

ALAMEDA COUNTY
HEALTH CARE SERVICES



AGENCY
DAVID J. KEARS, Agency Director

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

December 15, 2006

Mr. Hedayat Fedhai
Khan Petroleum Inc
3004 Andrade Rd
Sunol, CA 94586-9453

Mr. Obaid Abdullah
Khan Petroleum Inc
5500 Gold Creek Dr
Castro Valley, CA 94552-5441

Mr. Murray Kelsoe
Sunol Tree Gas Station
c/o Jeffery Lawson, Esq.
Silicon Valley Law Group
152 North Third Street, Suite 900
San Jose, CA 95112

Gentlemen:

Subject: Fuel Leak Case No. RO0002448, Global ID No. T0600114064, Sunol Tree Gas Station,
3004 Andrade Road, Sunol, CA

Alameda County Environmental Health (ACEH) is the lead oversight agency for investigation and cleanup of leaking underground fuel tank (LUFT) sites in Alameda County. The subject site is listed in our database as a LUFT site due to the unauthorized release of petroleum products from the previous UST system. A Methyl tert-Butyl Ether (MTBE) plume emanating from the unauthorized released at your site caused the drinking water supply well on your neighbor's property, T-Bear Ranch (3000 Andrade Road), to become contaminated. This contamination rendered the water supply unusable at the T-Bear site and contaminated a regional drinking water aquifer.

The Primary Responsible Party (RP) at that time, Mr. Murray Kelsoe, was ordered to provide a drinking water supply to T-Bear Ranch and cleanup the groundwater aquifer. The RP installed a non-industry standard temporary wellhead treatment system on the T-Bear well to provide the residents with an interim drinking water supply until a he could provide a permanent water source and cleanup to the aquifer. The RP subsequently defaulted on his cleanup responsibilities and bankrupted, leaving T-Bear with a contaminated water supply, an un-maintained drinking water treatment system, and a contaminated drinking water aquifer.

ACEH then took over corrective actions at your site by having your site designated an Emergency, Abandoned, Recalcitrant (EAR) Account site with the State Water Resources Control Board (SWRCB). ACEH retained an environmental consultant to maintain the temporary wellhead treatment system and perform investigation activities to determine the location of the contaminant plumes, cleanup the aquifer, and potentially install a new drinking water supply well at the T-Bear Ranch (corrective actions). ACEH pays for this work utilizing funds granted to your site through the EAR Account and the SWRCB recovers the associated costs paid via the EAR Account from the RP. Work ACEH has completed to date includes routine wellhead treatment system sampling and maintenance; emergency wellhead treatment system repairs; and site investigation activities and monitoring activities to locate the plume.

ACEH is eligible to utilize EAR Account grant funds provided there is no RP at the site. This became the case once Mr. Kelsoe became recalcitrant. If an RP becomes available for the site, e.g., through a property transaction, EAR Account grant funds cannot be utilized. ACEH is no longer eligible to receive EAR Account grant funds, nor perform work associated with contamination at the subject site due to your

purchase of the property. Through your purchase of the property you have become the Primary RP for the site and are responsible for all corrective actions.

All of the above information, including your identification as an RP and liability for corrective actions, was discussed with you in detail (before and after your property purchase) through numerous telephone conversations and meetings with Mr. Anthony Kandahari of your firm, and in detailed telephone conversations your attorney Karl R. Morthole Esq.

When you purchased the property in February 2006, ACEH was in the middle of implementing corrective actions at your site. Our contract for this work ends on December 31, 2006, after which we are no longer permitted to perform corrective actions associated with contamination at your site.

In the immediate near term this means that effective January 1, 2007, you are responsible for maintaining the T-Bear temporary wellhead treatment system, including but not limited to routine sampling; operation and maintenance; and emergency repairs to the system. Subsequent to this, you are responsible for all further corrective actions, including but not limited to, additional investigation activities, groundwater monitoring, aquifer cleanup, and potentially providing a new drinking water source to the T-Bear Ranch. The final report documenting work performed by ACEH's consultant is due December 31, 2006. After regulatory review of that report, ACEH will issue a directive letter to you requesting additional corrective actions at your site.

At this time we request that you attend a meeting at our offices the week of January 1, 2007, to discuss your site and your immediate plans to maintain the T-Bear temporary wellhead treatment system. We recommend that you bring your environmental consultant to this meeting. We will also be inviting the owners of the T-Bear Property to this meeting. Please contact me as soon as possible to schedule this meeting date.

We have established your schedule for sampling and maintenance, and reporting requirements for the T-Bear temporary wellhead treatment system below. Please note it is imperative that you perform sampling of the treatment system on a regular schedule to ensure that T-Bear is supplied with a clean water source and that system breakthrough (contamination in the influent water passes through the carbon treatment vessels to the effluent) does not occur. Therefore, we require that you address the technical comments below, perform this work and submit reports documenting your work in accordance with the due dates specified below.

TECHNICAL COMMENTS

1. **System Sampling Frequency and Analyses** – We request that you collect water samples from the influent to vessel #1, between the vessels, and the final discharge point every eight weeks. Samples from the influent to vessel #1 and from between the vessels shall be submitted for analysis and the effluent sample held by the lab. If analytical results indicate breakthrough between the vessels has occurred then the effluent sample shall be immediately analyzed. Water samples collected every eight weeks shall be analyzed by EPA Method 8260 for TPHG, BTEX, MTBE, TAME, ETBE, DIPE, and TBA. Laboratory analytical data sheets shall be submitted by e-mail to ACEH (donna.drogos@acgov.org) no later than 7-days after sample collection. A report documenting analytical results (containing cumulative data tables) and system operation and maintenance activities shall be submitted to ACEH in the System Sampling, Operation, and Maintenance Report according to the schedule below. This report is also to include field data sheets, tables of cumulative water flow data, and reporting on the general condition of the carbon filter system.

We require that you perform initial sampling of the system the first week of February 2007, and every 8 weeks thereafter. When carbon change-out occurs then sampling will need to occur every 8 weeks following the carbon change-out event.

2. System Breakthrough – If breakthrough occurs in the mid sample you are required to immediately replace the carbon/tank(s) and rotate the tanks so the vessel with the fresh carbon is in the back (discharge) end of the series so users are not exposed to a contaminated water supply. If breakthrough occurs at the final discharge point (post carbon sample) you are required to replace all carbon vessels. If breakthrough occurs, the system and sampling schedule shall be re-evaluated and a report of the evaluation submitted by the date specified below.

3. System Responsibility - You are responsible for all costs and for the performance of all work related to the system, including but not limited to, system sampling, system operation and maintenance, system evaluation and reporting, general and emergency repairs, dismantling, and removal. You are required to provide T-Bear with the phone number of a 24-hour emergency contact for system repairs & breakdown should T-Bear residents find the system is not working. We require that your 24-hour contact be someone who is competent and knowledgeable of water supply systems and in the repair of water treatment systems.

TECHNICAL REPORTS

Please submit technical reports to Alameda County Environmental Health (Attention: Ms. Donna Drogos), according to the following schedule:

- **Immediately** - Schedule meeting at ACEH offices for the week of January 2007
- **1st week of February 2007 and every 8 weeks thereafter (or every 8 weeks after a carbon change out event, should one occur)**– Sampling of water treatment system
- **7-days after each sampling of water treatment system** – Analytical results for samples of the influent to vessel #1 and of water collected between the vessels (submit one copy of laboratory reports by e-mail)
- **14-days after each sampling of water treatment system** – System Sampling, Operation and Maintenance Report
- **7-days after any system breakthrough is discovered** - System Re-evaluation Report

These reports are being requested pursuant to the Health and Safety Code Section 2725. We request that all required work be performed in a prompt and timely manner. Revisions to the schedule above shall be requested in writing with appropriate justification for anticipated delays.

ELECTRONIC SUBMITTAL OF REPORTS

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. Instructions for submission of electronic documents to the Alameda County Environmental Cleanup Oversight Program ftp site are provided on the attached "Electronic Report Upload (ftp) Instructions." Please do not submit reports as attachments to electronic mail.

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. Submission of reports to the Geotracker website does not fulfill the requirement to submit documents to the Alameda County ftp site. In September 2004, the SWRCB adopted regulations that require electronic submittal of information for 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, electronic submittal of a complete copy of all necessary reports was required in Geotracker (in PDF format). Please visit the SWRCB website for more information on these requirements (http://www.swrcb.ca.gov/ust/cleanup/electronic_reporting).

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

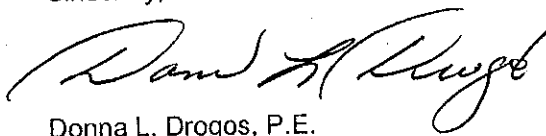
The California Business and Professions Code (Sections 6735, 6835, and 7835.1) requires that work plans and technical or implementation reports containing geologic or engineering evaluations and/or judgments be performed under the direction of an appropriately registered or certified professional. For 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.

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.

If you have any questions, please call me at (510) 567-6721.

Sincerely,



Donna L. Drogos, P.E.
LOP Program Manager

Enclosure: Electronic Report Upload (ftp) Instructions

cc: Alyce Sandbach , Esq.
Alameda County District Attorneys' Office
7677 Oakport Street, Suite 650
Oakland, CA 94621

Ms. Cheri McCaulou
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Mr. Roy Tovani & Ms. Helyn Hayes
PO Box 333
Sunol, CA 94586

Ms. Colleen Winey
Zone 7 Water Agency
100 North Canyons Parkway
Livermore, CA 94551

A. Levi, D. Drogos

Raymond MacKay, Esq.
Alameda County – County Counsel
1221 Oak Street
Oakland, CA 94607

Ms. Judy Reid
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Mr. Pat Hoban
Weber, Hayes & Associates
120 Westgate Drive
Watsonville, CA 95076

Mr. Scott Haggerty
Alameda County Board of Supervisors
1221 Oak Street, Suite 536
Oakland, CA 94612

ALAMEDA COUNTY
HEALTH CARE SERVICES



AGENCY
DAVID J. KEARS, Agency Director

Certified Mail #: 7002 2030 0006 9574 1655
December 15, 2006

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

NOTICE OF RESPONSIBILITY

Site Name & Address:
SUNOL TREE GAS
3004 ANDRADE RD
SUNOL, CA 94586

Local ID: RO0002448
Related ID: 3366
RWQCB ID: 01-3506
Global ID: T0600114064

Responsible Party:

HEDAYAT FEDHAI
KHAN PETROLEUM INC
3004 ANDRADE RD
SUNOL CA 94586-9453

Date First Reported: 4/17/2002

Substance: 8006619 Gasoline-Automotive (motor gasoline and additives), leaded & unleaded

Funding for Oversight: LOPF - LOP Federal Fund

Multiple RPs?: Yes

Pursuant to sections 25297.1 and 25297.15 of the Health and Safety Code, you are hereby notified that the above site has been placed in the Local Oversight Program and the individual(s) or entity(ies) shown above, or on the attached list, has (have) been identified as the party(ies) responsible for investigation and cleanup of the above site. Section 25297.15 further requires the primary or active Responsible Party to notify all current record owners of fee title before the local agency considers cleanup or site closure proposals or issues a closure letter. For purposes of implementing section 25297.15, this agency has identified KHAN PETROLEUM INC as the primary or active Responsible Party. It is the responsibility of the primary or active Responsible Party to submit a letter to this agency, within 20 calendar days of receipt of this notice that identifies all current record owners of fee title. It is also the responsibility of the primary or active Responsible Party to certify to the local agency that the required notifications have been made at the time a cleanup or site closure proposal is made or before the local agency makes a determination that no further action is required. If property ownership changes in the future, you must notify this local agency within 20 calendar days from when you are informed of the change.

Any action or inaction by this local agency associated with corrective action, including responsible party identification, is subject to petition to the State Water Resources Control Board. Petitions must be filed within 30 days from the date of the action/inaction. To obtain petition procedures, please FAX your request to the State Water Board at (916) 341-5808 or telephone (916) 341-5650.

Pursuant to section 25296.10(c)(6) of the Health and Safety Code, a responsible party may request the designation of an administering agency when required to conduct corrective action. Please contact this office for further information about the designation process.

Please contact your caseworker Donna L. Drogos, at this office at (510) 567-6721 if you have questions regarding your site.


ARIU LEVI, Director
Contract Project Director

Date: 12/15/06

Action: Add
Reason: New property owner

RENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Hedayat Fedhai
Khan Petroleum Inc
3004 Andrade Rd
Sunol, CA 94586-9453

2. Article Number
(Transfer from service label): **7002 2030 0006 9574 1655**

PS Form 3811, August 2001 Domestic Return Receipt 102895-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
X Hedayat Fedhai

B. Received by (Printed Name) *Hedayat Fedhai* C. Date of Delivery *12-19-06*

D. Is delivery address different from Item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To *MR HEDAYAT FEDHAI, KHAN PETRO*

Street, Apt. No.,
or PO Box No. *3004 ANDRADE RD*

City, State, ZIP+4 *SUNOL, CA 94552*

PS Form 3800, June 2002 See Reverse for Instructions

7002 2030 0006 9574 1655

ALAMEDA COUNTY
HEALTH CARE SERVICES



AGENCY

DAVID J. KEARS, Agency Director

Certified Mail #: 7002 2030 0006 9574 1662

December 15, 2006

ENVIRONMENTAL HEALTH SERVICES

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

NOTICE OF RESPONSIBILITY

Site Name & Address:

**SUNOL TREE GAS
3004 ANDRADE RD
SUNOL, CA 94586**

**Local ID: RO0002448
Related ID: 3366
RWQCB ID: 01-3506
Global ID: T0600114064**

Responsible Party:

**OBAID ABDULLAH
KHAN PETROLEUM INC
5500 GOLD CREEK DR
CASTRO VALLEY CA 94552-5441**

Date First Reported: 4/17/2002

Substance: 8006619 Gasoline-Automotive (motor gasoline and additives), leaded & unleaded

Funding for Oversight: LOPF - LOP Federal Fund

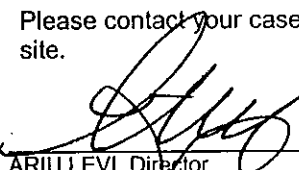
Multiple RPs?: Yes

Pursuant to sections 25297.1 and 25297.15 of the Health and Safety Code, you are hereby notified that the above site has been placed in the Local Oversight Program and the individual(s) or entity(ies) shown above, or on the attached list, has (have) been identified as the party(ies) responsible for investigation and cleanup of the above site. Section 25297.15 further requires the primary or active Responsible Party to notify all current record owners of fee title before the local agency considers cleanup or site closure proposals or issues a closure letter. For purposes of implementing section 25297.15, this agency has identified KHAN PETROLEUM INC as the primary or active Responsible Party. It is the responsibility of the primary or active Responsible Party to submit a letter to this agency, within 20 calendar days of receipt of this notice that identifies all current record owners of fee title. It is also the responsibility of the primary or active Responsible Party to certify to the local agency that the required notifications have been made at the time a cleanup or site closure proposal is made or before the local agency makes a determination that no further action is required. If property ownership changes in the future, you must notify this local agency within 20 calendar days from when you are informed of the change.

Any action or inaction by this local agency associated with corrective action, including responsible party identification, is subject to petition to the State Water Resources Control Board. Petitions must be filed within 30 days from the date of the action/inaction. To obtain petition procedures, please FAX your request to the State Water Board at (916) 341-5808 or telephone (916) 341-5650.

Pursuant to section 25296.10(c)(6) of the Health and Safety Code, a responsible party may request the designation of an administering agency when required to conduct corrective action. Please contact this office for further information about the designation process.

Please contact your caseworker Donna L. Drogos, at this office at (510) 567-6721 if you have questions regarding your site.


ARIU LEVI, Director
Contract Project Director

Date: 12/15/06

Action: Add
Reason: New property owner

Attachment A: Responsible Parties Data Sheet

cc: Jennifer Jordan - SWRCB, D. Drogos

NOR1.rpt - NOR 2006 Revision

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to: Mr. Obaid Abdullah Khan Petroleum Inc 5500 Gold Creek Dr Castro Valley, CA 94552-5441	B. Received by (Printed Name) Obaid Abdullah C. Date of Delivery 12/27/06
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:
7002 2030 0006 9574 1662	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
PS Form 3811, August 2001	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes Domestic Return Receipt 102595-02-M-1840

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To
 OBAID ABDULLAH, KHAN PETROLEUM
 Street, Apt. No.;
 or PO Box No. 5500 Gold Creek Dr
 City, State, ZIP+4
 CASTRO VALLEY, CA 94552

PS Form 3800, June 2002 See Reverse for Instructions

7002 2030 0006 9574 1662

ALAMEDA COUNTY ENVIRONMENTAL HEALTH
LUFT LOCAL OVERSIGHT PROGRAM

ATTACHMENT A - RESPONSIBLE PARTIES DATA SHEET

December 15, 2006

Site Name & Address:

SUNOL TREE GAS
3004 ANDRADE RD
SUNOL, CA 94586

Local ID: RO0002448
Related ID: 3366
RWQCB ID: 01-3506
Global ID: T0600114064

All Responsible Parties

RP has been named a Primary RP - HEDAYAT FEDHAI
KHAN PETROLEUM INC
3004 ANDRADE RD | SUNOL, CA 94586-9453 | Phone (510) 332-5049

RP has been named a RP - MURRAY KELSOE
SUNOL TREE GAS c/o Jeffery Lawson, Esq. | Silicon Valley Law Group
|152 NORTH THIRD ST, SUITE 900 | SAN JOSE, CA 95112 | Phone (408) 286-6100

RP has been named a RP - OBAID ABDULLAH
KHAN PETROLEUM INC
5500 GOLD CREEK DR | CASTRO VALLEY, CA 94552-5441 | Phone (510) 332-5051

Responsible Party Identification Background

Alameda County Environmental Health (ACEH) names a "Responsible Party," as defined under 23 C.C.R Sec. 2720. Section 2720 defines a responsible party 4 ways. An RP can be:

1. "Any person who owns or operates an underground storage tank used for the storage of any hazardous substance."
2. "In the case of any underground storage tank no longer in use, any person who owned or operated the underground storage tank immediately before the discontinuation of its use."
3. "Any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred."
4. "Any person who had or has control over an underground storage tank at the time of or following an unauthorized release of a hazardous substance."

AECH has named the responsible parties for this site as detailed below.

Murray Kelsoe owned the real property from November 1984 to November 2004. Murray Kelsoe owned and operated the UST system from December 1984 until April 2, 2002, when the USTs were removed. An unauthorized release was discovered and confirmed during the UST removal process. Murray Kelsoe is a responsible party because he owned or operated the underground storage tank immediately before the discontinuation of its use (Definition 2); he owned the property where an unauthorized release of a hazardous substance from an underground storage tank has occurred (Definition 3); and because he had control over an underground storage tank at the time of or following an unauthorized release of a hazardous substance (Definition 4).

Hedayat Fedhai and Obaid Abdullah of Khan Petroleum Inc. purchased the property in February 2006. Khan Petroleum Inc. is a responsible party because they own the real property where an unauthorized release of a hazardous substance from an underground storage tank has occurred (Definition 3).

20-2448



State Water Resources Control Board



Division of Water Quality

Alan C. Lloyd, Ph.D.
Agency Secretary

1001 I Street, Sacramento, California 95814 ♦ (916) 341-5680
Mailing Address: P.O. Box 2231, Sacramento, California 95812
FAX (916) 341-5808 ♦ Internet Address: <http://www.waterboards.ca.gov>

Arnold Schwarzenegger
Governor

January 4, 2005

Robert Schultz
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502

RECEIVED
JAN 11 2005
ALAMEDA COUNTY

Dear Responsible Party:

PASSWORD AUTHORIZATION

This letter confirms that the State Water Resources Control Board (SWRCB) has authorized your agent to electronically submit Underground Storage Tank (UST) data to the Geo Tracker database to comply with Chapter 727 of 2000 (AB 2886). This authorization is based on receipt of the completed Electronic Submittal Password Authorization Form, signed by you and your agent, which your agent sent us to follow up on his/her online application. The agent approved for your site is Joe Hayes.

We have now approved your agent to electronically submit data for the sites already requested and for any future sites that your agent requests. Should you decide that you no longer wish this person to submit data on your behalf, you will need to submit an Electronic Submittal Password Revocation Form to the SWRCB.

If you have questions or concerns, please feel free to contact the GeoTracker help desk by either email or phone at: geotrackerhelp@ecointeractive.com or (866) 480-1028

Sincerely yours,

Hamid Foolad
Environmental Scientist
Division of Water Quality

ELECTRONIC SUBMITTAL PASSWORD REVOCATION FORM FOR REMOVING CONSULTANTS AS AUTHORIZED RP AGENTS

FACILITY GLOBAL ID #:

T0600114064

TANK OWNER, OPERATOR, OR RESPONSIBLE PERSON AND ADDRESS::

EAR Account Site/Cleanup not by RP

Project Manager: Robert Schultz, Alameda County Environmental Health
1131 Harbor Bay Parkway, Alameda, CA 94502

FACILITY/ LEAK SITE ADDRESS:	CITY	STATE	ZIP CODE
3004 Andrade Road	Sunol	California	94502

The above identified responsible person does hereby revoke the authorization for:

DESIGNATED AUTHORIZED REPRESENTATIVE NAME:

Jessica Chiarro

COMPANY NAME:

Clearwater Group Inc.

COMPANY ADDRESS	CITY	STATE	ZIP CODE
	Point Richmond	California	

to use the password issued for the electronic submission to the GeoTracker database of laboratory and location data pertaining to the facility/site identified above.

This Revocation of Authority for designation of a representative shall become effective on the date of execution and shall remain in effect until terminated, in writing, by the above-named responsible person.

EXECUTED THIS 2nd DAY OF December, 20 04

AT Alameda, CA

Robert W. Schultz
RESPONSIBLE PERSON SIGNATURE

510-567-6719
PHONE NUMBER

Robert W. Schultz, ACEH
RESPONSIBLE PERSONS PRINTED NAME

To begin electronic data submittal process,
obtain password and login at:
<https://geotracker.swrcb.ca.gov/ab2886>.
Connection may take up to a minute as the
secure site is established. Please accept
certificate to allow process to continue. Mail
for FAX completed and signed form within 2
weeks.

Mail or FAX to:
Deanna Flanagin
SWRCB - DCWP
P.O. Box 944212
Sacramento, CA 94244
FAX: (916) 341-5808

CUPERTINO CAPITAL

15700 Winchester Blvd
Los Gatos, CA 95030
TELEPHONE: 408 · 354 · 9777
FACSIMILE: 408 · 354 · 9787

FACSIMILE COVER SHEET

From:	Michael Parsons
Date:	12.16.04
Regarding:	Sunol Gas
Total Pages Including This Cover Sheet: 3	

Please call (408) 354-9777, if you do not receive all of the pages in this facsimile.

<u>Recipient #1</u> To: Bob Schultz Company: County of Alameda Fax: (510) 337-9335 Phone:	<u>Recipient #2</u> To: Company: Fax: Phone:
<u>Recipient #3</u> To: Company: Fax: Phone:	<u>Recipient #4</u> To: Company: Fax: Phone:

Message:

Alameda County
DEC 13 2004
Environmental Health

CONFIDENTIALITY STATEMENT

THE DOCUMENTS ACCOMPANYING THIS COVER SHEET CONTAIN INFORMATION THAT IS CONFIDENTIAL OR PRIVILEGED AND IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT, DO NOT USE OR DISCLOSE THIS FACSIMILE. IF YOU RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE FACSIMILE TO US BY MAIL.

RECORDING REQUESTED BY:

2004507500

11/15/2004 11:38 AM

FIDELITY NATIONAL TITLE



OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK D'CONNELL
RECORDING FEE: 10.00

AND WHEN RECORDED MAIL TO:

Sunol Andrade Investors, LLC
15700 Winchester Blvd
Los Gatos, CA 95030



2 PGS

Forward Tax Statements To:
The Address Given Above

3

TS #: 03-5572-01
Loan #: 836

SPACED ABOVE LINE FOR RECORDERS USE
3692453

TRUSTEE'S DEED UPON SALE

A.P.N.: 096-0001-007-07 and 096-0001-007-08

Transfer Tax: \$0.00

"THIS TRANSACTION IS EXEMPT FROM THE REQUIREMENTS OF THE REVENUE AND TAXATION CODE, SECTION 480.3"

The Grantee Herein WAS The Foreclosing Beneficiary.

The Amount of The Unpaid Debt was: \$1,421,209.88

The Amount Paid By The Grantee was: \$1,000.00

Said Property is in UNINCORPORATED AREA, County of Alameda

WT Capital Lender Services, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

SUNOL ANDRADE INVESTORS, LLC, a California Limited Liability Company

(herein called Grantee) but without covenant or warranty, expressed or implied, all right title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Alameda, State of California, described as follows:

BEING THE TWO PARCELS DESCRIBED IN THE DEED TO JAMES D. BURNS, ET UX, RECORDED JANUARY 8, 1974, REEL 3585, IMAGE 927, ALAMEDA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THAT CERTAIN COURSE DESCRIBED AS HAVING A BEARING AND DISTANCE OF "SOUTH 9 DEGREES 47 MINUTES 58 SECONDS, EAST, 200.00 FEET", IN THE EASTERLY BOUNDARY OF THE LAND CONVEYED TO THE STATE OF CALIFORNIA DESCRIBED IN PARCEL 3A IN THE FINAL ORDER OF CONDEMNATION, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ALAMEDA, A CERTIFIED COPY OF WHICH WAS RECORDED JULY 8, 1963, REEL 929, IMAGE 753 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, DISTANT SOUTHEASTERLY ALONG SAID EASTERLY BOUNDARY 150.72 FEET FROM THE NORTHWESTERLY TERMINUS OF SAID CERTAIN COURSE; THENCE NORTH 64 DEGREES 59 MINUTES 55 SECONDS EAST, A DISTANCE OF 150.00 FEET TO THE SOUTHWESTERN CORNER OF PARCEL 2 AS DESCRIBED IN SAID DEED (REEL 3585, IMAGE 927); THENCE ALONG THE BOUNDARY OF SAID PARCEL 2 THE THREE (3) FOLLOWING COURSES: NORTH 64 DEGREES 59 MINUTES 55 SECONDS EAST, 70.70 FEET; NORTH 9 DEGREES 47 MINUTES 58 SECONDS WEST, 222.79 FEET; AND SOUTH 56 DEGREES 32 MINUTES 52 SECONDS WEST, 74.48 FEET TO THE NORTHEASTERN CORNER OF SAID PARCEL 1 (REEL 3585, IMAGE 927), SAID CORNER BEING ON THE SOUTHEASTERLY LINE OF THAT CERTAIN 20.00 FOOT STRIP OF LAND GRANTED TO THE SIERRA AND SAN FRANCISCO POWER COMPANY, RECORDED APRIL 27, 1910, IN BOOK 1709 OF DEEDS, PAGE 367, OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE SOUTH 56 DEGREES 32 MINUTES 52 SECONDS WEST ALONG SAID SOUTHEASTERLY LINE, A DISTANCE OF 152.36 FEET TO A POINT ON SAID EASTERLY BOUNDARY OF THE LAND CONVEYED TO THE STATE OF CALIFORNIA; THENCE SOUTH 2 DEGREES 12

TRUSTEE'S DEED UPON SALE

TS #: 03-5572-01
Loan #: 836

Alameda County
DEC 16 2004
Environmental Services

MINUTES 20 SECONDS EAST ALONG SAID EASTERLY BOUNDARY A DISTANCE OF 39.29 FEET TO AN ANGLE POINT IN SAID EASTERLY BOUNDARY; THENCE SOUTH 9 DEGREES 47 MINUTES 58 SECONDS EAST AND DISTANCE OF 150.72 FEET TO THE POINT OF BEGINNING.

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by Murray Kelsoe, a married man as his sole and separate property as Trustor, dated 3/15/2002, under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Default and Election to Sell under the Deed of Trust recorded on 3/29/2002, Instrument number 2002140530, Book ---, Page --- of Official records. Trustee has complied with all applicable statutory requirements of the State of California and performed all duties required by the Deed of Trust including sending a Notice of Default and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified mail, postage pre-paid to each person entitled to notice in compliance with California Civil Code 2924b.

All requirements per California Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 11/8/2004. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being \$1,000.00, in lawful money of the United States, in pro per, receipt thereof is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, WT Capital Lender Services, as Trustee, has this day, caused its name to be hereunto affixed by its officer thereunto duly authorized by its corporation by-laws.

Date: November 11, 2004

WT Capital Lender Services

By: Debra Berg
DEBRA BERG, Senior Vice President

State of California } ss.
County of Fresno }

On 11/11/2004, before me, the undersigned Notary Public, personally appeared Debra Berg personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Anthony R. Garcia
Anthony R. Garcia



Schultz, Robert, Env. Health

From: Schultz, Robert, Env. Health
Sent: Tuesday, November 30, 2004 5:10 PM
To: 'jst@svlg.com'
Cc: Pat Hoban (E-mail); Drogos, Donna, Env. Health
Subject: workplan/scope of work

Contacts: Jeffrey S. Lawson
Attachments: PHASE%20II%20Workplan%20Scope-and-Map.pdf

Jeff:
Please find attached a copy of the scope of work and map of drilling locations. As discussed earlier today, we plan to be onsite on Friday 12/3/04 to collect samples from the existing water supply well and to prepare for drilling next month.
Sincerely,
Bob

Robert W. Schultz, R.G.
Hazardous Materials Specialist
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502
510-567-6719 (direct)
510-337-9335 (facsimile)



PHASE%20II%20W
orkplan%20Scope-..

Proposed Phase II Work Tasks
Emergency Characterization Work Tasks for Replacement of MTBE-Impacted Domestic Water Well
 Sunol Tree Gas Station Fuel Release, 3004 Andrade Road, Sunol
 28-Oct-04

Proposed Work Tasks (Work to be completed upon review and approval of the workplan by Alameda County)	Data Collected & Reporting (all samples tested TPH-gasoline, BTEX and fuel oxygenates)
<p>Task 1. Initial Assessment of Sunol Tree Gas Station Well and Sampling of Piezometers</p> <ul style="list-style-type: none"> • Sunol Tree Gas Station water well reported as steel, 10-inch diameter, 153' deep. The pump is located at a depth of approximately 100 feet. Review existing video log to see if the well screen perforations are obvious. • Discrete water sampling will be conducted under ambient and, if possible, under low flow pumping conditions to investigate whether fuel contaminants are present, and if so, whether they are preferentially entering the well at a specific depth or depths. A stainless steel sample tube (Solinst discrete water sampling system) will be lowered to selected sampling depths based on the results of the flow meter logging described above. Up to ten samples will be collected and analyzed for TPH-gasoline, BTEX, and fuel oxygenates (MTBE, TAME, DIPE, TBA and EtOH). The 2 samples from PZ-2 will also be tested for nitrates/colliform to for Zone 7 Water District replacement well application. • Install digital flow meter on water supply line from Kelsoe's well to accurately gauge water consumption, pumping periods and rates, and potential connection to shallow water bearing zones (integration of transducer data collected in PZ-1). • Sample the existing three dual piezometers (shallow and deep zones) to confirm base concentrations obtained during initial exploratory borehole sampling. Obtain water levels and complete gradient maps. • Data submittal: Lab sheets, tabulated results, updated gradient & contaminant contour maps, summary of data. 	<p style="text-align: center;">Well perforations</p> <p>4-6 water samples (ambient) 4-6 water samples (low flow) (+ 1 at tap if any detections noted)</p> <p>Flow rate and volume at the Gas Station well, Aquifer characteristics & connectivity data, Periodic data monitoring/reporting, Continuous flow rate and volume data Aquifer connectivity data, Ongoing data monitoring; Electronic data submittal</p>
<p>Task 2: Drilling of Two Deep Exploratory Borings & Installation of Replacement Well (see attached Figure 1 for boring locations)</p> <ul style="list-style-type: none"> • The two deep exploratory borings will provide critical data needed to determine whether a replacement well's sanitary seal will adequately seal off the impacted shallow aquifer groundwater water from an underlying water production aquifer. We will quantify the thickness and continuity of a potential clay barrier underlying the MTBE plume for the design of a good, new water source at the T Bear Ranch. The A1 Water Well at the adjoining stable site has clay from 48-117' while the Golf Rage Water Well has clay strata from 82-124'. The proposed exploratory borings: 1) will be continuously cored to confirm whether this clay unit exists beneath the site close to the fuel leak site as well as in the vicinity of the existing T Bear well, and 2) will extend through to the underlying aquifer to determine if a viable water source is present. We do plan on using a using a hydromunch tool to grab 3 depth-discrete water samples from water bearing zones. The samples will target water bearing zones in the range of 50-75', 75-100' and at depth (150'). • One of the two deep exploratory borings will be converted into a replacement water well for the T Bear Ranch. There will be a minimum 50 foot cement seal but if possible the water production zone will be screened in a second underlying, aquifer ideally separated from the MTBE-impacted groundwater plume by a continuous clay layer. The sonic-cored exploratory boring will be contain a minimum 8-inch "over-shot" conductor casing for installation of 4-inch diameter, PVC well casing. • The existing electrical system will be evaluated to confirm any new loads on the do not overload the panel. Specifically, an assessment will be made if there is an increase in electrical needs due to deeper pumping. When the well has been approved for use as a replacement water source, the well will be plumbed to the existing water well system (pump, pressure tank). • At startup of the new replacement well, we will conduct a 48 hour pumping test to confirm adequate water yield, check for connectivity with the impacted, shallow water bearing zone, and complete a 2nd round of water quality testing. • Data submittal: Boring logs, tabulated water quality data and certified lab sheets, updated cross-section, & summary of data 	<p>6 water samples- same day turnaround 5-6 soil samples for sieve analysis</p> <p>Following well development, the new well will be sampled for TPH-gas, BTEX, fuel oxy's, & the Title 22 drinking water screen</p> <p>Written opinion from a licensed electrician.</p> <p>Following the pump test, the new well will be sampled for TPH-gas, BTEX, fuel oxy's, & the Title 22 drinking water screen</p> <p>Electronic data submittal</p>
<p>Task 3 On-site Plume Definition & Transect Calibration Borings (see attached Figure 1 for boring locations)</p> <ul style="list-style-type: none"> • On-Site Drilling: We plan to obtain 60-ft continuous cores from two on-site boring locations (Sunol Tree Gas Station) which address residual soil and groundwater contamination near the dispenser area and the underground tanks. Soil and discrete hydromunch water samples will be collected using Dual Tube GeoProbe technology which seals off the upper formation to reduce potential cross-contamination issues. Four soil and 3 groundwater samples per boring will be analyzed for TPHg/BTEX/oxygenates. □ Following consultation with ACEH, and if appropriate, we will install 3-channel multi-level system wells in these borings. The multi-level monitoring points will provide source area information on vertical groundwater gradients, potential MTBE transport pathways, and time-series sampling at multiple depths. We will permit, drill, install, survey, and develop the monitoring points. Following purging of individual chambers, we will collect representative water samples from all available monitoring zones and analyze for BTEX and fuel oxygenates (including MTBE and TBA). • Transect Calibration: We plan to characterize the distal ends of the proposed multi-level well transect (Task 4, below) by collecting 3 depth-discrete hydromunch samples at 2-3 locations. The borings will be positioned primarily along the eastern flank of the plume and the hydromunch samples will be collected using Dual Tube GeoProbe technology which seals off the upper formation to reduce potential cross-contamination issues. The results will provide distal locations for the proposed multi-level well transect (Task 4, below). • Data submittal: Boring logs, tabulated water quality data and certified lab sheets, updated cross-section, & summary of data 	<p>8 soil & 6 water samples</p> <p>• 2 Multi-Level Well locations (up to 6 sample intervals)</p> <p>6-9 water samples</p> <p>Electronic data submittal</p>
<p>Task 4 Multi-Level Well Transect (see attached Figure 1 for locations)</p> <ul style="list-style-type: none"> • The main goals behind installing the multi-level wells are: 1) to accurately log subsurface conditions to identify preferential transport pathways, and 2) to accurately measure the lateral and vertical residual contaminant discharge leaving the source site (Sunol Gas Station). The accurate calculation of contaminant mass leaving the site coupled with concentrations at the impacted T Bear well can provide a relatively accurate timeline for residual contamination to continue to impact water resources or attenuate to health-based levels. Accurately quantifying the mass discharge will provide invaluable data for determining a cost effective treatment system, or show that natural attenuation is the most cost effective and timely approach for protecting water resources. □ Transect A - 10 well locations on 25' centers. Install using sonic drilling technology which provides unique sampling capabilities below water. Groundwater is approximately 10 feet below ground surface. The 1 1/2-inch diameter, 3-channel multi-level wells will be installed with 2-foot screened zones having a 3-foot sand annulus per sampling interval, uncoated bentonite pellets between intervals, centralizers on 10 foot centers, and a cement seal. □ Each sample interval will be developed using a small submersible pump or check-valved tubing. Following development, the wells will be purged, sampled and tested for PH-gasoline, BTEX, and fuel oxygenates. The wells will be surveyed and water quality and elevation data uploaded to the State GeoTracker program. • Data submittal: Boring logs, tabulated water quality data and certified lab sheets, updated cross-section, & summary of data 	<p>• Initial Water Quality Testing of 30 Samples from the 10 Multi-Level Wells (Monitoring & Reporting Program to be developed following initial test results)</p> <p>Electronic data submittal</p>

Proposed Phase II Work Tasks
Emergency Characterization Work Tasks for Replacement of MTBE-Impacted Domestic Water Well
 Sunol Tree Gas Station Fuel Release, 3004 Andrade Road, Sunol
 28-Oct-04

Proposed Work Tasks (Work to be completed upon review and approval of the workplan by Alameda County)	Data Collected & Reporting (all samples tested TPH-gasoline, BTEX, and fuel oxygenates)
<p>Task 5 <u>Project Management, On-going Coordination including Bi-Weekly Conference Meetings with Regulators, Assessment and Revised SCM Uploads and Subsequent Ongoing Monitoring Tasks</u></p> <ul style="list-style-type: none"> • <u>Conduit Study</u> We will research historical maps and land use documents, and complete a neighborhood well reconnaissance to provide additional assurance that obvious, undocumented wells do not exist within a half-mile of the subject site. We will confirm the presence of public utility trenches along the fuel leak site property boundaries. We will identify potential conduits for contaminant migration. • <u>Aquifer & Mass Discharge Assessment</u> We plan to confirm preliminary aquifer flow velocity and aquifer parameter calculations with Kelso well data, and new gradient and transducer data. We will provide an assessment of aquifer conditions and contaminant mass discharge leaving the fuel release site by integrating the collected data which will include water quality concentrations, water level measurements, water consumption volumes, pumping periods and rates, and measurable transducer-recorded influence in screened water bearing zones, soil lithology, preferential pathways, and identified conduits. A minimum of 2 cross sections will be submitted to visually present subsurface conditions. • <u>Data submittal</u> We will revise the electronic Site Conceptual Model (SCM) to incorporate the aforementioned Conduit Study and Aquifer and Mass Discharge Assessments. A recommended Monitoring & Reporting Program will be submitted. We will confirm all new data collected has been uploaded to the electronic SCM intranet site including all boring logs, tabulated water quality data and certified lab sheets, updated cross-section, & summary of data. A confirmatory, stamped cover will be forwarded to ACEH documenting the electronic submittal. • <u>Subsequently, we plan to monitor water level, water quality, and pumping data in accordance with a Monitoring & Reporting Program</u> (to be developed based on initial test results). The site-specific program will target groundwater water fluctuations and water quality data to monitor plume stability, plume capture, and changes in mass discharge over time. 	<p style="text-align: center;">Electronic data submittal.</p> <p style="text-align: center;">Monthly, Quarterly & Annual Monitoring (A site-specific Monitoring & Reporting Program to be developed following initial test results)</p>
<p>Task 7 <u>Convert T-Bear well to Pump and Treat (Carbon Treatment) and Conduct System Operations and Maintenance</u></p> <ul style="list-style-type: none"> • We will complete the NPDES permit process to include filing fees, testing, system modification including installation of 175 feet of discharge piping to local discharge ditch, startup testing & reporting. • We will provide Operations and Maintenance service on the treatment system as it is the drinking water source for residences and a horse stabling business at the site. This work task includes providing carbon drum backup for immediate change-out following carbon breakthrough, testing and proper disposal of spent carbon, and troubleshooting any system failures. • We will conduct regularly-scheduled water quality monitoring sampling of water from the production well and treatment system for State-certified analysis (TPH-gas, BTEX, MTBE, TAME, DIPE, TBA AND EIOH), interpretation of those results, and make corrections to the system to prevent system breakthrough and ensure residents of T-Bear Ranch receive uncontaminated water. Laboratory testing of carbon treatment system samples will be run on a 2-day turnaround for effective monitoring. • We will provide milestone and monitoring reports required by Alameda County Environmental Health Services to include: <ul style="list-style-type: none"> <input type="checkbox"/> A monthly, <u>System Operation and Sampling Report</u>, to include State-certified laboratory data, chronological tabulation of water quality results, operations and maintenance information (datalogger flow record, carbon usage, MTBE mass removed, system update) <input type="checkbox"/> <u>System Re-evaluation Report</u>, addressing any carbon breakthrough and providing details of follow-up actions and any additional assessment – submitted 1 week from any carbon breakthrough. 	<p style="text-align: center;">NPDES Permit and Reporting</p> <p style="text-align: center;">Monthly</p> <p style="text-align: center;">Following Carbon Breakthrough</p>

Notes:

- #1.) Unless stated otherwise, all analysis is for TPH-gas, BTEX, and oxygenates (MTBE, TAME, DIPE, TBA and EIOH), analyzed by EPA Method 8260. Detection limits for all target constituents tested by EPA 8260 are all below MCLs with the exception of EDB. EDB's MCL is 0.05 ppb and the Minimum Detection Limit (MDL) is 0.2 ppb. EPA Method # 8011 can achieve the MDL but this will run an additional \$112 per sample.

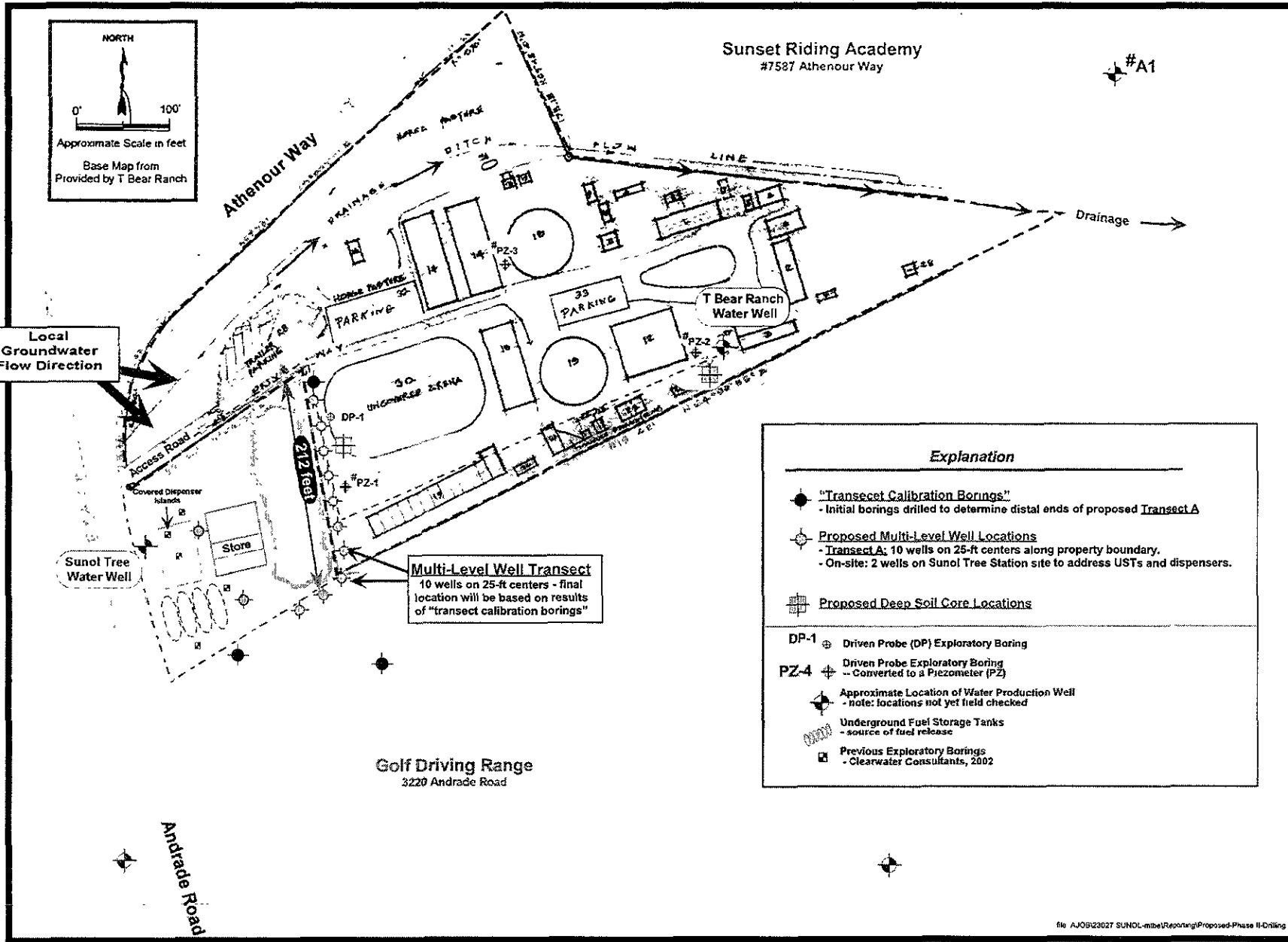


FIGURE
1
Job #
23027

**PHASE II Characterization Workplan
for Emergency Domestic Water Well Replacement**
SUNOL TREE GAS STATION
3004 Andrade Road
Sunol, Alameda County

Weber, Hayes & Associates
Hydrogeology and Environmental Engineering
120 Westgate Drive, Watsonville, Ca 95076
(831) 722 - 3580 (831) 662 - 3100



From: Lawson, Jeff [jst@svlg.com]
Sent: Monday, October 25, 2004 10:47 AM
To: Schultz, Robert, Env. Health
Subject: RE: Sunol Tree Gas Station

Bob,
Thanks for the response. I was out the end of last week. In negotiating with the Alameda County DA we agreed that the site priorities would be 1st Treating the T-Bear water. 2nd Removal of the dirt. The County wanted the dirt removed for many reasons but one I think is that it covers most of the site and is in the way of any future investigation. Please let me know when there is a work plan that we can comment on.
Thx

Jeff Lawson

-----Original Message-----

From: Schultz, Robert, Env. Health [mailto:robert.schultz@acgov.org]
Sent: Wednesday, October 20, 2004 11:57 AM
To: Lawson, Jeff
Cc: Pat Hoban (E-mail); Levi, Ariu, Env. Health; Drogos, Donna, Env. Health
Subject: Sunol Tree Gas Station

Jeff:
I am writing in response to your 10/14/04 letter. You asked if T-Bear Ranch is receiving treated water. Yes, ACDEH contracted with Weber Hayes to maintain and modify the treatment system. Since Weber Hayes first began site work for us on May 25,2004, Helen & Roy have been receiving treated and tested water. You also asked if part of the \$400,000 allocated to the site includes removing the dirt. At this time, it is premature for me to say yes or no. We have not issued contracts for all funds allocated by the state, as the \$400,000 is to cover work to be performed through the end of FY 2005.
Sincerely,
Bob

Robert W. Schultz, R.G.
Hazardous Materials Specialist
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502
510-567-6719 (direct)
510-337-9335 (facsimile)

Schultz, Robert, Env. Health

From: Schultz, Robert, Env. Health
Sent: Wednesday, October 20, 2004 11:57 AM
To: 'jst@svlg.com'
Cc: Pat Hoban (E-mail); Levi, Ariu, Env. Health; Drogos, Donna, Env. Health
Subject: Sunol Tree Gas Station

Jeff:
I am writing in response to your 10/14/04 letter. You asked if T-Bear Ranch is receiving treated water. Yes, ACDEH contracted with Weber Hayes to maintain and modify the treatment system. Since Weber Hayes first began site work for us on May 25,2004, Helen & Roy have been receiving treated and tested water. You also asked if part of the \$400,000 allocated to the site includes removing the dirt. At this time, it is premature for me to say yes or no. We have not issued contracts for all funds allocated by the state, as the \$400,000 is to cover work to be performed through the end of FY 2005.
Sincerely,
Bob

Robert W. Schultz, R.G.
Hazardous Materials Specialist
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502
510-567-6719 (direct)
510-337-9335 (facsimile)

SILICON VALLEY LAW GROUP

A LAW CORPORATION

Jeffrey S. Lawson

jsl@svlg.com

October 14, 2004

Via Facsimile & U.S. Mail

Donna L. Drogos
LOP Program Manager
Environmental Health Services
Environmental Protection
1131 Harbor Bay Parkway, Ste. 250
Alameda CA 94502-6577

Alameda County
OCT 18 2004
Environmental Health

Re: Sunol Tree Gas Station: 3004 Andrade Road, Sunol, CA
Fuel Leak Case No.: RO0002448

Dear Ms. Drogos:

I would like to follow up on the status of the groundwater supply at the T-Bear Ranch. Are they receiving treated water? Also, concerning the \$400,000 in the EAR account, does any of the money allocated for investigation of the Sunol Tree Gas Station include removing the \$170,000 of dirt?

I appreciate your assistance.

Very truly yours,
Silicon Valley Law Group



JEFFREY S. LAWSON

JSL/lt

Cc: Murray Kelsoe

Schultz, Robert, Env. Health

From: Alphacat2000@aol.com
Sent: Friday, October 15, 2004 12:51 PM
To: Schultz, Robert, Env. Health
Subject: Re: well sampling

Good Morning Robert,

Thanks for taking time to respond.

I have emergency numbers & contacts in the event we have a problem with the well. The numbers are Weber Hayes contacts. Can you give me new numbers & contacts to use until this issue is settled???

I know I let the PGE issue slide for awhile, however, I have the copies you requested & will mail them to you.

The PGE bill for Sept to October just arrived. The usage is so much higher than billing for the same time last year, or any other months. I'm going to have the read verified ASAP. If rates go back to what they were prior to the installation of the system, my bill would be double.

Thanks for any information & updates regarding our project.

Helyn Hayes & Roy Tovani
T Bear

Schultz, Robert, Env. Health

From: Schultz, Robert, Env. Health
Sent: Thursday, October 14, 2004 4:31 PM
To: 'Alphacat2000@aol.com'
Subject: RE: well sampling

Hi Helyn:

I expect no impact on schedule from the current sampling event by Weiss. In response to your question: I'm glad you like Weber Hayes, we're trying to figure out if County rules will allow us to continue the contract. We have strict guidelines for purchasing, including local company preference and competitive bidding. As you know Weber Hayes is driving up from the far end of Santa Cruz County - maybe they will continue, it's too hard to say right now.

Thank you,
Bob

-----Original Message-----

From: Alphacat2000@aol.com [mailto:Alphacat2000@aol.com]
Sent: Thursday, October 14, 2004 1:50 PM
To: Schultz, Robert, Env. Health
Subject: Re: well sampling

Hi Robert,

What impact will this have on the progress of locating a well location, if any?
Weber Hayes was so familiar with our situation & what needed to be done. Pat Hoban & Aaron have helped us to understand so much.

We would be interested in knowing when & why the contract was given to another firm.

Look forward to hearing from you soon & please say hello to Donna for us

Helyn Hayes

Schultz, Robert, Env. Health

From: Schultz, Robert, Env. Health
Sent: Thursday, October 14, 2004 9:16 AM
To: 'Alphacat2000@aol.com'
Subject: RE: well sampling

Hi Helyn:

As long as the gate is unlocked and the well pump shed is open, I don't see any need for Roy to be around. Due to some contracting issues, we weren't able to hire Weber Hayes for this round of sampling. Instead we have a local firm - Weiss Associates. From your perspective, there should not be any difference in service, but please let me know how it goes. I will send you results and keep you informed, once new data is available.

Thank you,
Bob

-----Original Message-----

From: Alphacat2000@aol.com [mailto:Alphacat2000@aol.com]
Sent: Thursday, October 14, 2004 8:46 AM
To: Schultz, Robert, Env. Health
Subject: Re: well sampling

Hi Robert,

I've forwarded the information on to Roy. Weber Hayes usually just comes in & does what they need to do without Roy having to be there.

Is there a reason why he should be there? If not, he may have to leave & help a friend out.

Let me know & i'll forward the info on.

Thanks
Helyn Hayes



Weber, Hayes & Associates
Hydrogeology and Environmental Engineering
120 Westgate Dr., Watsonville, CA 95076
(831) 722-3580 (831) 662-3100
Fax: (831) 722-1159

Alameda County
OCT 14 2004
Environmental Health

Letter of Transmittal

to: Alameda County Health Care Services Agency
Environmental Health Services, Environmental Protection
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-6577

To the attention of: Mr. Bob Schultz
Phone: (510) 567-6719

from: Patrick Hoban

re: Fuel Leak Site: Sunol Tree Gas Station, 3004 Andrade Road, Sunol

date: October 12, 2004

# of Copies	Date of Documents	Description
1 ea.	Oct-12, 2004	CD - IntraNet Record - Initial SCM (Sept-2004) - Table of Contents sheet included -
2 ea.	Sept 20, 2004	Weber Invoice #8019- Revised to reflect remaining budget Alameda County PO #0264 (Carbon System O&M)
2 ea.	Oct-12, 2004	Weber Invoice # 8031 - Existing charges for remaining task "Monitor & Decommission T-Bear Well (Alameda County PO # 0288
2 ea.	Oct 12, 2004	Cost Estimate for previously discussed, Emergency Well Replacement Tasks

Revised SCM and associated data sheets are being directly uploaded to the Intranet site. A cover letter signature sheet will follow.

Sincerely,

Pat Hoban
Senior Geologist

ACEH Directive Letters	646,738
AC-HCSA-Directive-2002_06-27.pdf	88,883
AC-HCSA-Directive-2002_08-29.pdf	35,668
AC-HCSA-Directive-2003_03-20.pdf	259,176
AC-HCSA-Directive-2003_06-13.pdf	137,695
AC-HCSA-Directive-2003_10-31.pdf	125,316
Boring Logs	5,409,800
Cross-Section Well Logs & Zone 7 Map.pdf	1,950,947
desktop.ini	266
DWR LOGS-Vicinity.pdf	2,825,895
ON-SITE BORING LOGS.pdf	444,592
Video-Log Kelsoe property-2003-2-27 .pdf	188,100
FIGURES	4,741,111
Folder Settings	
Background.jpg	28,871
Folder.htt	28,565
mincold.gif	56
minhot.gif	77
pluscold.gif	59
plushot.gif	80
wvleft.bmp	8,248
wvline.gif	54
Gas-Station	
Folder Settings	
Folder.htt	28,565
mincold.gif	56
minhot.gif	77
pluscold.gif	59
plushot.gif	80
wvleft.bmp	8,248
wvline.gif	54
2002-04-16 Geoprobe Sampling-Site Map.pdf	99,400
2002-04-16 UST Removal Report-Site Map.pdf	67,960
2002-05-09 UST Removal & Interim S & GW Remediation Report-FIGURES.pdf	222,373
2002-08-27 Workplan for Preliminary Site Assessment-FIGURE.pdf	42,072
2003-05-06 Well Sampling Report-FIGURE.pdf	71,548
2003-05-08 Work Plan for Soil & Water Investigation-FIGURE.pdf	228,092
2003-3-14 Preliminary Site Assessment Report-FIGURE.pdf	442,584
desktop.ini	273
1-Locate.pdf	541,173
2-Topograph-3D.pdf	345,892
3-gw-basins.pdf	328,969
4-aerial-vicinity.pdf	438,451
5-cross-Section.pdf	308,401
6-Site-Map.pdf	560,960
desktop.ini	481
Geologic X-Section (Bulletin 118-2).pdf	657,061
street map.pdf	50,957
Tax-assessors map.pdf	231,315
Folder Settings	66,010
Background.jpg	28,871
Folder.htt	28,565
mincold.gif	56
minhot.gif	77
pluscold.gif	59
plushot.gif	80
wvleft.bmp	8,248
wvline.gif	54
PHOTOS	3,375,852
2002-05-09 UST Removal Report-PHOTOS.pdf	88,858
2004-July-Piezometers.pdf	780,952
Aug-2003 T-Bear Ranch Inspection..pdf	1,828,599
Carbon System.pdf	677,443
REPORTS	33,000,283
Folder Settings	
Folder.htt	28,565

*Alameda County
OCT 14 2004
ENVIRONMENTAL SERVICES*



mincold.gif	56
minhot.gif	77
pluscold.gif	59
plushot.gif	80
wvleft.bmp	8,248
wvline.gif	54
Research and Guidance	
Folder Settings	
Background.jpg	28,871
Folder.htt	28,565
mincold.gif	56
minhot.gif	77
pluscold.gif	59
plushot.gif	80
wvleft.bmp	8,248
wvline.gif	54
Cal-EPA-Guidelines for Investigation & Cleanup of MTBE-&-Ether-.pdf	73,595
Charaterizing MTBE Sites (Einarson, API-2000).pdf	1,878,904
desktop.ini	481
GW-Remediation Strategies Tool-API.pdf	1,390,965
Sunol GW-Basin Description.pdf	305,667
Sunol Tree Gas Station Reports	
2002-04-16 Geoprobe Sampling.pdf	361,451
2002-04-16 Sample of Tanks.pdf	371,485
2002-04-16 UST Removal Report.pdf	531,933
2002-05-09 UST Removal & Interim S & GW Remediation Report.pdf	4,062,354
2002-08-27 Workplan for Preliminary Site Assessment.pdf	759,848
2003-03-14 Preliminary Site Assessment Report.pdf	14,223,752
2003-05-06 Well Sampling Report.pdf	652,368
2003-05-08 Work Plan for Soil & Water Investigation.pdf	1,108,273
2004-08 Geophysical Report-Final.pdf	1,499,516
2004-Sept Carbon-O&M Report.pdf	2,720,731
2004-Sept-Appendix A -Lab Results.pdf	1,953,928
desktop.ini	273
Workplan-DPs_3-rev_.pdf	1,001,610
SCM-docs	402,337
Chronology.pdf	34,025
Mission-Valley Rock-GeoTracker LUFT INFO.pdf	174,068
REFERENCES.pdf	9,175
REGIONAL DESCRIPTION OF GROUNDWATER BASIN.doc	30,208
REGIONAL DESCRIPTION OF GROUNDWATER BASIN.pdf	95,945
REGIONAL Geology.doc	29,184
REGIONAL Geology.pdf	29,732
TABLES-&-LAB	9,240,322
Lab-Sheets	
2002-04-16 Geoprobe Sampling-LAB.pdf	158,492
2002-04-16 Sample of Tanks-LAB.pdf	338,639
2002-04-16 UST Removal Report-LAB.pdf	433,936
2002-05-09 UST Removal & Interim S & GW Remediation Report-LAB.pdf	1,924,618
2002-08-27 Water Sample Collected on 8-20-02.pdf	151,914
2003-02-13 Domestic Well Sampled 2-23-03.pdf	43,014
2003-03-10 VOC Analysis- T Bear & Golf Course 3-3-03.pdf	91,582
2003-03-14 Preliminary Site Assessment Report-LAB.pdf	1,539,747
2003-05-06 Well Sampling Report-LAB.pdf	491,152
2003-11-04 Water Sampling Results of 10-24-03.pdf	220,272
2003-12-09 Analytical Data of Treatment System for 12-02-03.pdf	291,730
2004-01-14 Analytical Data of Treatment System for 1-6-04.pdf	656,933
2004-02-13 Analytical Data of Treatment Systemfor 1-27-04.pdf	680,713
2004-03-01 Analytical Data of Treatment System for 2-17-04.pdf	632,038
2004-03-18 Analytical Data for Treatment System for 3-9-04.pdf	615,305
2004-05-21 Analytical Data for Treatment System-for 5-21-04.	145,931

pdf	
TABLE-Carbon-System-&-TBear-Well-Testing.pdf	24,529
TABLES-Sunol Tree Gas Station.pdf	408,323
TABLES-Water Supply Well Sampling Report-2003-05-06 .pdf	391,454
desktop.ini	427
Sunol-Tree-Gas-SCM.doc	143,872

Schultz, Robert, Env. Health

From: Schultz, Robert, Env. Health
Sent: Tuesday, October 12, 2004 4:39 PM
To: Helyn Hayes (E-mail)
Subject: well sampling

Hi Helyn:

Just a quick note to let you know that we will have a sampler out there on Thursday 10/14 to sample the well. Please call or email if you have any questions.

Thank you,
Bob

Robert W. Schultz, R.G.
Hazardous Materials Specialist
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502
510-567-6719 (direct)
510-337-9335 (facsimile)

1 JEFFREY S. LAWSON, ESQ. (SBN 99855)
Silicon Valley Law Group
2 25 Metro Drive, Suite 600
San Jose, CA 95110
3 Telephone: 408.573.5700
Facsimile: 408.573.5701

4 Attorneys for Petitioner
5 Murray Kelsoe

Alameda County
SEP 01 2004
Environmental Health

7 STATE WATER RESOURCES CONTROL BOARD
8 CLEAN WATER PROGRAM

10 In Re:)	USTCF Claim No.: 017309
)	SWRCB/OCC File UST-208
11 Petition of MURRAY KELSOE)	
)	PETITIONER'S RESPONSE TO DRAFT
)	ORDER DATED JULY 28, 2004
)	
)	Hearing Date: September 8, 2004 Workshop
)	
)	<u>Associated Papers</u>
)	Supplemental Declaration of M. Kelsoe

18 INTRODUCTION

19 On July 28, 2004, the Chief Counsel's office prepared a Draft Order for the State Water
20 Resources Control Board's ("Board") consideration at a Workshop to be held at September 8, 2004. In
21 the Draft Order, the Chief Counsel's office takes the uncompromising position that any underground
22 storage tank ("UST") violation occurring after 1990 forever bars owners of USTs access to the
23 Underground Storage Tank Cleanup Fund ("Fund"). The Chief Counsel's position would bar coverage
24 under the Fund even if the permit violations occurred years before the USTs were brought into permit
25 compliance and even if the wholly past permit violations had no relationship to the release. The Chief
26 Counsel's position is not supported by the statute, is unfair, and counter-productive as public policy.

27
28 ///

1 **RESPONSE TO THE DRAFT ORDER'S STATEMENT OF CONTENTIONS AND FINDINGS**

2 1. Petitioner meets the eligibility criteria of Health & Safety Code §25299.57(d)(3)(A).

3 The Chief Counsel's office takes the position that no excuses and no waivers are available for a
4 post-1990 permit violation. That certainly is a tough prosecutorial view, but it is not a fair reading of the
5 Fund program. The Chief Counsel's Office has squeezed together the waiver criteria and the application
6 criteria to make eligibility much harder than the Legislature intended.

7 Health & Safety Code §25299.57 provides:

8 (d) Except as provided in subdivision (j), a claim specified in subdivision
9 (a) may be paid if the board makes all the following findings:

10 (A) Except as provided in subparagraph (B), the claimant has
11 complied with Section 25299.31 and the permit requirements of
Chapter 6.7 (commencing with Section 25280). [Emphasis added.]

12 To avoid the fact that Petitioner clearly meets these criteria, the Chief Counsel's Draft Order (at
13 Draft Opinion page 5) argues that the word "complied" is much more complex than its plain English
14 meaning. Their argument violates the fundamental tenant of statutory construction, which is, first, look
15 to the plain language of the statute. (*FDIC v. Superior Court* (1997) 54 Cal.App.4th 337, 345.) When
16 the language is clear and unambiguous, the language must be given its plain meaning. *Shippen and*
17 *Realty Information Systems v. DMV* (1984) 161 Cal.App.3rd 1119, 1124.

18 All the word "complied"¹ means is that by the date of the filing of the claim, the claimant had

19 _____
20 ¹ The Chief Counsel's Draft Opinion argues that as a past participle of the verb, "comply," that
21 somehow means compliance must have been perfect from UST installation to the present. Websters
22 provides the following information on this subject: "past participle - a participle that expresses
23 completed action Definition: The Past Participle is part of a verb. Like the present participle, the PAST
24 participle is not a finite verb, it has no sense of timing, and it cannot form a sentence alone. (Think of it
25 as the present participle's baby verb sibling.) A finite form of auxiliary be or have must accompany it to
26 supply the tense. Formation: For regular verbs, we form the past participle as we do the past tense. The
27 past tense and past participle are identical: talked and talked. Meaning: The past participle adds an
28 aspect to the verb that we call perfect (perf). To try to make sense of this grammar term, let's say that
the meaning of the past participle is "completed," or "perfected." (The term doesn't mean that the action
is flawless but that the action is finished.) We use the PERFECT aspect to indicate two past time
conditions:

27 •an unspecified time in the past—

28 •Amy has stretched, so she's ready to run.

(We aren't interested in when she stretched, just that she did.)

1 complied with the permit requirements. It does not mean, and no stretching of the English language can
2 make "has complied" mean, that you must be in compliance at all times in the past, present and future.
3 There are no cases, Board decisions, policy letters or any other supporting material for the concept that
4 "complied" means 100% compliance from 1990 to the present and that any deviation from full
5 compliance after 1990 means there is absolutely no coverage by the Fund and no mechanism for relief.
6 Applying the exact words of the statute to the facts, all the Board must find is that claimant "has
7 complied" with his permit requirement prior to the Fund paying the claim.

8 The Chief Counsel argues that the waiver provisions of Health & Safety Code
9 §25299.57(d)(3)(B) only apply to pre-1990 permit violations. But then spends pages applying the
10 waiver standards to this claimant's situation. Draft Order page 6. The Chief Counsel's argument is that
11 "even if the claimant meets all of the waiver criteria, the waiver only relieves the claimant of pre-
12 January 1, 1990, permit requirements." Draft Opinion page 9. By this statement we understand that it is
13 the Chief Counsel's position that any violation of the permit requirement after January 1, 1990 forever
14 bars any claimant from Fund eligibility. There is no statutory support for such a position, no policy
15 support for such a position and in fact, it would be a detrimental to the state of California for the Fund to
16 take such a position. The entire waiver discussion is inapplicable because Claimant is not seeking a
17 waiver. Claimant does not need a waiver because Claimant meets the eligibility standards.

18 The attempt to use the January 1, 1990 and January 1, 1994 dates as a reason to argue that
19 compliance must have been constant and unbroken since those dates ignores what was really going on
20 when the statute was drafted. There is significance to those dates, but those dates only have significance
21 relative to the special concerns of the time. As explained in the Petition, the 1990 date had to do with
22 the original enactment of the Fund which was created in 1989 and a concern that unpermitted operators
23 who had been without permits prior to the enactment of the Fund would at the last minute obtain permits
24 and jump ahead of claimants who had been in compliance for years. The January 1, 1994 date was a

- 25 _____
26 • a time that began in the past and is still being completed, or perfected, at the moment of speaking—
27 • Amy has stretched for half an hour now, so she's ready to run.

1 result of the inconsistency in Board decisions applying the original permit waiver criteria and the the
2 legislature making clear that its new waiver provisions apply to claims filed before the enactment of the
3 new waiver provisions.

4 The 1990 and 1994 dates are irrelevant to a recent claim with a newly discovered release from
5 permitted tanks. The Chief Counsel's Draft Order argues that if Mr. Kelsoe's claim is paid that would
6 mean the January 1, 1990 and January 1, 1994 dates would be rendered meaningless. That is not true,
7 all it means is those dates are not relevant to this particular claim, which they are not. Those dates are
8 relevant only to waivers for pre-1990 permit violations. As for post-1990 permit compliance issues,
9 none of the policy issues related to the pre-1990 claims applies, and the only issue is whether this
10 claimant meets the elements for eligibility found in Health & Safety Code §25299.57(d)(3)(A).

11 2. Requiring claimants to be in permit compliance before the discovery of an unauthorized
12 release provides ample incentive for claimants to comply with permit requirements.

13 Both Petitioner and the Chief Counsel's office agree that the legislature conditioned Fund
14 eligibility on permit compliance. However, the policy urged by the Chief Counsel's office is an
15 impediment to permit compliance. The Chief Counsel's proposed policy would punish UST owners
16 with post-1990 UST permit violations with a permanent cutoff of Fund eligibility. It would discourage
17 UST owners who have a permit violation from ever obtaining UST permits or paying UST fees. It has
18 no rehabilitative effect. Nothing in the legislative record indicates that the Legislature intended to create
19 the policy the Chief Counsel's Office advocates.

20 A Fund policy encouraging UST permit compliance should take account of the fact that tank
21 owners want to be in the Fund program because they want to access to the Fund if they have a release.
22 The Fund wants tank owners in the Fund because it wants them to pay their fees and because Fund
23 access is predicated on permit compliance. The Fund is anxious that UST owners have the their permits
24 to reduce the likelihood of releases. The Chief Counsel's office agrees that Petitioner's proposed
25 interpretation of permit compliance would encourage UST owners and operators to obtain UST permits

26 _____
27 *(She is still stretching or just finishing.)*" In short, all the past participle means is the action is
28 completed. It does not mean Amy has always stretched from the beginning of life to the present.
Similarly, in plain English, Mr. Kelsoe complied with the permit requirements prior to filing the claim.

1 before discovering a release. Draft Order page 10. But the Chief Counsel's office does not believe that
2 this policy would encourage early compliance. Draft Order page 10.

3 The Chief Counsel's proposed policy is based on the theory that people actually know of the
4 Fund's policy and that claimants can change their past. Neither theory is based on fact. Neither Mr.
5 Kelsoe nor Alameda County knew about the proposed Board policy that a person cannot become
6 eligible for the Fund if they have any post-1990 permit violation. Also even if Mr. Kelsoe had known of
7 this policy, there is no rehabilitative effect because if a person had a violation he cannot change his past
8 so there is no incentive to obtain UST permits.

9 In order to bolster its argument to have the Board adopt a public policy to deny coverage by the
10 Fund, the Chief Counsel posits two extremely unlikely scenarios. The first scenario is that allowing
11 eligibility for prior discovery of releases would encourage UST owners and operators to delay
12 discovering and reporting the releases until owners and operators come into permit compliance. Draft
13 Order page 10. But that is not the proposed policy. As claimant reads the statute, in order to be eligible
14 the UST permit must be obtained prior to learning of the release.

15 The facts of this case shows Petitioner's policy works. Mr. Kelsoe was anxious to participate in
16 the Fund and did participate in the Fund years before the release was discovered. A major reason for his
17 permit compliance was that he and Alameda County believed he obtained coverage under the Fund by
18 obtaining his permits and paying his fees.

19 The second scenario the Chief Counsel posits is that UST owners and operators are gamblers of
20 exceptional boldness. These gamblers would not obtain permits even when they knew they needed
21 them; and would wait until some unknown influence motivated them to suddenly obtain their permits
22 before they even suspected a release. If they did this, they would save the minor costs of permit
23 compliance while still paying their UST fees, and would take the risk that they would not be discovered
24 prior to racing in at the last minute for their permit or be stuck with hundreds of thousands of dollars in
25 cleanup costs. The Chief Counsel's office is unable to point to anyone who has knowingly made such a
26 self-destructive calculation.

27 The Draft Order argues that owners and operators of USTs should be motivated to obtain current
28 permits in order to operate lawfully. That is undoubtedly true, but this discussion is concerned with

1 promulgating a Fund policy that has a positive influence on permit compliance.

2 Finally, the Chief Counsel's office argues that UST owners should be in permit compliance to
3 avoid enforcement action by local agencies. However, enforcement by local agencies is independent of
4 the Fund and thus irrelevant to Fund policy initiatives. The local agencies will enforce under either
5 policy so that does not help the Fund select a policy. The key criteria for selecting a Fund policy is to
6 select a policy that promotes owners obtaining UST permits and paying these fees. Only claimant's
7 proposed policy does this.

8 3. The Fund is estopped from denying eligibility to Petitioner.

9 The Chief Counsel's office concedes that of the four elements necessary to prove estoppel
10 Petitioner meets elements one, two and four. However, the Chief Counsel's office asserts that Petitioner
11 has failed to show that he was ignorant of the rule forever barring eligibility for a past permit violation
12 and thus, was not ignorant of the true state of the facts. Attached hereto is a Supplemental Declaration
13 of Petitioner attesting to the fact that he was ignorant of any rule that a past violation forever barred his
14 access to the Fund despite his obtaining permits and paying the fees. Indeed he points out that Alameda
15 County also thought he was eligible for the Fund when he obtained the permits because otherwise the
16 County would not have allowed his Fund certification to provide financial assurance for his underground
17 storage tanks and would not have issued the permit.

18 There is no evidence that Petitioner had ever read or comprehended prior Board decisions
19 concerning this technicality of Fund eligibility. The fact is that when Petitioner filled out his
20 certification and paid his fees he legitimately believed that he was eligible for the Fund. And indeed,
21 Alameda County also believed that he was eligible for the Fund. For this reason the evidence is
22 uncontested that Petitioner meets the third element of estoppel. This is not a case of ignorance of the
23 law not being an excuse. This is about the doctrine of estoppel and Mr. Kelsoe's actual knowledge or
24 lack of knowledge is the element that must be proven. Mr. Kelsoe has submitted credible evidence of
25 his and Alameda County's lack of knowledge and the Chief Counsel's office has submitted no evidence
26 contradicting this point.

27 The Chief Counsel's office argues that there is a strong public policy supporting denial of the
28 claim that would override all of the elements of estoppel. But the "strong public policy" is simply their

1 argument that no forgiveness will promote early permit compliance. Their argument is made while
2 conceding that the government is bound by the doctrine of estoppel. But there is no strong public policy
3 arguing that a past violation should bar an individual from access to the Fund indefinitely. That is
4 simply their argument. Indeed, as described above, the better public policy, which actually would
5 encourage compliance, is that complying with the Health and Safety Code and requiring permit
6 compliance prior to discovery of release promote permits compliance.

7 There is no citation to any statement from the Legislature supporting the policy advocated by the
8 Chief Counsel. Nor does the statute state such a policy. There is no such policy.

9 There is no public policy that would support the Fund being allowed to mislead claimants with
10 inaccurate certification forms. Indeed, such a public policy would encourage people to mistakenly rely
11 on the Fund, so that when UST owners did have releases they would belatedly discover that they had no
12 source of funding for the cleanup and the environment would remain contaminated. The result of such a
13 poorly conceived policy is what is happening here. The environment is put at risk because of
14 Petitioner's difficulty in having his claim approved. The Chief Counsel's argument that UST owners
15 with past permit violations should be forever barred from the Fund is just a rationale supporting their
16 argument against eligibility. Their argument does not rise to a strong public policy.

17 The Division represented in its certification document that UST owners and operators are
18 eligible for the Fund if they are in current compliance with permit requirements and financial
19 responsibility requirements. There was nothing that put the Petitioner on notice that failure to comply
20 with past requirements would result in ineligibility. It is not fair to financially ruin him under these
21 circumstances.

22 CONCLUSION

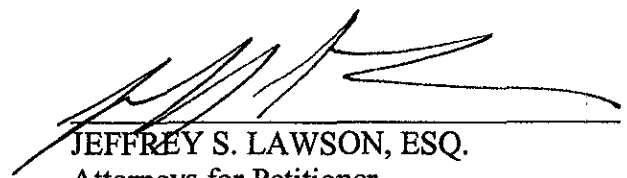
23 Very few independent UST owners can afford to pay for releases from petroleum USTs nor can
24 they find private insurance. But there must be a source of funding to protect the environment when
25 releases occur. The Fund was created to solve just this problem. It is not fair to Mr. Kelsoe, to the
26 environment or to the creators of the Fund to deny Mr. Kelsoe's eligibility. Mr. Kelsoe is an UST owner
27 who had his permits, paid his UST fees and filled out his certification forms all before he discovered or
28 even suspected a release. Mr. Kelsoe should be covered by the Fund. Allowing his claim to be paid is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

fair, consistent with the Fund's purpose and good public policy.

Dated: August 30, 2004

Silicon Valley Law Group



JEFFREY S. LAWSON, ESQ.
Attorneys for Petitioner
MURRAY KELSOE

PROOF OF SERVICE

I, the undersigned, declare:

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is 25 Metro Drive, Suite 600, San Jose, California, 95110. On the date hereinbelow, I caused to be served
___ a true and correct copy X the original of the following:

**PETITIONER'S RESPONSE TO DRAFT ORDER DATED JULY 28, 2004
&
SUPPLEMENTAL DECLARATION OF MURRAY KELSOE**

CERTIFIED MAIL I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

X **FEDERAL EXPRESS** Placed in a Federal Express facility

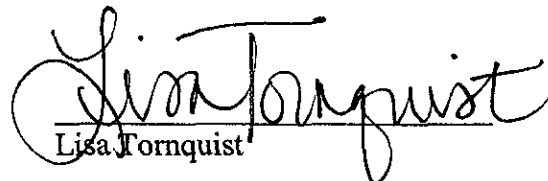
___ **PERSONAL SERVICE** Delivered by hand to the Addressee

___ **FACSIMILE** Transmitted via facsimile transmission to the Addressees as noted-below addressed to each of the following:

Original:
Ms. Debbie Irvin
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Tel: 916-341-5600

Copies via U.S. Mail to:
Mr. Arthur G. Baggett, Jr.
Mr. Craig M. Wilson
Ms. Barbara L. Evoy
Lori Senitte Brock
Allan Patton
Donna Drogos
Susan Torrence
Finley Boag
Laurie Berger
Peter Niemiec
Hans Herb
Jim Arnold
Murray Kelsoe

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Jose, California, on August 30, 2004.


Lisa Tornquist

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JEFFREY S. LAWSON, ESQ. (SBN 99855)
Silicon Valley Law Group
152 N. Third Street, Ste, 900
San Jose, Ca 95112
Telephone: (408) 286-6100
Facsimile: (408) 286-1400

Alameda County

SEP 07 2004

Environmental Health

Attorney for Petitioner
Murray Kelsoe

STATE WATER RESOURCES CONTROL BOARD
CLEAN WATER PROGRAM

In Re:) USTCF Claim No.: 017309
))
Petition of MURRAY KELSOE) SUPPLEMENTAL DECLARATION OF
) MURRAY KELSOE

I, Murray Kelsoe, declare:

1. I am the Claimant in the above referenced matter. If called as a witness I could and would competently testify to following matters from my own personal knowledge.

2. When I filled out the Underground Storage Tank Cleanup Fund Financial Responsibility form, I read it and it appeared to me that I was eligible for coverage. Moreover, I talked to various regulators at Alameda County Environmental Health Services and they told me that I needed to fill out the Financial Responsibility Form. Nothing in the form or my discussions with Alameda County indicated that I would not be eligible for coverage under the Fund's Financial Responsibility Program. I relied on the Fund's Financial Responsibility Program and it is my understanding that Alameda County, in providing me with a permit, also relied upon the Fund providing Financial Responsibility for my gas station. .

3. When I filled out my Financial Responsibility Form I did not know of any rule that a past violation forever barred my access to the Fund. I thought that by obtaining permits and paying the fees I would be eligible. In fact the people issuing my UST permit at Alameda County also thought I was eligible for the Fund. He told me I needed to fill out the Financial Responsibility Form before he would issue the permit. I believe Alameda County would not have allowed my Fund certification to provide

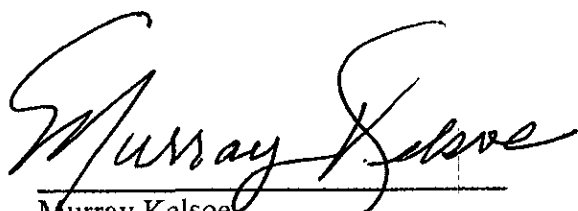
DECLARATION OF MURRAY KELSOE

1 financial assurance for my underground storage tanks and would not have issued the permit if they
2 believed a past permit violation made me ineligible for coverage under the Fund.

3 4. I have never read any Board decisions concerning anything, much less, Fund eligibility.
4 When I filled out my certification form and paid my UST fees I believed I was eligible for the Fund.

5
6 I declare under penalty of perjury under the laws of the State of California that the foregoing is
7 true and correct.

8
9 Dated: August 28, 2004


Murray Kelsoe

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

202448



State Water Resources Control Board



Terry Tamminen
Secretary for
Environmental
Protection

Office of Chief Counsel
1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ <http://www.swrcb.ca.gov>

Arnold Schwarzenegger
Governor

July 28, 2004

Alameda County

AUG 03 2004

CERTIFIED MAIL

Environmental Health

Mr. Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third Street, Suite 900
San Jose, CA 95112

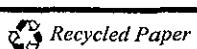
Dear Mr. Lawson:

PETITION OF MURRAY KELSOE (USTCF CLAIM 17309), 3004 ANDRADE ROAD,
SUNOL, CALIFORNIA: BOARD WORKSHOP NOTIFICATION
SWRCB/OCC FILE UST - 208

The State Water Resources Control Board (SWRCB) will consider a proposed order in the above-entitled matter at its workshop session, which will be held on September 8, 2004, at the Cal/EPA Building, 1001 I Street, Sacramento, California. The draft order is enclosed for your review. This draft order is dated July 28, 2004, and has been revised from the earlier draft you received dated June 4, 2004. For your convenience, a version in strikeout/underline format, which highlights the changes, is also enclosed. You will separately receive an agenda for this workshop session at least 10 days before the workshop. Agendas are also posted on the SWRCB's website at <http://www.swrcb.ca.gov> at least 10 days before the respective workshop or meeting.

For all other interested persons, you may view the draft order on the SWRCB's website at <http://www.swrcb.ca.gov/cwphome/ustcf>. If you do not have internet access and would like a paper copy of the draft order and/or the agenda for the September 8, 2004, workshop session, please contact Lori Senitte Brock at (916) 341-5185 or at the address above by August 23, 2004.

Formal action will not be taken on this matter at the workshop session. At the workshop, interested persons will be allowed to comment orally on the draft order, subject to the following time limits. The petitioner and other interested persons directly affected by the draft will be allowed five minutes each for oral comment with an additional reasonable time for questions by the SWRCB members. Other interested persons will be allotted a lesser amount of time to address the SWRCB as time permits.

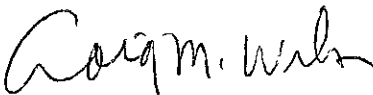


The receipt of additional written evidence will not be permitted at the workshop meeting except in compliance with California Code of Regulations, title 23, section 2814.5. Written comments on the draft order must be received by **5:00 p.m., August 31, 2004**. Those comments must be addressed to:

Ms. Debbie Irvin
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
(tel) 916-341-5600
(fax) 916-341-5620

If there are any questions or comments, please call Lori Senitte Brock, Senior Staff Counsel, of the Office of Chief Counsel, at (916) 341-5185.

Sincerely,



Craig M. Wilson
Chief Counsel

Enclosures

cc: **[All with enclosures]**
Mr. Robert Weston
Alameda County
1131 Harbor Bay Parkway, Suite 240
Alameda, CA 94502-6577

Peter Niemiec, Esq.
2314 John Street
Manhattan Beach, CA 90266-2616

Mr. Michael Bakaldin
835 East Fourteenth Street, Suite 200
San Leandro, CA 94577

Mr. Hans Herb
P.O. Box 970
Santa Rosa, CA 95402

Continued next page

Mr. Jeffrey S. Lawson

- 3 -

July 28, 2004

cc: Ms. Barbara Evoy, Chief **[via e-mail only]**
Division of Financial Assistance
State Water Resources Control Board
1001 I Street, 17th Floor [95814]
P.O. Box 944212
Sacramento, CA 94244-2120

Lori Senitte Brock, Esq. **[via e-mail only]**
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Mr. Jim Arnold
3620 Happy Valley Road, Suite 202
Lafayette, CA 94549

Mr. Allan Patton, Manager **[via e-mail only]**
UST Cleanup Fund
Division of Financial Assistance
State Water Resources Control Board
1001 I Street, 17th Floor [95814]
P.O. Box 944212
Sacramento, CA 94244-2120

Interested Persons **[Without enclosures]**

AUG 03 2004

Environmental Health

INTERESTED-PARTIES LIST FOR MATTERS CONCERNING THE CALIFORNIA PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND

Your name is included on a list of persons interested in matters relating to the Underground Storage Tank Cleanup Fund (Fund). This list has been used to notify persons of news, activities or decisions pertaining to the Fund that are of general interest. This information is now available via the internet at http://www.swrcb.ca.gov/cwphome/ustcf. If you would like to receive e-mail notice of Fund-related activities, such as proposed regulations and draft State Water Resources Control Board (SWRCB) orders, you may subscribe on the internet at http://www.swrcb.ca.gov/lyrisforms/swrcb_subscribe.html; the name of the electronic mailing list is UST Cleanup Fund. After subscribing, you will receive electronic notifications of certain Fund-related activities or decisions by e-mail. You may still request to receive a paper copy of notifications, but since Fund-related matters of general interest are posted on the Fund's website, hard copy notices will only be sent for certain activities, such as proposed regulations and draft SWRCB orders. If you would like to receive a paper copy of notifications, please complete the bottom portion of this form and return it by August 25, 2004, to the following:

Dominica Eriksen
Underground Storage Tank Cleanup Fund
P.O. Box 944212
Sacramento, CA 94244

If you do not return the bottom portion of this form, you will not receive paper-copy notices.

INTERESTED-PARTIES LIST FOR MATTERS CONCERNING THE CALIFORNIA PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND (COMPLETE ONLY IF YOU WANT TO RECEIVE PAPER COPIES)

I would like to receive paper-copy notices relating to certain Fund activities that are of general interest, including proposed regulations and draft SWRCB orders relating to the Fund.

I only wish to receive paper-copy notices of draft SWRCB orders relating to the Fund.

Name:
Organization:
Street number and name:
City, State and Zip Code:



State Water Resources Control Board



Arnold Schwarzenegger
Governor

Office of Chief Counsel

1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100

ALC (916) 341-5161 ♦ FAX (916) 341-5199 ♦ <http://www.swrcb.ca.gov>

JUL 30 2004
Environmental Health

July 28, 2004

CERTIFIED MAIL

Mr. Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third Street, Suite 900
San Jose, CA 95112

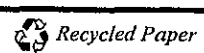
Dear Mr. Lawson:

**PETITION OF MURRAY KELSOE (USTCF CLAIM 17309), 3004 ANDRADE ROAD, SUNOL, CALIFORNIA: BOARD WORKSHOP NOTIFICATION
SWRCB/OCC FILE UST - 208**

The State Water Resources Control Board (SWRCB) will consider a proposed order in the above-entitled matter at its workshop session, which will be held on September 8, 2004, at the Cal/EPA Building, 1001 I Street, Sacramento, California. The draft order is enclosed for your review. This draft order is dated July 28, 2004, and has been revised from the earlier draft you received dated June 4, 2004. For your convenience, a version in strikeout/underline format, which highlights the changes, is also enclosed. You will separately receive an agenda for this workshop session at least 10 days before the workshop. Agendas are also posted on the SWRCB's website at <http://www.swrcb.ca.gov> at least 10 days before the respective workshop or meeting.

For all other interested persons, you may view the draft order on the SWRCB's website at <http://www.swrcb.ca.gov/cwphome/ustcf>. If you do not have internet access and would like a paper copy of the draft order and/or the agenda for the September 8, 2004, workshop session, please contact Lori Senitte Brock at (916) 341-5185 or at the address above by August 23, 2004.

Formal action will not be taken on this matter at the workshop session. At the workshop, interested persons will be allowed to comment orally on the draft order, subject to the following time limits. The petitioner and other interested persons directly affected by the draft will be allowed five minutes each for oral comment with an additional reasonable time for questions by the SWRCB members. Other interested persons will be allotted a lesser amount of time to address the SWRCB as time permits.

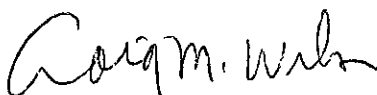


The receipt of additional written evidence will not be permitted at the workshop meeting except in compliance with California Code of Regulations, title 23, section 2814.5. Written comments on the draft order must be received by **5:00 p.m., August 31, 2004**. Those comments must be addressed to:

Ms. Debbie Irvin
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
(tel) 916-341-5600
(fax) 916-341-5620

If there are any questions or comments, please call Lori Senitte Brock, Senior Staff Counsel, of the Office of Chief Counsel, at (916) 341-5185.

Sincerely,



Craig M. Wilson
Chief Counsel

Enclosures

cc: **[All with enclosures]**
Mr. Robert Weston
Alameda County
1131 Harbor Bay Parkway, Suite 240
Alameda, CA 94502-6577

Peter Niemiec, Esq.
2314 John Street
Manhattan Beach, CA 90266-2616

Mr. Michael Bakaldin
835 East Fourteenth Street, Suite 200
San Leandro, CA 94577

Mr. Hans Herb
P.O. Box 970
Santa Rosa, CA 95402

Continued next page

Mr. Jeffrey S. Lawson

- 3 -

July 28, 2004

cc: Ms. Barbara Evoy, Chief **[via e-mail only]**
Division of Financial Assistance
State Water Resources Control Board
1001 I Street, 17th Floor [95814]
P.O. Box 944212
Sacramento, CA 94244-2120

Lori Senitte Brock, Esq. **[via e-mail only]**
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Mr. Jim Arnold
3620 Happy Valley Road, Suite 202
Lafayette, CA 94549

Mr. Allan Patton, Manager **[via e-mail only]**
UST Cleanup Fund
Division of Financial Assistance
State Water Resources Control Board
1001 I Street, 17th Floor [95814]
P.O. Box 944212
Sacramento, CA 94244-2120

Interested Persons **[Without enclosures]**

JUL 8 6 2004

Environmental Health

INTERESTED-PARTIES LIST FOR MATTERS CONCERNING THE CALIFORNIA
PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND

Your name is included on a list of persons interested in matters relating to the Underground Storage Tank Cleanup Fund (Fund). This list has been used to notify persons of news, activities or decisions pertaining to the Fund that are of general interest. This information is now available via the internet at <http://www.swrcb.ca.gov/cwphome/ustcf>. If you would like to receive e-mail notice of Fund-related activities, such as proposed regulations and draft State Water Resources Control Board (SWRCB) orders, you may subscribe on the internet at http://www.swrcb.ca.gov/lyrisforms/swrcb_subscribe.html; the name of the electronic mailing list is **UST Cleanup Fund**. After subscribing, you will receive electronic notifications of certain Fund-related activities or decisions by e-mail. You may still request to receive a paper copy of notifications, but since Fund-related matters of general interest are posted on the Fund's website, hard-copy notices will only be sent for certain activities, such as proposed regulations and draft SWRCB orders. If you would like to receive a **paper copy** of notifications, please complete the bottom portion of this form and return it by August 25, 2004, to the following:

Dominica Eriksen
Underground Storage Tank Cleanup Fund
P.O. Box 944212
Sacramento, CA 94244

If you do not return the bottom portion of this form, you will not receive paper-copy notices.

INTERESTED-PARTIES LIST FOR MATTERS CONCERNING THE CALIFORNIA
PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND
(COMPLETE ONLY IF YOU WANT TO RECEIVE PAPER COPIES)

_____ I would like to receive **paper-copy** notices relating to certain Fund activities that are of general interest, including proposed regulations and draft SWRCB orders relating to the Fund.

_____ I only wish to receive **paper-copy** notices of draft SWRCB orders relating to the Fund.

Name: _____
Organization: _____
Street number and name: _____
City, State and Zip Code: _____



State Water Resources Control Board



Terry Tamminen
Secretary for
Environmental
Protection

Office of Chief Counsel

1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ <http://www.swrcb.ca.gov>

Arnold Schwarzenegger
Governor

JUN 10 2004

Alameda County

JUN 15 2004

Environmental Health

Mr. Jeffrey Lawson
Silicon Valley Law Group
25 Metro Drive, Suite 600
San Jose, CA 95110

Dear Mr. Lawson:

IN THE MATTER OF THE PETITION OF MURRAY KELSOE REGARDING PARTICIPATION IN THE UNDERGROUND STORAGE TANK CLEANUP FUND (3004 ANDRADE ROAD, SUNOL): REQUEST FOR POSTPONEMENT OF WORKSHOP SWRCB/OCC FILE UST-208

In a letter dated June 4, 2004, our office notified you that the State Water Resources Control Board (SWRCB) would be considering a proposed order in the above-entitled matter at its workshop session on July 7, 2004. In your letter dated June 8, 2004, you explained that you will be away on military duty from June 13 through June 23, and then on a family vacation from June 24 through July 3, 2004. You requested that the matter be postponed to the next available workshop date.

Your request is granted. The next workshop session is scheduled for September 8, 2004 (the SWRCB will not be holding a workshop session and board meeting in August). The September board meeting is scheduled for September 30, 2004. You will receive a notice in August that will provide more information about the September workshop session, including a new deadline for the submission of comments on the proposed order.

If you foresee any problems with the September dates, please contact Lori Senitte Brock, Senior Staff Counsel, at your earliest convenience. She can be reached at (916) 341-5185.

Sincerely,

Craig M. Wilson
Chief Counsel

cc: See next page

JUN 10 2004

Mr. Jeffrey Lawson

- 2 -

cc: Mr. Robert Weston
Alameda County
1131 Harbor Bay Parkway, Suite 240
Alameda, CA 94502-6577

Peter Niemiec, Esq.
2314 John Street
Manhattan Beach, CA 90266-2616

Ms. Barbara Evoy, Chief (via e-mail)
Division of Financial Assistance
State Water Resources Control Board
1001 I Street, 17th Floor [95814]
P.O. Box 944212
Sacramento, CA 94244-2120

Ms. Lori Senitte Brock
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Mr. Michael Bakaldin
835 East Fourteenth Street, Suite 200
San Leandro, CA 94577

Mr. Hans Herb
P.O. Box 970
Santa Rosa, CA 95402

Mr. Allan Patton, Manager, UST Cleanup Fund
Division of Financial Assistance
State Water Resources Control Board
1001 I Street, 17th Floor [95814]
P.O. Box 944212
Sacramento, CA 94244-2120



SVLG

SILICON VALLEY LAW GROUP

A LAW CORPORATION

Alameda County

JUN 10 2004

Environmental Health jsl@svlg.com

Jeffrey S. Lawson

June 8, 2004

Via Facsimile & U.S. Mail

Lori Senitte Brock
Senior Staff Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento CA 95812-0100

Re: Petition of Murray Kelsoe (USTCF Claim 17309),
3004 Andrade Road, Sunol, CA: Augmentation of Record
SWRCB/OCC File UST-208
Response to Augmentation of Record

Dear Ms. Brock:

Attached please find Murray Kelsoe's response to your letter of April 15, 2004, in which you provided my office with various documents that the State Water Resources Control Board, Office of Chief Counsel is adding to the record. Your letter invites Petitioner's review and comment. Subsequent to your letter, my office contacted you regarding the fact that I would be out on military duty from April 26, 2004 through May 17, 2004. As it turned out, I did not return until May 19, 2004. Once I returned my office was in the process of moving from downtown San Jose to our new location at 25 Metro Drive, Suite 600, San Jose, CA 95110. We are now at our new location. For those reasons, I was not able to respond to the additional documents until now. I appreciate your courtesy in allowing me additional time to respond to these documents.

Very truly yours,
Silicon Valley Law Group



JEFFREY S. LAWSON

JSL/lt

Enclosure: Response to Augmentation of Record

Lori Senitte Brock
June 8, 2004
Page 2 of 2

Cc via U.S. Mail: Arthur Baggett, Jr.
Craig Wilson
Barbara Evoy
Murray Kelsoe
Laurie Berger
Donna Drogos
Finley Boag
Susan Torrence

1 JEFFREY S. LAWSON, ESQ. (SBN 99855)
Silicon Valley Law Group
2 25 Metro Drive, Suite 600
San Jose, CA 95110
3 Telephone: 408.573.5700
Facsimile: 408.573.5701
4 Attorneys for Petitioner
5 Murray Kelsoe

6 **STATE WATER RESOURCES CONTROL BOARD**
7 **CLEAN WATER PROGRAM**
8

9 In Re:) **USTCF Claim No.: 017309**
) **SWRCB/OCC File UST-208**
10 Petition of MURRAY KELSOE)
) **PETITIONER'S RESPONSE TO PROPOSED**
11) **AUGMENTATION OF RECORD**
12)
13)
14)

15
16 **INTRODUCTION**

17 On April 15, 2004 the Chief Counsel's office submitted additional documents to the State Water
18 Resources Control Board ("Board") regarding a station formerly owned by Petitioner at 1066 Marina
19 Blvd., San Leandro ("Marina Station"). These documents, which are proposed for augmentation of the
20 record, relate to an entirely separate site from the site at issue at 3004 Andrade Road, Sunol ("Sunol
21 Tree Station"). These records indicate Petitioner had a UST permit violation at the Marina Station.

22 The issue before the Board is not whether Mr. Kelsoe violated UST Regulations. It is assumed
23 for purposes of the Petition, that in fact, he was in violation of his permit requirements at the Sunol Tree
24 Station. The documents are unduly prejudicial and not relevant to the legal and policy issues the Board
25 is called upon to decide.

26 **ARGUMENT**

27 The central issue in the Petition is whether a past permit violation permanently bars a claimant
28 from ever using the Underground Storage Tank Cleanup Fund ("Fund"). The attempted use of the

1 Marina Station's permit violation, although irrelevant to the Board's decision, is an example of the
2 unfairness of any doctrine that would require the Fund not to pay claims based on an unrelated past
3 underground storage tank ("UST") permit requirement violation. It would not be the Fund's position
4 that a knowing violation of the permit requirement at the Marina Station would prevent Mr. Kelsoe from
5 making a valid claim on the Sunol Tree Station, if he was in permit compliance at Sunol Tree Station, if
6 he had properly filled out the Fund eligibility forms for Sunol Tree Station and if he had paid the
7 appropriate UST fees for Sunol Tree Station. As far as Petitioner knows, the Fund has never taken the
8 position that a permit violation at one site barred access to the Fund for a leaking petroleum UST at
9 another site. In other words, an unrelated UST permit violation does not impact a claim on the Fund.

10 If the purpose of refusing access to the Fund for past permit non-compliance is to encourage
11 permit compliance, then barring individuals from access to the Fund forever based on unrelated permit
12 violations makes no sense. So, in our example, if the Sunol Tree Station had been in compliance,
13 evidence of permit violations at the Marina Station would be irrelevant in authorizing a claim under the
14 Fund. In regard to having a policy to encourage permit compliance, if a violation at the Marina Station
15 made Sunol Tree Station ineligible for the Fund, such a policy would discourage people from getting
16 permits or paying their UST fees on any other stations they own or later at the same station. Why bother
17 complying with the permit requirements when there is no chance of recovering from the Fund. Also,
18 barring a permitted station from access to the Fund because another station did not have its permit
19 creates an unfair situation where a station owner would pay his UST fees at one station and yet not have
20 access to the Fund for that station. This is a manifestly unfair scenario. It is like taxation without
21 representation.

22 In this case, Mr. Kelsoe's violation at Sunol Tree Station was many years prior to the release.
23 The claim is made long after he had come into compliance with the permit requirements and the UST
24 fee payment requirements. Indeed, he had also paid all his back fees. So, in every real sense it is the
25 same as being two different stations. Permanently barring a claimant from the Fund for a wholly cured
26 violation would discourage a UST owner from paying back fees or ever bringing his USTs into
27 compliance.

1 The apparent purpose for submitting the additional information is to attack Petitioner's
2 secondary argument that permit waiver relief should be granted unless the permit violation was
3 intentional and occurred prior to 1990; and here there is no evidence that Mr. Kelsoe intentionally failed
4 to obtain his UST operating permit prior to 1990. Accordingly, since he did not commit an intentional
5 violation prior to 1990 he should be granted a permit waiver.

6 The proposed documents do not indicate whether "Mr. Kelsoe had an intent to intentionally
7 avoid the permit requirement or fees associated with the permit" prior to 1990. Interestingly, in his
8 declaration, Michael Bakaldin states that at a meeting on August 30, 1991, Mr. Kelsoe denied that he
9 knew that California law actually applied to him, but rather Mr. Kelsoe believed that his station was
10 regulated under Federal law and Federal law would not require tank testing for leaks until 1992 or 1993.
11 (*Bakaldin Declaration, page2, lines 24 through page 3, line 2.*) Mr. Bakaldin then states that Mr.
12 Kelsoe was not convinced that California law applied to his station until his discussion with regulators
13 on August 30, 1991. (*Bakaldin Declaration, page2, lines 3-4.*) Thus Mr. Bakaldin's testimony indicates
14 that Mr. Kelsoe did not intentionally avoid the permit requirements as late as August 1991, but rather
15 had a legitimate disagreement with local authorities regarding their regulatory jurisdiction. Although,
16 subsequent events have proven Mr. Kelsoe to be wrong in his understanding of the state and federal
17 jurisdiction, that does not change the fact that he did not intentionally avoid California permit
18 requirements prior to 1990.

19 CONCLUSION

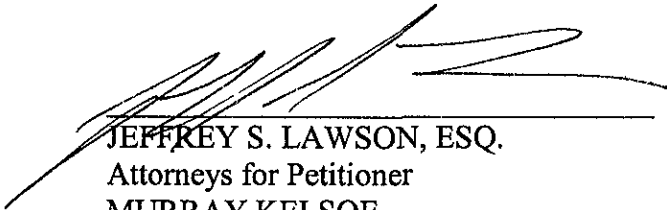
20 Only relevant evidence should be admitted. *Government Code §11513(c)*. The proposed
21 documents do not have any probative value to the central issue, which is whether the legislature
22 intended to permanently bar tank owners from access to the Fund for an unrelated permit violation. On
23 the secondary issue of whether or not the documents are evidence of his intent to violate the permit
24 requirement prior to 1990, the evidence presented in these documents is contradictory, but in the main
25 supports Mr. Kelsoe's statements that he did not intentionally violate California law prior to 1990. Prior
26 to 1991 he held a good faith belief that he was in compliance with applicable law.

27 The submitted documents relate to another permit violation, at a separate property and are more
28 prejudicial than probative. The prejudice is obvious. The documents could be used to smear Mr. Kelsoe

1 as someone with repeated UST permit violations and therefore, undeserving of a ruling in his favor. But
2 that is not a legitimate reason for ruling against Mr. Kelsoe; the ruling in this matter should be made
3 purely on the merits of the facts and law applicable to the Sunol Tree Station and this claim. For the
4 above reasons, the proposed documents should be excluded, pursuant to Government Code §11513(f).

5
6
7 Dated: June 8, 2004

Silicon Valley Law Group

8
9
10 
11 JEFFREY S. LAWSON, ESQ.
12 Attorneys for Petitioner
13 MURRAY KELSOE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



SVLG

SILICON VALLEY LAW GROUP

A LAW CORPORATION

Jeffrey S. Lawson

jsl@svlg.com

June 8, 2004

Via Facsimile & U.S. Mail

Lori Senitte Brock
Senior Staff Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento CA 95812-0100

Alameda County
JUN 10 2004
ENVIRONMENTAL

Re: Petition of Murray Kelsoe (USTCF Claim 17309),
Regarding Participation In the Underground Storage Tank Cleanup Fund
3004 Andrade Road, Sunol, CA: Board Workshop Notification
SWRCB/OCC File UST-208
Request For Extension of Workshop Date

Dear Ms. Brock:

This letter is in follow up to our telephone conversations today. I received the draft order in the above referenced matter today, June 8, 2004. The order is fourteen pages long with numerous citations to statutory authority, regulatory authority, State Water Resources Control Board ("Board") opinions and State Court opinions. In light of the fact that the workshop is the only real opportunity I will have to influence the Board, I believe it is essential that I provide written comments to the Board in advance of the workshop. Moreover, although I am not aware of when the Board member receive their packets, I assume that date is well in advance of the actual workshop date. I will be away on military duty June 13, 2004 through June 23, 2004. From June 24, 2004 through July 3, 2004 I will be on a pre-planned vacation with my family in Alaska.

It is impossible for me to file cogent comments on the draft Board order in advance of the workshop date. For these reasons I respectfully request an extension of the workshop hearing to the next available workshop date. It is my understanding that because the Board does not hold a workshop in August, the next workshop date will be September 8, 2004.

Your courtesy in this matter is greatly appreciated. I look forward to hearing from you.

Very truly yours,
Silicon Valley Law Group



JEFFREY S. LAWSON

Ro-2448



State Water Resources Control Board



Terry Tamminen
Secretary for
Environmental
Protection

Office of Chief Counsel
1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ <http://www.swrcb.ca.gov>

Arnold Schwarzenegger
Governor

JUN 04 2004

CERTIFIED MAIL

Alameda County
JUN 08 2004
Environmental Health

Mr. Jeffrey Lawson
Silicon Valley Law Group
25 Metro Drive, Suite 600
San Jose, CA 95110

Dear Mr. Lawson:

IN THE MATTER OF THE PETITION OF MURRAY KELSOE REGARDING PARTICIPATION IN THE UNDERGROUND STORAGE TANK CLEANUP FUND (3004 ANDRADE ROAD, SUNOL): BOARD WORKSHOP NOTIFICATION SWRCB/OCC FILE UST-208

The State Water Resources Control Board (SWRCB) will consider a proposed order in the above-entitled matter at its workshop session, which will be held on July 7, 2004, at the Cal/EPA Building, 1001 I Street, Sacramento, California. The draft order is enclosed for your review. You will separately receive an agenda for this workshop session at least 10 days before the workshop. Agendas are also posted on the SWRCB's website at <http://www.swrcb.ca.gov> at least 10 days before the respective workshop or meeting.

For all other interested parties, you may view the draft order on the SWRCB's website at <http://www.swrcb.ca.gov/cwphome/ustcf>. If you do not have internet access and would like a paper copy of the draft order and/or the agenda for the July 7, 2004, workshop session, please contact Lori Senitte Brock at (916) 341-5185 or at the address above by June 24, 2004.

Formal action will not be taken on this matter at the workshop session. At the workshop, interested persons will be allowed to comment orally on the draft order, subject to the following time limits. The petitioner and other interested persons directly affected by the draft will be allowed five minutes each for oral comment with an additional reasonable time for questions by the SWRCB members. Other interested persons will be allotted a lesser amount of time to address the SWRCB as time permits.

The receipt of additional written evidence will not be permitted at the workshop meeting except in compliance with California Code of Regulations, title 23, section 2814.5. Written comments on the draft order must be received by this office by 5:00 p.m., Wednesday, June 30, 2004.

California Environmental Protection Agency

Mr. Jeffrey Lawson

- 2 -

JUN 01 2004

If there are any questions or comments, please call Lori Senitte Brock, Senior Staff Counsel, of the Office of Chief Counsel, at (916) 341-5185.

Sincerely,



Craig M. Wilson
Chief Counsel

Enclosure

cc: **[All with enclosures]**

Mr. Robert Weston
Alameda County
1131 Harbor Bay Parkway, Suite 240
Alameda, CA 94502-6577

Peter Niemiec, Esq.
2314 John Street
Manhattan Beach, CA 90266-2616

Ms. Barbara Evoy, Chief (via e-mail)
Division of Financial Assistance
State Water Resources Control Board
1001 I Street, 17th Floor [95814]
P.O. Box 944212
Sacramento, CA 94244-2120

Mr. Michael Bakaldin
835 East Fourteenth Street, Suite 200
San Leandro, CA 94577

Mr. Hans Herb
P.O. Box 970
Santa Rosa, CA 95402

Mr. Allan Patton, Manager, UST Cleanup Fund
Division of Financial Assistance
State Water Resources Control Board
1001 I Street, 17th Floor [95814]
P.O. Box 944212
Sacramento, CA 94244-2120

Interested Persons **[Without enclosures]**

DRAFT

June 4, 2004

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
ORDER WQO 2004- -UST

In the Matter of the Petition of

MURRAY KELSOE

For Review of a Decision
of the Division of Financial Assistance,
State Water Resources Control Board,
Regarding Eligibility of a Claim to the
Underground Storage Tank Cleanup Fund

SWRCB/OCC FILE UST-208

BY THE BOARD:

This order concerns a petition challenging a final division decision issued by the Division of Financial Assistance (Division). Murray Kelsoe (petitioner) seeks review of the Division's decision to deny petitioner's claim to the Underground Storage Tank Cleanup Fund (Fund). The Division rejected petitioner's claim on the grounds of noncompliance with permit requirements. After review of the record, the State Water Resources Control Board (State Board) upholds the Division's decision.

I. STATUTORY, REGULATORY, PROCEDURAL AND FACTUAL BACKGROUND

The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 (Act) authorizes the State Board to administer a program to reimburse underground storage tank (UST) owners and operators for eligible costs incurred as a result of contamination from leaking petroleum USTs. (Health and Saf. Code, §§ 25299.10 – 25299.99.3.)¹ To implement the Act, the Legislature authorized the State Board to adopt regulations governing administration of the Fund. These regulations are codified in title 23, division 3, chapter 18, of the California Code of Regulations (Fund regulations).

¹ All statutory references are to the California Health and Safety Code unless otherwise noted.

The Legislature limited participation in the Fund to those petroleum UST owners or operators who meet specified requirements. (§§ 25299.54, 25299.57.) One of these requirements is that a Fund claimant must have complied with the permit requirements of Chapter 6.7 (commencing with section 25280). (§ 25299.57, subd. (d)(3)(A).) Section 25284 of Chapter 6.7 states, in part, that “no person may own or operate an underground storage tank unless a permit for its operation has been issued by the local agency to the owner or operator of the tank.” Thus, UST owners or operators are not eligible for reimbursement from the Fund if they have not obtained a permit for the UST that is the source of the unauthorized release.

The Act provides an exception to this eligibility requirement. For claims filed on and after January 1, 1994, and for claims that were filed before January 1, 1994, but that are not eligible for a waiver of the permit requirement pursuant to Fund regulations in effect when the claim application was filed, claimants may seek a statutory permit waiver.² The State Board’s authority to grant a statutory waiver of the permit requirement is governed by section 25299.57, which provides:

All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) [requirement to comply with permit requirements] regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

“(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

“(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

² For claims that were filed before January 1, 1994, claimants may seek a permit waiver pursuant to the Fund regulations that were in effect when the claim was filed.

“(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40 and the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.” (Health & Saf. Code, § 25299.57, subd. (d)(3)(B).)”

In 1983, petitioner became the owner and operator of the Sunol Tree Gas Station at 3004 Andrade Road in Sunol. In December of 1984, petitioner replaced the existing USTs with six new fiberglass USTs, piping and dispensers. The Alameda County Health Care Services Agency (Alameda County) began implementing its UST program in 1987, and claims to have notified all UST owners in their jurisdiction of permitting requirements in 1988. Petitioner states that he did not receive Alameda County’s 1988 notification, and there is no record of a 1988 notification in Alameda County’s files for the Sunol site. Petitioner states that he did not become aware of the permitting requirements until 1991, and that up until 1991, he believed that his permit issued by the Bay Area Air Quality Management District was sufficient.³

Petitioner owned or operated three other UST facilities in Alameda County during this same time period. One of the other facilities, which was commonly referred to as Marina Chevron Service, was located at 1066 Marina Boulevard in San Leandro and was regulated by the City of San Leandro. The City of San Leandro’s files for this site show that the City sent notices to this facility as early as 1988 regarding UST permitting requirements.

On April 24, 1991, Alameda County issued a Notice of Violation to petitioner concerning the Sunol site. This Notice informed petitioner of numerous violations of the California Health and Safety Code, including section 25284, which requires a permit to own or operate a UST. This Notice also informed petitioner that he was required to submit a Plan of Correction to Alameda County to address the violations by May 24, 1991. On June 5, 1991, Alameda County sent a second Notice of Violation, again requesting that petitioner submit a Plan of Correction to address the violations that were specified in the Notice of Violation dated April 24, 1991. In 1994, the Alameda County District Attorney’s Office initiated an enforcement action against petitioner, which related to the Sunol site and the three other sites in Alameda County. In August of 1994, the Superior Court issued a judgment against petitioner that required

³ These permits are issued to UST owners and address air-quality impacts from UST systems.

petitioner to pay civil penalties and to comply with Health and Safety Code section 25284 and other provisions of the Health and Safety Code. In December of 1994, the Sunol Tree Gas Station was brought into UST permit compliance. Shortly thereafter, the enforcement action was settled pursuant to a Stipulation and Modified Judgment.

Petitioner filed for bankruptcy in 1993. Petitioner states that he did not obtain a permit until December of 1994 (even though he became aware of the permit requirements in 1991) because his trustee and the trustee's accountant controlled all monies, and that the trustee did not allow the USTs to be tested until 1994. The station was closed in 1998 and petitioner received a temporary closure permit for the USTs. In April of 2002, petitioner removed five 15,000-gallon gasoline USTs and associated piping, and discovered an unauthorized release. In December of 2002, petitioner installed new USTs, obtained UST permits, and reopened the station.

Petitioner filed a claim with the Fund on June 25, 2002. The Division determined that petitioner had not complied with permit requirements of Chapter 6.7 of the Health and Safety Code and did not qualify for a permit waiver. On August 28, 2003, petitioner filed a petition seeking State Board review of the FDD rejecting petitioner's claim.⁴ Petitioner also requested a hearing to present oral argument.

II. CONTENTIONS AND FINDINGS

1. Contention: Petitioner argues that section 25299.57, subdivision (d)(3), subparagraph (A) only requires current compliance with permit requirements. Petitioner contends that he meets the permit requirements because he had obtained a section 25284 permit before the discovery of the unauthorized release and before he applied to the Fund.

⁴ The Act directs the State Board to review a final decision of the Division within 90 days after receiving a petition challenging the decision. (Health & Saf. Code, § 25299.56, subd. (c); Cal. Code Regs., tit. 23, § 2814.4, subd. (d).) Fund regulations allow the State Board and petitioner, by written agreement, to extend the 90-day time limit. (Cal. Code Regs., tit. 23, § 2814.4, subd. (d).) If the State Board does not take action on a petition within either the 90-day period or the extension period, the State Board has continuing jurisdiction to review the petition on its own motion. See State Board Order WQ 98-05-UST, *In the Matter of the Petition of Cupertino Electric, Inc.*, pp. 3-4 (discussing an agency's continuing jurisdiction pursuant to *California Correctional Peace Officers Ass'n v. State Personnel Bd.* (1995) 10 Cal.4th 1133 [43 Cal.Rptr.2d 693, 899 P.2d 79], and the State Board's discretion to consider a petition on its own motion as authorized by California Code of Regulations, title 23, section 2814.4, subdivision (e).)

Findings: The language contained in section 25299.57, subdivision (d)(3) indicates that permit compliance, for purposes of accessing the Fund, is not achieved merely by obtaining the required permits before the unauthorized release is discovered or before the Fund application is submitted. If a claimant was subject to permitting requirements before January 1, 1990, the claimant must show that it applied for or obtained a permit on or before January 1, 1990, to meet the permit-compliance criterion. This showing is required even if the unauthorized release is discovered and the Fund claim is filed several years after January 1, 1990.

When interpreting a statute, the fundamental objective is to determine and give effect to the intention of the Legislature. (Code Civ. Proc., § 1859.) In construing a statute, courts first look to the plain language of the statute. (*Federal Deposit Insurance Corporation v. Superior Court* (1997) 54 Cal.App.4th 337, 345 [62 Cal.Rptr. 2d 713].) If the language of a statute is clear and unambiguous, the language must be given its plain meaning and statutory construction is unnecessary. (*Shippen and Realty Information Systems v. Department of Motor Vehicles* (1984) 161 Cal.App.3d 1119, 1124 [208 Cal.Rptr. 13].) Except when otherwise clearly indicated, words and phrases in a statute are to be construed according to the context and approved usage of the language. *People v. One 1952 Mercury 2-Door Sedan* (1959) 176 Cal.App.2d 220, 222 [1 Cal.Rptr. 245].) Statutes should be construed to harmonize its various elements without doing violence to its language or spirit. (*People v. Garcia* (1999) 21 Cal.4th 1, 6 [87 Cal.Rptr.2d. 114].)

Section 25299.57, subdivision (d)(3), subparagraph (A) reads as follows:

Except as provided in subparagraph (B), the claimant *has complied* with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280). (Italics added.)

As stated above, petitioner asserts that the above language only requires current compliance with permit requirements. The word “complied” is the past participle of the verb “comply” and when preceded with either “have” or “has,” the phrase is characterized as the present perfect tense of the verb. (*The Gregg Reference Manual*, Ninth Edition, § 1033.) This tense indicates action that was started in the past and has recently been completed or is continuing until the present time. (*Ibid.*) According to standard usage of the English language, the term “has complied . . . with permit requirements” means that the claimant must have complied in the past and continues to comply with permit requirements. Other language

contained in section 25299.57 shows that past compliance means more than just obtaining a permit before the unauthorized release is discovered or before a Fund claim is filed.⁵

Subdivision (d)(3), subparagraph (B) provides that:

All claimants who file their claim on or after January 1, 1994 . . . and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason

This language indicates that if a claimant did not obtain or apply for the required permit by January 1, 1990, or qualify for the statutory permit waiver established in subparagraph (B), that the claimant is ineligible for the Fund. The language expressly mentions claimants who file their claims after January 1, 1994, yet conditions eligibility on permit compliance by January 1, 1990. Thus, if someone failed to obtain the required permit by January 1, 1990, and failed to qualify for a permit waiver, the claimant would be ineligible for the Fund even though the claim was filed in 1994 or later. With petitioner's proposed interpretation, the January 1, 1990, date has no significance so long as the claimant complied with permit requirements before the release was discovered or before the claim was filed. Petitioner's proposed interpretation of subparagraph (A) would essentially ignore a claimant's permit-compliance status as of January 1, 1990, which is so clearly mandated in subparagraph (B).

2. Contention: Petitioner contends that the statutory permit waiver is only applicable for failures to obtain section 25284 permits before January 1, 1990. Petitioner argues that a knowing failure to have a permit is only a ban with respect to pre-1990 permits, and that there was no intent by the Legislature to forever bar an individual from accessing the Fund for failure to have a permit sometime in the past.

Finding: We agree with petitioner that the statutory permit waiver is only available for permits that were required by January 1, 1990. We do not, however, agree with all of the underlying arguments that petitioner has advanced in support of this conclusion. Nor do

⁵ Language contained in Fund regulations over the years also indicates that a claimant does not satisfy the permit-requirement condition merely by obtaining required permits before the claimant discovers the release or applies to the Fund. The existing Fund regulations condition eligibility on, among other things, the claimant having obtained or applied for "any" permit required by Chapter 6.7 of the Health and Safety Code. (Fund regulations, § 2811, subd. (a)(2).) Earlier versions of the Fund regulations provided that a claimant is eligible if, among other things, the claimant "had and has obtained any permit or permits required of the claimant." (See Fund regulations, § 2811, subd. (a)(2), effective dates December 2, 1991, December 27, 1994, and August 8, 1996.)

we agree with petitioner on the impact that a January 1, 1990, cutoff date has on his claim to the Fund.

Petitioner was out of compliance with section 25284 permit requirements until December of 1994. Petitioner may have met the statutory criteria for a waiver of permit requirements as expressed in section 25299.57, subdivision (d)(3)(B)(i)-(iii), but that waiver, as petitioner seems to agree, only applies to permits required by January 1, 1990.⁶ Petitioner remained out of compliance with permit requirements from January 2, 1990, through December of 1994, when he finally obtained his permits. Since petitioner did not have a section 25284 permit from January 2, 1990 through December of 1994, and the statutory permit waiver is not available for permits that were required during this timeframe, petitioner does not satisfy the eligibility requirements of section 25299.57, subdivision (d)(3).

Section 25299.57, subdivision (d)(3)(A) reads as follows:

Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

Section 25284, which is contained in Chapter 6.7 of the Health and Safety Code, provides that no person shall own or operate a UST unless a permit has been issued by the appropriate agency. Section 25284 became effective on January 1, 1984. Therefore, subparagraph (3)(A) requires compliance with section 25284 at all times beginning January 1, 1984, except as provided in subparagraph (B), which provides for a waiver of permit requirements if certain criteria are met.⁷

On its face, section 25299.57, subdivision (d)(3), subparagraph (B) sets a cutoff date for permit waivers, and that date is January 1, 1990. Subparagraph (B), provides for a

⁶ In light of our findings, we do not need to reach the issue of whether petitioner met the waiver criteria with respect to permits required by January 1, 1990.

⁷ Local agencies are responsible for issuing permits required by section 25284. Even though this permit requirement became effective on January 1, 1984, it took many local agencies a few years or more to start issuing actual permits. If a UST owner or operator obtained a section 25284 permit when the applicable local agency began permitting USTs, it is the Fund's practice to consider the owner or operator to be in compliance with UST permitting requirements for purposes of the Fund, even though the UST permit was issued several years after the effective date of section 25284.

waiver for a claimant “who did not obtain or apply for any permit required by subdivision (a) of section 25284 by January 1, 1990.” Thus, waivers are allowed for permits that were required before 1990, or in the period pending issuance of permits based on applications filed before 1990. All others, except for claimants who filed before 1994 and were eligible for waivers under the State Board regulations then in effect, are ineligible for the Fund if they failed to comply with applicable permit requirements, as specified in subparagraph (A) of subdivision (d)(3) of section 25299.57.

Assembly Bill 1061 (Costa) was enacted in 1993 and added subparagraph (B). Assembly Bill 1061, as it related to the permit waivers, was aimed at addressing a few key issues. First, instead of using the case-by-case approach for granting waivers of the permit requirement as had been used pursuant to applicable Fund regulations, the Legislature moved to an objective standard.⁸ Second, the Legislature wanted to avoid the harsh result of complete ineligibility for the Fund in cases where claimants were justifiably unaware of the section 25284 permit requirement. As explained in *In the Matter of Lloyd Properties* (State Board Order WQ-93-1-UST), some UST owners and operators were justifiably unaware of permitting requirements in the early years of the UST program. In the early years after the effective date of section 25284 (1984), the permit requirement was not well publicized in many areas of the state, and UST permitting and enforcement programs were unevenly handled throughout the state. (*Lloyd Order*, p.7.)

The Legislature responded to these issues by establishing the three-criteria standard for permit waivers (instead of the subjective, case-by-case approach), with the key criterion being the lack of knowledge of the permit requirement before January 1, 1990, and the lack of the intention to avoid the permit requirement or the associated fees. This criterion reads as follows:

The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit. (§ 25299.57, subd. (d)(3)(B)(i).)

⁸ The Fund regulations in effect when AB 1061 was enacted and which still apply to Fund claims filed before January 1, 1994, allow the State Board to waive permit requirements if a claimant can show that obtaining a permit was beyond the claimant’s reasonable control or that under the circumstances of particular case, it would be unreasonable or inequitable to impose the permit requirement.

There are two elements to this criterion – the lack of awareness of the permit requirement by January 1, 1990, and the lack of the intent to avoid the permit or fee requirement. The fact that the claimant must have been unaware of the permit requirement before January 1, 1990, to satisfy the first element also supports the position that the Legislature intended to limit the waivers to permits that were required by January 1, 1990.

The second element of the criterion, the lack of any intent to avoid permit or fee requirements, is intended primarily to make claimants ineligible for waivers if they intentionally failed to obtain after-the-fact permits or pay past fees once they became aware of the permit requirement. The legislative history indicates that the Legislature was concerned about claimants not obtaining past permits and paying associated back fees. If a claimant was unaware of permit requirements before January 1, 1990, but became aware of them on or after January 1, 1990, then that claimant would be eligible for the waiver so long as there is nothing that shows that the claimant (before or after January 1, 1990) intended to avoid permit and fee requirements.

The second element also serves to address the issue of how promptly a claimant must have applied for a permit once the claimant became aware of the permitting requirement. The claimant could not be expected to apply the very instant the claimant became aware of the permitting requirement, but it would also be inappropriate to allow a long period of time to obtain a permit, after becoming aware of the permitting requirements, simply because the claimant was initially unaware of those requirements. The second element allows for eligibility, if the claimant applied before January 1, 1990, so long as any delays in compliance were not the result of a deliberate attempt to avoid permitting or fee requirements.

Petitioner argues, based on the fact that the statutory waiver is not available after January 1, 1990, that the knowing failure to obtain a permit is not a bar for failures to obtain permits that occurred after January 1, 1990. Under this interpretation, eligibility requirements would be stricter for failures to obtain permits that occurred before January 1, 1990, than afterwards. But both the language and the legislative history of these provisions indicate the opposite is true. Failure to obtain a permit was more excusable in the earlier years of the UST program than later, as explained in the *Lloyd Order*.

3. Contention: Petitioner argues that requiring claimants to be in permit compliance before the discovery of the unauthorized release provides ample incentive for

claimants to comply with permit requirements. Petitioner further argues that there would be no incentive to comply with current permitting requirements if past noncompliance bars participation in the Fund.

Finding: The Legislature conditioned Fund eligibility on permit compliance. Before a local agency may issue a section 25284 permit, the local agency must inspect the UST and determine that it complies with applicable provisions of Title 23 of the California Code of Regulations, Chapter 16 (UST regulations.) (Cal Code Regs., tit. 23, § 2712, subd. (c).) The UST regulations contain, among other things, design and construction requirements for USTs and monitoring requirements. (See UST regulations, Articles 3 and 4.) Compliance with these requirements can prevent unauthorized releases and provide for early detection when releases do occur. Thus, obtaining and complying with the terms of a UST permit can prevent releases and minimize the impacts of releases on the environment.

Petitioner's proposed interpretation of permit compliance would encourage UST owners and operators to obtain UST permits before discovering a release, but it would not necessarily encourage earlier permit compliance, which could prevent the unauthorized releases in the first place or allow for early detection of the releases. Further, petitioner's proposed interpretation may encourage UST owners and operators to delay discovering and reporting their releases until the owners and operators have come into permit compliance, which has obvious, negative impacts on the environment. Petitioner's proposed interpretation of permit compliance would, therefore, hinder the objectives of the UST permitting requirements and may result in delayed discoveries and cleanups of unauthorized releases.

It is true that past permit non-compliance can bar participation in the Fund, but this should not eliminate a UST owner or operator's incentive to comply with current permit requirements. Even where UST owners or operators have not complied with UST permitting requirements in the past, they should be motivated to obtain current permits so that they can lawfully operate the USTs and businesses and avoid penalties for operating unpermitted USTs.

4. Contention: Petitioner contends that the Division is estopped from denying eligibility to petitioner because the Division represented that UST owners and operators are eligible for the Fund if they are in current compliance with permit requirements and financial responsibility requirements, and there is nothing that put the petitioner on notice that failure to

comply with past permit requirements would result in ineligibility. Petitioner refers to language included in the *Certification of Financial Responsibility Form (Certification)*. Petitioner claims that if the forms had been accurate, he would have realized that he could not use the Fund for financial assurance and would have obtained an alternate form of financial assurance. Petitioner also argues that it is unfair to deny eligibility since petitioner has been paying UST storage fees for a number of years.

Findings: Four elements are required before an equitable estoppel is applied:

(1) the party to be estopped must be apprised of the facts; (2) the party to be estopped must intend that his or her conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the party asserting estoppel must be ignorant of the true state of the facts; and (4) the party asserting estoppel must rely upon the conduct to his or her injury. (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 399 [261 Cal.Rptr. 310].) Estoppel may be asserted against the government where justice and right require it, but it will not be applied against the government if to do so would effectively nullify a strong rule of policy, adopted for the benefit of the public. (*Ibid.*)

Petitioner has not demonstrated that the four elements are met. It appears that the third element would be especially problematic for petitioner in light of the facts of this case. Petitioner executed his *Certification* on December 28, 1994. This form states that if a UST owner or operator is using the Fund as any part of its demonstration of financial responsibility, that execution and submission of the *Certification* certifies that the UST owner or operator is in compliance with all conditions for participation in the Fund.

As discussed earlier, section 25299.57, subdivision (d)(3)(B) expressly conditions Fund eligibility on permit compliance by January 1, 1990, even for Fund claims filed many years after that date. This subdivision became effective on January 1, 1994, almost a year before petitioner completed his *Certification*. The Fund regulations in effect when petitioner completed the *Certification* conditioned Fund eligibility on, among other things, compliance with permit

requirements. More specifically, to be eligible for reimbursement, the Fund regulations stated that:

The claimant *had and has* obtained any permit or permits required of the claimant pursuant to Chapter 6.7, Division 20, of the California Health and Safe Code unless the claimant can demonstrate that waiver of the permit requirement is appropriate in accordance with the criteria set forth below. (Cal. Code Regs., tit. 23, Chap. 18, § 2811, subd. (a)(2), effective date Dec. 27, 1994, italics added.)

The language in section 25299.57, subdivision (d)(3), subparagraph (B), the above-cited Fund regulation, and several State Board precedential decisions concerning the permit requirements that were issued before December 28, 1994, show that Fund eligibility is conditioned not only on permit compliance at the time a Fund application is filed or at the time the unauthorized release is discovered, but also with permit compliance by January 1, 1990.

Additionally, estopping the Division from properly enforcing the permit requirement would nullify a strong rule of policy, adopted for the benefit of the public. As explained before, obtaining and complying with the terms of a permit (e.g., construction standards and monitoring requirements) can prevent an unauthorized release and, in the event a release occurs, minimize the impacts of the release on the environment. USTs must be properly permitted at all times and proper maintenance and operation must be continuous in order to achieve the regulatory purpose behind the permitting requirements. Conditioning Fund eligibility on long-term compliance with permit requirements provides appropriate incentive to accomplish the goals of the UST permitting requirements.

The Legislature established a system whereby the payment of UST storage fees into the Fund is mandatory, but receipt of reimbursement from the Fund is conditioned on certain eligibility requirements. (§§ 25299.41, 25299.57 & 25299.58.) By conditioning Fund eligibility on regulatory compliance (e.g., compliance with permit requirements and corrective action directives) the Legislature must have intended to provide an incentive for UST owners and operators to comply with UST regulatory requirements. The UST storage fees provide money for cleanup, but the Legislature must have concluded that conditioning Fund eligibility on the payment of UST storage fees, alone, would not provide incentive to UST owners and operators to comply with UST regulatory requirements.

III. SUMMARY AND CONCLUSION

1. To participate in the Fund, claimants must demonstrate compliance with section 25284 permitting requirements, unless the claimant qualifies for a waiver of the permitting requirements. To satisfy the permit-compliance criterion, the claimant must demonstrate that it has obtained all section 25284 permits required of the claimant. If a claimant owned or operated USTs as of January 1, 1984, the claimant is considered to be in compliance with permit requirements for purposes of the Fund if the claimant obtained section 25284 permit(s) when the applicable local agency began issuing section 25284 permits.

2. The language in section 25299.57, subdivision (d)(3), subparagraph (B) indicates that the Legislature was aware that claimants would be discovering unauthorized releases and filing Fund claims after January 1, 1994, yet still conditioned eligibility on the claimant's permit compliance by January 1, 1990. Interpreting the permit-compliance criterion as compliance by the time the unauthorized release was discovered or the time the Fund claim was filed would contradict the express language of the statute and would hinder legislative objectives for this particular eligibility criterion.

3. If a claimant has not complied with section 25284 permitting requirements, the claimant may seek a waiver of the requirements. For claims filed before January 1, 1994, a claimant may seek a permit waiver based upon Fund regulations in effect when the particular claim was filed. For claims filed after January 1, 1994, and claims that were filed before January 1, 1994, but that are not eligible for a waiver of the permit requirement pursuant to Fund regulations in effect when the claim application was filed, claimants may seek a permit waiver pursuant Health and Safety Code section 25299.57, subdivision (d)(3), subparagraph (B).

4. Permit waivers authorized in section 25299.57, subdivision (d)(3), subparagraph (B) are only available for permits that were required by January 1, 1990, and may not be used to excuse permit non-compliance after January 1, 1990.

5. Petitioner became the owner and operator of the Sunol Tree Gas Station in 1983, and became subject to section 25284 permitting requirements on January 1, 1984. Alameda County began implementing its UST program in 1987. Petitioner did not obtain section 25284 permits for this facility until December of 1994. Since petitioner did not properly permit his USTs until seven years after Alameda County first implemented its UST program and

began issuing permits, this Board cannot make a finding that petitioner complied with UST permitting requirements.

6. We do not need to reach the issue of whether petitioner met the criteria for a waiver of permit requirements as expressed in section 25299.57, subdivision (d)(3), subparagraph (B)(i)-(iii). That waiver is only available for failures to obtain permits that occurred before January 1, 1990, and may not be used to excuse petitioner's permit noncompliance that lasted beyond January 1, 1990.

7. Four elements are required before an equitable estoppel is applied, and estoppel will not be applied against the government if to do so would effectively nullify a strong rule of policy, adopted for the benefit of the public. Petitioner has not demonstrated these elements, and estopping the Division from enforcing the permit requirement established in the Act would impede the legislative purpose for conditioning Fund eligibility on compliance with UST permitting requirements.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 22, 2004.

AYE:

NO:

ABSENT:

ABSTAIN:

DRAFT

Debbie Irvin
Clerk to the Board

Roz 448



SVLG

SILICON VALLEY LAW GROUP

A LAW CORPORATION

Jeffrey S. Lawson

isl@svlg.com

March 15, 2004

Via Facsimile & U.S. Mail

Helyn Hayes
251 Arguello Blvd.
San Francisco CA 94118

Re: Sunol Tree Gas Station/T-Bear Ranch
Treatment System

Dear Ms. Hayes:

This letter is in follow up to our telephone conversation and your email of around a week ago. Attached please find a copy of a letter Mr. Kelsoe has had me send to Culligan agreeing to allow the owners of the T-Bear Ranch to contact Culligan for an emergency repair not to exceed \$500 and to allow the cost of the repairs to be billed directly to Murray Kelsoe. Secondly, in regard to shutting the treatment system down, there are two circuit breakers already installed. The first is in the shed and the second is 50 feet away from the treatment system next to the horse stalls. Roy knows where both circuit breakers are. Flipping either circuit breaker will shut the system down.

I hope this letter adequately responds to your concerns.

Very truly yours,
Silicon Valley Law Group



JEFFREY S. LAWSON

JSL/lt

Enclosure: Letter to Culligan

Cc: Murray Kelsoe
Donna Drogos



SVLG

SILICON VALLEY LAW GROUP

A LAW CORPORATION

Jeffrey S. Lawson

jsl@svlg.com

March 15, 2004

Via Facsimile & U.S. Mail

Stewart Dennis
Ising's Culligan
P.O. 1140
Livermore CA 94551-1140

Re: Sunol Tree Gas Station & T-Bear Ranch

Dear Mr. Dennis:

The owners of the T-Bear Ranch have asked that Culligan agree to an arrangement whereby if there is an emergency with the treatment system, that the T-Bear Ranch can contact Culligan to respond and have the bill forwarded to Murray Kelsoe. Murray is willing to agree to that arrangement as long as the bill does not exceed \$500. Please let me know if this arrangement is acceptable.

Very truly yours,
Silicon Valley Law Group



JEFFREY S. LAWSON

JSL/lt

Cc: Murray Kelsoe
Helen Hayes

SILICON VALLEY LAW GROUP
A LAW CORPORATION

152 NORTH THIRD STREET
SUITE 900
SAN JOSE, CA 95112

TELEPHONE: (408) 286-6100
FACSIMILE: (408) 286-1400
www.svlg.com

F A C S I M I L E C O V E R S H E E T

DATE: March 15, 2004
TO: Donna L. Drogos
FROM: Lisa Tornquist, Paralegal to Jeff Lawson
RE: Fuel Leak Case No. R02448/Sunol Tree Gas Station
FACSIMILE NO.: 510-337-9335 **TELEPHONE NO.:** 510-567-6700

Number of pages including Facsimile Cover Sheet: 23

COMMENTS: Please refer to the attached letter of today's date.

PRIVILEGED AND CONFIDENTIAL information intended only for the use of the addressee(s) named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any dissemination, distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify this office immediately by telephone and return the original message to this office at the above address via U.S. Mail.

Seery, Scott, Env. Health

From: Seery, Scott, Env. Health
Sent: Tuesday, February 17, 2004 1:42 PM
To: Drogos, Donna, Env. Health
Cc: Seery, Scott, Env. Health
Subject: sampling at T-Bear Ranch

I went to the Sunol Tree station, this morning, where I met Murray Kelsoe. A while later the technician (Gregory Fultcher) from Sequoia Labs arrived. He had apparently been waiting at the sample location for a little while, instead of coming directly to Murray's station. We went to the well head at T-Bear where I witnessed him collect water samples from 3 sample spigots, marked with tags number 1, 2, and 3 (INF, MID, EFL, respectively). Three (3) samples were collected from each sample location, with a total of 9 VOAs in all. I took several pictures of the system and of the sampling activity.

A chain of custody was completed at the site, and Murray kept one copy (pink).

I also spoke with Roy Trovani (T-Bear) and went over the sample results for the 1/27/04 sampling event. I offered a copy of the sample report to him, but he indicated he was satisfied having viewed the results with me. He mentioned that he had not been receiving copies of the sample reports.



SVLG

SILICON VALLEY LAW GROUP

A LAW CORPORATION

Lisa Tornquist

lat@svlg.com

February 6, 2004

Via U.S. Mail

Alameda County
FEB 10 2004
Environmental Health

Leticia Reyes
Project Manager
Sequoia Analytical
885 Jarvis Drive
Morgan Hill CA 95037

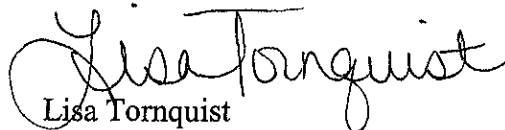
Re: Sunol Tree Gas Station & T-Bear Ranch

Dear Ms. Reyes:

This letter is in reference to the testing schedule for the water samples from the Carbon Treatment System at T-Bear Ranch. The current testing schedule is as follows: February 17, 2004; March 9, 2004; March 30, 2004; April 20, 2004; May 11, 2004; and June 1, 2004. A representative from both Alameda County and Weber, Hayes & Associates would like to be present during Sequoia Analytical's sampling of T-Bear Ranch prior to each sampling event. Please provide me with times when the sampling will take place. I will then provide both Alameda County and Weber, Hayes & Associates with these times so that they can make arrangements to be present.

Thank you for your assistance in this matter.

Very truly yours,
Silicon Valley Law Group


Lisa Tornquist
Paralegal to Jeff Lawson

/lt

Cc: Murray Kelsoe
Donna Drogos
Pat Hoban

10084208

152 N. Third Street, Suite 900 • San Jose, CA 95112 • Tel: (408) 286-6100 • Facsimile: (408) 286-1400 • www.svlg.com

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com
Sent: Wednesday, January 07, 2004 9:49 AM
To: ddrogos@co.alameda.ca.us
Cc: pat@weber-hayes.com; FBOAG@COMCAST.NET
Subject: T BEAR RANCH WATER TESTING

Hi Donna.

Sorry I missed your call last week regarding the E mail I sent to you. Roy called me only to tell me that there has been no new developments due to lack of manpower to process paperwork.

I will call you this week or better yet, send me an update & send Pat, Jeff Lawson & Finley a copy.

Yesterday Roy was continuing to replace fixtures in the barn so it would be ready to put on the market , if & when this happens. Murray Kelso called & asked Roy if he would be available to show a person where to get water samples. Once again he said he would stay around until the person showed up. Cerco was the last firm to test water. Roy spent valuable time showing the person where to take samples.

The person who came down yesterday was Gregory Fultcher from Sequoia Analytical. Address is 885 Jarvis Drive, Morgan Hill. 408-782 8165.

Mr Fultcher had a picture of the system, which Roy had sent to Pat Hoban. He was not familiar with the site & Roy had to again show this new person the system as he did with Cerco. Roy had to leave the ranch for a short time & on returning the person was gone, however, our clients asked Roy when the water was going to be on again. Mr Fultcher had shut off the water to the whole ranch! Roy just cannot be around to monitor everything these people do. We feel that the same person should be taking water samples to avoid problems like this in the future. Roy & I are unable to leave the property anymore as we don't know what may happen while away.

What can be done to push this through?

Thanks
Roy & Helyn Tovani

2/25/2004

Drogos, Donna, Env. Health

From: Pat Hoban [pat@weber-hayes.com]
Sent: Tuesday, December 16, 2003 5:42 PM
To: Jeff Lawson-SVLG
Cc: Helen Hayes-Roy Tovani; (ACHCSA) Drogos, Donna
Subject: T Bear Carbon Treatment System Sampling

Drogos, Donna, Env. Health



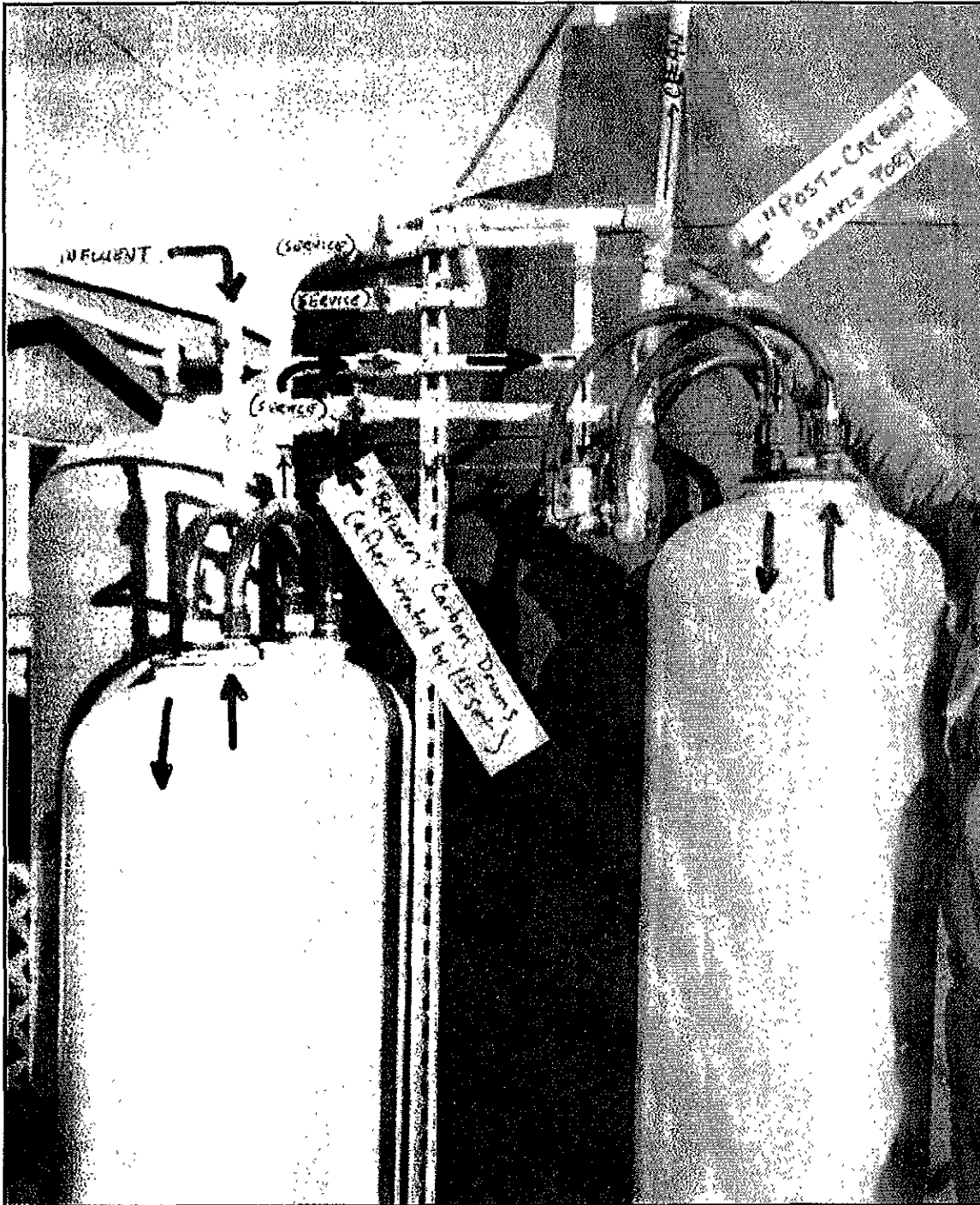
Weber, Hayes & Associates
Hydrogeology and Environmental Engineering
120 Westgate Drive, Watsonville, Ca. 95078
(831) 722-3580 (831) 662-3100

Hello Jeff,

I received some good photos from Roy Tovani at the T Bear Ranch and chatted with Stewart from Culligan to confirm the water flow path at the site's carbon treatment system which started operation on Nov-6th (see labeled photo below). The information I received indicates that the treatment system has three garden hose-type sampling ports that require sampling to satisfy Alameda County Health Care Services Agency (ACHCSA) requirements (see ATTACHED directive):

- The **first sample port** is at the well-head (inside pump shed).
 - Water influent is apparently split into the two smaller tanks at left where it is filtered. Filtered water from both tanks is then commingled back into a single pipe.
- The **second sample port**, shown on the photo below, is positioned after the first set of smaller filters and before the second larger set of filters ("between").
 - Water is again split up and discharged into the larger smaller tanks at right. The filtered effluent water exiting the 2 larger carbon tanks is again commingled back into a single pipe where the **final sampling port** is located ("post-carbon").
- Looks appears that the required system sampling was inadvertently collected from the incorrect sample port location (at the "post-carbon" port). The recent (Dec-2) non-detect lab result is good, but does not satisfy the ACHCSA requirements for sampling the influent (at the well head) and between the carbon drums ("between"). This sampling/testing was required to be completed on should be done ASAP on a rush turn-around as Mr. Kelsoe is out of compliance.

2/25/2004



Feel free to call and discuss.

Pat Hoban
Project Geologist
Weber, Hayes and Associates
120 Westgate Drive, Watsonville, CA 95076

(831) 722-3580

From: Jeff Lawson [jjsl@svlg.com]
Sent: Wednesday, December 10, 2003 9:58 AM
To: ddrogos@co.alameda.ca.us
Subject: Sunol Tree Gas

Donna,
Weber/Hayes will read the testing data for us to see if there is breakthrough. As for the meter, the one we found is \$4300 and then we need to hire someone to read it. Weber/Hayes thinks there may be a less expensive system and they will be sending me info on it in the near future. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste. 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jjsl@svlg.com" and delete this email message from your system.

From: Jeff Lawson [jst@svlg.com]
Sent: Friday, December 05, 2003 2:33 PM
To: ddrogos@co.alameda.ca.us
Subject: Fwd: Sunol Tree Gas Station



Sunol Tree Gas
Station

Donna,

I waited until after I spoke to the DA, but here are the answers to your questions which I supplied to the DA a couple of days ago. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jst@svlg.com" and delete this email message from your system.

From: Jeff Lawson [jsl@svlg.com]
Sent: Wednesday, December 03, 2003 4:29 PM
Subject: Sunol Tree Gas Station

Alyce,
I have been trying to return your call, but your line has been busy. I learned today from the client that the system became fully operational on 11/28. The system was sampled yesterday. We are asking Weber Hayes to analyze the data to calculate breakthrough. We have contacted the system vendor to find out about the cost of installing a flowmeter. I will be in tomorrow. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Seery, Scott, Env. Health
Sent: Friday, December 05, 2003 2:25 PM
To: Drogos, Donna, Env. Health
Subject: RE: RO2448

I updated all the Geotracker fields for this site.

-----Original Message-----

From: Drogos, Donna, Env. Health
Sent: Wednesday, December 03, 2003 3:26 PM
To: Seery, Scott, Env. Health
Subject: RO2448
Importance: High

Scott , pls write a note for the file documenting the date & time you observed kelsoe's pile uncovered this past weekend.

Also, pls update all the fields on Geotracker for this site. The state is trying to get data on all sites that have impacted water supply wells in order to respond to a lawsuit. They want those fields updated this week.

Thanks, Donna

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Thursday, December 04, 2003 8:46 AM
To: Levi, Ariu, Env. Health; Sandbach, Alyce, DA; Seery, Scott, Env. Health; Hugo, Susan, Env. Health; Weston, Robert, Env. Health
Subject: FW: RO2448, T-Bear temp system

Work (unknown if appropriate) is occurring without notice to anyone.

-----Original Message-----

From: Alphacat2000@aol.com [mailto:Alphacat2000@aol.com]
Sent: Wednesday, December 03, 2003 8:40 PM
To: donna.drogos@acgov.org
Subject: Re: RO2448, T-Bear temp system

Hi Donna,

I just spoke with Roy. He said Cerco came down late yesterday afternoon to test the water. Roy saw Murray last week & he asked if anyone had been down to test water .

Cerco did not know where to take the water sample. Roy & the man from Cerco finally figured it out & called Culligan to confirm that this was the proper site to get sample.

Why isn't anyone informed about what needs to be done? I can only assume that Cerco knows what to do with the water sample. We can't always be there & need to know who to call when we need help & it sure isn't Mr. Kelsoe.

Please let me know if you need us to do anything.

Helyn

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Thursday, December 04, 2003 8:45 AM
To: Levi, Ariu, Env. Health; Sandbach, Alyce, DA; Seery, Scott, Env. Health; Hugo, Susan, Env. Health; Weston, Robert, Env. Health
Subject: FW: RO2448, T-Bear temp system

FYI-

-----Original Message-----

From: Alphacat2000@aol.com [mailto:Alphacat2000@aol.com]
Sent: Wednesday, December 03, 2003 6:19 PM
To: donna.drogos@acgov.org
Subject: Re: RO2448, T-Bear temp system

Hi Donna,

Thanks for the reply. I will confirm with Roy as to the date system was supposedly operating. The electrician had to meet with Culligan team on several occasions. Culligan didn't have all the parts, or filters necessary to finish the job & that delayed it another week.

The water has not been tested & Murray doesn't even answer his phone. I prefer Jeff Lawson speak to Murray as Roy & I have already done way to much of Murrays work for him.

We need the water tested. I made a promise to my clients months ago that we would have clean water for them & their horses.

We haven't heard from Pat Hoban in a while. I'm sure he is getting impatient as the consulting fees must be really adding up!

We will get back to you ASAP on anything new.

Take care,
Helyn

2/25/2004

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Thursday, December 04, 2003 8:43 AM
To: 'Alphacat2000@aol.com'
Subject: RE: RO2448, T-Bear temp system

I heard from the DA that your system was samples on Tuesday?

-----Original Message-----

From: Alphacat2000@aol.com [mailto:Alphacat2000@aol.com]
Sent: Wednesday, December 03, 2003 6:19 PM
To: donna.drogos@acgov.org
Subject: Re: RO2448, T-Bear temp system

Hi Donna,

Thanks for the reply. I will confirm with Roy as to the date system was supposedly operating. The electrician had to meet with Culligan team on several occasions. Culligan didn't have all the parts, or filters necessary to finish the job & that delayed it another week.

The water has not been tested & Murray doesn't even answer his phone. I prefer Jeff Lawson speak to Murray as Roy & I have already done way to much of Murrays work for him.

We need the water tested. I made a promise to my clients months ago that we would have clean water for them & their horses.

We haven't heard from Pat Hoban in a while. I'm sure he is getting impatient as the consulting fees must be really adding up!

We will get back to you ASAP on anything new.

Take care,
Helyn

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com
Sent: Wednesday, December 03, 2003 8:40 PM
To: donna.drogos@acgov.org
Subject: Re: RO2448, T-Bear temp system

Hi Donna,

I just spoke with Roy. He said Cerco came down late yesterday afternoon to test the water. Roy saw Murray last week & he asked if anyone had been down to test water .

Cerco did not know where to take the water sample. Roy & the man from Cerco finally figured it out & called Culligan to confirm that this was the proper site to get sample.

Why isn't anyone informed about what needs to be done? I can only assume that Cerco knows what to do with the water sample. We can't always be there & need to know who to call when we need help & it sure isn't Mr. Kelsoe.

Please let me know if you need us to do anything.

Helyn

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com
Sent: Wednesday, December 03, 2003 6:19 PM
To: dohna.drogos@acgov.org
Subject: Re: RO2448, T-Bear temp system

Hi Donna,

Thanks for the reply. I will confirm with Roy as to the date system was supposedly operating. The electrician had to meet with Culligan team on several occasions. Culligan didn't have all the parts, or filters necessary to finish the job & that delayed it another week.

The water has not been tested & Murray doesn't even answer his phone. I prefer Jeff Lawson speak to Murray as Roy & I have already done way to much of Murrays work for him.

We need the water tested. I made a promise to my clients months ago that we would have clean water for them & their horses.

We haven't heard from Pat Hoban in a while. I'm sure he is getting impatient as the consulting fees must be really adding up!

We will get back to you ASAP on anything new.

Take care,
Helyn

2/25/2004

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Wednesday, December 03, 2003 5:12 PM
To: Sandbach, Alyce, DA
Subject: FW: soil pile observations, RO 2448 - Sunol Tree, 3004 Andrade Rd., Sunol

-----Original Message-----

From: Seery, Scott, Env. Health
Sent: Wednesday, December 03, 2003 4:49 PM
To: Drogos, Donna, Env. Health
Cc: Weston, Robert, Env. Health
Subject: soil pile observations, RO 2448 - Sunol Tree, 3004 Andrade Rd., Sunol

On the morning and afternoon of Sunday, November 30, I observed the soil pile at the Sunol Tree facility to be substantially uncovered. There were some apparent remnants of plastic sheeting on top of the pile that I could see from my vantage points of the south- and northbound lanes of Interstate 680, but the pile, for all intents and purposes, was uncovered. There was measurable precipitation on Sunday.

Scott

Seery, Scott, Env. Health

From: Seery, Scott, Env. Health
Sent: Wednesday, December 03, 2003 4:49 PM
To: Drogos, Donna, Env. Health
Cc: Weston, Robert, Env. Health
Subject: soil pile observations, RO 2448 - Sunol Tree, 3004 Andrade Rd., Sunol

On the morning and afternoon of Sunday, November 30, I observed the soil pile at the Sunol Tree facility to be substantially uncovered. There were some apparent remnants of plastic sheeting on top of the pile that I could see from my vantage points of the south- and northbound lanes of Interstate 680, but the pile, for all intents and purposes, was uncovered. There was measurable precipitation on Sunday.

Scott

Tracking:

Recipient

Drogos, Donna, Env. Health

Weston, Robert, Env. Health

Delivery

Delivered: 12/3/2003 4:49 PM

Delivered: 12/3/2003 4:49 PM

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Thursday, November 20, 2003 9:20 PM
To: 'Jeff Lawson'
Cc: Sandbach, Alyce, DA; alphacat2000@aol.com; pat@weber-hayes.com; Seery, Scott, Env. Health; Levi, Ariu, Env. Health; Murray Einarson (mdeinarson@stanford.edu); Weston, Robert, Env. Health
Subject: Treatment System at T-Bear
Importance: High

Jeff,

It appears that the treatment system is operational at T-Bear Ranch. However, I have not received the System Installation/Startup Notification from Mr. Kelseo.

Notification to ACEH of system startup is necessary at this site. Water samples from the T-Bear Ranch treatment system need to be analyzed on an expedited turnaround time every 3 weeks to ensure system breakthrough does not occur and to prevent residents of T-Bear Ranch from becoming exposed to contaminated water. It appears that the system may be approaching a 3 week operational time.

- 1) Where is the System Installation/Startup Notification?
- 2) How long has the treatment system been running?
- 3) What is the schedule for sampling and analysis of the system?
- 4) Re: Technical Comments 2) & 4) in ACEH's 10/31/03 letter, who will be interpreting analytical results to identify a potential breakthrough problem and take appropriate actions?
- 5) What is the status on installation of the data logging flowmeter?

Donna

Donna L. Drogos, P.E.
LOP Program Manager
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502

510-567-6721
donna.drogos@acgov.org

3/2/2004

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com
Sent: Monday, November 03, 2003 4:30 PM
To: donna.drogos@acgov.org
Cc: jsl@svlg.com; pat@weber-hayes.com
Subject: (no subject)

Hi Donna,

Roy & I waited for Culligan to begin hooking up the equipment for the filtering system. The schedule was set for Monday, November 3rd.

We finally called & they said that there would be a delay until Tuesday. Apparently someone didn't show & it had to be postponed.

If they don't show tomorrow, I'll give you a call. We can't & won't keep cancelling medical appointments just to sit & wait for nothing.

We are trying our best to be available just to get this going.

Thanks
Helyn & Roy

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Monday, November 03, 2003 10:47 AM
To: 'Jeff Lawson'
Cc: Sandbach, Alyce, DA; alphacat2000@aol.com; mdeinarson@stanford.edu; pat@weber-hayes.com
Subject: RE: ACEH Letter 10/31/03

Hi Jeff, It is Mr. Kelsoe's responsibility to have all reports for his fuel leak site prepared by the appropriately licensed professional and submitted to ACEH. I can discuss with you which type of data logging flowmeters will meet the technical requirements of ACEH's directive.
Donna

-----Original Message-----

From: Jeff Lawson [mailto:jsl@svlg.com]
Sent: Saturday, November 01, 2003 3:26 PM
To: donna.drogos@acgov.org
Cc: alyce.sandbach@acgov.org; alphacat2000@aol.com; mdeinarson@stanford.edu; pat@weber-hayes.com
Subject: Re: ACEH Letter 10/31/03

Donna,
In looking at the flowmeter info you sent, it looks like you need specialized chart recorders or other equipment to get the data report that you want. Is this something that if we install the flowmeter Alameda county could come out and collect the data off of it themselves? Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

>>> "Drogos, Donna, Env. Health" <donna.drogos@acgov.org> 10/31/03
>>> 02:53PM >>>

Jeff,

Attached is ACEH's directive letter issued today, along with an enclosure. Call if questions.

Donna

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



October 31, 2003

Mr. Murray Kelsoe
PO Box 176
Alamo, CA 94507

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

Dear Mr. Kelsoe:

Subject: Fuel Leak Case No. RO0002448, Sunol Tree Gas Station, 3004 Andrade Road, Sunol, CA

Alameda County Environmental Health (ACEH) staff have reviewed your proposal dated September 19, 2003, for installation of the temporary water treatment system (system) consisting of a carbon filtration system. We generally concur with your proposal and present the following technical comments and requirements. Please address the following technical comments regarding treatment system operation and complete the system installation and operation without delay. ACEH gave verbal approval for system installation on September 26, 2003. You are reminded that the Alameda County District Attorney's office directed you to have a water supply system for T-Bear Ranch operational by September 1, 2003. **Your system is currently 2-months late and your site is not in compliance with ACEH directives.**

TECHNICAL COMMENTS

- 1. System Design** - ACEH notes that the temporary treatment system proposed is not a standardized and tested system designed by an environmental consultant. Rather it is a custom system in which the vendor, Culligan, utilized rough estimates from standardized systems to design its custom system. Based on the estimates made for system design, the initial sampling schedule to check for carbon breakthrough has been proposed to occur after three weeks of operation based on loading rates provided by Culligan and their carbon vendor.
- 2. System Breakthrough** - If breakthrough occurs you are required to immediately replace the carbon/tank(s) and rotate the tanks so the vessel with the fresh carbon is in the back (discharge) end of the series so users are not exposed to a contaminated water supply. If breakthrough occurs the system and sampling schedule shall be re-evaluated and a report of the evaluation submitted by the date specified below.
- 3. Initial Wellhead Sampling and Analyses** - ACEH previously requested that you analyze a water sample at the T-Bear Ranch well before system installation. We have recently received the analytical results from the sample collected on October 1, 2003. We understand that an additional sample was collected on October 24, 2003, please submit those results to our office by the date specified below.
- 4. System Sampling and Analyses** - We request that you collect water samples from the influent to vessel #1, between the vessels, and the final discharge point every three weeks. Samples from the influent to vessel #1 and from between the vessels shall be submitted for analysis and the effluent sample held by the lab. If analytical results indicate breakthrough between the vessels has occurred then the effluent sample shall be immediately analyzed. Water samples collected every three weeks shall be analyzed by EPA Method 8260 for BTEX, MTBE, TAME, ETBE, DIPE, TBA, and EtOH. Additionally, analysis for TPHG shall also be performed during the first sampling event, then every 6-weeks thereafter. Analytical results (containing

Mr. Murray Kelsoe
October 31, 2003, 2 of 3

cumulative data tables) shall be submitted to ACEH within 1-week of sample collection in the System Operation and Sampling Reports according to the schedule below.

5. Data Logging Flowmeter – Data on water usage at the T-Bear well is needed at this site to quantify the rate of MTBE mass removal from the well. We request that you replace the totalizing flowmeter currently installed on the T-Bear well with a data logging flowmeter as part of your system installation. You are required to order and install the data logging flowmeter as soon as possible, without delaying system startup. Summaries and graphs of instantaneous and cumulative flow from the well shall be submitted in the System Operation and Sampling Reports according to the schedule below. An example of this type of meter is enclosed.

6. System Responsibility - You are responsible for all costs and for the performance of all work related to the system, including but not limited to, system evaluation and reporting, installation, operation, and dismantling.

TECHNICAL REPORTS

Please submit technical reports to Alameda County Environmental Health (Attention: Mr. Scott Seery), according to the following schedule:

Immediately - System Installation Completion & Startup Notification

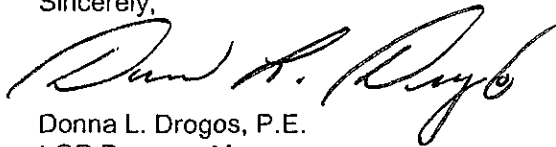
November 7, 2003 - Analytical results from T-Bear Ranch water sample collected on October 24, 2003

4 weeks after System Startup and every 4 weeks thereafter - System Operation and Sampling Report

1 week after system breakthrough - System Re-evaluation Report

These reports are being requested pursuant to the Health and Safety Code Section 2725. We request that all required work be performed in a prompt and timely manner. Revisions to the schedule above shall be requested in writing with appropriate justification for anticipated delays.

Sincerely,



Donna L. Drogos, P.E.
LOP Program Manager

Enclosure

Mr. Murray Kelsoe
October 31, 2003, 3 of 3

cc: Alyce Sandbach , Esq.
Alameda County District Attorneys'
Office
7677 Oakport Street, Suite 650
Oakland, CA 94621

Mr. Pat Hoban
Weber, Hayes & Associates
120 Westgate Drive
Watsonville, CA 95076

Jeffery Lawson, Esq.
Silicon Valley Law Group
152 North Third Street, Suite 900
San Jose, CA 95112

Mr. Roy Tovani
PO Box 333
Sunol, CA 94586

Mr. Matt Katen
Zone 7 Water Agency
5997 Parkside Drive
Pleasanton, CA 94588-5217

A. Levi, D. Drogos, S. Seery

Ms. Betty Graham
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Mr. Murray Einarson
Einarson & Associates
2271 Old Middlefield Way
Mountain View, CA 94043

Finley Boag, Esq.
4558 Second Street
Pleasanton, CA 94566

Mr. Scott Haggerty
Alameda County Board of Supervisors
1221 Oak Street, Suite 536
Oakland, CA 94612

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Thursday, November 20, 2003 9:20 PM
To: 'Jeff Lawson'
Cc: Sandbach, Alyce, DA; alphacat2000@aol.com; pat@weber-hayes.com; Seery, Scott, Env. Health; Levi, Ariu, Env. Health; Murray Einarson (mdeinarson@stanford.edu); Weston, Robert, Env. Health
Subject: Treatment System at T-Bear
Importance: High

Jeff,

It appears that the treatment system is operational at T-Bear Ranch. However, I have not received the System Installation/Startup Notification from Mr. Kelseo.

Notification to ACEH of system startup is necessary at this site. Water samples from the T-Bear Ranch treatment system need to be analyzed on an expedited turnaround time every 3 weeks to ensure system breakthrough does not occur and to prevent residents of T-Bear Ranch from becoming exposed to contaminated water. It appears that the system may be approaching a 3 week operational time.

- 1) Where is the System Installation/Startup Notification?
- 2) How long has the treatment system been running?
- 3) What is the schedule for sampling and analysis of the system?
- 4) Re: Technical Comments 2) & 4) in ACEH's 10/31/03 letter, who will be interpreting analytical results to identify a potential breakthrough problem and take appropriate actions?
- 5) What is the status on installation of the data logging flowmeter?

Donna

Donna L. Drogos, P.E.
LOP Program Manager
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502

510-567-6721
donna.drogos@acgov.org

12/4/2003

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Friday, October 31, 2003 2:53 PM
To: 'Jeff Lawson'
Cc: Sandbach, Alyce, DA; alphacat2000@aol.com; pat@weber-hayes.com; Murray Einarson (mdeinarson@stanford.edu)
Subject: ACEH Letter 10/31/03
Importance: High



R02448_RP3_2003 R02448_RP3enc_2
_1031.pdf (101 ... 003_1031.pdf (5...

Jeff,

Attached is ACEH's directive letter issued today, along with an enclosure. Call if questions.

Donna

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com
Sent: Friday, October 31, 2003 5:20 PM
To: donna.drogos@acgov.org
Subject: Re: ACEH Letter 10/31/03

Hi Donna,

Thanks for letter. Perhaps he will comply without any more delays.

When you get through all this, would you follow on the issue of all the vehicles stored on his property?

We had to have any vehicles that were not driven regularly, parked on a cement pad or removed from the property. Murray Kelso has many such vehicles which are parked next to his pile of contaminated dirt.

I thank you for your effort to clean up the mess. With any luck we will have a well next year & salvage our business.

Thanks again
Helyn & Roy

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Friday, October 31, 2003 8:37 AM
To: Sandbach, Alyce, DA
Subject: FW: Murray Kelsoe, Sunol Tree Gas Station

-----Original Message-----

From: Weston, Robert, Env. Health
Sent: Friday, October 31, 2003 8:36 AM
To: 'jssl@svlg.com'
Cc: Drogos, Donna, Env. Health; Hugo, Susan, Env. Health
Subject: Murray Kelsoe, Sunol Tree Gas Station

Hello Mr. Lawson,

The copies of the inspection report mentioned in your message were hand delivered to Mr. Kelsoe on the morning of October 29, 2003.

I had previously spoken to the contractor by telephone regarding the work needed to adjust the capacity of the overspill containers. This work is not a high priority and can be done at anytime over the next 60 days.

I have explained exactly that to Mr. Kelsoe.

Please let me know if you need any other information regarding this site.

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Friday, October 31, 2003 6:46 AM
To: Weston, Robert, Env. Health
Subject: FW: Sunol Tree Gas Station

Rob, This sounds like its re: Kelsoe's insurance requirements that you previously handled. Thanks, Donna

-----Original Message-----

From: Jeff Lawson [mailto:jsl@svlg.com]
Sent: Tuesday, October 28, 2003 10:48 AM
To: ddrogos@co.alameda.ca.us
Subject: Sunol Tree Gas Station

Donna,
Murray needs a report from Robert Weston for the contractor to use. Would you please look into getting that out. I don't have Weston's email address. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Jeff Lawson [jls@svlg.com]
Sent: Wednesday, October 29, 2003 1:37 PM
To: Alphacat2000@aol.com
Cc: ddrogos@co.alameda.ca.us; pat@weber-hayes.com
Subject: Re: Sunol Tree Gas Station

Helyn,
I'm not clear, are you saying the electrician has not trenched yet? I thought the line was pulled to the pad, and the rest would be done when the equipment was installed. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jls@svlg.com" and delete this email message from your system.

>>> <Alphacat2000@aol.com> 10/29/03 11:42AM >>>
Hi Jeff,

Murray Kelso seems to have a problem with my contacting you regarding confirmation of electricians status. Roy needed to know since the electrician wasn't going to schedule until it was authorized by Murray Kelso. Since Murray didn't have any answers, I contacted you. We have enough on our plate & want to get the job done ASAP.

Life would be much easier if everyone involved was informed as to when & what is going to be done. We have put everything on hold in order to be of assistance. If possible, please provide a contact that can OK work schedules. I wish to avoid any future conflicts with Murray Kelso.

Thanks,

Helyn

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com
Sent: Wednesday, October 29, 2003 11:42 AM
To: jsl@svlg.com
Cc: ddrogos@co.alameda.ca.us; pat@weber-hayes.com
Subject: Re: Sunol Tree Gas Station

Hi Jeff,

Murray Kelso seems to have a problem with my contacting you regarding confirmation of electricians status. Roy needed to know since the electrician wasn't going to schedule until it was authorized by Murray Kelso. Since Murray didn't have any answers, I contacted you. We have enough on our plate & want to get the job done ASAP.

Life would be much easier if everyone involved was informed as to when & what is going to be done. We have put everything on hold in order to be of assistance. If possible, please provide a contact that can OK work schedules . I wish to avoid any future conflicts with Murray Kelso.

Thanks,

Helyn

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Wednesday, October 29, 2003 10:45 AM
To: 'Jeff Lawson'
Cc: pat@weber-hayes.com; Alphacat2000@aol.com; Sandbach, Alyce, DA
Subject: RE: Sunol Tree Gas Station

What are the results?
pdf or fax 510-337-9335 please
& do we have both sets of analyticals, Gribi & Cerco?

-----Original Message-----

From: Jeff Lawson [mailto:jsl@svlg.com]
Sent: Tuesday, October 28, 2003 10:11 AM
To: Alphacat2000@aol.com
Cc: Alfahorse@aol.com; ddrogos@co.alameda.ca.us; pat@weber-hayes.com
Subject: Re: Sunol Tree Gas Station

I received it today. Has Pat Hoban looked at it? Has it changed his opinion on the amount of carbon needed?
Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste. 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

>>> <Alphacat2000@aol.com> 10/27/03 08:16PM >>>
Jeff,

I will have Roy send copies to you & Pat Hoban tonight. Please confirm with him that you have received it or send me a confirmation by E mail.
Please fax a copy to Donna, since I don't have her fax number available.
Thanks

Helyn

Drogos, Donna, Env. Health

From: Jeff Lawson [jsl@svlg.com]
Sent: Wednesday, October 29, 2003 10:16 AM
To: Alphacat2000@aol.com
Cc: ddrogos@co.alameda.ca.us; pat@weber-hayes.com
Subject: Re: Sunol Tree Gas Station

Helyn,
Thanks for the update. I assume the electrical cable went in without encountering any obstructions-good. The well testing data is also good, so hopefully we'll have you up and running pretty soon. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

>>> <Alphacat2000@aol.com> 10/29/03 10:00AM >>>
Hello Jeff,

The electricians have done all they can until equipment is delivered.
Culligan contacted Roy & said it will be on November 3.
Electrician will wait for a call from Roy when installation is complete.

Helyn

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com
Sent: Wednesday, October 29, 2003 10:01 AM
To: jsl@svlg.com
Cc: ddrogos@co.alameda.ca.us; pat@weber-hayes.com
Subject: Re: Sunol Tree Gas Station

Hello Jeff,

The electricians have done all they can until equipment is delivered. Culligan contacted Roy & said it will be on November 3.
Electrician will wait for a call from Roy when installation is complete.

Helyn

Drogos, Donna, Env. Health

From: Jeff Lawson [jls@svlg.com]
Sent: Tuesday, October 28, 2003 10:48 AM
To: ddrogos@co.alameda.ca.us
Subject: Sunol Tree Gas Station

Donna,
Murray needs a report from Robert Weston for the contractor to use. Would you please look into getting that out. I don't have Weston's email address. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jls@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Jeff Lawson [jls@svlg.com]
Sent: Tuesday, October 28, 2003 10:45 AM
To: Alphacat2000@aol.com
Cc: ddrogos@co.alameda.ca.us; pat@weber-hayes.com
Subject: Re: Sunol Tree Gas Station

Helyn,
I talked to Murray today and he says the electrician is working.
Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jls@svlg.com" and delete this email message from your system.

>>> <Alphacat2000@aol.com> 10/27/03 02:09PM >>>
Hi Jeff,

Gribi called Roy this morning. He said that he had mailed the report to everyone 2 weeks ago & left for vacation.
Check the mail & if you haven't received anything I'll have Roy send it over.

Electrician also called this morning. He has not had anyone officially OK the proposal. Roy told him we received an E mail from you. Electrician was going to have a contract signed by Murray & begin work. Roy has moved horses, cleared area & will be there to assist electrician in anyway possible.

Have a nice day
Helyn Hayes

Drogos, Donna, Env. Health

From: Jeff Lawson [jls@svlg.com]
Sent: Tuesday, October 28, 2003 10:11 AM
To: Alphacat2000@aol.com
Cc: Alfahorse@aol.com; ddrogos@co.alameda.ca.us; pat@weber-hayes.com
Subject: Re: Sunol Tree Gas Station

I received it today. Has Pat Hoban looked at it? Has it changed his opinion on the amount of carbon needed? Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jls@svlg.com" and delete this email message from your system.

>>> <Alphacat2000@aol.com> 10/27/03 08:16PM >>>
Jeff,

I will have Roy send copies to you & Pat Hoban tonight. Please confirm with him that you have received it or send me a confirmation by E mail. Please fax a copy to Donna, since I don't have her fax number available. Thanks

Helyn

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com
Sent: Monday, October 27, 2003 8:16 PM
To: jsl@svlg.com
Cc: pat@weber-hayes.com; ddrogos@co.alameda.ca.us; Alfahorse@aol.com
Subject: Re: Sunol Tree Gas Station

Jeff,

I will have Roy send copies to you & Pat Hoban tonight. Please confirm with him that you have received it or send me a confirmation by E mail.

Please fax a copy to Donna, since I don't have her fax number available.

Thanks

Helyn

Drogos, Donna, Env. Health

From: Jeff Lawson [jls@svlg.com]
Sent: Monday, October 27, 2003 2:20 PM
To: Alphacat2000@aol.com
Cc: ddrogos@co.alameda.ca.us; pat@weber-hayes.com
Subject: Re: Sunol Tree Gas Station

I check my mail everyday. Please have Roy fax it to me.
Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jls@svlg.com" and delete this email message from your system.

>>> <Alphacat2000@aol.com> 10/27/03 02:09PM >>>
Hi Jeff,

Gribi called Roy this morning. He said that he had mailed the report to everyone 2 weeks ago & left for vacation.
Check the mail & if you haven't received anything I'll have Roy send it over.

Electrician also called this morning. He has not had anyone officially OK the proposal. Roy told him we received an E mail from you. Electrician was going to have a contract signed by Murray & begin work. Roy has moved horses, cleared area & will be there to assist electrician in anyway possible.

Have a nice day
Helyn Hayes

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com
Sent: Monday, October 27, 2003 2:10 PM
To: jsl@svlg.com
Cc: pat@weber-hayes.com; ddrogos@co.alameda.ca.us
Subject: Re: Sunol Tree Gas Station

Hi Jeff,

Gribi called Roy this morning. He said that he had mailed the report to everyone 2 weeks ago & left for vacation.

Check the mail & if you haven't received anything I'll have Roy send it over.

Electrician also called this morning. He has not had anyone officially OK the proposal. Roy told him we received an E mail from you. Electrician was going to have a contract signed by Murray & begin work. Roy has moved horses, cleared area & will be there to assist electrician in anyway possible.

Have a nice day
Helyn Hayes

Drogos, Donna, Env. Health

From: Jeff Lawson [jls@svlg.com]
Sent: Monday, October 27, 2003 9:08 AM
To: Alphacat2000@aol.com; ddrogos@co.alameda.ca.us; PatHoban@msn.com
Cc: Alfahorse@aol.com
Subject: Re: Sunol Tree Gas Station

Helyn,
I have not received it so I would appreciate Roy faxing it to me. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste. 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jls@svlg.com" and delete this email message from your system.

>>> <Alphacat2000@aol.com> 10/26/03 06:04PM >>>
Jeff,

Roy received a copy of water test from Gribi & Assoc in the mail on Saturday. I assume he also sent copies to Pat Hoban, Donna Drogos & yourself. In the event you need Roy to fax copies, just give him a call or E mail him at Alfahorse@aol.com.

Thanks
Helyn Hayes

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com

Sent: Sunday, October 26, 2003 6:05 PM

To: jsl@svlg.com; ddrogos@co.alameda.ca.us; PatHoban@msn.com

Subject: Re: Sunol Tree Gas Station

Jeff,

Roy received a copy of water test from Gribi & Assoc in the mail on Saturday. I assume he also sent copies to Pat Hoban, Donna Drogos & yourself. In the event you need Roy to fax copies, just give him a call or E mail him at Alfahorse@aol.com.

Thanks
Helyn Hayes

Drogos, Donna, Env. Health

From: Jeff Lawson [jsl@svlg.com]
Sent: Saturday, October 25, 2003 11:09 AM
To: Alphacat2000@aol.com; ddrogos@co.alameda.ca.us; pat@weber-hayes.com
Cc: Alfahorse@aol.com
Subject: Re: Sunol Tree Treatment System

Helyn,
I spoke to Murray and he will have the electrician at the T-Bear ranch on Monday, with the understanding that it is the T-Bear ranch's responsibility to provide a clear path for the trench. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste. 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

>>> <Alphacat2000@aol.com> 10/25/03 09:46AM >>>
Hi Jeff,

The Electrician has called Roy to confirm Monday, however, he has not been given the OK to go ahead from Murray. He(electrician) is going out of town & will swing by the station on his way home. Could you confirm with Murray that its OK ? . The electrician will not leave this day open..

Thanks
Helyn

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com
Sent: Saturday, October 25, 2003 9:46 AM
To: jsl@svlg.com; ddrogos@co.alameda.ca.us; pat@weber-hayes.com
Cc: Alfahorse@aol.com
Subject: Re: Sunol Tree Treatment System

Hi Jeff,

The Electrician has called Roy to confirm Monday, however, he has not been given the OK to go ahead from Murray. He(electrician) is going out of town & will swing by the station on his way home. Could you confirm with Murray that its OK ? . The electrician will not leave this day open..

Thanks
Helyn

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com
Sent: Friday, October 24, 2003 6:53 PM
To: jsl@svlg.com; PatHoban@msn.com
Cc: ddrogos@co.alameda.ca.us
Subject: Re: Sunol Tree Treatment System

Jeff,

Roy will be on the premises Monday. I will forward this to him so that he can be somewhat prepared. We will do our best to recall what is underground before any work is started.

Thanks,
Helyn

12/4/2003

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Friday, October 24, 2003 11:52 AM
To: 'Jeff Lawson'
Cc: alphacat2000@aol.com; PatHoban@msn.com; Sandbach, Alyce, DA
Subject: RE: Sunol Tree Gas Station

You will want to have an expedited turn around time on this sample (i.e., 1-2 day) not the standard 2-week turnaround time.

-----Original Message-----

From: Jeff Lawson [mailto:jsl@svlg.com]
Sent: Friday, October 24, 2003 10:51 AM
To: alphacat2000@aol.com; ddrogos@co.alameda.ca.us; PatHoban@msn.com
Subject: Sunol Tree Gas Station

I have been informed that the water samples were collected today (the second time). When we get the lab results we will forward them to you. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Jeff Lawson [jls@svlg.com]
Sent: Friday, October 24, 2003 10:51 AM
To: alphacat2000@aol.com; ddrogos@co.alameda.ca.us; PatHoban@msn.com
Subject: Sunol Tree Gas Station

I have been informed that the water samples were collected today (the second time). When we get the lab results we will forward them to you. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jls@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Jeff Lawson [jsl@svlg.com]
Sent: Friday, October 24, 2003 10:12 AM
To: ddrogos@co.alameda.ca.us
Cc: alyce.sandbach@acgov.org; alphacat2000@aol.com; sseery@co.alameda.ca.us; pat@weber-hayes.com
Subject: Re: FW: Sunol Tree Gas Station

I heard today that the tanks are on site and the other equipment is close. Gribi has not returned my call.

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

>>> "Drogos, Donna, Env. Health" <ddrogos@co.alameda.ca.us> 10/23/03
>>> 08:08AM >>>
Jeff,

What equipment is on order, what is already at the site, and when will system installation be completed?

When will the sample from the well be collected? Helen & Roy's consultant may want to observe sampling as well as our office.

Also, what happened to the Gribi collected water sample?

Donna

-----Original Message-----

From: Jeff Lawson [mailto:jsl@svlg.com]
Sent: Wednesday, October 22, 2003 6:18 PM
To: ddrogos@co.alameda.ca.us
Subject: Sunol Tree Gas Station

Donna,

In follow up to our conversations, the lab will be sampling asap. The equipment is on order and should be arriving any day. When it arrives it will be installed, without waiting for the power issue to be resolved. We are sending out an electrician and we will find out what needs to be done within the next couple of days. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Jeff Lawson [jsl@svlg.com]
Sent: Friday, October 24, 2003 9:48 AM
To: alphacat2000@aol.com; PatHoban@msn.com
Cc: ddrogos@co.alameda.ca.us
Subject: Sunol Tree Treatment System

Helen,
Murray has had an electrician look at the power issues at the ranch. Unlike what we were told there is insufficient power at the pad to run the treatment system. He will need to run power 50 ft underground to get power (installed to code) to the treatment system. This will be a significant expense. The electrician can start on Monday, however, we need someone from the ranch to be present and to take responsibility for insuring that the trench does not impact any other utilities or underground structures. Please let me know how you want us to proceed. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste. 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Thursday, October 23, 2003 8:08 AM
To: 'jst@svlg.com'
Cc: Sandbach, Alyce, DA; Helen Hayes-Roy Tovani; Pat Hoban; Seery, Scott, Env. Health
Subject: FW: Sunol Tree Gas Station

Jeff,

What equipment is on order, what is already at the site, and when will system installation be completed?

When will the sample from the well be collected? Helen & Roy's consultant may want to observe sampling as well as our office.

Also, what happened to the Gribi collected water sample?

Donna

-----Original Message-----

From: Jeff Lawson [mailto:jst@svlg.com]
Sent: Wednesday, October 22, 2003 6:18 PM
To: ddrogos@co.alameda.ca.us
Subject: Sunol Tree Gas Station

Donna,

In follow up to our conversations, the lab will be sampling asap. The equipment is on order and should be arriving any day. When it arrives it will be installed, without waiting for the power issue to be resolved. We are sending out an electrician and we will find out what needs to be done within the next couple of days. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jst@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Jeff Lawson [jsl@svlg.com]
Sent: Wednesday, October 22, 2003 6:18 PM
To: ddrogos@co.alameda.ca.us
Subject: Sunol Tree Gas Station

Donna,

In follow up to our conversations, the lab will be sampling asap. The equipment is on order and should be arriving any day. When it arrives it will be installed, without waiting for the power issue to be resolved. We are sending out an electrician and we will find out what needs to be done within the next couple of days. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Alphacat2000@aol.com
Sent: Tuesday, October 21, 2003 8:45 PM
To: ddrogos@co.alameda.ca.us
Subject: WATER TEST RESULTS: T BEAR RANCH

Hi Donna,

I have called Gribi & Assoc several times & left messages. Obviously he is not going to return our call.

The results of water testing were going to be given to us a couple weeks ago & as of today we have heard nothing.

Pat Hoban is also waiting on the results. Would you give Kelso a call & get the ball rolling on this? We would rather have you deal with this issue than get involved with Murray Kelso.

I would appreciate it if you can let me know when Pat Hoban & myself will get a copy of the testing.

Thanks Donna

Helyn

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



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

September 29, 2003

PR0400266

Murray Kelsoe
Tank Owner/Operator
Sunol Tree Gas
3004 Andrade Road
Sunol, California 94586

Re: REQUIREMENT TO PROVIDE CERTIFICATION OF FINANCIAL RESPONSIBILITY

Dear Mr. Kelsoe:

All owners/operators of underground storage tank (UST) systems are required by law to provide proof of Certification of Financial Responsibility (CFR). The financial responsibility requirements are designed to make sure that tank owners can pay the costs of cleaning up leaks and compensating third parties for bodily injury and property damage caused by leaking USTs.

Maintenance of Certification of Financial Responsibility is one of the conditions of your operating permit. You have indicated the use of the State Fund and a Chief Financial Officer letter to demonstrate your financial responsibility and secure your operating permit.

However, this office was recently notified by the State Water Resources Control Board (SWRCB) that the State Fund is not an available option for you to demonstrate CFR. This SWRCB action is a consequence of their denial of your claim and determination of your ineligibility for reimbursement of current cleanup costs.

You are required to provide CFR using another mechanism within 30 days. **Failure to demonstrate CFR will result in the revocation of your operating permit.** Enclosed is a copy of the financial responsibility guide published by the State Water Resources Control Board.

Please contact me at (510) 567-6781 should you have any questions about this letter.

Sincerely,

Robert Weston
Sr. Hazardous Materials Specialist

c: Donna Drogos, Manager, LOP
Susan Hugo, Manager, ACDEH
Susan Torrence, Deputy District Attorney, Alameda County District Attorney's Office

Final version

Drogos, Donna, Env. Health

From: Jeff Lawson [jls@svlg.com]
Sent: Thursday, September 25, 2003 4:14 PM
To: ddrogos@co.alameda.ca.us
Subject: RE: Sunol Tree Gas Station

Donna,
I received consent for access from Helyn Hayes. But we need your office's approval before moving forward. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jls@svlg.com" and delete this email message from your system.

>>> "Drogos, Donna, Env. Health" <ddrogos@co.alameda.ca.us> 09/23/03
>>> 05:28PM >>>

Hi Jeff,
I received your proposal sent Friday evening & the followup e-mails sent yesterday morning and afternoon. I am currently reviewing the documents for the system. As we discussed Friday, I mentioned that the DA was following up on the site & may be calling you this week, which it looks like she has. I will respond to the proposal for the system after I complete my review. Looking through the documents so far, I have not seen your schedule for installation & startup, or maybe I missed it. Please clarify. Thanks, Donna

-----Original Message-----

From: Jeff Lawson [mailto:jls@svlg.com]
Sent: Tuesday, September 23, 2003 5:16 PM
To: ddrogos@co.alameda.ca.us
Subject: Sunol Tree Gas Station

Donna,
I am back in my office. Culligan will not start work without County approval. Accordingly we need that as soon as possible. The DA called and chewed on my paralegal about the baker tank concept. Have you explained to the DA that T-Bear ranch did not want the baker tank and we needed to find another alternative. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jls@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Babcock, Bruce, CDA
Sent: Thursday, September 25, 2003 10:58 AM
To: Drogos, Donna, Env. Health
Cc: Smith, George, CDA
Subject: RE: Murray Kelsoe 925-862-2288, 3004 Andrade Rd, Sunol

Hi Donna,

We changed territories last week and George Smith is the Investigator handling the Sunol area now. I have passed on all the information to him regarding the above property, and I asked him to keep you informed on what is going on with the property.

Please feel free to contact either George or myself if you have any questions.

Thank you,

Bruce
670-6523

-----Original Message-----

From: Drogos, Donna, Env. Health
Sent: Friday, September 12, 2003 3:22 PM
To: Babcock, Bruce, CDA
Subject: Murray Kelsoe 925-862-2288, 3004 Andrade Rd, Sunol

Bruce, Thanks for your help!

Donna L. Drogos, P.E.
LOP/Toxics Program Manager
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502-6577

office 510-567-6721
fax 510-337-9335
ddrogos@co.alameda.ca.us

9/30/2003

Drogos, Donna, Env. Health

From: Jeff Lawson [jsl@svlg.com]
Sent: Tuesday, September 23, 2003 5:38 PM
To: ddrogos@co.alameda.ca.us
Subject: RE: Sunol Tree Gas Station

Donna,
As I understand it, it will take 3 weeks to install. Most of that is waiting for delivery of the equipment. A cement pad can be laid pretty quick and will need time to cure and construction is only 3 days. Culligan will not order the equipment until the plan is approved by your office. Pat Hoban has agreed to it. However, Helyn Hayes will not grant access until the plan is approved, so we can't even lay the pad at this point. I have asked Culligan to do what they can to prepare the suppliers to move quickly once we have approval. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

>>> "Drogos, Donna, Env. Health" <ddrogos@co.alameda.ca.us> 09/23/03
>>> 05:28PM >>>

Hi Jeff,
I received your proposal sent Friday evening & the followup e-mails sent yesterday morning and afternoon. I am currently reviewing the documents for the system. As we discussed Friday, I mentioned that the DA was following up on the site & may be calling you this week, which it looks like she has. I will respond to the proposal for the system after I complete my review. Looking through the documents so far, I have not seen your schedule for installation & startup, or maybe I missed it. Please clarify. Thanks, Donna

-----Original Message-----

From: Jeff Lawson [mailto:jsl@svlg.com]
Sent: Tuesday, September 23, 2003 5:16 PM
To: ddrogos@co.alameda.ca.us
Subject: Sunol Tree Gas Station

Donna,
I am back in my office. Culligan will not start work without County approval. Accordingly we need that as soon as possible. The DA called and chewed on my paralegal about the baker tank concept. Have you explained to the DA that T-Bear ranch did not want the baker tank and we needed to find another alternative. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Jeff Lawson [jls@svlg.com]
Sent: Tuesday, September 23, 2003 5:16 PM
To: ddrogos@co.alameda.ca.us
Subject: Sunol Tree Gas Station

Donna,
I am back in my office. Culligan will not start work without County approval. Accordingly we need that as soon as possible. The DA called and chewed on my paralegal about the baker tank concept. Have you explained to the DA that T-Bear ranch did not want the baker tank and we needed to find another alternative. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jls@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Jeff Lawson [jsl@svlg.com]
Sent: Monday, September 22, 2003 4:54 PM
To: ddrogos@co.alameda.ca.us; PatHoban@msn.com
Cc: alphacat2000@aol.com; Lisa Tornquist; pat@weber-hayes.com
Subject: Re: Carbon Filtration System for 3004 Andrade Road - T-BearRanch

Pat,
I believe your assumptions are correct. But you can call Stuart Dennis at Culligan if you have any questions, I am in a heavy deposition schedule at the moment. We are just waiting for the county's approval. Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

>>> "Pat Hoban" <PatHoban@msn.com> 09/22/03 01:48PM >>>

Hello Jeff,

Thank you for the Culligan drawing. I am assuming that 1) each vessel will contain at least 5 cubic feet of carbon (> or = 145 lbs), and 2) the system is designed to have the retention time appropriate for removing the site-specific concentrations of MTBE.

I have talked with Helyn Hayes and recommended she agree to site access, once Alameda County Health Care Services Agency has reviewed and approved the design.

Sincerely,

Pat Hoban
Weber, Hayes and Associates
cell: 831.254-7022

----- Original Message -----

From: Jeff Lawson
Sent: Monday, September 22, 2003 11:13 AM
To: ddrogos@co.alameda.ca.us; PatHoban@msn.com
Cc: alphacat2000@aol.com; Lisa Tornquist; pat@weber-hayes.com
Subject: Re: Carbon Filtration System for 3004 Andrade Road - T-BearRanch

Pat,
Here is the schematic you requested.
Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

>>> "Pat Hoban" <PatHoban@msn.com> 09/22/03 08:21AM >>>

I will be working at home today (Monday, Sept-22). If I can be of any assistance expediting approval of the water filtration system, please email me at PatHoban@msn.com or call me on my cell (831.254-7022).

Sincerely,
Pat Hoban
Weber, Hayes and Associates

----- Original Message -----

From: Jeff Lawson
Sent: Friday, September 19, 2003 6:18 PM
To: ddrogos@co.alameda.ca.us; PatHoban@msn.com
Cc: alphacat2000@aol.com; Lisa Tornquist
Subject: Carbon Filtration System for 3004 Andrade Road - T-Bear Ranch

Donna,

Enclosed please find the proposal for the installation of a carbon filtration system for the T-Bear Ranch. In response to recommendations by Pat Hoban of Weber, Hayes & Associates, Mr. Kelsoe will test the well and test the carbon filter system on the schedule that Weber, Hayes recommends. You will see from the attached copy of an e-mail from Pat Hoban that he is recommending that the T-Bear Ranch property owner sign the Access Agreement that I had previously provided to Helyn Hayes. I have left a voicemail and sent a fax to Culligan to find out how quickly they can mobilize to undertake this work and to find out to how long it will take to install the system. I will be in court Monday morning and in deposition Monday afternoon. Accordingly, I am sending you this information now and I will provide the timing information as soon as I receive it. I do not have the DA's email so please forward this to her.

Very truly yours,

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste. 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Pat Hoban [PatHoban@msn.com]
Sent: Monday, September 22, 2003 1:49 PM
To: Jeff Lawson; ddrogos@co.alameda.ca.us
Cc: alphacat2000@aol.com; Lisa Tornquist; Pat @ work
Subject: Re: Carbon Filtration System for 3004 Andrade Road - T-BearRanch

Hello Jeff,

Thank you for the Culligan drawing. I am assuming that 1) each vessel will contain at least 5 cubic feet of carbon (> or = 145 lbs), and 2) the system is designed to have the retention time appropriate for removing the site-specific concentrations of MTBE.

I have talked with Helyn Hayes and recommended she agree to site access, once Alameda County Heath Care Services Agency has reviewed and approved the design.

Sincerely,

Pat Hoban
Weber, Hayes and Associates
cell: 831.254-7022

----- Original Message -----

From: Jeff Lawson
Sent: Monday, September 22, 2003 11:13 AM
To: ddrogos@co.alameda.ca.us; PatHoban@msn.com
Cc: alphacat2000@aol.com; Lisa Tornquist; pat@weber-hayes.com
Subject: Re: Carbon Filtration System for 3004 Andrade Road - T-BearRanch

Pat,
Here is the schematic you requested.
Thx

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jssl@svlg.com" and delete this email message from your system.

>>> "Pat Hoban" <PatHoban@msn.com> 09/22/03 08:21AM >>>

I will be working at home today (Monday, Sept-22). If I can be of any assistance expediting approval of the water filtration system, please email me at PatHoban@msn.com or call me on my cell (831.254-7022).

Sincerely,
Pat Hoban
Weber, Hayes and Associates

----- Original Message -----

From: Jeff Lawson
Sent: Friday, September 19, 2003 6:18 PM
To: ddrogos@co.alameda.ca.us; PatHoban@msn.com
Cc: alphacat2000@aol.com; Lisa Tornquist
Subject: Carbon Filtration System for 3004 Andrade Road - T-Bear Ranch

Donna,

Enclosed please find the proposal for the installation of a carbon filtration system for the T-Bear Ranch. In response to recommendations by Pat Hoban of Weber, Hayes & Associates, Mr. Kelsoe will test the well and test the carbon filter system on the schedule that Weber, Hayes recommends. You will see from the attached copy of an e-mail from Pat Hoban that he is recommending that the T-Bear Ranch property owner sign the Access Agreement that I had previously provided to Helyn Hayes. I have left a voicemail and sent a fax to Culligan to find out how quickly they can mobilize to undertake this work and to find out to how long it will take to install the system. I will be in court Monday morning and in deposition Monday afternoon. Accordingly, I am sending you this information now and I will provide the timing information as soon as I receive it. I do not have the DA's email so please forward this to her.

Very truly yours,

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.

Drogos, Donna, Env. Health

From: Pat Hoban [PatHoban@msn.com]
Sent: Monday, September 22, 2003 8:22 AM
To: Jeff Lawson; ddrogos@co.alameda.ca.us
Cc: alphacat2000@aol.com; Lisa Tornquist; Pat @ work
Subject: Re: Carbon Filtration System for 3004 Andrade Road - T-Bear Ranch

I will be working at home today (Monday, Sept-22). If I can be of any assistance expediting approval of the water filtration system, please email me at PatHoban@msn.com or call me on my cell (831.254-7022).

Sincerely,
Pat Hoban
Weber, Hayes and Associates

----- Original Message -----

From: Jeff Lawson
Sent: Friday, September 19, 2003 6:18 PM
To: ddrogos@co.alameda.ca.us; PatHoban@msn.com
Cc: alphacat2000@aol.com; Lisa Tornquist
Subject: Carbon Filtration System for 3004 Andrade Road - T-Bear Ranch

Donna,

Enclosed please find the proposal for the installation of a carbon filtration system for the T-Bear Ranch. In response to recommendations by Pat Hoban of Weber, Hayes & Associates, Mr. Kelsoe will test the well and test the carbon filter system on the schedule that Weber, Hayes recommends. You will see from the attached copy of an e-mail from Pat Hoban that he is recommending that the T-Bear Ranch property owner sign the Access Agreement that I had previously provided to Helyn Hayes. I have left a voicemail and sent a fax to Culligan to find out how quickly they can mobilize to undertake this work and to find out to how long it will take to install the system. I will be in court Monday morning and in deposition Monday afternoon. Accordingly, I am sending you this information now and I will provide the timing information as soon as I receive it. I do not have the DA's email so please forward this to her.

Very truly yours,

Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third St., Ste, 900
San Jose, CA 95112
Phone: 408-286-6100x3023
Fax: 408-286-1400
Web Page www.svlg.com

The information contained in this email is confidential and may be subject to the attorney-client or work product privileges. If you are not the intended recipient or the person named above as the recipient, any disclosure, re-transmission, or other distribution is strictly prohibited. If you

12/4/2003

receive this email transmission in error, please immediately notify the sender at "jsl@svlg.com" and delete this email message from your system.



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Office of Chief Counsel

1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ www.swrcb.ca.gov



Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov.

September 10, 2003

Alameda County

SEP 15 2003

CERTIFIED MAIL

Environmental Health

Mr. Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third Street, Suite 900
San Jose, CA 95112

Dear Mr. Lawson:

PETITION OF MURRAY KELSOE (USTCF CLAIM 17309), 3004 ANDRADE ROAD,
SUNOL, CALIFORNIA: COMPLETE PETITION
SWRCB/OCC FILE UST - 208

This is to confirm receipt of the above-cited petition on August 28, 2003. The petition is complete pursuant to the requirements of the California Code of Regulations, title 23, section 2814 et seq.

You will be advised of all proceedings connected with the petition. If you have any questions about this matter, please contact me at (916) 341-5184.

Sincerely,

Kathleen A. Keber

Kathleen A. Keber
Senior Staff Counsel

cc: Mr. Murray Kelsoe
229 Tewksbury Avenue
Point Richmond, CA 94801

Ms. Donna Drogos
Alameda County Health Care
Services Agency
1131 Harbor Bay Parkway
Alameda, CA 94502-6577



SVLG

SILICON VALLEY LAW GROUP

A LAW CORPORATION

COPY

Alameda County

AUG 27 2003

Environmental Health

TO: Ms. Barbara L. Evoy
Chief of the Division of Financial Assistance
SWRCB
P.O. Box 100
Sacramento, CA 95812-0100

FROM: Lisa Tornquist, Paralegal to Jeff Lawson

DATE: August 25, 2003

RE: Petition of Murray Kelsoe

ENCLOSED PLEASE FIND: **PETITION FOR BOARD REVIEW OF FINAL
DIVISION DECISION [23 C.C.R. §2814.2]**

- FOR YOUR INFORMATION
- FOR YOUR REVIEW
- FOR YOUR FILES
- IN ACCORDANCE WITH YOUR REQUEST
- PLEASE REVIEW AND COMMENT
- PLEASE CALL UPON RECEIPT TO DISCUSS
- PLEASE HANDLE
- PLEASE FILE AND RETURN CONFORMED COPY
- OTHER:

COPY

1 JEFFREY S. LAWSON, ESQ. (SBN 99855)
Silicon Valley Law Group
2 152 N. Third Street, Ste, 900
San Jose, Ca 95112
3 Telephone: (408) 286-6100
Facsimile: (408) 286-1400

Alameda County

AUG 27 2003

4 Attorneys for Petitioner
5 Murray Kelsoe

Environmental Health

6 **STATE WATER RESOURCES CONTROL BOARD**

7 **CLEAN WATER PROGRAM**

8
9 In Re:) **USTCF Claim No.: 017309**
)
10 Petition of MURRAY KELSOE) **PETITION FOR BOARD REVIEW OF FINAL**
) **DIVISION DECISION**
11) **[23 C.C.R. §2814.2]**
12)
13)

Oral Argument Requested

Associated Papers:

- Final Division Decision
- Declaration of Murray Kelsoe
- Declaration of Rusty Reinhardt
- Declaration of Jeffrey Lawson

18 **INTRODUCTION**

19 This petition raises substantial issues that are appropriate for, and require review by, the State
20 Water Resources Control Board (SWRCB). The site is a high priority site in Alameda County. The
21 issue of compliance with past permit requirements has been the source of previous SWRCB decisions
22 and an amendment to the Underground Storage Tank Cleanup Fund ("Fund") statute in 1993 creating a
23 permit waiver. The scope of the permit requirement, and in particular, the retroactive scope of the
24 permit requirement is important and has not been determined by the SWRCB since the permit waiver
25 was enacted. Secondly, the SWRCB needs to determine whether a past failure to have an UST permit
26 forever bars an operator from eligibility despite subsequent compliance, justifiable reliance on the Fund
27 for Financial Responsibility, and payment of all fees to the Fund. Finally, the SWRCB should consider
28 whether Claimant's and Alameda County's reasonable and justifiable reliance on the Fund's Financial

PETITION FOR BOARD REVIEW OF FINAL DIVISION DECISION

1 Responsibility guidance justify a finding of eligibility in this case under the principles of estoppel.

2 Petitioner requests a hearing to present oral argument. The impact of the SWRCB decision will
3 determine whether or not petitioner will be financially ruined at a point in his life where he has no time
4 to start over. It also will determine whether the site is cleaned up since no other source of funds to clean
5 up the site exists. Under these circumstances it is important that the issues be fully developed and that
6 can only be done with oral argument.

7 (1) **Service of the petition:** The petition was served on Mr. Arthur G. Baggett, Jr., Chairman
8 of the SWRCB, with copies to Mr. Craig M. Wilson, Chief Counsel, and Ms. Barbara L.
9 Evoy, Chief of the Division of Financial Assistance at SWRCB, P.O. Box 100,
10 Sacramento, CA 95812-0100.

11 (2) **Name and address of the Petitioner:** Murray Kelsoe, 3004 Andrade Road, Sunol, CA
12 94586.

13 (3) **Date Petitioner received the Final Division Decision:** Counsel for Petitioner received
14 the Final Division Decision on August 7, 2003.

15 (4) **A copy of the Final Division Decision is attached hereto as:** Attachment A.

16 (5) **Explanation of why Claimant believes the Final Division Decision is erroneous,
17 inappropriate or improper:**

18 **Preface**

19 The Chief of the Division of Financial Assistance ("Division Chief") issued a decision holding
20 that Murray Kelsoe's Claim to the Underground Storage Tank Cleanup Fund ("Fund") was ineligible
21 primarily on the grounds that Mr. Kelsoe had not complied with the UST permit requirements as
22 required by section 25299.57(d)(3)(A).¹

23 ///

24
25
26 ¹ In the Final Division Decision the Division Chief raised an entirely new ground for denying eligibility.
27 That reason is that Mr. Kelsoe was in violation of the permit requirement when his tanks were unused
28 from 1998-2002. However, that argument is without merit. First, it is raised too late. Second, Alameda
County is the enforcement agency, Alameda County was well aware of the status of the site and did not
issue a notice of violation or any orders. Third, there is no record regarding the understandings between
Claimant and Alameda County during that period and therefore no basis for any findings on this issue.

1 To be eligible, the Claimant is only required to be in compliance with Section 25299.31 [the
2 financial responsibility requirement] and the permit requirements of Chapter 6.7 (commencing with
3 Section 25280) prior to filing a claim with the Fund. Mr. Kelsoe has been in compliance with his permit
4 requirements and financial assurance requirements since 1994. Mr. Kelsoe relied on the financial
5 responsibility provisions of the Fund since 1994 and there is nothing in the Financial Responsibility
6 Form to put him on notice that the Fund would not perform in accordance with its representations in that
7 form. Alameda County also relied on the Fund's Financial Responsibility commitment in granting Mr.
8 Kelsoe his permit.

9 Permanently barring UST operators from the Fund for past non-compliance with permit
10 requirements unrelated to a release was never the intention of either the drafters or the sponsors of the
11 Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 ("Act"). In this case, Mr.
12 Kelsoe came into permit compliance in 1994. Since 1994, Mr. Kelsoe has paid all past and current
13 underground storage tank fees and used the cleanup Fund for Financial Responsibility. Now when a
14 release is discovered in 2002, the Fund points to an unrelated permit problem that was cured almost ten
15 years earlier as grounds to reject the claim. Contrary to the Division Chief's decision, the Fund does
16 provide coverage in this circumstance.

17 FACTS

18 The facts presented herein were undisputed by the Division Chief in her opinion. In 1983, Mr.
19 Kelsoe became the owner and operator of the Sunol Tree Gas Station at 3004 Andrade Road, Sunol,
20 California. In December of 1984, he replaced the existing UST's with six new fiberglass tanks, new
21 piping and new dispensers. In 1985, Alameda County did not have an underground storage tank permit
22 program. Subsequently, Alameda County began implementing an UST program, but despite regular
23 government inspection, Mr. Kelsoe did not become aware of the County permit requirement until 1991.
24 Up until that time, he believed that his Bay Area Air Quality Management District permit was sufficient.
25 (Declaration of Kelsoe paragraphs 3 & 4.) There is no evidence that the Claimant had any intent to
26 intentionally avoid the permit requirement or fees prior to January 1, 1990.

27 In 1991, the County of Alameda issued Notices of Violation to Mr. Kelsoe. In 1994, the
28 Alameda District Attorney commenced an enforcement action. In December of 1994, the Sunol Tree

1 Gas Station was brought into UST permit compliance. Mr. Kelsoe also began using and relying on the
2 Fund for financial responsibility in 1994. (Declaration of Kelsoe paragraph 11.) The Financial
3 Responsibility Form was filled out and submitted to Alameda County and on that basis Alameda County
4 issued Mr. Kelsoe his UST permit. Shortly thereafter, the enforcement action was settled pursuant to a
5 Stipulation and Modified Judgment. In addition, Mr. Kelsoe paid over \$30,000 in overdue UST storage
6 fees to bring his account current.

7 In January 1993 Mr. Kelsoe went bankrupt. In 1998 the station was closed. By 2002, Mr. Kelsoe
8 had the funds to install six new underground storage tanks. He upgraded and reopened the station in
9 December of 2002. At that time Mr. Kelsoe met all permitting requirements. In 2002, Alameda County
10 again issued the UST permit in reliance on Mr. Kelsoe meeting the Financial Responsibility
11 requirements through the Fund.

12 On April 12, 2002, five 15,000-gallon gasoline fiberglass USTs and associated piping were
13 removed from the site and disposed of at Ecology Control Industries ("ECI") in Richmond, California.
14 At that time, approximately 3,500 cubic yards of soil were excavated from around the USTs, and
15 approximately 176,000 gallons of hydrocarbon and Methyl Tertiary-Butyl Ether ("MTBE") impacted
16 water was pumped from the excavation.

17 The discovery date of the release is long after Claimant came into compliance. An Underground
18 Storage Tank Unauthorized Release (leak) / Contamination Site Report was prepared on April 22, 2002.
19 The report was dated April 17, 2002 and the discovery date is shown as April 10, 2002. All these dates
20 are long after the Claimant came into UST permit compliance.

21 No leaks were ever detected in the tanks and no repairs were made. The tanks tested tight in
22 1995, 1996 and 1997. The tanks were taken out of service in 1998. There is absolutely no evidence of a
23 release prior to 1995. The tanks were less than 10 years old and tested tight in 1995. Leaking tanks do
24 not repair themselves; therefore since the tanks were tight in 1995, they had to be tight from 1985-1995.
25 Health & Safety Code § 25299.57(d)(3)(C)(ii) allows prior UST tightness certification to be used to
26 show that permit compliance occurred prior to the release of contamination. In this case, the evidence
27 shows the release occurred after the tanks were properly permitted. The Division Chief argues that the
28 release "may" have occurred prior to 1995. However, that is simply speculation. There is no evidence

1 that the release was that early and there is no requirement that Claimant disprove every speculative
2 possibility to be Fund eligible. The key factor in a Fund application is the discovery date, and that is
3 many years after Claimant obtained his permit.

4 To date, Mr. Kelsoe has spent over \$95,000 investigating the release. At this point his funds are
5 exhausted. Furthermore, according to Ms. Donna Drogos, Alameda County LOP Program Manager, this
6 is a high priority case because of the potential impact to rural water supplies. The Fund was created to
7 ensure there are sufficient funds available to UST owners/operators to adequately respond to exactly this
8 type of event.

9 Discussion

10 **1. The Purpose Of Fund Is To Protect Public Health and Safety, and the Environment**

11 Denying coverage to a permitted gas station owner for not having a permit eight years prior to
12 the discovery of a release does not achieve any legislative purpose; particularly when the denial results
13 in a MTBE plume degrading the Sunol Valley. In the findings and declarations of the Barry Keene
14 Underground Storage Tank Cleanup Trust Fund Act of 1989 ("Act"), the Legislature stated that the
15 purpose of the Fund is to protect public health and safety and the environment. Further, the legislature
16 found that owners and operators of underground storage tanks could not find environmental impairment
17 liability insurance and determined that the Fund should act to provide that insurance. Just as importantly,
18 the legislature determined that it is in the interest of the health and safety of the people of California for
19 the Fund to pay for corrective action when there is not other coverage available. *Health & Safety Code*
20 *§25299.10*. (All statutory references hereafter refer to the California Health & Safety Code unless
21 otherwise noted.) The release at the Sunol Tree Gas Station is exactly the type of problem the legislature
22 created the Fund to alleviate.

23 The Division Chief opines that the permanent elimination of eligibility to the Fund for a permit
24 violation many years prior to the release and long after permit compliance furthers the Legislature's
25 intent by providing an incentive for UST owners/operators to obtain their permits. However, that
26 argument ignores the fact that in this situation the Claimant has his permit so no further incentive is
27 required; and secondly, permit compliance prior to discovery of the release is still required under
28 Claimant's interpretation of the statute so the incentive to obtain a UST operating permit is not

1 diminished. Further, no incentive will have any effect if the Fund's position is a pre-permit failure is
2 permanently unfixable. No incentive can change the past. Indeed the Division Chief's position creates a
3 disincentive to pay back fees because the Claimant basically is paying for insurance that he is barred
4 from using.

5 **2. Claimant Meets the Eligibility Criteria Of §25299.57(d)(3)(A).**

6 A claim against the Fund is eligible if the Board finds that the claimant is currently in
7 compliance with permit requirements for underground storage tanks, in compliance with the Financial
8 Responsibility requirements of the Act, and the claimant has done so prior to discovery of a petroleum
9 release. Section 25299.57 provides:

10 (d) Except as provided in subdivision (j), a claim specified in subdivision
11 (a) may be paid if the board makes all the following findings:

12 (A) Except as provided in subparagraph (B), the claimant has complied
13 with Section 25299.31 and the permit requirements of Chapter 6.7
14 (commencing with Section 25280). **[There is no dispute that the
15 Claimant has complied with this section and nothing in this
16 section looks back to a prior failure to have a permit. The
17 compliance has to be prior to a release otherwise there is no basis
18 for a claim.]**

19 (B) All claimants who file their claim on or after January 1, 1994, **[Which
20 Claimant did]** and all claimants who filed their claim prior to that
21 date but are not eligible for waiver of the permit requirement pursuant
22 to the board regulations in effect on the date of the filing of the claim,
23 and who did not obtain or apply for any permit required by
24 subdivision (a) of Section 25284 by January 1, 1990, shall be subject
25 to subparagraph (A) regardless of the reason or reasons that the
26 permit was not obtained or applied for. **[This section does not apply
27 to Claimant because he did not file before 1994 and was never
28 subject to prior board regulations]**
However, on and after January 1, 1994, the board may waive the
provisions of subparagraph (A) as a condition for payment from the
fund if the board finds all of the following:... **[Here Claimant does
not need a waiver of subparagraph (A) because Claimant is in
compliance with that section.]**

As explained above, §25299.57(d)(3)(A) is phrased in the current tense and does not look back
to failure to have a permit prior to the release. Secondly, the permit waiver criteria do not supercede the
current permit requirement of subparagraph (A). The permit waiver criteria of section

1 25299.57(d)(3)(B)(i-iii) only apply to claimants seeking a permit waiver.

2 The Division Chief argues that we can ignore the tense of the section because Health &
3 Safety Code §11 states that “the present tense includes the past and future tenses, . . .” But that is no
4 help at all. As discussed below the statute must be interpreted to implement the Legislature’s intent.
5 The Legislature wrote the statute using terms that have plain ordinary meaning. There is no indication
6 in the Legislative history to support an interpretation that the Legislature meant “any time in the past
7 present or future” regarding the permit requirement. Such a reading would make nonsense of the
8 paragraph. If as the Chief suggests under Health & Safety Code §11 the word “has” includes the future,
9 then obtaining the permit in the future would be satisfactory. Rather than ignoring the dictionary
10 meaning, it would be better to apply the meaning that a layperson reading the statute would apply or
11 determining what the Legislature intended.

12 Although the statute does not use the word “currently” the meaning of “has” would necessarily
13 mean currently having a permit. By requiring the claimant to have a permit the Legislature’s intent that
14 UST operators/owners have a permit is not undermined, rather the Legislature’s intent is furthered.
15 Secondly, the Claimant by having a permit, ensures that the permit’s precautionary measures are met. A
16 permanent bar to eligibility, on the other hand, discourages ever obtaining a permit and thus frustrates
17 the implementation of the precautionary measures designed to minimize UST releases.

18 **3. The Permit Waiver Is Only Applicable For A Failure To Obtain A Permit By 1990.**

19 The Division Chief claims that even though there is no evidence that Claimant knowingly failed
20 to have a permit prior to 1990, that knowing failure to have a permit in 1991 permanently extinguishes
21 eligibility under 25299.57(d)(3)(B)(i). However, that is not what the statute says. Even if the permit
22 waiver applied to Claimant, the knowing failure to obtain a permit only applies to a knowing failure to
23 obtain a permit prior to January 1, 1990. The permit waiver provision in §25299.57(d)(3)(B) only looks
24 back to past compliance with the permit requirement if it relates to a claim jumping problem related to
25 the initial passing of the Act in 1989. In other words, the permit waiver is only concerned about past
26 permit non-compliance for a pre-1990 permit failure and release.

27 ///

1 There is a disjunction rather than a conjunction in section 25299.57(d)(3)(B)(i). That section
2 states:

3 The claimant was unaware of the permit requirement prior to January 1,
4 1990, and there was no intent to intentionally avoid the permit requirement
5 or the fees associated with the permit. [Emphasis added]

6 The language of this section only refers to knowing failure to obtain a permit prior to January 1,
7 1990. This reading is consistent with the plain language of the statute and the legislative history of the
8 permit waiver. Both make clear that January 1, 1990 was a critical date. The concern about claim
9 jumping was critical in regard to the initial January 1, 1990 filing date. The intent requirement in section
10 25299.57(d)(3)(B)(i) does not forgive a failure to have a permit only as it relates to a knowing failure to
11 have a permit prior to January 1, 1990. In this case Claimant did not intentionally fail to have a permit
12 prior to 1990, and there is no evidence of a knowing failure until 1991.

13 Normal construction of the statutory language demonstrates that the knowing avoiding of the
14 permit requirement in §25299.57(d)(3)(B)(i) only applies to knowing failure to obtain a permit by 1990.
15 “And” is a conjunction connecting words or phrases expressing the idea that the latter is to be added to
16 or taken along with the first. *Black’s Law Dictionary, 4th Edition, 1968*. Black’s Law Dictionary goes on
17 to state, “The word “and” expresses a general relation or connection, a participation or accompaniment
18 in sequence, having no inherent meaning standing alone but deriving force from what comes before and
19 after. ... its use implies that the connected elements must be grammatically co-ordinate, as where the
20 element preceding and succeeding the use of the words refer to the same subject matter.”

21 Based on Black’s Law Dictionary definition of the word “and”; the “and” in §25299(d)(3)(B)(i)
22 relates to a knowing failure to meet the permit requirement prior to January 1, 1990 and not to a permit
23 failure at anytime. Since there is no evidence that Mr. Kelsoe knowingly failed to obtain his UST
24 operating permit prior to 1990, there is no statutory authority for a permanent ban on his Fund
25 eligibility.

26 A. The Fund Statute Distinguishes Between Pre-1990 Operations Without A Permit And
27 Subsequent Permit Lapses.
28

1 The legislative history makes clear that a knowing failure to have a permit is only a ban for pre-
2 1990 permits and releases. There was no intent by the Legislative to forever bar an individual from
3 access to the Fund for failure to have a permit sometime in the past. The legislature's concern about a
4 claimant having a past permit was based around the question of whether a permit was in effect on
5 January 1, 1990. Why January 1990? That date was only important for the initial filing.

6 Permit compliance was a major concern of one of the major sponsors of the Act - the California
7 Independent Oil Marketers Association. The Marketers were concerned that non-member UST owners
8 were operating without a permit, knew about or suspected releases, and were not taking corrective
9 action. The Marketers believed that once the Fund was created in 1989, these unpermitted operators
10 would immediately file for their permits and their claims would jump ahead of the Marketers' members
11 who had properly complied with their permit requirements and were undertaking corrective action.

12 (Declaration of Rusty Reinhardt.)

13 B. The Fund Originally Narrowly Interpreted Fund Eligibility.

14 Prior to 1994, there was no permit waiver in the Fund statute, instead the relevant section dealt
15 only with the eligibility requirements for a valid claim on the Fund. Until 1994, section 25299.57(d)(3)
16 read, "The claimant has complied with Section 25299.31 [financial responsibility] and the permit
17 requirements of Chapter 6.7 (commencing with Section 25280)."

18 The Fund's pre-1994 regulations covered eligibility and permit waiver requirements at section
19 2811(a)(2). At that time, section 2811(a)(2) provided, in relevant part, that in order to obtain
20 reimbursement from the Fund a claimant must have:

21 "... obtained any permit or permits required of the claimant pursuant to
22 Chapter 6.7, Division 20, of the California Health and Safety Code, or ...
23 filed a substantially complete application for such permit or permits, not
24 later than January 1, 1990, unless the claimant can demonstrate to the
25 satisfaction of the Division that obtaining any required permit was beyond
26 the reasonable control of the claimant or that under the circumstances of
27 the particular case it would be unreasonable or inequitable to require the
28 claimant to have filed an application for such a permit by January 1, 1990.
Any claimant who is excused from obtaining a permit or filing an
application pursuant to this subsection shall continue to pursue and obtain
any permits required by Chapter 6.75 with reasonable diligence..."
[Emphasis added]

1 Importantly, the past permit requirement and permit waiver criteria were focused only on the
2 January 1, 1990 date. This is consistent with the sponsors concerns about unpermitted claimants jumping
3 over permitted claimants' claims during the vital initial filing period. After the initial filing period for
4 the Fund, the only requirement became §25299.57(d)(3) - a current permit and financial responsibility.

5 C. Early State Water Resource Control Board Decisions Inconsistently Applied The Permit
6 Waiver Criteria.

7 In 1993 the State Board issued a series of decisions interpreting the then existing permit waiver
8 provisions. Two decisions came down on the same day - January 21, 1993. The most important was
9 *Petition of Lloyd Properties, Order No. WQ 93-1-UST, January 21, 1993*. In that case, the Petitioner had
10 an underground storage tank that had been installed in the 1950's or 1960's. The tank had been taken out
11 of service in 1981. The tank was removed in December of 1990 in response to Petitioner being informed
12 by the fire department that even out of service tanks had to be removed. Contamination was discovered
13 during the tank removal. Petitioner made the very reasonable argument that they had not been notified of
14 the permit requirements prior to 1990 and they were not aware of the permit requirements for an out of
15 service tank until August of 1990. Moreover, as soon as they became aware of the requirements, they
16 acted promptly to remove the tank and remediate the site. The Board refused to exercise discretion to
17 deem the permit requirement unreasonable or inequitable under the circumstances and denied the claim.
18 Importantly, Lloyd properties did not have a current UST permit obtained prior to knowledge of a
19 release nor did they file a Financial Responsibility Form.

20 In *Petition of Christensen, Order No. WQ-93-3-UST, January 21, 1993*, the Petitioner had used
21 two 800-gallon underground petroleum storage tanks until 1975, at which time the tanks were pumped
22 dry and the use of the tanks terminated. In 1991, the City of Pinol ordered the Petitioners to remove the
23 tanks in order to allow the City to make certain street and frontage improvements. The Petitioners
24 promptly obtained a removal permit and removed the tanks. Contamination was discovered and they
25 performed the appropriate remedial activities. Again, despite the Petitioners reasonable actions, the
26 Board refused to exercise its equitable powers to allow application to the Fund. Christensen did not have
27 a current UST permit obtained prior to knowledge of a release, nor did they file a Financial
28 Responsibility Form.

1 Later that year in *Petition of Wong, Order No. WQ-93-6-UST, June 17, 1993*, the Petitioner was
2 informed in June of 1990 that permits were required for the USTs. The Petitioner responded by
3 notifying the County that they would remove the tanks. The Petitioner did not obtain operating permits,
4 but did properly remove the tanks within a reasonable time. Importantly, the County advised the Fund
5 that the County would not normally issue a UST operating permit under these circumstances. The Board
6 found that it would be inequitable not to provide coverage and the claim was allowed. The Board held
7 that the County inspected the site in 1987, 1988 and 1989 and had not informed the claimant of the
8 permit requirement, thereby waiving the permit requirement.

9 In *Petition of Mission Mortuary, Order No. WQ-93-11-UST, August 19, 1993*, the Board also
10 waived the permit requirement. Here the Petitioner had not been aware of the existence of the
11 underground storage tank when it bought the property. When the Petitioner learned that there was an
12 underground storage tank on the property, Petitioner also discovered that it had been empty and
13 abandoned in the late 1940's. Although no active measures had been taken to make the system
14 inoperable, the passing of time had made the pumping system non-operational. In 1991 in the course of
15 a property sale, Petitioner had the tank removed. Contamination was detected and Petitioner spent
16 several hundred thousand dollars cleaning up the site.

17 None of these cases required a UST owner who had met the permit and financial responsibility
18 requirements prior to discovery of the release to seek a permit waiver.

19 D. The Legislature Responded To The Board's Erratic Permit Waiver Decisions By
20 Enacting A New "Permit Waiver."

21 In response to the unpredictable nature of the Board's permit waiver decisions, the Legislature
22 acted in 1993 to liberalize the permit waiver requirement. Section 25299.57 was amended by Stats 1993
23 CH 432 Section 6(AB 1061), effective September 22, 1993. The new broader permit waiver is set forth
24 in Section 25299.57(d)(3):

25 (A) Except as provided in subparagraph (B), the claimant has complied
26 with Section 25299.31 and the permit requirements of Chapter 6.7
(commencing with Section 25280).

27 (B) All claimants who file their claim on or after January 1, 1994, and all
28 claimants who filed their claim prior to that date but are not eligible for

1 waiver of the permit requirement pursuant to the board regulations in
2 effect on the date of the filing of the claim, and who did not obtain or
3 apply for any permit required by subdivision (a) of Section 25284 by
4 January 1, 1990, shall be subject to subparagraph (A) regardless of the
5 reason or reasons that the permit was not obtained or applied for.
6 However, on and after January 1, 1994, the board may waive the
7 provisions of subparagraph (A) as a condition for payment from the fund
8 if the board finds all of the following:

9 (i) The claimant was unaware of the permit requirement prior to
10 January 1, 1990, and there was no intent to intentionally avoid the
11 permit requirement or the fees associated with the permit.

12 (ii) Prior to submittal of the application to the fund, the claimant has
13 complied with Section 25299.31 and has obtained and paid for all
14 permits currently required by this paragraph.

15 (iii) Prior to submittal of the application to the fund, the claimant has
16 paid all fees, interest, and penalties imposed pursuant to Article 5
17 (commencing with Section 25299.40) and Part 26 (commencing with
18 Section 501101) of Division 2 of the Revenue and Taxation Code for
19 the underground storage tank that is the subject of the claim.

20 (C)(i) A claimant exempted pursuant to subparagraph (B) shall obtain a
21 level of financial responsibility twice as great as the amount which the
22 claimant is otherwise required to obtain pursuant to subdivision (a) of
23 Section 25299.32.

24 (ii) The board may waive the requirements of clause (i) if the claimant can
25 demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of
26 subparagraph (B) were satisfied prior to the causing of any contamination.
27 That demonstration may be made through a certification issued by the
28 permitting agency based on site and tank tests at the time of permit
application or in any other manner acceptable to the board. [Emphasis
added]

29 E. The Legislative History Of The Current Permit Waiver Shows That The
30 Legislature's Intent Was Broad.

31 The permit waiver first appeared in the July 6th 1993 Senate Amendment. When the permit
32 waiver was originally to be placed in Section 25299.54(g), it provided:

33 Notwithstanding this chapter, a claimant who did not acquire a permit on
34 or before January 1, 1990, pursuant to the requirements of Chapter 6.7
35 (commencing with Section 25280) is eligible to receive an award if both
36 of the following apply:

1 (1) The claimant provides a certification to the board from the local
2 agency that the claimant has since obtained a permit, and, at the time the
3 permit was issued, there was no contamination from the prior operation of
the underground storage tank requiring corrective action.

4 (2) The claimant has paid all fees required to be paid pursuant to Section
5 25299.41.

6 The legislative analysis for the Senate Amendment dated August 26, 1993 analyzed the permit
7 waiver as follows:

8 4. Tank owners or operators who did not apply for a permit for their tank
9 before January 1, 1990 would be eligible for reimbursement from the
fund, provided that:

- 10 a. They were unaware of the permit requirement and had no intention of
11 avoiding permit requirement;
- 12 b. By the time they have submitted application to the fund they have
13 obtained a permit and paid all fees required to be paid by permittees;
- 14 c. They have paid a higher matching fee (\$20,000 instead of \$10,000).
15 This requirement may be waived if the claimant can demonstrate that
16 the conditions of "a" and "b" were satisfied prior to causing any
contamination. [Emphasis added]

17 It is clear from the Legislative analysis and the language of the statute, as amended, that the
18 intention of the current permit waiver was still to deal with the pre-1990 claim jumpers, and there was
19 no intent to bar eligibility for post 1990 failure to have a permit.

20 The relevant permit waiver sections of the bill did not change throughout the month of August
21 1993. In September of 1993 the bill was enrolled with the relevant portion placed in the language that
22 eventually was finalized in the statute. The bill was chaptered on September 24, 1993.

23 The final bill analysis dated September 3, 1993 shows concurrence by the House and the Senate
24 Amendments. It is apparent that the rewrite of the section from the Senate Amendment to its final form
25 was administrative and not designed to change the Senates' intent.

26 In conclusion, the Legislative intent is clear, the permit waiver is only relevant to claimants who
27 had a pre-1990 release and knowingly failed to have a permit before January 1, 1990. That was the
28 Legislature's intent. The focus of its legislation was on the thousands of applications filed on the initial

1 filing date. It is not applicable to Mr. Kelsoe's situation. Mr. Kelsoe only needs to meet the basic
2 eligibility requirements of 25299.57(d)(3)(A).

3 F. The Fund Is Obligated To Implement The Fund Statute In A Manner That Effectuates
4 The Legislature's Intent.

5 (i) California Law requires finding the Legislative Intent.

6 To construe or interpret a statute the primary objective is to determine the legislative intent of the
7 enactment, all other rules of construction yield to this rule.

8 In the construction of a statute the intention of the Legislature ... is to be
9 pursued, if possible ...; *Code of Civil Procedure Section 1859.*

10 The primary rule of statutory construction, to which every other rule as to
11 interpretation of particular terms must yield, is that the intention of the
12 Legislature must be ascertained if possible, and when once ascertained,
13 will be given effect, even though it may not be consistent with the strict
14 letter of the statute. *Marina Village v. California Coastal Zone*
Conservation Commission (1976) 61 Cal. App. 3d 338, 392.

14 (ii) The Legislative Intent Must Be Followed Whether Or Not The Statute Is Ambiguous.

15 The United States Supreme Court has said:

16 But words are inexact tools at best, and for that reason there is wisely no
17 rule of law forbidding resort to explanatory legislative history no matter
18 how clear the words may appear on superficial examination. *Harrison v.*
Northern Trust Co. (1943) 317 U.S. 476, 479.

19 The courts resist blind obedience to the putative 'plain meaning' of a
20 statutory phrase where literal interpretation would defeat the Legislature's
21 central object. *Leslie Salt Co. v. S.F. Bay Conserv. And Develop. Comm.*
(1984) 153 Cal. App. 3d 605, 614.

22 (iii) The Legislature Is Presumed To Be Aware Of The Board's Prior Decisions And The
23 Prior Law.

24 In addition, the Legislature is deemed to be aware of existing laws and
25 judicial decisions in effect at the time legislation is enacted and to have
26 enacted and amended statutes in the light of such decisions as have a
27 direct bearing upon them." *People v. Overstreet* (1986) 42 Cal. 3d 891,
28 897.

1 (iv) Chronology of Enactment Is Relevant In Interpreting A Statute.

2 After reviewing the language of the amendment and the events that led to
3 its passage, we are convinced that the electorate intended section 4 to
4 apply to school districts.... *Arvin Union School District v. Ross* (1985)
176 Cal. App. 3rd 189.

5 In the present instance both the legislative history of the statute and the
6 wider historical circumstances of its enactment are legitimate and valuable
7 aids in divining the statutory purpose. *California Mfrs. Assn. v. Public
Utilities Commission* (1979) 24 Cal. 3d 836, 844.

8 The Legislative Counsel's Digest is a proper resource to determine the
9 intent of the Legislature. (cites) Here the Legislative Counsel's Digest
10 indicates unequivocally that the Legislature intended to change the law.
Five v. Chaffey Joint Union High School District (1990) 225 Cal. App. 3d
1548, 1555.

11 (v) Statements by Proponents and Opponents:

12 Finally, the chairman of the State Bar subcommittee which was the driving
13 force behind revision of the challenge for cause statute, wrote in a
14 supporting memorandum: *Woodman v. Superior Court* (1987) 196 Cal.
App. 407, 414.

15 The statement of the sponsor of legislation are entitled to be considered in
16 determining the import of the legislation. *Kern v. County of Imperial*
17 (1990) 226 Cal. App. 3d 391, 401.

18 **4. The Fund Is Estopped From Denying Coverage Because Kelsoe Reasonably Relied On**
19 **The Fund's Financial Responsibility Form.**

20 Mr. Kelsoe has complied with UST operating permit requirements. As part of working with the
21 local agencies, he obtained his Financial Responsibility from the Fund and paid his taxes. Nothing in the
22 forms drafted by the Fund put him on notice that he could not rely on the Fund. Moreover, in a basic
23 American principle of fairness, Claimant has been paying UST fees for many years based upon the
24 requirements of the law and his expectation that those fees went to his benefit as a permitted tank owner
25 is reasonable. Basic fairness and the principles of estoppel prevent the Fund from reversing course now
26 in his hour of need by refusing to provide coverage.

27 The Division Chief attempts to avoid allowing eligibility under principle of estoppel on the
28 grounds that the Financial Responsibility Certification Form is a self certification form. But that ignores

1 how estoppel works. Generally, a government entity is bound by the same rules of estoppel that apply to
2 private individuals. *Sagaser v. McCarthy* (1986) 176 Cal.App.3rd 288. There are many instances in
3 which an equitable estoppel will lay against the government where justice and right require it, *Driscoll v.*
4 *Los Angeles* (1967) 67 Cal.2nd 297. Importantly, an estoppel may be invoked against a governmental
5 agency when it has the power to do that which it promised to do or that which it led the opposing party
6 reasonably and justifiably to believe that it would do. *Merco Construction Engineers, Inc. v. Los Angeles*
7 *Unified School District* (1969) 274 Cal.App.2nd 154. An important consideration is the degree of
8 seriousness of the impact or effect of the negligent conduct or advise on the claimant. *Lee v. Board of*
9 *Administration* (1982) 130 Cal.App.3rd 122. The essence of an estoppel is that a party to be estopped has
10 by conduct led another to do that which he would of not otherwise have done and that as a result thereof,
11 he has suffered injury. *Sanguansak v. Myers* (1986) 178 Cal.App.3rd 110.

12 In this case, the Fund is estopped from denying Petitioner's claim. The Fund set up a system that
13 induces operators of petroleum USTs to believe that as long as they are currently in compliance with
14 their operating permit and financial responsibility requirements, that they are eligible for coverage from
15 the Cleanup Fund. Attached as Exhibit A to the Declaration of Jeff Lawson is a copy of the Certification
16 of Financial Responsibility Form posted on the Underground Storage Tank Cleanup Fund website. The
17 Fund example form does not state that if a tank operator has been out of compliance with its permit any
18 time in the past or had an intentional permit violation that the Fund will not provide coverage. Rather, it
19 specifically provides that the UST operator certify "it is in compliance." "Is" normally means "present."
20 Black's Law Dictionary, supra. Thus "it is in compliance" means current compliance only.

21 Similarly, attached as Exhibit B to the Declaration of Jeff Lawson is the Financial Responsibility
22 page from the Underground Storage Tank Cleanup Fund website. It states three requirements for the
23 Fund to be used as financial responsibility mechanism:

- 24 (1) Be the owner or operator of a petroleum UST;
- 25 (2) Be in compliance with applicable financial responsibility requirements; and
- 26 (3) Be in compliance with UST laws and regulations.

27 The plain language the Fund posted on its webpage speaks only of current compliance. Nothing
28 in the Fund's language puts an owner or operator of petroleum UST on notice that a failure to comply

1 with the permit requirement over eight years earlier would cause the Fund not to live up to the financial
2 responsibility obligations. Whether the Form is a self certification form is irrelevant. The Form and its
3 instructions are something claimant could reasonably and justifiably believe. Reliance on the Form and
4 its instructions has seriously harmed claimant. If the Form and the instructions had been accurate
5 Claimant and the County would not have relied on the Fund for Financial Responsibility and would have
6 obtained alternate Financial Responsibility or refused to issue a permit. In either case the harm would
7 have been prevented.

8 CONCLUSION

9 To be eligible the Claimant is only required to have complied with Section 25299.31 [the
10 financial responsibility requirement] and the permit requirements of Chapter 6.7 (commencing with
11 Section 25280) prior to filing a claim with the Fund. Claimant has met the eligibility requirements.

12 Mr. Kelsoe has been in compliance with his permit requirements and financial responsibility
13 requirements since 1994. Mr. Kelsoe relied on the financial responsibility provisions of the Fund since
14 1994 and there is nothing in the Financial Responsibility Form to put him on notice that the Fund was
15 not prepared to live up to its obligations under that program.

16 The release was not detected until 2002, eight years after Mr. Kelsoe came into compliance, and
17 while he was in the praiseworthy activity of upgrading his underground storage tanks. The prior tank
18 testing certifications show that the release occurred after Claimant was properly permitted.

19 There are no other funds available for the cleanup of the groundwater contaminated by MTBE in
20 the Sunol Valley. Denial of this claim will unfairly punish Claimant, the County of Alameda, the town
21 of Sunol and the nearby residences. Leaving this problem untreated is contrary to the intent of the
22 Legislature when it passed the Act.

23 (6) A statement describing how the Petitioner is damaged by the Final Division

24 Decision:

25 The Claimant is required to respond to Alameda County clean up directives. However, Claimant
26 relied on the Fund Financial Responsibility program to provide the resources to respond to this type of
27 contingency. Claimant does not have the Funds to pay for the cleanup. Therefore Claimant will likely go
28 bankrupt and Alameda County, which also relied on the Fund in granting the permit, will be stuck with

1 potential damage to rural drinking water supplies.

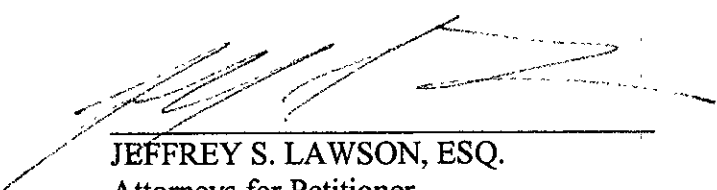
2 **(7) A description of the remedy or outcome desired:**

3 Claimant desires that the Fund find Claimant eligible because, at the time of the release and
4 filing of the claim, Claimant was in compliance with the UST permit requirements and met the Financial
5 Responsibility requirements; or alternatively, that the Fund is estopped from denying the claim because
6 Claimant reasonably relied on the Fund to provide financial responsibility. Finally, Claimant is eligible
7 for a permit waiver because he did not knowingly fail to have a permit prior to 1990.

8 For all of the above reasons, the Claimant respectfully requests to be found eligible.

9
10 Dated: August 25, 2003

Silicon Valley Law Group

11
12 
13 _____
14 JEFFREY S. LAWSON, ESQ.
Attorneys for Petitioner
MURRAY KELSEO

- 15 Attachments: A. Final Division Decision
16 B. Declaration of Murray Kelsoe
17 C. Declaration of Rusty Reinhardt
18 D. Declaration of Jeffrey Lawson
19
20
21
22
23
24
25
26
27
28



State Water Resources Control Board

Winston H. Hickox
Secretary for
Environmental
Protection

Division of Financial Assistance

1001 I Street Sacramento, California 95814
P O. Box 944212 Sacramento, California 94244-2120
(916) 341-5632 FAX (916) 341-5806 www.swrcb.ca.gov/cwphome/ustcf



Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov

AUG - 6 2003

CERTIFIED MAIL NUMBER: 7099-3220-0000-1879-4164

Mr. Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third Street, Suite 900
San Jose, CA 95112

Dear Mr. Lawson:

UNDERGROUND STORAGE TANK (UST) CLEANUP FUND (FUND); FINAL DIVISION DECISION: CLAIM NUMBER 17309; FOR SITE ADDRESS: 3004 ANDRADE ROAD, SUNOL

I have reviewed your letter dated July 3, 2003, submitted on behalf of Mr. Murray Kelsoe, claimant to the Fund. In your letter you are requesting that I reconsider the Fund Manager Decision dated May 12, 2003. The Fund Manager determined the subject claim ineligible for placement on the Priority List because Mr. Kelsoe had not complied with the UST permit requirements as required by section 25299.57(d)(3)(A) of the Health and Safety Code¹. The Fund Manager also denied Mr. Kelsoe a waiver of the permit requirement.

You contend that at the time of the discovery of the unauthorized release and the filing of the Fund's claim application Mr. Kelsoe: (1) was in compliance with the UST permit requirements; and (2) had met the financial responsibility requirements. Therefore, he should be determined eligible.

After reviewing your arguments and the applicable Fund files, I must concur with the Fund Manager Decision for reasons discussed below:

Site Background

Mr. Kelsoe acquired the site, Sunol Tree Gas Station, in 1983. In December 1984, he replaced the existing USTs with six new fiberglass tanks, new piping and new dispensers. Mr. Kelsoe filed for bankruptcy in 1993, and in 1998, the station was closed. In 2002, Mr. Kelsoe gathered the funds to install six new USTs. On April 12, 2002, during the removal of five of the existing fiberglass USTs, contamination was discovered. On June 27, 2002, Alameda County Health Care Services (County) issued a directive to assess the extent of the contamination. In December 2002, the station was reopened.

¹ All statutory references hereafter refer to the California Health & Safety Code unless otherwise noted.

Mr. Jeffrey S. Lawson

- 2 -

Regulatory Background

The County began implementing its UST program in 1987 and, in 1988, notified all UST owners of permitting requirements. Although Mr. Kelsoe states that he did not receive any notice at that time, he did receive a "Notice of Violation" from the County dated April 24, 1991, informing him of the permitting requirements. On June 5, 1991, a "Second Notice of Violation" was issued. On August 12, 1994, the Alameda County District Attorney commenced enforcement action. On October 4, 1994, Mr. Kelsoe obtained a five-year UST permit. On December 19, 1995, Mr. Kelsoe entered into a "Stipulated and Modified Judgment" (*People of the State of California v. Murray Kelsoe*); he was required, among other things, to comply with the permitting requirements of the Health & Safety Code. Mr. Kelsoe was also required to pay a substantial fine for civil penalties.

Discussion

You contend the following:

(1) The purpose of the Fund is to protect public health and safety, and the environment. Denying Mr. Kelsoe's Fund application does not achieve any legislative intent.

I agree that the primary goal of the Fund program is to help ensure the protection of public health, safety, and the environment. However, the Legislature also intended that only UST owners/operators that meet certain eligibility requirements may participate in the Fund. One of the eligibility requirements is that the claimant obtains a UST operating permit. This provides incentive to tank owners and operators to operate their tanks in a manner that is protective to public health, safety and the environment. Thus, the eligibility requirements are, in themselves, one of the ways the Fund program meets its goal of protecting public health, safety and the environment.

(2) Mr. Kelsoe meets the eligibility criteria of section 25299.57(d)(3)(A).

Section 25299.57(d)(3)(A) states, in part:

"(d) Except as provided in subdivision (j), a claim...may be paid if the board makes all of the following findings:"

"(3) (A) Except as provided in subparagraph (B) [*Waiver criteria*], the claimant has complied with Section 25299.31 [*Financial responsibility*] and the permit requirements of Chapter 6.7 (commencing with Section 25280)."

You contend: "A claim against the fund is eligible if the Board finds that the claimant is currently in compliance with permit requirements for underground storage tanks, in compliance

Mr. Jeffrey S. Lawson

- 3 -

with the financial responsibility requirements of the Act, and the claimant has done so prior to the discovery of the petroleum release." You also contend: "...§25299.57(d)(3)(A) is phrased in the current tense and does not look back to failure to have a permit prior to the release."

I disagree with your contentions. First, with regard to the structure of the Health & Safety Code, Section 11 states:

"The present tense includes the past and future tenses; and the future, the present."

The applicable statute does not state that the claimant must be *currently* in compliance with the permit requirements. In addition, it is not reasonable that a claimant needs only to obtain a permit prior to the discovery of the unauthorized release, because: (1) It would undermine the UST statutes² and regulations, which require all UST owners/operators to obtain a permit; and (2) As stated in the Fund Manager Decision, the requirements and responsibilities attached with the acquisition of the permit include precautionary measures such as proper testing and monitoring to detect whether a release from the tank has occurred and to prevent any contamination from spreading farther from the source of the release.

You also argue that, in this case, the unauthorized release occurred after the USTs were properly permitted (1994). You state:

"The tanks tested tight in 1995, 1996 and 1997. The tanks were taken out of service in 1998. There is absolutely no evidence of a release prior to 1995. The tanks were less than 10 years old and tested tight in 1995. Leaking tanks do not repair themselves; therefore since the tanks were tight in 1995, they had to be tight from 1985-1995."

I cannot agree with your argument. The fact remains that contamination was discovered in April 2002. You state that the USTs tested tight in 1995, 1996 and 1997. In addition, the station was not in operation for approximately four years (1998 to April 2002, when the USTs were removed). During this four year period, in accordance with section 25298(a)³, (1) all permitting requirements, including tightness testing, should have continued; or (2) the USTs must have been properly closed. Therefore, if the USTs tested tight in 1995, 1996 and 1997, as you state, and the USTs were in permit compliance, pursuant to section 25298(a) from 1998 to 2002, it may be concluded that they leaked sometime prior to 1995, when they were not regulated. Further, tank

² Section 25284(a) (1) states, in part: "...no person may own or operate an underground storage tank unless a permit for its operation has been issued by the local agency to the owner or operator of the tank, or a unified program facility permit has been issued by the local agency to the owner or operator of the unified program facility on which the tank is located.

³ Section 25298(a) discusses abandonment, closure, and temporary cessation of USTs.

Mr. Jeffrey S. Lawson

- 4 -

tests are only a screening tool, and are not intended to conclusively determine that a release is not occurring.

(3) The permit waiver is only applicable for a failure to obtain a permit by 1990.

With regard to the permit waiver, section 25299.57(d)(3)(B) states, in relevant part:

“All claimants who file their claim on or after January 1, 1994...and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) [25299.57(d)(3)] regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.”

Your letter contains a lengthy discussion on the applicability of the permit waiver. You contend that the waiver is only applicable to the failure to obtain a permit prior to January 1, 1990. However, regardless of whether the failure to obtain was pre-1990, or post-1990, Mr. Kelsoe would not be eligible. In this case Mr. Kelsoe was informed of the permit requirement in April 1991, and June 1991. He eventually obtained the permit in October 1994. Assuming that Mr. Kelsoe was unaware of the permit requirement prior to January 1, 1990, the waiver is applicable (if other criteria are met) up until January 1, 1990. However, since Mr. Kelsoe did not obtain a permit until October 1994, almost five years later, he is not in compliance with the permit requirement, pursuant to section 25299.57(d)(3)(A). Further, if the waiver were to be available beyond January 1, 1990, Mr. Kelsoe would still not be eligible because, although he was unaware of the permit requirement prior to January 1, 1990, he became aware of the requirement in April 1991, and still did not obtain a permit, which violates section 25299.57(d)(3)(B)(i).

Mr. Jeffrey S. Lawson

- 5 -

(4) The Fund is estopped from denying coverage because Mr. Kelsoe reasonably relied on the Fund's financial responsibility form.

You contend that Mr. Kelsoe has been in compliance with the permit requirements and the financial responsibility requirements since 1994 and there is nothing in the "Certification of Financial Responsibility" form (Certification Form) to put him on notice that the Fund would not perform in accordance with its representations noted on the form. Specifically, the Certification Form states:

"If you are using the State Fund as part of your demonstration of financial responsibility, your execution and submission of this certification also certifies that you are in compliance with all conditions for participation in the Fund."

Financial responsibility is a federal requirement and is enforced by the local regulatory agency. All UST owners/operators must demonstrate, to the local regulatory agency, that money will be available if corrective action is required due to an unauthorized release from their UST. In addition, all claimants to the Fund must demonstrate evidence of financial responsibility. The form "Certification of Financial Responsibility" is utilized by many UST owners as a means to *self-certify* that they are in compliance with the financial responsibility requirements. The local regulator generally accepts this form provided that all other UST requirements, for which it has authority, have been met. The local regulatory does not have authority to administer or enforce requirements imposed by law for participation in the Fund.

In this case, Mr. Kelsoe executed the Certification Form on December 28, 1994, and since he had recently obtained the required permit, the County accepted his self-certification and deemed him in compliance with the financial responsibility and the permitting requirements. Although Mr. Kelsoe may be in compliance (as of 1994) with the County's requirements, he has not met the conditions for participation in the Fund; specifically, the permit requirement as discussed above.

In addition, Fund regulations require a tank owner or operator at all times to maintain eligibility to the Fund in order to use the Fund to demonstrate financial responsibility for taking corrective action. (California Code of Regulations, title 23, section 2808.1(a).) Therefore, since Mr. Kelsoe is not eligible to the Fund, he may not use the Fund to demonstrate compliance with federal financial responsibility requirements and he must use one of the other financial responsibility mechanisms specified in the federal regulations.

Conclusion / Summary

The Fund was established to aid in the protection of public health, safety and the environment. One way in which this goal is accomplished is to assist UST owners/operators with the cleanup of petroleum contamination, which resulted from an unauthorized release from their UST.

Mr. Jeffrey S. Lawson

- 6 -

Another way this goal is accomplished is by establishing eligibility requirements. Compliance with these requirements will also aid in the protection of public health, safety and the environment.

Mr. Kelsoe was not in compliance with the permit requirements of Chapter 6.7 (commencing with section 25280). Such compliance is required for participation in the Fund pursuant to section 25299.57(d)(3)(A).

Although you contend that the release occurred after Mr. Kelsoe was properly permitted, this has not been demonstrated. In fact, based on the history of the site (tightness testing, USTs closed for four years) it is reasonable to conclude that the release occurred prior to the time that the USTs were permitted.

Although, in 1994, Mr. Kelsoe relied on the County's acceptance of the "Certification of Financial Responsibility" form that all Fund requirements were met, the form is a 'self-certifying' document and it is Mr. Kelsoe's sole responsibility to assure that he meets the eligibility requirements.

With regard to financial responsibility, Mr. Kelsoe is not eligible for the Fund; therefore, he may not use the Fund to demonstrate compliance with federal financial responsibility requirements.

Decision

Based on the above discussion: (1) I must uphold the Fund Manager Decision of May 12, 2003. Mr. Kelsoe is ineligible for participation in the Fund for this claim due to failure to comply with the permit requirement of section 25299.57(d)(3)(A). (2) Mr. Kelsoe is not entitled to a waiver of the permit requirement. (3) Mr. Kelsoe may not use the Fund as a basis for demonstration of financial responsibility.

If you disagree with this Final Division Decision, you may file a petition for review by the State Water Resources Control Board (SWRCB). The petition must be received by the SWRCB within thirty (30) days from the date of the Final Division Decision, as provided in Title 23, Chapter 18, Article 5 of the California Code of Regulations. Your petition must be sent to Mr. Arthur G. Baggett, Jr., Chairman of the SWRCB, with copies to Mr. Craig M. Wilson, Chief Counsel, and Ms. Barbara L. Evoy, Chief of the Division of Financial Assistance, at the following address:

State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

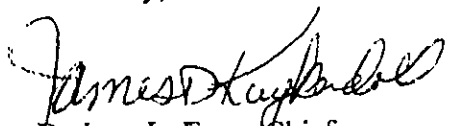
Mr. Jeffrey S. Lawson

- 7 -

A petition to the SWRCB must include, at a minimum: (1) the name and address of the petitioner; (2) a copy of the Final Division Decision that the SWRCB is requested to review; (3) an explanation why the petitioner believes the Final Division Decision is erroneous, inappropriate, or improper; (4) a statement describing how the petitioner is damaged by the Final Division Decision; and (5) a description of the remedy or outcome desired. If the SWRCB does not receive a petition for review within thirty (30) days from the date of this letter, this Final Division Decision is final and conclusive.

If you have any further questions, please call me at (916) 341-5632, or if you have questions specific to your claim, please call Mr. Steve Parada (916) 341-5733.

Sincerely,



Barbara L. Evoy, Chief
Division of Financial Assistance

cc: Mr. Murray Kelsoe
229 Tewksbury Avenue
Point Richmond, CA 94801

Ms. Donna Drogos
Alameda County Health Care Services Agency
1131 Harbor Bay Parkway
Alameda, CA 94502-6577

1 JEFFREY S. LAWSON, ESQ. (SBN 99855)
Silicon Valley Law Group
2 152 N. Third Street, Ste, 900
San Jose, Ca 95112
3 Telephone: (408) 286-6100
Facsimile: (408) 286-1400

4 Attorney for Petitioner
5 Murray Kelsoe

6 STATE WATER RESOURCES CONTROL BOARD
7 CLEAN WATER PROGRAM
8

9 In Re:) USTCF Claim No.: 017309
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
_____)
DECLARATION OF MURRAY KELSOE

13 I, Murray Kelsoe, declare:

14 1. I am the Claimant in the above referenced matter. If called as a witness I could and would
15 competently testify to following matters from my own personal knowledge.

16 2. In 1983, I purchased the Sunol Tree Gas Station at 3004 Andrade Road, Sunol,
17 California. In December of 1984, I replaced all the existing UST's with six new fiberglass tanks. I also
18 completely replaced the existing piping and installed new dispensers along with a tank leak electronic
19 monitor system. No contamination was discovered at that time.

20 3. Prior to 1990, I did not know that an Underground Storage Tank operating permit was
21 required from Alameda County. At that time I believed that a Bay Area Air Quality Management
22 District permit was all that was required.

23 4. I was inspected by different agencies at least six times before 1990. In none of the pre-
24 1990 inspections did the inspectors inform me that I needed a County of Alameda permit.

25 5. Sometime in 1991, I was informed for the first time that a County permit was required.
26 The reason I did not get a permit at that time is that I was told that first I needed to get the tanks tested.
27 In 1989 Chevron started zone pricing in October of 1989 (illegally charging me higher gas costs), the
28 earthquake of 1989 also hurt business, and also the fact that I lost my Chevron brand in December of

1 1991. As a result, my income was so diminished that I had to file Chapter 11 in January of 1993,
2 fourteen months after losing the Chevron brand. I had no money to test any tanks.

3 6. I went bankrupt in January 1993.

4 7. The reason I did not obtain a permit prior to the Alameda County District Attorney
5 bringing an enforcement action in 1994 is that my trustee and her accountant controlled all monies. My
6 trustee finally gave permission to test the tanks in 1994 (while working with the County). My
7 bankruptcy release was in April 1997.

8 8. My trustee settled the enforcement action by the County of Alameda by settlement
9 sometime in 1995. As part of that settlement I paid all back underground storage tank fees and taxes.
10 Since that date, I have stayed current with my underground storage tank fees and taxes.

11 9. I shut down the gas tanks at the station on December 22, 1998.

12 10. In July of 2001, I had accumulated enough money to upgrade the tanks and reopen the
13 Sunol Tree Gas Station. In April of 2002, I removed the old tanks pursuant to permit and installed six
14 new tanks and associated piping. At that time, I paid all my underground storage tank fees and taxes and
15 relied upon the Underground Storage Tank Cleanup Fund for my financial assurance.

16 11. From 1994, when I obtained my Alameda County underground storage tank permit,
17 through 1998 when I closed the USTs at the station, I relied on the Underground Storage Tank Cleanup
18 Fund Financial Responsibility Form.

19 12. When I filled out the Underground Storage Tank Cleanup Fund Financial Responsibility
20 form, I read it and it appeared to me that I was eligible for coverage. Moreover, I talked to various
21 regulators at Alameda County Environmental Health Services and they told me that I needed to fill out
22 the Financial Responsibility Form. Nothing in the form or my discussions with Alameda County
23 indicated that I would not be eligible for coverage under the Fund's Financial Responsibility Program. I
24 relied on the Fund's Financial Responsibility Program and it is my understanding that Alameda County,
25 in providing me with a permit, also relied upon the Fund providing Financial Responsibility for my gas
26 station.

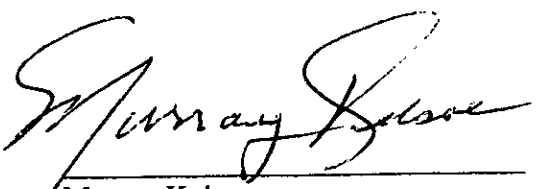
27 13. My bankruptcy estate was closed in April of 1997.

28 14. To date, I have expended over \$95,000 in responding to the release from the underground

1 storage tanks at the Sunol Tree Gas Station. The gas station is not very successful and I am unable to
2 hire any employees. I work seven days a week, from 4 a.m. to 9 p.m. I have been informed that
3 petroleum cleanups involving MTBE are very expensive and I do not have the assets to undertake the
4 cleanup myself. Due to the Silicon Valley melt down and the post war syndrome coupled with the fact
5 that I see 40,000 less cars per day on the freeway because of the Silicon Valley 149,000 job losses over
6 the last 2.5 years, my service station is not very successful.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct.

9
10 Dated: June ²⁶ __, 2003


Murray Kelsoe

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 JEFFREY S. LAWSON, ESQ. (SBN 99855)
Silicon Valley Law Group
2 152 N. Third Street, Ste, 900
San Jose, Ca 95112
3 Telephone: (408) 286-6100
Facsimile: (408) 286-1400

4 Attorney for Petitioner
5 Murray Kelsoe

6 **STATE WATER RESOURCES CONTROL BOARD**
7 **CLEAN WATER PROGRAM**
8

9 In Re:) **USTCF Claim No.: 017309**
10 Petition of MURRAY KELSOE) **DECLARATION OF RUSTY RINEHART**
11)

12
13 I, Rusty Rinehart, declare:

- 14 1. I am an attorney licensed in the state of California. If called as a witness I could and
15 would competently testify to following matters from my own personal knowledge.
16 2. I have represented the California Independent Oil Marketers Association since the middle
17 1980s. In 1988 I was involved in the lobbying efforts to create the Underground Storage Tank Cleanup
18 Fund. (UST Fund) The California Independent Oil Marketers Association was heavily involved in many
19 of the hearings related to the Fund legislation.
20 3. I worked closely with the, lobbyist for the California Independent Oil Marketers
21 Association. I even attended some hearings before the California State Senate and the Assembly in
22 regard to the proposed UST Fund legislation. Moreover, I received regular reports from our lobbyist in
23 regard to those hearings that I could not attend.
24 4. The California Independent Oil Marketers Association is comprised of approximately
25 450 independent petroleum marketers throughout California. When Federal legislation was passed in
26 1986 requiring those who owned or operated underground storage tanks containing petroleum to have
27 minimum liability insurance requirements there was no insurance available in California to meet this
28

DECLARATION OF RUSTY REINHARDT

1 demand. In response to this requirement many businesses would simply have had to been shut down. As
2 had been done in several other states, but not that successfully, was the development of a UST Tank
3 Fund. In a UST Tank Fund industry would pay into it on a product throughput basis thus creating a
4 fund for which claims could be made in the event there was a unauthorized release. With minimum
5 deductible requirements, it would also satisfy the federal minimum insurance requirements. Thanks in
6 large part to the independent sector of the industry such a program became law in California in 1989;
7 with implementing regulations passed by the SWRCB in 1991.

8 5. The permit program in California was already in place when the UST Fund came into
9 fruition by legislation passed in California in 1984. One of the principal requirements in achieving
10 eligibility to the fund was the requirement that the owner or operator have a valid permit in place. The
11 rationale being that those owners who had complied with the tank laws all along would be unfairly
12 positioned for tank funds if they were competing with tank owners who purposefully ignored the
13 existing tank laws. In addition there needed to be protection from those who ignored the payment of the
14 throughput fee. On the other hand it was recognized early on that many California counties simply did
15 not have the funds or the personal experienced enough to set up a permitting program for UST's. Thus
16 there was established in the law a "quasi amnesty" program or waiver that allowed those operators early
17 on in the UST Fund's operation to show that they exercised their best efforts to comply with the law but
18 circumstances beyond their reasonable control prevented them from doing so. This was also intended to
19 prevent a run on what was a limited amount of funds trying to address an overwhelming number of
20 claims in the early 1990's.

21 6. I do not believe it was the intent of the authors of the bill or its sponsors and supporters to
22 forever bar an owner or operator from participation in the program if he may have had permit problems
23 years ago but has mended those issues and has had a recent record of permitted operations. It has also
24 been the intent of the program to fairly weigh all the equities of a claim filed with the fund. If the tank
25 owner has obtained its permit and met its financial responsibility requirement prior to learning of a
26 petroleum release, that is a strong equitable argument for allowing the tank owner participation in the
27 UST Fund.

1 7. Finally, one of the enabling declarations of the 1989 law was to prevent and correct
2 threats to public health and water quality through a comprehensive response program. Barring an
3 individual from access to the UST Fund for a permit violation that occurred years before discovery of
4 the release is not consistent with the purposes of the UST Fund.

5 I declare under penalty of perjury under the laws of the State of California that the foregoing is
6 true and correct.

7
8 Dated: June 25, 2003


Rusty Reinhardt

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 JEFFREY S. LAWSON, ESQ. (SBN 99855)
Silicon Valley Law Group
2 152 N. Third Street, Ste, 900
San Jose, Ca 95112
3 Telephone: (408) 286-6100
Facsimile: (408) 286-1400

4 Attorneys for Petitioner
5 Murray Kelsoe

6 STATE WATER RESOURCES CONTROL BOARD
7 CLEAN WATER PROGRAM

9 In Re:) USTCF Claim No.: 017309
10 Petition of MURRAY KELSOE) DECLARATION OF JEFFREY S. LAWSON
11)

12
13 I, Jeffrey S. Lawson, declare:

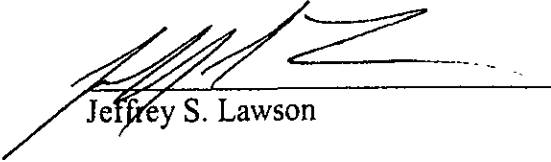
14 1. I am an attorney licensed in all state and federal courts in the state of California. I am the
15 attorney for Petitioner in the above referenced matter. If called as a witness I could competently testify
16 to following matters from my own personal knowledge.

17 2. Attached as Exhibit A to this declaration is a copy of the Financial Responsibility form
18 that I downloaded form the Underground Storage Tank Cleanup Fund website, on April 28, 2003.

19 3. Attached as Exhibit B to this declaration is a copy of the Financial Responsibility page
20 that I downloaded form the Underground Storage Tank Cleanup Fund website on April 28, 2003.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct.

23
24 Dated: July 3, 2003


Jeffrey S. Lawson

25
26
27
28
DECLARATION OF JEFFREY S. LAWSON



State of California
 State Water Resources Control Board
 Division of Clean Water Programs
 P.O. Box 944212
 Sacramento, CA 94244-2120

For State Use Only

(Instructions on reverse side)

CERTIFICATION OF FINANCIAL RESPONSIBILITY FOR UNDERGROUND STORAGE TANKS CONTAINING PETROLEUM

A. I am required to demonstrate Financial Responsibility in the Required amounts as specified in Section 2807, Chapter 18, Div. 3, Title 23, CCR:

- | | | |
|---|-----|---|
| <input checked="" type="checkbox"/> 500,000 dollars per occurrence
or
<input type="checkbox"/> 1 million dollars per occurrence | AND | <input checked="" type="checkbox"/> 1 million dollars annual aggregate
or
<input type="checkbox"/> 2 million dollars annual aggregate |
|---|-----|---|

B. Make Believe Co. hereby certifies that it is in compliance with the requirements of Section 2807,
(Name of Tank Owner or Operator)
 Article 3, Chapter 18, Division 3, Title 23, California Code of Regulations.
 The mechanisms used to demonstrate financial responsibility as required by Section 2807 are as follows:

C. Mechanism Type	Name and Address of Issuer	Mechanism Number	Coverage Amount	Coverage Period	Corrective Action	Third Party Comp
State UST Fund	State UST Cleanup Fund: P.O. Box 944212 Sacramento, CA 94244-2120	N/A for UST Cleanup Fund	\$995,000 per Occurrence and Annual Aggregate	State UST Cleanup Fund Continuous	YES	YES
Chief Financial Officer Letter	Make Believe Co. 123 Tank Street Fund City, CA 90001	N/A for this mechanism	\$5,000 per Occurrence and Annual Aggregate	Annual	YES	YES

Note:
 This is a sample certification of a petroleum UST owner or operator using the State Cleanup Fund as the financial responsibility mechanism, in conjunction with the state alternative mechanism "Letter from Chief Financial Officer." For additional information and requirements refer to Title 23, Chapter 18, of the California Code of Regulations and Chapter 7.75 of the California Health and Safety Code.

Note: If you are using the State Fund as any part of your demonstration of financial responsibility, your execution and submission of this certification also certifies that you are in compliance with all conditions for participation in the Fund.

D. Facility Name <p style="text-align: center;">Make Believe Co.</p>	Facility Address <p style="text-align: center;">Station #1 123 Tank Street Fund City, CA 90002</p>
Facility Name <p style="text-align: center;">Make Believe Co.</p>	Facility Address <p style="text-align: center;">Station #2 200 Site Avenue Fund City, CA 90002</p>
Facility Name	Facility Address
E. Signature of Tank Owner or Operator <p style="text-align: center;"><i>Rhea Cycle</i></p>	Date <p style="text-align: center;">7-3-95</p>
Signature of Witness or Notary <p style="text-align: center;"><i>Tom Storage</i></p>	Date <p style="text-align: center;">7-3-95</p>
Name and Title of Tank Owner or Operator <p style="text-align: center;">Rhea Cycle - Owner</p>	
Name of Witness or Notary <p style="text-align: center;">Tom Storage</p>	



State of California
 State of Water Resources Control Board
 Division of Clean Water Programs
 P.O. Box 944212
 Sacramento, CA 94244-2120

(Instructions on reverse side)

For State Use Only

CERTIFICATION OF FINANCIAL RESPONSIBILITY FOR UNDERGROUND STORAGE TANKS CONTAINING PETROLEUM

A. I am required to demonstrate Financial Responsibility in the Required amounts as specified in Section 2807, Chapter 18, Div. 3, Title 23, CCR:

500,000 dollars per occurrence

1 million dollars annual aggregate

or

AND

or

1 million dollars per occurrence

2 million dollars annual aggregate

B. _____ hereby certifies that it is in compliance with the requirements of Section 2807,

(Name of Tank Owner or Operator)

Article 3, Chapter 18, Division 3, Title 23, California Code of Regulations.

The mechanisms used to demonstrate financial responsibility as required by Section 2807 are as follows:

C. Mechanism Type	Name and Address of Issuer	Mechanism Number	Coverage Amount	Coverage Period	Corrective Action	Third Party Comp

Note: If you are using the State Fund as any part of your demonstration of financial responsibility, your execution and submission of this certification also certifies that you are in compliance with all conditions for participation in the Fund.

D. Facility Name	Facility Address	
Facility Name	Facility Address	
Facility Name	Facility Address	
E. Signature of Tank Owner or Operator	Date	Name and Title of Tank Owner or Operator
Signature of Witness or Notary	Date	Name of Witness or Notary

INSTRUCTIONS

CERTIFICATION OF FINANCIAL RESPONSIBILITY

Please type or print information clearly. All UST sites owned or operated may be listed on one form, therefore, a separate certification is not required for each site.

DOCUMENT INFORMATION

- A. **Coverage Required** Check the appropriate boxes.
- B. **Name of Tank Owner or Operator** Full name of either the tank owner or the operator.
- C. **Mechanism Type** Indicate which approved mechanism(s) are being used to show financial responsibility either as contained in the federal regulations, 40 CFR Part 280 Subpart H, Sections 280.93 through 280.107, or Section 2808.1 Chapter 18, Div. 3, Title 23, CCR (see Financial Responsibility Guide for more information).
- Name of Issuer** List all names and address of companies and/or individuals issuing coverage.
- Mechanism Number** List identifying number for each mechanism used. Example: insurance policy number, Letter of Credit number, etc., etc. If using the State Cleanup Fund, leave blank.
- Coverage Amount** Indicate amount of coverage for each listed mechanism. If more than one mechanism is indicated, total must equal 100% of financial responsibility for each site.
- Coverage Period** Indicate the effective date(s) of all mechanisms. State Cleanup Fund coverage is continuous as long as you maintain compliance and remain eligible to participate in the Fund.
- Corrective Action** Indicate yes or no. Does the specified financial assurance mechanism provide coverage for corrective action? It is a required coverage. If using the State Cleanup Fund, indicate "yes."
- Third Party Compensation** Indicate yes or no. Does the specified financial assurance mechanism provide coverage for corrective action? It is a required coverage. If using the State Cleanup Fund, indicate "yes."
- D. **Facility Information** Provide all facility and or site names and addresses.
- E. **Signature Block** Provide signature and date signed by tank owner or operator; printed or typed name and title of tank owner or operator; signature of witness or notary and date signed; and printed or typed name of witness or notary. (If notary signs please attach documentation.)

Where to Mail certification:

Please send original to your local agency(ies) [agency(ies) that issues the UST permits]. Keep a copy of the certification at each listed site.

Questions:

If you have questions about financial responsibility requirements or about the Certification of Financial Responsibility form, please contact the State Water Resources Control Board, Underground Storage Tank Cleanup Fund at (916) 341-5648.


Note:

Penalties for Failure to Comply with Financial Responsibility Requirements:

Failure to comply may result in: 1) jeopardizing claimant eligibility for the State Cleanup Fund, and 2) liability for civil penalties of up to \$10,000 per day, per underground storage tank, for each day of violation as stated in Article 7, Section 25299.76(a) of the California Health and Safety Code.



- [Home](#)
- [Board Business](#)
- [Laws/Regulations](#)
- [News/Media Info](#)
- [Regional Boards](#)
- [Water Quality](#)
- [Water Rights](#)
- [Water Education](#)


California Environmental Protection Agency
STATE WATER RESOURCES CONTROL BOARD
WATER QUALITY

My CA

USTCF Program

Underground Storage Tank Cleanup Fund - Financial Responsibility

Federal Environmental Protection Agency (EPA) regulations (section 280.90, subpart Responsibility, part 280, 40 CFR) published on October 26, 1988, requires owners ar of USTs to demonstrate through insurance coverage or other acceptable mechanism can pay for cleanup and third-party damages resulting from leaks that may occur from

On June 9, 1993, the United States EPA approved California's Fund as a mechanism the federal financial responsibility requirements for USTs containing petroleum.

In order for the Fund to be used as a financial responsibility mechanism, the law requ claimant must (1) be the owner or operator of a petroleum UST, (2) be in compliance applicable financial responsibility requirements, and (3) be in compliance with UST la regulations. The Fund works closely with regulatory agencies to determine whether a made a good faith effort to achieve compliance with the regulations and relies heavily recommendation of the regulatory agency when evaluating eligibility.

- [USTCF Home](#)
- [General Information & Statistics](#)
- [Statutes & Regulations](#)
- [Financial Responsibility](#)
- [Claim Forms & Information](#)
- [Payment Forms & Information](#)
- [Technical Forms & Information](#)

- › [Financial Responsibility Guide](#)
- › [Exhibits to the Financial Responsibility Guide](#)

Maintained by
[Robert Wall](#)

Last Updated on:
Friday, July 5, 2002

[Back to Top of Page](#)
If you have any questions, please [contact us](#).

Exhibit B

1 **PROOF OF SERVICE**

2 I, the undersigned, declare:

3 I am a citizen of the United States and a resident of the County aforesaid; I am over the age
4 of eighteen years and not a party to the within action; my business address is 152 North Third
5 Street, Suite 900, San Jose, California, 95112. On the date hereinbelow, I caused to be served
6 X a true and correct copy X the original of the following:

7 **PETITION FOR BOARD REVIEW OF FINAL DIVISION DECISION [23 C.C.R. §2814.2]**

8 X **CERTIFIED MAIL** I am "readily familiar" with this firm's practice of collection and
9 processing correspondence for mailing. It is deposited with U.S. postal service on
10 that same day in the ordinary course of business. I am aware that on motion of party
11 served, service is presumed invalid if postal cancellation date or postage meter date
12 is more than one day after date of deposit for mailing in affidavit.

13 **EXPRESS MAIL** Placed in the United States mail at San Jose, Santa Clara County,
14 California, postage fully prepaid

15 **FEDERAL EXPRESS** Placed in a Federal Express facility

16 **PERSONAL SERVICE** Delivered by hand to the Addressee

17 **FACSIMILE** Transmitted via facsimile transmission to the Addressees as noted below

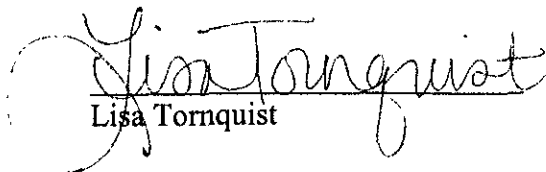
18 addressed to each of the following:

19 **Original:**
20 Mr. Arthur G. Baggett, Jr.
21 Chairman of the SWRCB
22 SWRCB
23 P.O. Box 100
24 Sacramento, CA 95812-0100

25 **Copies to:**
26 Mr. Craig M. Wilson
27 Chief Counsel
28 SWRCB
P.O. Box 100
Sacramento, CA 95812-0100

Ms. Barbara L. Evoy
Chief of the Division of Financial Assistance
SWRCB
P.O. Box 100
Sacramento, CA 95812-0100

29 I declare under penalty of perjury that the foregoing is true and correct. Executed at San
30 Jose, California, on August 25, 2003.

31 
32 Lisa Tornquist



State Water Resources Control Board

Division of Financial Assistance

1001 I Street Sacramento, California 95814
P.O. Box 944212 Sacramento, California 94244-2120
(916) 341-5632 FAX (916) 341-5806 www.svrch.ca.gov/cwphome/ustcf



Gray Davis
Governor

Winston H. Hickox
Secretary for
Environmental
Protection

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.svrch.ca.gov

AUG - 6 2003

CERTIFIED MAIL NUMBER: 7099-3220-0000-1879-4164

Mr. Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third Street, Suite 900
San Jose, CA 95112

Alameda County
AUG 13 2003
Environmental Health

Dear Mr. Lawson:

UNDERGROUND STORAGE TANK (UST) CLEANUP FUND (FUND); FINAL DIVISION DECISION: CLAIM NUMBER 17309; FOR SITE ADDRESS: 3004 ANDRADE ROAD, SUIJNOI

I have reviewed your letter dated July 3, 2003, submitted on behalf of Mr. Murray Kelsoe, claimant to the Fund. In your letter you are requesting that I reconsider the Fund Manager Decision dated May 12, 2003. The Fund Manager determined the subject claim ineligible for placement on the Priority List because Mr. Kelsoe had not complied with the UST permit requirements as required by section 25299.57(d)(3)(A) of the Health and Safety Code¹. The Fund Manager also denied Mr. Kelsoe a waiver of the permit requirement.

You contend that at the time of the discovery of the unauthorized release and the filing of the Fund's claim application Mr. Kelsoe: (1) was in compliance with the UST permit requirements; and (2) had met the financial responsibility requirements. Therefore, he should be determined eligible.

After reviewing your arguments and the applicable Fund files, I must concur with the Fund Manager Decision for reasons discussed below:

Site Background

Mr. Kelsoe acquired the site, Sunol Tree Gas Station, in 1983. In December 1984, he replaced the existing USTs with six new fiberglass tanks, new piping and new dispensers. Mr. Kelsoe filed for bankruptcy in 1993, and in 1998, the station was closed. In 2002, Mr. Kelsoe gathered the funds to install six new USTs. On April 12, 2002, during the removal of five of the existing fiberglass USTs, contamination was discovered. On June 27, 2002, Alameda County Health Care Services (County) issued a directive to assess the extent of the contamination. In December 2002, the station was reopened.

¹ All statutory references hereafter refer to the California Health & Safety Code unless otherwise noted.

Mr. Jeffrey S. Lawson

- 2 -

Regulatory Background

The County began implementing its UST program in 1987 and, in 1988, notified all UST owners of permitting requirements. Although Mr. Kelsoe states that he did not receive any notice at that time, he did receive a "Notice of Violation" from the County dated April 24, 1991, informing him of the permitting requirements. On June 5, 1991, a "Second Notice of Violation" was issued. On August 12, 1994, the Alameda County District Attorney commenced enforcement action. On October 4, 1994, Mr. Kelsoe obtained a five-year UST permit. On December 19, 1995, Mr. Kelsoe entered into a "Stipulated and Modified Judgment" (*People of the State of California v. Murray Kelsoe*); he was required, among other things, to comply with the permitting requirements of the Health & Safety Code. Mr. Kelsoe was also required to pay a substantial fine for civil penalties.

Discussion

You contend the following:

(1) The purpose of the Fund is to protect public health and safety, and the environment. Denying Mr. Kelsoe's Fund application does not achieve any legislative intent.

I agree that the primary goal of the Fund program is to help ensure the protection of public health, safety, and the environment. However, the Legislature also intended that only UST owners/operators that meet certain eligibility requirements may participate in the Fund. One of the eligibility requirements is that the claimant obtains a UST operating permit. This provides incentive to tank owners and operators to operate their tanks in a manner that is protective to public health, safety and the environment. Thus, the eligibility requirements are, in themselves, one of the ways the Fund program meets its goal of protecting public health, safety and the environment.

(2) Mr. Kelsoe meets the eligibility criteria of section 25299.57(d)(3)(A).

Section 25299.57(d)(3)(A) states, in part:

"(d) Except as provided in subdivision (j), a claim...may be paid if the board makes all of the following findings:"

"(3) (A) Except as provided in subparagraph (B) [*Waiver criteria*], the claimant has complied with Section 25299.31 [*Financial responsibility*] and the permit requirements of Chapter 6.7 (commencing with Section 25280)."

You contend: "A claim against the fund is eligible if the Board finds that the claimant is currently in compliance with permit requirements for underground storage tanks, in compliance

Mr. Jeffrey S. Lawson

- 3 -

with the financial responsibility requirements of the Act, and the claimant has done so prior to the discovery of the petroleum release.” You also contend: “...§25299.57(d)(3)(A) is phrased in the current tense and does not look back to failure to have a permit prior to the release.”

I disagree with your contentions. First, with regard to the structure of the Health & Safety Code, Section 11 states:

“The present tense includes the past and future tenses; and the future, the present.”

The applicable statute does not state that the claimant must be *currently* in compliance with the permit requirements. In addition, it is not reasonable that a claimant needs only to obtain a permit prior to the discovery of the unauthorized release, because: (1) It would undermine the UST statutes² and regulations, which require all UST owners/operators to obtain a permit; and (2) As stated in the Fund Manager Decision, the requirements and responsibilities attached with the acquisition of the permit include precautionary measures such as proper testing and monitoring to detect whether a release from the tank has occurred and to prevent any contamination from spreading farther from the source of the release.

You also argue that, in this case, the unauthorized release occurred after the USTs were properly permitted (1994). You state:

“The tanks tested tight in 1995, 1996 and 1997. The tanks were taken out of service in 1998. There is absolutely no evidence of a release prior to 1995. The tanks were less than 10 years old and tested tight in 1995. Leaking tanks do not repair themselves; therefore since the tanks were tight in 1995, they had to be tight from 1985-1995.”

I cannot agree with your argument. The fact remains that contamination was discovered in April 2002. You state that the USTs tested tight in 1995, 1996 and 1997. In addition, the station was not in operation for approximately four years (1998 to April 2002, when the USTs were removed). During this four year period, in accordance with section 25298(a)³, (1) all permitting requirements, including tightness testing, should have continued; or (2) the USTs must have been properly closed. Therefore, if the USTs tested tight in 1995, 1996 and 1997, as you state, and the USTs were in permit compliance, pursuant to section 25298(a) from 1998 to 2002, it may be concluded that they leaked sometime prior to 1995, when they were not regulated. Further, tank

² Section 25284(a) (1) states, in part: “...no person may own or operate an underground storage tank unless a permit for its operation has been issued by the local agency to the owner or operator of the tank, or a unified program facility permit has been issued by the local agency to the owner or operator of the unified program facility on which the tank is located.

³ Section 25298(a) discusses abandonment, closure, and temporary cessation of USTs.

Mr. Jeffrey S. Lawson

- 4 -

tests are only a screening tool, and are not intended to conclusively determine that a release is not occurring.

(3) The permit waiver is only applicable for a failure to obtain a permit by 1990.

With regard to the permit waiver, section 25299.57(d)(3)(B) states, in relevant part:

“All claimants who file their claim on or after January 1, 1994...and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) [25299.57(d)(3)] regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.”

Your letter contains a lengthy discussion on the applicability of the permit waiver. You contend that the waiver is only applicable to the failure to obtain a permit prior to January 1, 1990. However, regardless of whether the failure to obtain was pre-1990, or post-1990, Mr. Kelsoe would not be eligible. In this case Mr. Kelsoe was informed of the permit requirement in April 1991, and June 1991. He eventually obtained the permit in October 1994. Assuming that Mr. Kelsoe was unaware of the permit requirement prior to January 1, 1990, the waiver is applicable (if other criteria are met) up until January 1, 1990. However, since Mr. Kelsoe did not obtain a permit until October 1994, almost five years later, he is not in compliance with the permit requirement, pursuant to section 25299.57(d)(3)(A). Further, if the waiver were to be available beyond January 1, 1990, Mr. Kelsoe would still not be eligible because, although he was unaware of the permit requirement prior to January 1, 1990, he became aware of the requirement in April 1991, and still did not obtain a permit, which violates section 25299.57(d)(3)(B)(i).

Mr. Jeffrey S. Lawson

- 6 -

Another way this goal is accomplished is by establishing eligibility requirements. Compliance with these requirements will also aid in the protection of public health, safety and the environment.

Mr. Kelsoe was not in compliance with the permit requirements of Chapter 6.7 (commencing with section 25280). Such compliance is required for participation in the Fund pursuant to section 25299.57(d)(3)(A).

Although you contend that the release occurred after Mr. Kelsoe was properly permitted, this has not been demonstrated. In fact, based on the history of the site (tightness testing, USTs closed for four years) it is reasonable to conclude that the release occurred prior to the time that the USTs were permitted.

Although, in 1994, Mr. Kelsoe relied on the County's acceptance of the "Certification of Financial Responsibility" form that all Fund requirements were met, the form is a 'self-certifying' document and it is Mr. Kelsoe's sole responsibility to assure that he meets the eligibility requirements.

With regard to financial responsibility, Mr. Kelsoe is not eligible for the Fund; therefore, he may not use the Fund to demonstrate compliance with federal financial responsibility requirements.

Decision

Based on the above discussion: (1) I must uphold the Fund Manager Decision of May 12, 2003. Mr. Kelsoe is ineligible for participation in the Fund for this claim due to failure to comply with the permit requirement of section 25299.57(d)(3)(A). (2) Mr. Kelsoe is not entitled to a waiver of the permit requirement. (3) Mr. Kelsoe may not use the Fund as a basis for demonstration of financial responsibility.

If you disagree with this Final Division Decision, you may file a petition for review by the State Water Resources Control Board (SWRCB). The petition must be received by the SWRCB within thirty (30) days from the date of the Final Division Decision, as provided in Title 23, Chapter 18, Article 5 of the California Code of Regulations. Your petition must be sent to Mr. Arthur G. Baggett, Jr., Chairman of the SWRCB, with copies to Mr. Craig M. Wilson, Chief Counsel, and Ms. Barbara L. Evoy, Chief of the Division of Financial Assistance, at the following address:

State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Alameda County

JUL 17 2003

Environmental Health

Jeffrey S. Lawson



SVLG

SILICON VALLEY LAW GROUP

A LAW CORPORATION

COPY

jsl@svlg.com

July 14, 2003

Via Facsimile & E-mail

Wes Wilkinson, Regulations Coordinator
State Water Resources Control Board
Division of Financial Assistance
Underground Storage Tank Cleanup Fund
P.O. Box 944212
Sacramento CA 94244-2120

Re: Comment on Proposed Amendments to Fund Regulations

Dear Mr. Wilkinson:

This letter constitutes my comments on the State Water Resources Control Board (SWRCB) proposed amendments to California Code of Regulations, Title 23, Division 3, Chapter 18 (Fund Regulations). Currently, the Fund Regulations [2811(a)(2)(B)(i)] state that certain claims are ineligible if a claimant has failed to comply with the permit requirements in California's Health & Safety Code Chapter 6.7 at any time. This section of the current and proposed Fund Regulation is not consistent with the statute or the legislatures' intent.

Permanently barring UST operators from the Fund for past non-compliance with permit requirements unrelated to a release was never the intention of the drafters or the sponsors of the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 ("Act"). Claimants who have paid all past and current underground storage tank fees and used the cleanup Fund for Financial Responsibility should be eligible. Otherwise, they are paying for coverage which they do not receive.

To be eligible, the claimant is only required to be in compliance with Section 25299.31 [the financial assurance requirement] and the permit requirements of Chapter 6.7 (commencing with Section 25280) prior to filing a claim with the Fund. The proposed section 2811(a)(2)(B)(2)a, is not consistent with the Health & Safety Code. The new Fund Regulations should be modified to correct this inconsistency.

1. The Purpose Of Fund Is To Protect Public Health, Safety And The Environment.

Denying coverage to a permitted UST owner for not having a permit "at any time" does not promote any legislative purpose. In the findings and declarations of the Act, the legislature stated that the purpose of the Fund is to protect public health and safety and the environment.

Wes Wilkinson
July 14, 2003
Page 5 of 5

Alameda County
JUL 17 2003
Environmental Health

Importantly, the past permit requirement and permit waiver criteria were focused only on the January 1, 1990 date. This is consistent with the sponsors concerns about unpermitted claimants jumping over permitted claimants' claims during the vital initial filing period. After the initial filing period for the Fund, the only requirement became §25299.57(d) - a current permit and financial responsibility. The proposed regulatory language should clarify this issue.

Conclusion

Under the Health and Safety Code, to be eligible the claimant is only required to have complied with Section 25299.31 [the financial responsibility requirement] and the permit requirements of Chapter 6.7 (commencing with Section 25280) prior to filing a claim with the Fund. The Fund Regulations should be consistent with the statute.

Very truly yours,
Silicon Valley Law Group



JEFFREY S. LAWSON

JSL/lt

Cc: Donna Drogos, Alameda County
Laurie Berger
Murray Kelsoe
Finley Boag
Roy Tovani
Scott Haggerty

COPY

Alameda County

JUL 09 2003

Environmental Health

1 JEFFREY S. LAWSON, ESQ. (SBN 99855)
Silicon Valley Law Group
2 152 N. Third Street, Ste, 900
San Jose, Ca 95112
3 Telephone: (408) 286-6100
Facsimile: (408) 286-1400

4 Attorneys for Petitioner
5 Murray Kelsoe

6 STATE WATER RESOURCES CONTROL BOARD

7 CLEAN WATER PROGRAM

8
9 In Re:) USTCF Claim No.: 017309
10 Petition of MURRAY KELSOE) DECLARATION OF JEFFREY S. LAWSON
11)

12
13 I, Jeffrey S. Lawson, declare:

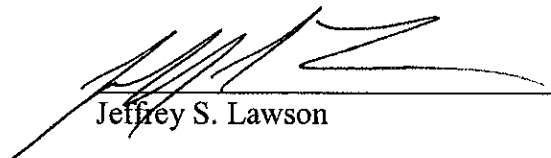
14 1. I am an attorney licensed in all state and federal courts in the state of California. I am the
15 attorney for Petitioner in the above referenced matter. If called as a witness I could competently testify
16 to following matters from my own personal knowledge.

17 2. Attached as Exhibit A to this declaration is a copy of the Financial Responsibility form
18 that I downloaded form the Underground Storage Tank Cleanup Fund website, on April 28, 2003.

19 3. Attached as Exhibit B to this declaration is a copy of the Financial Responsibility page
20 that I downloaded form the Underground Storage Tank Cleanup Fund website on April 28, 2003.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct.

23
24 Dated: July 3, 2003


Jeffrey S. Lawson

25
26
27
28
DECLARATION OF JEFFREY S. LAWSON



State of California
 State of Water Resources Control Board
 Division of Clean Water Programs
 P.O. Box 944212
 Sacramento, CA 94244-2120

(Instructions on reverse side)

For State Use Only

CERTIFICATION OF FINANCIAL RESPONSIBILITY

FOR UNDERGROUND STORAGE TANKS CONTAINING PETROLEUM

A. I am required to demonstrate Financial Responsibility in the Required amounts as specified in Section 2807, Chapter 18, Div. 3, Title 23, CCR:

- | | | |
|--|-----|--|
| <input type="checkbox"/> 500,000 dollars per occurrence
or
<input type="checkbox"/> 1 million dollars per occurrence | AND | <input type="checkbox"/> 1 million dollars annual aggregate
or
<input type="checkbox"/> 2 million dollars annual aggregate |
|--|-----|--|

B. _____ hereby certifies that it is in compliance with the requirements of Section 2807,
(Name of Tank Owner or Operator)
 Article 3, Chapter 18, Division 3, Title 23, California Code of Regulations.
 The mechanisms used to demonstrate financial responsibility as required by Section 2807 are as follows:

C. Mechanism Type	Name and Address of Issuer	Mechanism Number	Coverage Amount	Coverage Period	Corrective Action	Third Party Comp

Note: If you are using the State Fund as any part of your demonstration of financial responsibility, your execution and submission of this certification also certifies that you are in compliance with all conditions for participation in the Fund.

D. Facility Name	Facility Address	
Facility Name	Facility Address	
Facility Name	Facility Address	
E. Signature of Tank Owner or Operator	Date	Name and Title of Tank Owner or Operator
Signature of Witness or Notary	Date	Name of Witness or Notary

INSTRUCTIONS

CERTIFICATION OF FINANCIAL RESPONSIBILITY

Please type or print information clearly. All UST sites owned or operated may be listed on one form, therefore, a separate certification is not required for each site.

DOCUMENT INFORMATION

- A. **Coverage Required** Check the appropriate boxes.
- B. **Name of Tank Owner or Operator** Full name of either the tank owner or the operator.
- C. **Mechanism Type** Indicate which approved mechanism(s) are being used to show financial responsibility either as contained in the federal regulations, 40 CFR Part 280 Subpart H, Sections 280.93 through 280.107, or Section 2808.1 Chapter 18, Div. 3, Title 23, CCR (see Financial Responsibility Guide for more information).
- Name of Issuer** List all names and address of companies and/or individuals issuing coverage.
- Mechanism Number** List identifying number for each mechanism used. Example: insurance policy number, Letter of Credit number, etc., etc. If using the State Cleanup Fund, leave blank.
- Coverage Amount** Indicate amount of coverage for each listed mechanism. If more than one mechanism is indicated, total must equal 100% of financial responsibility for each site.
- Coverage Period** Indicate the effective date(s) of all mechanisms. State Cleanup Fund coverage is continuous as long as you maintain compliance and remain eligible to participate in the Fund.
- Corrective Action** Indicate yes or no. Does the specified financial assurance mechanism provide coverage for corrective action? It is a required coverage. If using the State Cleanup Fund, indicate "yes."
- Third Party Compensation** Indicate yes or no. Does the specified financial assurance mechanism provide coverage for corrective action? It is a required coverage. If using the State Cleanup Fund, indicate "yes."
- D. **Facility Information** Provide all facility and or site names and addresses.
- E. **Signature Block** Provide signature and date signed by tank owner or operator; printed or typed name and title of tank owner or operator; signature of witness or notary and date signed; and printed or typed name of witness or notary. (If notary signs please attach documentation.)

Where to Mail certification:

Please send original to your local agency(ies) [agency(ies) that issues the UST permits]. Keep a copy of the certification at each listed site.

Questions:

If you have questions about financial responsibility requirements or about the Certification of Financial Responsibility form, please contact the State Water Resources Control Board, Underground Storage Tank Cleanup Fund at (916) 341-5648.

Note:

Penalties for Failure to Comply with Financial Responsibility Requirements:

Failure to comply may result in: 1) jeopardizing claimant eligibility for the State Cleanup Fund, and 2) liability for civil penalties of up to \$10,000 per day, per underground storage tank, for each day of violation as stated in Article 7, Section 25299.76(a) of the California Health and Safety Code.

California Home

Monda

[Home](#)[Board Business](#)[Laws/Regulations](#)[News/Media Info](#)[Regional Boards](#)[Water Quality](#)[Water Rights](#)[Water Education](#)**USTCF Program**[USTCF Home](#)[General Information & Statistics](#)[Statutes & Regulations](#)[Financial Responsibility](#)[Claim Forms & Information](#)[Payment Forms & Information](#)[Technical Forms & Information](#)

California Environmental Protection Agency
STATE WATER RESOURCES CONTROL BOARD
WATER QUALITY

My CA

Underground Storage Tank Cleanup Fund - Financial Responsibility

Federal Environmental Protection Agency (EPA) regulations (section 280.90, subpart Responsibility, part 280, 40 CFR) published on October 26, 1988, requires owners ar of USTs to demonstrate through insurance coverage or other acceptable mechanism can pay for cleanup and third-party damages resulting from leaks that may occur from

On June 9, 1993, the United States EPA approved California's Fund as a mechanism the federal financial responsibility requirements for USTs containing petroleum.

In order for the Fund to be used as a financial responsibility mechanism, the law requ claimant must (1) be the owner or operator of a petroleum UST, (2) be in compliance applicable financial responsibility requirements, and (3) be in compliance with UST la regulations. The Fund works closely with regulatory agencies to determine whether a made a good faith effort to achieve compliance with the regulations and relies heavily recommendation of the regulatory agency when evaluating eligibility.

- › [Financial Responsibility Guide](#)
- › [Exhibits to the Financial Responsibility Guide](#)

Maintained by
[Robert Wall](#)

Last Updated on:
 Friday, July 5, 2002

[Back to Top of Page](#)

If you have any questions, please [contact us](#).

© 2000 State of California. Gray Davis, Governor [Conditions of Use](#) [Privacy Policy](#)

Exhibit B



SVLG

SILICON VALLEY LAW GROUP

A LAW CORPORATION

Jeffrey S. Lawson

jsl@svlg.com

July 3, 2003

Via U.S. Mail

Donna L. Drogos, P.E.
LOP Program Manager
Environmental Health Services
1131 Harbor Bay Parkway, Ste. 250
Alameda CA 94502-6577

Alameda County
JUL 09 2003
Environmental Health

Re: Fuel Leak Case No. RO2448
Sunol Tree Gas: 3004 Andrade Road, Sunol, CA

Dear Donna:

Enclosed please find the UST Cleanup Fund Appeal I filed on behalf of Murray Kelsoe. Obviously, it would be helpful if Alameda County would support Mr. Kelsoe in this appeal. The only point that I am looking for Alameda County to make, is that, Alameda County relied upon the Cleanup Fund in granting Mr. Kelsoe his permit. If you think your office would be willing to send such a letter to the Cleanup Fund, please let me know. It would be very helpful if you would coordinate that letter with me prior to sending it.

Very truly yours,
Silicon Valley Law Group



JEFFREY S. LAWSON

JSL/lt

Enclosure: Kelsoe UST Appeal Package

Cc: Murray Kelsoe



SVLG

SILICON VALLEY LAW GROUP

A LAW CORPORATION

COPY

Jeffrey S. Lawson

jsl@svlg.com

July 3, 2003

Via Facsimile & Federal Express

Barbara L. Evoy, Chief
Division of Financial Assistance
State Water Resources Control Board
P.O. Box 944212
Sacramento CA 94244-2120

Alameda County
JUL 09 2003
Environmental Health

Re: Request For Final Division Decision
USTCF Claim No.: 017309
Address: 3004 Andrade Road, Sunol, CA

Dear Ms. Evoy:

Introduction

This letter constitutes Murray Kelsoe's ("Claimant") request for a Final Division Decision. On May 12, 2003, the Underground Storage Tank Cleanup Fund ("Fund"), Fund Manager issued a decision holding that Mr. Kelsoe's 2002 claim was ineligible on the grounds that Mr. Kelsoe had failed to comply with the permit requirements in California's Health & Safety Code Chapter 6.7 prior to 1994. The Fund Manager also held that Mr. Kelsoe is ineligible for a permit waiver because he did not prove that he had not intentionally avoided the UST permit requirements prior to 1994.

To be eligible, the claimant is only required to be in compliance with Section 25299.31 [the financial assurance requirement] and the permit requirements of Chapter 6.7 (commencing with Section 25280) prior to filing a claim with the Fund. Mr. Kelsoe has been in compliance with his permit requirements and financial assurance requirements since 1994. Mr. Kelsoe relied on the financial responsibility provisions of the Fund since 1994 and there is nothing in the Financial Responsibility Form to put him on notice that the Fund would not perform in accordance with its representations in that form. Alameda County also relied on the Fund's Financial Responsibility commitment in granting Mr. Kelsoe his permit.

Permanently barring UST operators from the Fund for past non-compliance with permit requirements unrelated to a release was never the intention of either the drafters or the sponsors of the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 ("Act"). In this case, Mr. Kelsoe came into permit compliance in 1994. Since 1994, Mr. Kelsoe has paid all past and current underground storage tank fees and used the cleanup Fund for Financial Responsibility. Now when a release is discovered in 2002, the Fund Manager points to an

unrelated permit problem that was cured almost ten years earlier as grounds to reject the claim. Contrary to the Fund Manager's decision, the Fund does provide coverage in this circumstance.

Facts

In 1983, Mr. Kelsoe became the owner and operator of the Sunol Tree Gas Station at 3004 Andrade Road, Sunol, California. In December of 1984, he replaced the existing UST's with six new fiberglass tanks, new piping and new dispensers. In 1985, Alameda County did not have an underground storage tank permit program. Subsequently, Alameda County began implementing an UST program, but despite regular government inspection, Mr. Kelsoe did not become aware of the County permit requirement until 1991. Up until that time, he believed that his Bay Area Air Quality Management District permit was sufficient. (Declaration of Kelsoe paragraphs 3 & 4.) There is no evidence that the Claimant had any intent to intentionally avoid the permit requirement or fees prior to January 1, 1990.

In 1991, the County of Alameda issued Notices of Violation to Mr. Kelsoe. In 1994, the Alameda District Attorney commenced an enforcement action. In December of 1994, the Sunol Tree Gas Station was brought into UST permit compliance. Mr. Kelsoe also began using and relying on the Fund for financial responsibility in 1994. (Declaration of Kelsoe paragraph 11.) The Financial Responsibility Form was filled out and submitted to Alameda County and on that basis Alameda County issued Mr. Kelsoe his UST permit. Shortly thereafter, the enforcement action was settled pursuant to a Stipulation and Modified Judgment. In addition, Mr. Kelsoe paid over \$30,000 in overdue UST storage fees to bring his account current.

In January 1993 Mr. Kelsoe went bankrupt. In 1998 the station was closed. By 2002, Mr. Kelsoe had the funds to install six new underground storage tanks. He upgraded and reopened the station in December of 2002. At that time Mr. Kelsoe met all permitting requirements. In 2002, Alameda County again issued the UST permit in reliance on Mr. Kelsoe meeting the Financial Responsibility requirements through the Fund.

On April 12, 2002, five 15,000-gallon gasoline fiberglass USTs and associated piping were removed from the site and disposed of at Ecology Control Industries ("ECI") in Richmond, California. At that time, approximately 3,500 cubic yards of soil were excavated from around the USTs, and approximately 176,000 gallons of hydrocarbon and Methyl Tertiary-Butyl Ether ("MTBE") impacted water was pumped from the excavation.

An Underground Storage Tank Unauthorized Release (leak) / Contamination Site Report was prepared on April 22, 2002. The report was dated April 17, 2002 and the discovery date is shown as April 10, 2002. All these dates are long after the claimant came into UST permit compliance.

No leaks were ever detected in the tanks and no repairs were made. The tanks tested tight in 1995, 1996 and 1997. The tanks were taken out of service in 1998. There is absolutely no

evidence of a release prior to 1995. The tanks were less than 10 years old and tested tight in 1995. Leaking tanks do not repair themselves; therefore since the tanks were tight in 1995, they had to be tight from 1985-1995. Health & Safety Code § 25299.57(d)(3)(C)(ii) allows prior UST tightness certification to be used to show that permit compliance occurred prior to the release of contamination. In this case, the evidence shows the release occurred after the tanks were properly permitted.

To date, Mr. Kelsoe has spent over \$95,000 investigating the release. At this point his funds are exhausted. Furthermore, according to Ms. Donna Drogos, Alameda County LOP Program Manager, this is a high priority case because of the potential impact to rural water supplies. The Fund was created to ensure there are sufficient funds to adequately respond to exactly this type of event.

Previous Decisions

The Staff rejected the claim on the grounds that Mr. Kelsoe did not obtain a permit for the USTs until 1994. The Staff held Claimant ineligible for a permit waiver because Mr. Kelsoe was aware of the requirement to obtain a permit after 1991. The Fund Manager upheld the Staff Decision on May 12, 2003.

Statement of How Claimant Was Damaged By The Fund Manager's Decision

The Claimant is required to respond to Alameda County clean up directives. However, Claimant relied on the Fund Financial Responsibility program to provide the resources to respond to this type of contingency. Claimant does not have the Funds to pay for the cleanup. Therefore Claimant will likely go bankrupt and Alameda County, which also relied on the Fund in granting the permit, will be stuck with potential damage to rural drinking water supplies.

The Remedy or Outcome Desired

Claimant desires that the Fund find Claimant eligible because, at the time of the release and filing of the claim, Claimant was in compliance with the UST permit requirements and met the Financial Assurance requirements; or alternatively, that the Fund is estopped from denying the claim because Claimant reasonably relied on the Fund to provide financial responsibility. Finally, Claimant is eligible for a permit waiver because he did not knowingly fail to have a permit prior to 1990.

Discussion

- 1. The Purpose Of Fund Is To Protect Public Health and Safety, and the Environment**

Denying coverage to a permitted gas station owner for not having a permit eight years earlier than the discovery of a release does not achieve any legislative purpose; particularly when the denial results in a MTBE plume degrading the Sunol Valley. In the findings and declarations of the Act, the legislature stated that the purpose of the Fund is to protect public health and safety and the environment. Further, the legislature found that owners and operators of underground storage tanks could not find environmental impairment liability insurance and determined that the Fund should act to provide that insurance. Just as importantly, the legislature determined that it is in the interest of the health and safety of the people of California for the Fund to pay for corrective action when there is not other coverage available. *Health & Safety Code §25299.10*. (All statutory references hereafter refer to the California Health & Safety Code unless otherwise noted.) The release at the Sunol Tree Gas Station is exactly the type of problem the legislature created the Fund to alleviate.

2. Claimant Meets the Eligibility Criteria Of §25299.57(d)(3)(A).

A claim against the fund is eligible if the Board finds that the claimant is currently in compliance with permit requirements for underground storage tanks, in compliance with the financial responsibility requirements of the Act, and the claimant has done so prior to discovery of a petroleum release. Section 25299.57 provides:

(d) Except as provided in subdivision (j), a claim specified in subdivision (a) may be paid if the board makes all the following findings:

(A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280). **[There is no dispute that the claimant has complied with this section and nothing in this section looks back to a prior failure to have a permit. The compliance has to be prior to a release otherwise there is no basis for a claim.]**

(B) All claimants who file their claim on or after January 1, 1994, **[Which Claimant did]** and all claimants who filed their claim prior to that date but are not eligible for waiver of the permit requirement pursuant to the board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. **[This section does not apply to Claimant because he did not file before 1994 and was never subject to prior board regulations]**

However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:... **[Here Claimant does not need a waiver of subparagraph (A) because Claimant is in compliance with that section.]**

As explained above, §25299.57(d)(3)(A) is phrased in the current tense and does not look back to failure to have a permit prior to the release. Secondly, the permit waiver criteria do not supersede the current permit requirement of subparagraph (A). The permit waiver criteria of section 25299.57(d)(3)(B)(i-iii) only apply to claimants seeking a permit waiver.

3. The Permit Waiver Is Only Applicable For A Failure To Obtain A Permit By 1990.

Even if the permit waiver applied to Claimant, the knowing failure to obtain a permit only applies to a knowing failure to obtain a permit prior to January 1, 1990. The permit waiver provision in §25299.57(d)(3)(B) only looks back to past compliance with the permit requirement if it relates to a claim jumping problem related to the initial passing of the Act in 1989. In other words, the permit waiver is only concerned about past permit non-compliance for a pre-1990 permit failure and release.

There is a disjunction rather than a conjunction in section 25299.57(d)(3)(B)(i). That section states:

The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.
[Emphasis added]

The language of this section only refers to knowing failure to obtain a permit prior to January 1, 1990. This reading is consistent with the plain language of the statute and the legislative history of the permit waiver. Both make clear that January 1, 1990 was a critical date. The concern about claim jumping was critical in regard to the initial January 1, 1990 filing date. The intent requirement in section 25299.57(d)(3)(B)(i) does not forgive a failure to have a permit only as it relates to a knowing failure to have a permit prior to January 1, 1990. In this case Claimant did not intentionally fail to have a permit prior to 1990, and there is no evidence of a knowing failure until 1991.

Normal construction of the statutory language demonstrates that the knowing avoiding of the permit requirement in §25299.57(d)(3)(B)(i) only applies to knowing failure to obtain a permit by 1990. "And" is a conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. *Black's Law Dictionary, 4th Edition, 1968*. Black's Law Dictionary goes on to state, "The word "and" expresses a general relation or

connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. ... its use implies that the connected elements must be grammatically co-ordinate, as where the element preceding and succeeding the use of the words refer to the same subject matter.”

Based on Black’s Law Dictionary definition of the word “and;” the “and” in §25299(d)(3)(B)(i) relates to a knowing failure to meet the permit requirement prior to January 1, 1990 and not to a permit failure at anytime. There is no evidence that Mr. Kelsoe knowingly failed to obtain his UST operating permit prior to 1990.

A. The Fund Statute Distinguishes Between Pre-1990 Operations Without A Permit And Subsequent Permit Lapses.

The legislative history makes clear that a knowing failure to have a permit is only a ban for pre-1990 permits and releases. There was no intent by the Legislative to forever bar an individual from access to the Fund for failure to have a permit sometime in the past. The legislature’s concern about a claimant having a past permit was based around the question of whether a permit was in effect on January 1, 1990. Why January 1990? That date was only important for the initial filing.

Permit compliance was a major point of one of the major sponsors of the Act - the California Independent Oil Marketers Association. The Marketers were concerned that non-member UST owners were operating without a permit, knew about or suspected releases, and were not taking corrective action. The Marketers believed that once the Fund was created in 1989, these unpermitted operators would immediately file for their permits and their claims would jump ahead of the Marketers’ members who had properly complied with their permit requirements and were undertaking corrective action. (Declaration of Rusty Reinhardt.)

B. The Fund Originally Narrowly Interpreted Fund Eligibility.

Prior to 1994, there was no permit waiver in the Fund statute, instead the relevant section dealt only with the eligibility requirements for a valid claim on the Fund. Until 1994, section 25299.57(d)(3) read, “The claimant has complied with Section 25299.31 [financial responsibility] and the permit requirements of Chapter 6.7 (commencing with Section 25280).”

The Fund’s pre-1994 regulations covered eligibility and permit waiver requirements at section 2811(a)(2). At that time, section 2811(a)(2) provided, in relevant part, that in order to obtain reimbursement from the Fund a claimant must have:

“... obtained any permit or permits required of the claimant pursuant to Chapter 6.7, Division 20, of the California Health and Safety Code, or ... filed a substantially complete application for such permit or permits, not later than January 1, 1990, unless the

claimant can demonstrate to the satisfaction of the Division that obtaining any required permit was beyond the reasonable control of the claimant or that under the circumstances of the particular case it would be unreasonable or inequitable to require the claimant to have filed an application for such a permit by January 1, 1990. Any claimant who is excused from obtaining a permit or filing an application pursuant to this subsection shall continue to pursue and obtain any permits required by Chapter 6.75 with reasonable diligence..." [Emphasis added]

Importantly, the past permit requirement and permit waiver criteria were focused only on the January 1, 1990 date. This is consistent with the sponsors concerns about unpermitted claimants jumping over permitted claimants' claims during the vital initial filing period. After the initial filing period for the Fund, the only requirement became §25299.57(d)(3) - a current permit and financial responsibility.

C. Early State Water Resource Control Board Decisions Inconsistently Applied The Permit Waiver Criteria.

In 1993 the State Board issued a series of decisions interpreting the then existing permit waiver provisions. Two decisions came down on the same day - January 21, 1993. The most important was *Petition of Lloyd Properties, Order No. WQ 93-1-UST, January 21, 1993*. In that case, the Petitioner had an underground storage tank that had been installed in the 1950's or 1960's. The tank had been taken out of service in 1981. The tank was removed in December of 1990 in response to Petitioner being informed by the fire department that even out of service tanks had to be removed. Contamination was discovered during the tank removal. Petitioner made the very reasonable argument that they had not been notified of the permit requirements prior to 1990 and they were not aware of the permit requirements for an out of service tank until August of 1990. Moreover, as soon as they became aware of the requirements, they acted promptly to remove the tank and remediate the site. The Board refused to exercise discretion to deem the permit requirement unreasonable or inequitable under the circumstances and denied the claim. The Petitioner did not have a current UST permit obtained prior to knowledge of a release nor did the Petitioner meet the Financial Responsibility requirements.

In *Petition of Christensen, Order No. WQ-93-3-UST, January 21, 1993*, the Petitioner had used two 800-gallon underground petroleum storage tanks until 1975, at which time the tanks were pumped dry and the use of the tanks terminated. In 1991, the City of Pinol ordered the Petitioners to remove the tanks in order to allow the City to make certain street and frontage improvements. The Petitioners promptly obtained a removal permit and removed the tanks. Contamination was discovered and they performed the appropriate remedial activities. Again, despite the Petitioners reasonable actions, the Board refused to exercise its equitable powers to allow application to the Fund. The Petitioner did not have a current UST permit obtained prior to knowledge of a release, nor did the Petitioner meet the Financial Responsibility requirements.

Later that year in *Petition of Wong, Order No. WQ-93-6-UST, June 17, 1993*, the Petitioner was informed in June of 1990 that permits were required for the USTs. The Petitioner responded by notifying the County that they would remove the tanks. The Petitioner did not obtain operating permits, but did properly remove the tanks within a reasonable time. Importantly, the County advised the Fund that the County would not normally issue a UST operating permit under these circumstances. The Board found that it would be inequitable not to provide coverage and the claim was allowed. The Board held that the County inspected the site in 1987, 1988 and 1989 and had not informed the claimant of the permit requirement, thereby waiving the permit requirement.

In *Petition of Mission Mortuary, Order No. WQ-93-11-UST, August 19, 1993*, the Board also waived the permit requirement. Here the Petitioner had not been aware of the existence of the underground storage tank when it bought the property. When the Petitioner learned that there was an underground storage tank on the property, Petitioner also discovered that it had been empty and abandoned in the late 1940's. Although no active measures had been taken to make the system inoperable, the passing of time had made the pumping system non-operational. In 1991 in the course of a property sale, Petitioner had the tank removed. Contamination was detected and Petitioner spent several hundred thousand dollars cleaning up the site.

None of these cases required a UST owner who had met the permit and financial responsibility requirements prior to discovery of the release to seek a permit waiver.

D. The Legislature Responded To The Board's Erratic Permit Waiver Decisions By Enacting A New "Permit Waiver."

In response to the unpredictable nature of the Board's permit waiver decisions, the Legislature acted in 1993 to liberalize the permit waiver requirement. Section 25299.57 was amended by Stats 1993 CH 432 Section 6(AB 1061), effective September 22, 1993. The new broader permit waiver is set forth in Section 25299.57(d)(3):

(A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for waiver of the permit requirement pursuant to the board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after

January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

- (i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.
- (ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.
- (iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) and Part 26 (commencing with Section 501101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(C)(i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility twice as great as the amount which the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32.

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner acceptable to the board.

E. The Legislative History Of The Current Permit Waiver Shows That The Legislature's Intent Was Broad.

The permit waiver first appeared in the July 6th 1993 Senate Amendment. When the permit waiver was originally to be placed in Section 25299.54(g), it provided:

Notwithstanding this chapter, a claimant who did not acquire a permit on or before January 1, 1990, pursuant to the requirements of Chapter 6.7 (commencing with Section 25280) is eligible to receive an award if both of the following apply:

(1) The claimant provides a certification to the board from the local agency that the claimant has since obtained a permit, and, at the time the permit was issued, there was no contamination from the prior operation of the underground storage tank requiring corrective action.

(2) The claimant has paid all fees required to be paid pursuant to Section 25299.41.

The legislative analysis for the Senate Amendment dated August 26, 1993 analyzed the permit waiver as follows:

4. Tank owners or operators who did not apply for a permit for their tank before January 1, 1990 would be eligible for reimbursement from the fund, provided that:

- a. They were unaware of the permit requirement and had no intention of avoiding permit requirement;
- b. By the time they have submitted application to the fund they have obtained a permit and paid all fees required to be paid by permittees;
- c. They have paid a higher matching fee (\$20,000 instead of \$10,000). This requirement may be waived if the claimant can demonstrate that the conditions of "a" and "b" were satisfied prior to causing any contamination.

It is clear from the legislative analysis and the language of the statute, as amended, that the intention of the current permit waiver was still to deal with the pre-1990 claim jumpers.

The relevant permit waiver sections of the bill did not change throughout the month of August 1993. In September of 1993 the bill was enrolled with the relevant portion placed in the language that eventually was finalized in the statute. The bill was chaptered on September 24, 1993.

The final bill analysis dated September 3, 1993 shows concurrence by the House and the Senate Amendments. It is apparent that the rewrite of the section from the Senate Amendment to its final form was administrative and not designed to change the Senates' intent.

The permit waiver is only relevant to claimants who had a pre-1990 release and failed to have a permit before January 1, 1990. A claimant is only ineligible for a permit waiver if the

release was before 1990 and the failure to have a permit before 1990 was intentional. That was the legislature's intent. It is not applicable to Mr. Kelsoe's situation.

F. The Fund Is Obligated To Implement The Fund Statute In A Manner That Effectuates The Legislature's Intent.

(i) California Law requires finding the Legislative Intent.

To construe or interpret a statute the primary objective is to determine the legislative intent of the enactment, all other rules of construction yield to this rule.

In the construction of a statute the intention of the Legislature ... is to be pursued, if possible ...; *Code of Civil Procedure Section 1859.*

The primary rule of statutory construction, to which every other rule as to interpretation of particular terms must yield, is that the intention of the Legislature must be ascertained if possible, and when once ascertained, will be given effect, even though it may not be consistent with the strict letter of the statute. *Marina Village v. California Coastal Zone Conservation Commission* (1976) 61 Cal. App. 3d 338, 392.

(ii) The Legislative Intent Must Be Followed Whether Or Not The Statute Is Ambiguous.

The United States Supreme Court has said:

But words are inexact tools at best, and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how clear the words may appear on superficial examination. *Harrison v. Northern Trust Co.* (1943) 317 U.S. 476, 479.

The courts resist blind obedience to the putative 'plain meaning' of a statutory phrase where literal interpretation would defeat the Legislature's central object. *Leslie Salt Co. v. S.F. Bay Conserv. And Develop. Comm.* (1984) 153 Cal. App. 3d 605, 614.

(iii) The Legislature Is Presumed To Be Aware Of The Board's Prior Decisions And The Prior Law.

In addition, the Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted

and to have enacted and amended statutes in the light of such decisions as have a direct bearing upon them." *People v. Overstreet* (1986) 42 Cal. 3d 891, 897.

(iv) Chronology of Enactment Is Relevant In Interpreting A Statute.

After reviewing the language of the amendment and the events that led to its passage, we are convinced that the electorate intended section 4 to apply to school districts.... *Arvin Union School District v. Ross* (1985) 176 Cal. App. 3rd 189.

In the present instance both the legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose. *California Mfrs. Assn. v. Public Utilities Commission* (1979) 24 Cal. 3d 836, 844.

The Legislative Counsel's Digest is a proper resource to determine the intent of the Legislature. (cites) Here the Legislative Counsel's Digest indicates unequivocally that the Legislature intended to change the law. *Five v. Chaffey Joint Union High School District* (1990) 225 Cal. App. 3d 1548, 1555.

(v) Statements by Proponents and Opponents:

Finally, the chairman of the State Bar subcommittee which was the driving force behind revision of the challenge for cause statute, wrote in a supporting memorandum: *Woodman v. Superior Court* (1987) 196 Cal. App. 407, 414.

The statement of the sponsor of legislation are entitled to be considered in determining the import of the legislation. *Kern v. County of Imperial* (1990) 226 Cal. App. 3d 391, 401.

4. The Fund Is Estopped From Denying Coverage Because Kelsoe Reasonably Relied On The Fund's Financial Responsibility Form.

Mr. Kelsoe has complied with UST operating permit requirements. As part of working with the local agencies, he obtained his financial responsibility from the Fund and paid his taxes. Nothing in the forms drafted by the Fund put him on notice that he could not rely on the Fund. Moreover, in a basic American principle of fairness, he has been paying UST fees for many years based upon the requirements of the law and his reasonable expectation that those fees went

to his benefit as a permitted tank owner. Basic fairness and the principles of estoppel prevent the Fund from reversing course now in his hour of need by refusing to provide coverage.

Generally, a government entity is bound by the same rules of estoppel that apply to private individuals. *Sagaser v. McCarthy* (1986) 176 Cal.App.3rd 288. There are many instances in which an equitable estoppel will lay against the government where justice and right require it. *Driscoll v. Los Angeles* (1967) 67 Cal.2nd 297. Importantly, an estoppel may be invoked against a governmental agency when it has the power to do that which it promised to do or that which it led the opposing party reasonably and justifiably to believe that it would do. *Merco Construction Engineers, Inc. v. Los Angeles Unified School District* (1969) 274 Cal.App.2nd 154. An important consideration is the degree of seriousness of the impact or effect of the negligent conduct or advise on the claimant. *Lee v. Board of Administration* (1982) 130 Cal.App.3rd 122. The essence of an estoppel is that a party to be estopped has by conduct led another to do that which he would of not otherwise have done and that as a result thereof, he has suffered injury. *Sanguansak v. Myers* (1986) 178 Cal.App.3rd 110.

In this case, the Fund is estopped from denying Petitioner's claim. The Fund set up a system that induces operators of petroleum USTs to believe that as long as they are currently in compliance with their operating permit and financial responsibility requirements, that they are eligible for coverage from the Cleanup Fund. Attached as Exhibit A to the Declaration of Jeff Lawson is a copy of the Certification of Financial Responsibility Form posted on the Underground Storage Tank Cleanup Fund website. The Fund example form does not state that if a tank operator has been out of compliance with its permit any time in the past or had an intentional permit violation that the Fund will not provide coverage. Rather, it specifically provides that the UST operator certify "it is in compliance." "Is" normally means "present." Black's Law Dictionary, supra. Thus "it is in compliance" means current compliance only.

Similarly, attached as Exhibit B to the Declaration of Jeff Lawson is the Financial Responsibility page from the Underground Storage Tank Cleanup Fund website. It states three requirements for the Fund to be used as financial responsibility mechanism:

- (1) Be the owner or operator of a petroleum UST;
- (2) Be in compliance with applicable financial responsibility requirements; and
- (3) Be in compliance with UST laws and regulations.

The plain language the Fund posted on its webpage speaks only of current compliance. Nothing in the Fund's language puts an owner or operator of petroleum UST on notice that a failure to comply with the permit requirement over eight years earlier would cause the Fund not to live up to the financial responsibility obligations.

Barbara Envoy
July 3, 2003
Page 14 of 15

Conclusion

To be eligible the claimant is only required to have complied with Section 25299.31 [the financial responsibility requirement] and the permit requirements of Chapter 6.7 (commencing with Section 25280) prior to filing a claim with the Fund. Claimant has met the eligibility requirements.

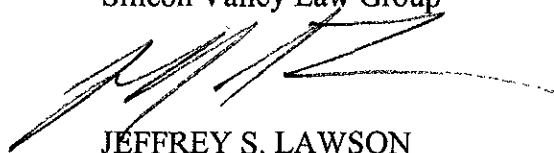
Mr. Kelsoe has been in compliance with his permit requirements and financial responsibility requirements since 1994. Mr. Kelsoe relied on the financial responsibility provisions of the Fund since 1994 and there is nothing in the Financial Responsibility Form to put him on notice that the Fund was not prepared to live up to its obligations under that program.

The release was not detected until 2002, eight years after Mr. Kelsoe came into compliance, and while he was in the praiseworthy activity of upgrading his underground storage tanks. The prior tank testing certifications show that the release occurred after Claimant was properly permitted.

There are no other funds available for the cleanup of the groundwater contaminated by MTBE in the Sunol Valley. Denial of this claim will unfairly punish the County of Alameda, the town of Sunol and the nearby residences. Leaving this problem untreated is contrary to the intent of the Legislature when it passed the Act.

For all of the above reasons, the Claimant respectfully requests to be found eligible.

Very truly yours,
Silicon Valley Law Group



JEFFREY S. LAWSON

JSL/lt

Enclosures: Declaration of Murray Kelsoe
Declaration of Rusty Reinhardt
Declaration of Jeffrey Lawson

Cc: Donna Drogos, Alameda County
Laurie Berger
Murray Kelsoe
John Reardon
Finley Boag
Roy Tovani

Barbara Envoy
July 3, 2003
Page 15 of 15

Betty Graham
Susan Torrence
Scott Haggerty

1 JEFFREY S. LAWSON, ESQ. (SBN 99855)
Silicon Valley Law Group
2 152 N. Third Street, Ste, 900
San Jose, Ca 95112
3 Telephone: (408) 286-6100
Facsimile: (408) 286-1400

4 Attorney for Petitioner
5 Murray Kelsoe

6 STATE WATER RESOURCES CONTROL BOARD
7 CLEAN WATER PROGRAM
8

9 In Re:) USTCF Claim No.: 017309
10 Petition of MURRAY KELSOE) DECLARATION OF MURRAY KELSOE
11)

12
13 I, Murray Kelsoe, declare:

14 1. I am the Claimant in the above referenced matter. If called as a witness I could and would
15 competently testify to following matters from my own personal knowledge.

16 2. In 1983, I purchased the Sunol Tree Gas Station at 3004 Andrade Road, Sunol,
17 California. In December of 1984, I replaced all the existing UST's with six new fiberglass tanks. I also
18 completely replaced the existing piping and installed new dispensers along with a tank leak electronic
19 monitor system. No contamination was discovered at that time.

20 3. Prior to 1990, I did not know that an Underground Storage Tank operating permit was
21 required from Alameda County. At that time I believed that a Bay Area Air Quality Management
22 District permit was all that was required.

23 4. I was inspected by different agencies at least six times before 1990. In none of the pre-
24 1990 inspections did the inspectors inform me that I needed a County of Alameda permit.

25 5. Sometime in 1991, I was informed for the first time that a County permit was required.
26 The reason I did not get a permit at that time is that I was told that first I needed to get the tanks tested.
27 In 1989 Chevron started zone pricing in October of 1989 (illegally charging me higher gas costs), the
28 earthquake of 1989 also hurt business, and also the fact that I lost my Chevron brand in December of

1 1991. As a result, my income was so diminished that I had to file Chapter 11 in January of 1993,
2 fourteen months after losing the Chevron brand. I had no money to test any tanks.

3 6. I went bankrupt in January 1993.

4 7. The reason I did not obtain a permit prior to the Alameda County District Attorney
5 bringing an enforcement action in 1994 is that my trustee and her accountant controlled all monies. My
6 trustee finally gave permission to test the tanks in 1994 (while working with the County). My
7 bankruptcy release was in April 1997.

8 8. My trustee settled the enforcement action by the County of Alameda by settlement
9 sometime in 1995. As part of that settlement I paid all back underground storage tank fees and taxes.
10 Since that date, I have stayed current with my underground storage tank fees and taxes.

11 9. I shut down the gas tanks at the station on December 22, 1998.

12 10. In July of 2001, I had accumulated enough money to upgrade the tanks and reopen the
13 Sunol Tree Gas Station. In April of 2002, I removed the old tanks pursuant to permit and installed six
14 new tanks and associated piping. At that time, I paid all my underground storage tank fees and taxes and
15 relied upon the Underground Storage Tank Cleanup Fund for my financial assurance.

16 11. From 1994, when I obtained my Alameda County underground storage tank permit,
17 through 1998 when I closed the USTs at the station, I relied on the Underground Storage Tank Cleanup
18 Fund Financial Responsibility Form.

19 12. When I filled out the Underground Storage Tank Cleanup Fund Financial Responsibility
20 form, I read it and it appeared to me that I was eligible for coverage. Moreover, I talked to various
21 regulators at Alameda County Environmental Health Services and they told me that I needed to fill out
22 the Financial Responsibility Form. Nothing in the form or my discussions with Alameda County
23 indicated that I would not be eligible for coverage under the Fund's Financial Responsibility Program. I
24 relied on the Fund's Financial Responsibility Program and it is my understanding that Alameda County,
25 in providing me with a permit, also relied upon the Fund providing Financial Responsibility for my gas
26 station.

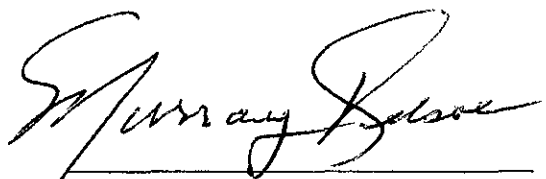
27 13. My bankruptcy estate was closed in April of 1997.

28 14. To date, I have expended over \$95,000 in responding to the release from the underground

1 storage tanks at the Sunol Tree Gas Station. The gas station is not very successful and I am unable to
2 hire any employees. I work seven days a week, from 4 a.m. to 9 p.m. I have been informed that
3 petroleum cleanups involving MTBE are very expensive and I do not have the assets to undertake the
4 cleanup myself. Due to the Silicon Valley melt down and the post war syndrome coupled with the fact
5 that I see 40,000 less cars per day on the freeway because of the Silicon Valley 149,000 job losses over
6 the last 2.5 years, my service station is not very successful.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct.

9
10 Dated: June ²⁶ __, 2003


Murray Kelsoe

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COPY

Alameda County
JUL 09 2003
Environmental Health

1 JEFFREY S. LAWSON, ESQ. (SBN 99855)
Silicon Valley Law Group
2 152 N. Third Street, Ste, 900
San Jose, Ca 95112
3 Telephone: (408) 286-6100
Facsimile: (408) 286-1400

4 Attorney for Petitioner
5 Murray Kelsoe

6 **STATE WATER RESOURCES CONTROL BOARD**
7 **CLEAN WATER PROGRAM**

9 In Re:) **USTCF Claim No.: 017309**
10 Petition of MURRAY KELSOE) **DECLARATION OF RUSTY RINEHART**
11)

12
13 I, Rusty Rinehart, declare:

14 1. I am an attorney licensed in the state of California. If called as a witness I could and
15 would competently testify to following matters from my own personal knowledge.

16 2. I have represented the California Independent Oil Marketers Association since the middle
17 1980s. In 1988 I was involved in the lobbying efforts to create the Underground Storage Tank Cleanup
18 Fund. (UST Fund) The California Independent Oil Marketers Association was heavily involved in many
19 of the hearings related to the Fund legislation.

20 3. I worked closely with the, lobbyist for the California Independent Oil Marketers
21 Association. I even attended some hearings before the California State Senate and the Assembly in
22 regard to the proposed UST Fund legislation. Moreover, I received regular reports from our lobbyist in
23 regard to those hearings that I could not attend.

24 4. The California Independent Oil Marketers Association is comprised of approximately
25 450 independent petroleum marketers throughout California. When Federal legislation was passed in
26 1986 requiring those who owned or operated underground storage tanks containing petroleum to have
27 minimum liability insurance requirements there was no insurance available in California to meet this

1 demand. In response to this requirement many businesses would simply have had to been shut down. As
2 had been done in several other states, but not that successfully, was the development of a UST Tank
3 Fund. In a UST Tank Fund industry would pay into it on a product throughput basis thus creating a
4 fund for which claims could be made in the event there was a unauthorized release. With minimum
5 deductible requirements, it would also satisfy the federal minimum insurance requirements. Thanks in
6 large part to the independent sector of the industry such a program became law in California in 1989;
7 with implementing regulations passed by the SWRCB in 1991.

8 5. The permit program in California was already in place when the UST Fund came into
9 fruition by legislation passed in California in 1984. One of the principal requirements in achieving
10 eligibility to the fund was the requirement that the owner or operator have a valid permit in place. The
11 rationale being that those owners who had complied with the tank laws all along would be unfairly
12 positioned for tank funds if they were competing with tank owners who purposefully ignored the
13 existing tank laws. In addition there needed to be protection from those who ignored the payment of the
14 throughput fee. On the other hand it was recognized early on that many California counties simply did
15 not have the funds or the personal experienced enough to set up a permitting program for UST's. Thus
16 there was established in the law a "quasi amnesty" program or waiver that allowed those operators early
17 on in the UST Fund's operation to show that they exercised their best efforts to comply with the law but
18 circumstances beyond their reasonable control prevented them from doing so. This was also intended to
19 prevent a run on what was a limited amount of funds trying to address an overwhelming number of
20 claims in the early 1990's.

21 6. I do not believe it was the intent of the authors of the bill or its sponsors and supporters to
22 forever bar an owner or operator from participation in the program if he may have had permit problems
23 years ago but has mended those issues and has had a recent record of permitted operations. It has also
24 been the intent of the program to fairly weigh all the equities of a claim filed with the fund. If the tank
25 owner has obtained its permit and met its financial responsibility requirement prior to learning of a
26 petroleum release, that is a strong equitable argument for allowing the tank owner participation in the
27 UST Fund.

1 7. Finally, one of the enabling declarations of the 1989 law was to prevent and correct
2 threats to public health and water quality through a comprehensive response program. Barring an
3 individual from access to the UST Fund for a permit violation that occurred years before discovery of
4 the release is not consistent with the purposes of the UST Fund.

5 I declare under penalty of perjury under the laws of the State of California that the foregoing is
6 true and correct.

7
8 Dated: June 25, 2003



Rusty Reinhardt

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COM No.	REMOTE STATION	START TIME	DURATION	PAGES	RESULT	USER ID	REMARKS
858	408-286-1400 +	06-13 09:23	01' 21	03/03	OK		

Jeff Lawson

7499402046

**ALAMEDA COUNTY
 HEALTH CARE SERVICES**



AGENCY
 DAVID J. KEARS, Agency Director

June 13, 2003

Mr. Murray Kelsoe
 P.O. Box 176
 Alamo, CA 94507

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

Subject: RO0002448, Sunol Tree Gas Station, 3004 Andrade Road, Sunol, CA

Dear Mr. Kelsoe:

Alameda County Environmental Health (ACEH) staff has received the "Work Plan for Soil and Water Investigation," dated May 8, 2003, prepared by Clearwater Group (Clearwater). We have examined the work plan and determined it to be unacceptable for submittal to ACEH. For reasons stated below, ACEH is unable to review the work plan. This notifies you that your due date for the completed work plan is not extended. Please submit the work plan without delay.

Additionally, this letter provides comments on the "Well Sampling Report," dated May 6, 2003, prepared by Clearwater.

WELL SAMPLING REPORT COMMENTS

Clearwater recommends shutting down impacted domestic/irrigation water supply well 04S01E20G2 located on the adjacent private property and plumbing the service connection at that property to Mr. Kelsoe's water supply well located on the Sunol Tree Gas Station site. They recommend this as a "solution" to the MTBE contamination of the private well.

The potential consequences of Clearwater's proposed solution are serious and potentially disastrous. Clearwater's proposed action would significantly increase the extraction rate from Mr. Kelsoe's supply well, a well located on the gas station property. The increased pumping rate could draw contaminants deeper into the aquifer and into the screens of Mr. Kelsoe's supply well - a well that has up until now been free of detectable MTBE contamination. In addition to potentially causing Mr. Kelsoe's well to become contaminated, such an action has the potential to cause deeper migration of the contaminant plume and further degradation of a regional drinking water aquifer. Clearwater's recommendation is thus deemed unacceptable.

We further note that Clearwater describes this solution as providing "...protection for human health and the environment, with the least cost..." however: it does not appear that other options

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



June 13, 2003

Mr. Murray Kelsoe
P.O. Box 176
Alamo, CA 94507

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

Subject: RO0002448, Sunol Tree Gas Station, 3004 Andrade Road, Sunol, CA

Dear Mr. Kelsoe:

Alameda County Environmental Health (ACEH) staff has received the "Work Plan for Soil and Water Investigation," dated May 8, 2003, prepared by Clearwater Group (Clearwater). We have examined the work plan and determined it to be unacceptable for submittal to ACEH. For reasons stated below, ACEH is unable to review the work plan. This notifies you that your due date for the completed work plan is not extended. Please submit the work plan without delay.

Additionally, this letter provides comments on the "Well Sampling Report," dated May 6, 2003, prepared by Clearwater.

WELL SAMPLING REPORT COMMENTS

Clearwater recommends shutting down impacted domestic/irrigation water supply well 04S01E20G2 located on the adjacent private property and plumbing the service connection at that property to Mr. Kelsoe's water supply well located on the Sunol Tree Gas Station site. They recommend this as a "solution" to the MTBE contamination of the private well.

The potential consequences of Clearwater's proposed solution are serious and potentially disastrous. Clearwater's proposed action would significantly increase the extraction rate from Mr. Kelsoe's supply well, a well located on the gas station property. The increased pumping rate could draw contaminants deeper into the aquifer and into the screens of Mr. Kelsoe's supply well – a well that has up until now been free of detectable MTBE contamination. In addition to potentially causing Mr. Kelsoe's well to become contaminated, such an action has the potential to cause deeper migration of the contaminant plume and further degradation of a regional drinking water aquifer. Clearwater's recommendation is thus deemed unacceptable.

We further note that Clearwater describes this solution as providing "...protection for human health and the environment, with the least cost..." however; it does not appear that other options for a water source were considered and no formal analysis of the cost of various alternatives was presented. Clearwater's proposal to make a private property that has had its own water source dependant upon a water supply from an adjacent gas station is unacceptable.

Finally, the report incorrectly depicts the location of well 04S01E20B1, which appears to be mapped as 115' east of well 04S01E20A1 rather than 50' as stated by Clearwater in the text. Also, the well described in the report as 4S01E20H2 does not appear to be the well that Clearwater sampled. The DWR well log for 4S01E20H2 describes its location as approximately 2000 feet south of I-680, and 1000 feet east of Andrade Road. This is not the well identified by Clearwater in their report.

EXAMPLES OF WORK PLAN DEFICIENCIES

Following are several examples of why Clearwater's "Work Plan for Soil and Water Investigation," dated May 8, 2003, is unacceptable. These comments are provided to the responsible party in order to highlight some of the major deficiencies of the work plan. These deficiencies are substantial enough to cause ACEH to reject the work plan.

1) Site Conceptual Model – The initial site conceptual model prepared for this site is not adequate. Although substantial information is readily available in DWR well logs for the immediate vicinity of the site and DWR bulletins and other published reports for this specific groundwater basin, it appears that Clearwater limited their review of regional geological/hydrogeological references to a cursory survey of general geologic and topographic maps in addition to the limited data obtained from their shallow investigation at the subject site. This level of work is not sufficient to develop the initial SCM as previously requested of you. Also, Clearwater proposes several alternative hypotheses for various release scenarios but the scope of work proposed in the workplan is inadequate to confirm or refute them. Lastly, the rationale and details for piezometer installation and the supplemental geologic assessment need to be based on the initial SCM, which, as discussed above, is inadequately described in Clearwater's work plan.

2) Transect of Monitoring Wells – The work plan proposes to place a transect of wells in the same location as the temporary piezometers. These locations do not correspond to a transect oriented perpendicular to the expected axis of the contaminant plume as was requested. The temporary piezometers are intended to determine groundwater flow direction so that the transect can be oriented appropriately. Clearwater's proposal appears to ignore that intent.

3) Nested Wells – Clearwater proposes to install nested wells at this site. Nested wells are not acceptable at contaminated sites due to difficulties ensuring reliable seals between sampling zones. Poor seals can result in leakage between zones and are therefore not allowed. Additionally, the proposed well construction diagram appears to combine elements of several different well types, none of which are shown correctly. Among many of the discrepancies, the diagram shows the filter pack extending from 4' below ground surface to the total depth for each sampling interval without any seals between the monitored zones. Moreover, the screen lengths are shown as being 10-feet-long. This screened interval is too long for depth-discrete groundwater monitoring. In summary, aside from providing monitoring data that would likely be unreliable, Clearwater's proposed multi-level well construction has the potential to cause cross contamination of the aquifer.

4) UST Excavation Spoils Pile – The soil stockpile characterization and disposal activities previously requested of you have not been performed. Your proposal to continue to leave the waste soil generated during your UST removal and replacement activities in stockpiles at this site is not acceptable. If you do not dispose of this soil pile by July 13, 2003, we will refer your case to the County District Attorney for nuisance abatement. You could then be facing civil and criminal prosecution.

CONCLUSION

In summary, the work plan is poorly written and confusing, has numerous errors, and lacks logical presentation of essential background information and technical details of the proposed scope of work. The poor quality and content of the work plan suggests that Clearwater is not familiar with current MTBE investigation practices or the appropriate standard of care at high-risk groundwater contamination sites. In particular, the nested well 'transect' work as proposed in the work plan causes ACEH to question the consultant's understanding of dissolved plume characterization techniques and their ability to install a groundwater monitoring network protective of groundwater resources. Further, Clearwater's proposal to increase pumping of a supply well at a

Mr. Murray Kelsoe
June 13, 2003, Page 3

contaminated site has the potential to further jeopardize groundwater resources and is unacceptable.

AGENCY OVERSIGHT

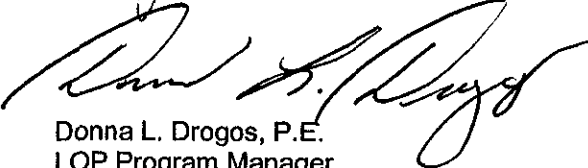
If it appears as though significant delays are occurring or reports are not submitted as requested, we will refer your case to the County District Attorney, for enforcement follow up. Enforcement follow up may include administrative action or monetary penalties of up to \$10,000 per day for each day of violation of the California Health and Safety Code, Division 20, Chapter 6.75.

If you have any questions please call Mr. Scott Seery at (510) 567-6783.

Sincerely,



Scott O. Seery, CHMM
Hazardous Materials Specialist



Donna L. Drogos, P.E.
LOP Program Manager

cc: Mr. Barney Popkin
Clearwater Group
229 Tewksbury Ave
Point Richmond, CA 94801

Ms. Betty Graham
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Mr. Matt Katen
Zone 7 Water Agency
5997 Parkside Drive
Pleasanton, CA 94588-5217

Susan Torrence, Esq.
Alameda County District Attorneys' Office
7677 Oakport Street, Suite 650
Oakland, CA 94621

Mr. Roy Tovani
PO Box 333
Sunol, CA 94586

Mr. Scott Haggerty
Alameda County Board of Supervisors
1221 Oak Street, Suite 536
Oakland, CA 94612

Jeffery Lawson, Esq.
Silicon Valley Law Group
152 North Third Street, Suite 900
San Jose, CA 95112

Finley Boag, Esq.
4558 Second Street
Pleasanton, CA 94566

Mr. Murray Einarson
Einarson & Associates
2271 Old Middlefield Way
Mountain View, CA 94043

A. Levi, D. Drogos, S. Seery



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental

Division of Financial Assistance

1001 I Street • Sacramento, California 95814
P.O. Box 944212 • Sacramento, California • 94244-2120
(916) 341-5714 • FAX (916) 341-5806 • www.swrcb.ca.gov/cwphome/ustcf

Gray Davis
Governor

Protection The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov.

MAY 12 2003

Mr. Murray Kelsoe
229 Tewksbury Ave
Point Richmond, CA 94801

Alameda County
MAY 19 2003
Environmental Health

Dear Mr. Kelsoe:

UNDERGROUND STORAGE TANK CLEANUP FUND (FUND), FUND MANAGER
DECISION: CLAIM NUMBER 17309; FOR SITE ADDRESS: 3004 ANDRADE RD, SUNOL

I received a request for a Fund Manager Decision dated January 14, 2003, submitted on your behalf, by Ms. Julie Rose. In Ms. Rose's letter, she requested that I reconsider the Fund's Staff Decision dated December 9, 2002. Fund staff denied your claim because you had not complied with the permitting requirements of Chapter 6.7, Health & Safety Code (H&S Code). In addition, you were denied a waiver to the permitting requirements. Ms. Rose contends that you paid for the previous non-compliance through civil penalties and you are currently in compliance with all requirements with regard to the remediation. Ms. Rose argues that to deny you access to the Fund is punishing you twice for a single indiscretion.

After reviewing the facts and supporting documentation, I must concur with the staff's decision.

Authority

With regard to the permit requirement, Section 25299.57(d)(3)(A) of the H&SC states, in part, that a claimant may be paid if:

"...the claimant has complied with...the permit requirements of Chapter 6.7 (commencing with Section 25280)."

In addition, Section 25284(a)(1) states, in part:

"...no person shall own or operate an underground storage tank unless a permit for its operation has been issued by the local agency..."

With regard to eligibility for a permit waiver, Section 25299.57 (d)(3)(B)(i) states, in part:

"The claimant was unaware of the permit requirements prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit"

Background

According to your Fund application, submitted on June 25, 2002, you acquired the subject site in 1983. In December 1984, you installed six underground storage tanks (UST). Operation of the USTs began in 1985 and continued until April 2002, when five of the USTs were removed and replaced with eight new USTs. The sixth original UST was left in place. Permits to own/operate the USTs were not obtained until October 1994. Evidence of contamination was discovered during the UST removal/replacement at which time Alameda County Health Care Services (County) issued a directive to assess the extent of the contamination. After reviewing your application/supporting documents, and discussing the site with the County, Fund staff determined the claim ineligible for participation in the Fund pursuant to the H&SC sections cited above.

Discussion

Ms. Rose argues that while it is true the USTs were not permitted until 1994 and there were compliance problems, you have paid for any non-compliance through civil penalties. She indicates that you are now in compliance and the site is being remediated. Denial of access to the Fund is double punishment.

In order to participate in the Fund, claimants must meet specific eligibility requirements. One such requirement requires that a claimant has complied with the permit requirements of Chapter 6.7. The County has confirmed that they began implementing their UST program in 1987. In 1988, the County notified all known UST owners of the UST law and operating permit requirements. In the present case, you were also notified, through subsequent letters¹ and meetings, of the requirement to obtain a permit and comply with the permit requirements. Since you failed to comply with the permit requirements, the County referred the case to the District Attorney in August 1994.

The District Attorney explained that you were in violation of section 25284, failure to obtain an operating permit, for a period of ten years and in violation of section 25292, failure to provide proof of having ever used an approved system to monitor the USTs for leaks. You entered into a "Stipulation and Modified Judgment", which was filed on December 19, 1995. The judgment ordered you to pay \$125,000 for your non-compliance. As I understand from Ms. Rose's letter, this judgment has been paid.

Decision

Based on the information above, I must concur with the staff's Decision to deny the claim pursuant to the H&S Code sections cited above. The eligibility requirements for participation in the Fund are to encourage timely compliance with UST law and, in turn, possibly minimize or

¹ County mailed "Notice of Violation" on April 24, 1991. Subsequently, a follow-up "Second Notice of Violation" on June 5, 1991.

Murray Kelsoe

-3-

even avoid unauthorized releases. The failure to obtain the required permit is not merely a paperwork violation. The material requirements that go together with the permit include proper testing to detect whether a release from the tank has occurred and the initiation of corrective action measures. As the result of this violation of the H&S Code, an unauthorized release occurred and the resultant contamination has been left without investigation or cleanup for a period of several years, allowing the contamination to spread farther from the source of the release. No action at this late date would rectify this violation.

Therefore, you are ineligible for placement on the Priority List for this occurrence. In addition, since you were aware of the permit requirement, you are ineligible for a waiver to the permit requirement. If a release is discovered from the new USTs that you installed in 2002, and you have continued to remain in compliance with all applicable requirements associated with USTs, you may submit an application for any new occurrences.

NOTE: Sections cited are found in the Petroleum Underground Storage Tank Cleanup Fund Regulations, Title 23, Division 3, Chapter 18, of the California Code of Regulations.

If you disagree with this Fund Manager Decision, you may request a Final Division Decision from the Chief of the Division. A request should be sent to:

Barbara L. Evoy, Chief USTCF Claim #017309
Division of Financial Assistance
State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120

A request to the Chief of the Division must include, at a minimum: (1) a statement describing how the claimant is damaged by the prior Fund Manager Decision; (2) a description of the remedy or outcome desired; and (3) an explanation of why the claimant believes the Fund Manager Decision is erroneous, inappropriate or improper.

If you do not request a Final Division Decision from the Chief of the Division within sixty (60) calendar days from the date of this letter, the Fund Manager Decision will then become final and conclusive and steps will be taken to remove your claim from the Priority List at the end of the 60 day period.

If you have any questions, please call Shari Knieriem at (916) 341-5714.

Sincerely,



Allan V. Patton, Fund Manager
Underground Storage Tank Cleanup Fund

MAY 12 2003

Murray Kelsoe

-4-

cc: Mr. Donna Drogos, LOP Program Manager
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502-6577

California Environmental Protection Agency

 *Recycled Paper*

Murray Kelsoe
3004 Andrade Road
Sunol, CA 94586

April 16, 2003

Via Federal Express

Donna L. Drogos
LOP Program Manager
Environmental Health Services
1131 Harbor Bay Parkway, Ste. 250
Alameda CA 94502-6577

Scott Seery
Hazardous Materials Specialist
Environmental Health Services
1131 Harbor Bay Parkway, Ste. 250
Alameda CA 94502-6577

Re: Fuel Leak Case No. RO2448
Sunol Tree Gas: 3004 Andrade Road, Sunol, CA

Dear Ms. Drogos and Mr. Seery:

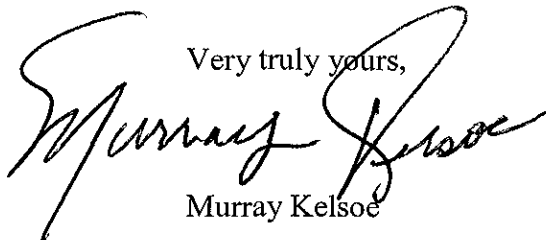
This letter is to authorize Alameda County Environmental Health Services to send all communications regarding the above referenced case directly to my attorney, Jeffrey S. Lawson. Also, please send a copy to me.

His contact information is as follows: Jeffrey S. Lawson
Silicon Valley Law Group
152 N. Third Street, Suite 900
San Jose, CA 95113

Tel: 408-286-6100
Fax: 408-286-1400
E-mail: jsl@svlg.com

If you have any questions, please contact Mr. Lawson.

Very truly yours,



Murray Kelsoe

Cc: Jeff Lawson

10058486

Finlay J. Boag

ATTORNEY AT LAW
4558 SECOND STREET
PLEASANTON, CA 94586

TEL (925) 846-6710
FAX (925) 426-9369

April 14, 2003

Via Facsimile

Donna Drogos
I.OP Program Manager
Environmental Health Services
Environmental Protection
1131 Harbor Bay Parkway< ste 250
Alameda, CA 94502-6577

Re: Fuel Leak Case No. Ro2448
Sunol Tree Gas Station, 3004 Andrade Road, Sunol, CA

Dear Ms. Drogos:

Please be advised that I have been retained by Mr. Tovani to ensure that his property is cleaned up. As you know, Mr. Tovani owns the property next to Mr. Murray Kelsoe's Sunol Tree gas station. As you also know, Mr. Kelsoe's leaking fuel tanks have severely contaminated Mr. Tovani wells and property.

In order to assist Mr. Tovani's I am hopeful that we could have an in-person meeting (at Mr. Tovani's property if possible) so that my client and I could understand the following:

- 1) What has been done to assess the magnitude of the contamination to Mr. Tovani's property?
- 2) What else needs to be done to assess the magnitude of the contamination to Mr. Tovani's property?
- 3) What role does your agency play regarding the contamination of Mr. Tovani's property?
- 4) Does your agency plan on ordering Mr. Kelsoe to take action to clean up the all the damage his leaking fuel tanks have caused to Mr. Tovani's property?
- 5) If your agency has formulated a plan for the clean up Mr. Tovani's property, what is the plan and what is the time frame for its completion?

COM No.	REMOTE STATION	START TIME	DURATION	PAGES	RESULT	USER ID	REMARKS
715	+	04-15 10:28	00' 32	01/01	OK		

7499402046

**ALAMEDA COUNTY
 HEALTH CARE SERVICES**



AGENCY
 DAVID J. KEARS, Agency Director

ENVIRONMENTAL HEALTH SERVICES
 ENVIRONMENTAL PROTECTION
 1131 Harbor Bay Parkway, Suite 250
 Alameda, CA 94502-6577
 (510) 667-0700
 FAX (510) 337-9335

April 7, 2003

Mr. Murray Kelsoe
 P.O. Box 176
 Alamo, CA 94507

Re: Fuel Leak Case No. RO 2448, Sunol Tree Gas, 3004 Andrade Road, Sunol

Dear Mr. Kelsoe:

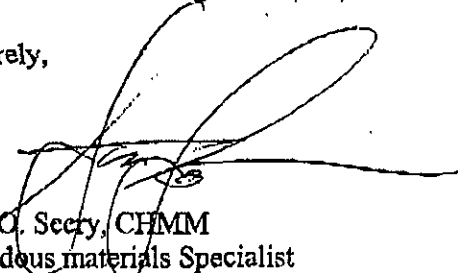
This letter is in response to our receipt of a facsimile transmittal from your attorney, Jeff Lawson. Mr. Lawson's transmittal was in regards to the submittal of a Soil and Water Investigation (SWI) workplan, and sampling from the several water supply wells in proximity to the subject site.

We were informed on April 4, 2003, by Clearwater Group's John Reardon that the nearby water supply wells will be sampled the week of April 6, 2003. This office expects the report of this sampling effort to be received by this office by Friday, April 11, 2003.

The due date for submittal of the SWI workplan and associated elements (e.g., Site Conceptual Model, etc.) has been extended to April 25, 2003.

Please call the undersigned at (510) 567-6783 should you have any questions.

Sincerely,


 Scott C. Seery, CHMM
 Hazardous materials Specialist

cc: Betty Graham, RWQCB

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 1
To J. LAWSON	From T. DROGOS	
Co.	Co. ACEN	
Dept.	Phone # 510-567-6721	
Fax # 408-286-1400	Fax #	

Seery, Scott, Env. Health

From: Seery, Scott, Env. Health
Sent: Tuesday, April 08, 2003 3:49 PM
To: 'bpopkin@clearwatergroup.com'
Cc: Drogos, Donna, Env. Health
Subject: RE: Verbal access granted to sample all five wells, Sunol Tree Service, CB021C

Hi Barney

Thank you for the updates.

For those wells with active pumps and spigots, please allow the water to run several minutes before sampling in case the water trapped in the line is stagnant.

Some clarifications:

Well 4S/1E-20-A2 appears to be located on one of the FRANCO properties on Andrade Road; paragraph 4 of your e-mail suggested the well at that location was well 4S/1E-20-A1.

Well 4S/1E-20-A1 actually appears to be at the Sunset Riding Academy (as you mentioned earlier in your post), 7587 Athenour Way, ASN 096-0001-008-07, on property owned by BERKELEY READY MIX (Mort Calvert, 925-862-2257). The record also suggests that only one well is at that location.

Well 4S/1E-20-B1 appears to be located at 7645 Athenour Way, on one of two parcels in that general area (-010-05 or -008-05). Both are owned by BERKELEY READY MIX.

Well 4S/1E-20-H2 may or may not be on the parcel which is now an open pit. The two parcels are 096-0001-011-08 and 011-09. It appears that the open pit is located on -011-08.

Thanks again for the update.

Scott

-----Original Message-----

From: Barney [mailto:bpopkin@clearwatergroup.com]
Sent: Tuesday, April 08, 2003 12:30 PM
To: Scott O. Seery/ACHCSA (E-mail)
Cc: John Reardon/Clearwater (E-mail); Brian Pierskalla/Clearwater (E-mail); Jessica Chiaro/Clearwater (E-mail)
Subject: Verbal access granted to sample all five wells, Sunol Tree Service, CB021C

Hi Scott,

Here is our update on sampling domestic wells in the vicinity of Sunol Tree Service per your request and meeting yesterday afternoon at 3 p.m. We have verbal access granted to sample all five wells, though reportedly, a Berkeley Ready Mix well 4S/1E-20-H2 is possibly destroyed, according to Mort Calvert.

We've called Roy Tovani/T-Bear Ranch, 3000 Andrade Road (1 well, 4S/1E-20-G2) at 925-862-2340, spoke with Roy and got his okay to sample his well on Thursday, April 10, 2003.

We've called Mort Calvert/Sunset Riding Academy, 7587 Athenour Way (1 well, 4S/1E-20-A1) & Berkeley Ready Mix, 7645 Athenour Way (2 wells: 4S/1E-20-B1

(Athenour property well; no street address, 4S/1E-20-H2 - possibly destroyed) at 925-862-2992, Fax 925-862-0229, cell 925-321-6012), left a voice mail message for him to call Brian to confirm when we can sample, and what pumping system he might have in-place, etc. I continued calling, and was able to reach Mort and get his verbal okay to sample his three wells. Mort says he thinks that the 4S/1E-20-H2 well is destroyed because there is an open pit in that area. Mort will try to coordinate with his grounds manager, Bob Saia (direct line 925-835-1236), who is off today. We hope to be onsite on Thursday, April 10, 2003, to sample these wells.

We've called John Franco (1 well, 4S/1E-20-AI) at 925-862-0535 several times. There is no answering machine. John and Joseph have unlisted phone numbers according to telephone information. Mort Calvert says that this well is on the County Drives Golf Center; I called information and got 925-862-0252 as the business address for the Golf Center at 3200 Andrade Road. I called the number, spoke to a "Bill" who said it would be okay with him if we sample the well; Bill gave me a cell phone for John Franco, 925-200-5070. I left a message on this phone, called again, spoke with John and got his verbal okay to sample the well on Thursday. John says it is an irrigation production well with a pump and faucet. John said he'll call ahead to the Golf Center to alert them.

Therefore, we plan to be onsite on Thursday, April 10, 2003, to sample the five wells that you have directed us to sample, access permitting. We are preparing site access agreements for the property owners and are making arrangements for the analytical laboratory work.

Barney P. Popkin, RG, REA, CHMM
Principal Geologist, Technical Director
Clearwater Group - Environmental Services
229 Tewksbury Avenue
Point Richmond (nr San Francisco), CA 94801
Office 510.307.9943 x 227, fax 510.232.2823
Mobile 415.378.4365, bpopkin@clearwatergroup.com

Tracking:

Recipient

'bpopkin@clearwatergroup.com'

Drogos, Donna, Env. Health

Delivery

Delivered: 4/8/2003 3:49 PM

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



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

April 7, 2003

Mr. Murray Kelsoe
P.O. Box 176
Alamo, CA 94507

Re: Fuel Leak Case No. RO 2448, Sunol Tree Gas, 3004 Andrade Road, Sunol

Dear Mr. Kelsoe:

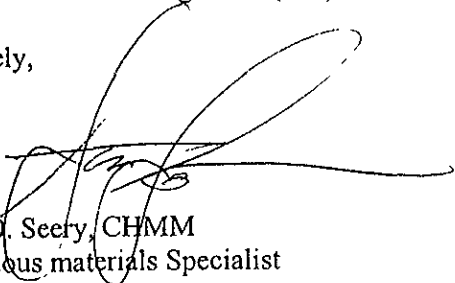
This letter is in response to our receipt of a facsimile transmittal from your attorney, Jeff Lawson. Mr. Lawson's transmittal was in regards to the submittal of a Soil and Water Investigation (SWI) workplan, and sampling from the several water supply wells in proximity to the subject site.

We were informed on April 4, 2003, by Clearwater Group's John Reardon that the nearby water supply wells will be sampled the week of April 6, 2003. This office expects the report of this sampling effort to be received by this office by Friday, April 11, 2003.

The due date for submittal of the SWI workplan and associated elements (e.g., Site Conceptual Model, etc.) has been extended to April 25, 2003.

Please call the undersigned at (510) 567-6783 should you have any questions.

Sincerely,


Scott O. Seery, CHMM
Hazardous materials Specialist

cc: Betty Graham, RWQCB
Shari Knieriem, SWRCB UST Fund
Matt Katen, Zone 7 Water Agency
Scott Haggerty, Alameda Co. Board of Supervisors
Susan Torrance, Alameda Co. District Attorney's Office
Barney Popkin, Clearwater Group, 229 Tewksbury Ave., Pt. Richmond, CA 94801
Roy Tovani, P.O. Box 333, Sunol, CA 94566
A. Levi, D. Drogos



SVLG

SILICON VALLEY LAW GROUP

A LAW CORPORATION

Jeffrey S. Lawson

jsl@svlg.com

April 4, 2003

Via Facsimile & U.S. Mail

Donna L. Drogos
LOP Program Manager
Environmental Health Services
Environmental Protection
1131 Harbor Bay Parkway, Ste. 250
Alameda CA 94502-6577

Alameda County
APR 09 2003
Environmental Health

Re: Fuel Leak Case No. R02448
Sunol Tree Gas Station, 3004 Andrade Road, Sunol, CA

Dear Ms. Drogos:

This letter is in response to your letter of March 20, 2003 and also in follow up to our telephone conversation of March 26, 2003. I have been retained by Murray Kelsoe to assist him in complying with your agency's directives and to assist him in appealing the denial of coverage by the Underground Storage Tank Cleanup Fund (USTCF). As you know, Mr. Kelsoe has extremely limited financial resources. Although the extent of the release at Sun Tree Gas Station is currently unknown, generally MTBE releases are extremely expensive to investigate and remediate. The USTCF was created to insure the protection of public health and safety, to provide hard to obtain environmental insurance coverage, to provide financial assistance to small businesses that have limited financial resources and to ensure timely compliance with the law governing underground storage tanks. *California Health & Safety Code §25299.10*. Mr. Kelsoe has relied on the USTCF financial assurance provisions for almost ten years. It is important that the USTCF step up to its' obligations in regard to the Sunol Tree Gas Station and we request your assistance in obtaining fund coverage. In the meantime, despite his extremely limited financial resources, it is my client's goal to comply to the best of his ability with the directives of your agency.

I have been told that the video survey of the Sunol Tree Gas Station well has been completed and presented to Environmental Health Services. From our discussion, it is my understanding that the next most critical task set forth in your March 20, 2003 letter is the water supply well sampling. Yesterday, Clearwater Group, Sun Tree Gas Station's environmental consultant, provided me with a letter proposal for completing that task. The Clearwater letter is attached hereto. As you can see, it will take 3-4 weeks after your approval to complete this task and to present you with a report. We apologize for the delay, but it is took until yesterday to scrape together the necessary funds to undertake that task.

Donna L. Drogos
April 4, 2003
Page 2 of 2

In regard to the due dates set forth in the March 20, 2003 letter, we respectfully request an extension of the date for submitting the water supply sampling report to May 9, 2003. We also request an extension of the April 4, 2003 date for completion of disposal of UST excavation soils pile and submission of a work plan to June 30, 2003.

We look forward to working with the Environmental Health Services to resolve this matter.

Very truly yours,
Silicon Valley Law Group



JEFFREY S. LAWSON

JSL/lt

Enclosure: Clearwater Proposal

Cc: Murray Kelsoe
John Reardon
Matt Katen
Roy Tovani
Betty Graham
Susan Torrence
Scott Haggerty



229 Tewksbury Ave. * Pt. Richmond, CA 94801
 Telephone 510-307-9943 * Fax Line 510-232-2823

Limited Access Drilling-Phase I Environmental Assessments-Subsurface Investigations-
 Remediations Responsible Party Studies-Litigation Support-Underground Storage Tank Studies-
 Asbestos Inspections.

FACSIMILE TRANSMISSION

TO: Scott Seery

FAX #: 510 337 9335

NUMBER OF SHEETS (INCLUDING THIS ONE): 4

DATE: 4/4/03 JOB NUMBER: CB021C

MESSAGE: Per Sunal Tree Service
Stockpiled soil analyses - from
Clearwater's PSA, Appendix A,
March 14, 2003 report - FYI/use.
Note low levels of petroleum products and
lead.

FROM: Brian Pierstalla/Barney Popkowi
RG

IF YOU DID NOT RECEIVE THE COMPLETE TRANSMISSION,
 PLEASE CALL 510-307-9943

THIS FAX MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE
 USE OF PERSON(S) NAMED ABOVE WHO HAVE A RIGHT OF PRIVACY. IF YOU ARE NOT AN
 INTENDED RECIPIENT, YOU ARE NOTIFIED THAT ANY DISCLOSURE DISSEMINATION DUPLICATION
 OF THIS FAX IS NOT AUTHORIZED, AND NO WAIVER OF ANY PRIVILEGE OR CONFIDENTIALITY IS
 INTENDED BY YOUR RECEIPT OF THIS TRANSMISSION. IF YOU HAVE RECEIVED THIS FAX IN ERROR,
 PLEASE NOTIFY US BY COLLECT TELEPHONE CALL AND RETURN IT SO WE MAY REDIRECT IT THANK
 YOU.

TABLE 2
SUMMARY OF LABORATORY ANALYSES
SOIL SAMPLES FROM DISPENSER AND PIPING AREAS, AND SOIL STOCKPILES

Sunol Tree Gas
3004 Andrade Road
Sunol, California 94586

Sample No.	TPHg (mg/kg)	TPHd (mg/kg)	TPHmo (mg/kg)	Benzene (mg/kg)	Toluene (mg/kg)	Ethylbenzene (mg/kg)	Xylenes (mg/kg)	MTBE (mg/kg)	Lead (mg/kg)
Soil Samples from Piping Trench Area									
PT1-2.5'	1.5	80	53***	ND	ND	0.0072	0.053	0.095	10.5
PT2-4'	150	61**	65***	ND	1.0	2.4	20	5.9	8.01
PT3-4'	9.2	14**	36***	ND	ND	0.039	0.67	1.1	9.33
Soil Samples from under Dispenser Area									
DSP1-3'	ND	65	26***	ND	ND	ND	ND	ND	10.3
DSP2-3'	ND	38	45***	ND	ND	ND	ND	0.79	9.27
DSP2-3'	ND	3.5	21***	ND	ND	ND	ND	0.0058	9.51
DSP4-3'	ND	5.3	20***	ND	ND	ND	ND	ND	12.0
DSP5-3'	ND	60	39***	ND	ND	ND	ND	ND	13.9
DSP6-3'	ND	8.4	26***	ND	ND	ND	ND	ND	9.88
DSP7-3'	3.9*	1,300	ND	ND	ND	ND	0.030	0.090	7.36
DSP8-3'	ND	10	9.9***	ND	ND	ND	ND	ND	6.02
DSP9-3'	ND	4.9**	19***	ND	ND	ND	ND	ND	8.66
DSP10-3'	13	7.4**	12***	ND	0.17	0.19	1.7	0.078	7.53
DSP11-3'	ND	ND	14***	ND	ND	ND	ND	0.13	8.38
DSP12-4'	ND	ND	ND	ND	ND	ND	ND	0.0064	7.54
Soil Samples from Soil Stockpiles									
STP-1 A1,A2,A3,A4	ND	ND	ND	ND	ND	ND	ND	ND	7.04
STP-2 B1,B2,B3,B4	ND	ND	87	ND	ND	ND	ND	ND	7.38
STP-3 C1,C2,C3,C4	ND	ND	16***	ND	ND	ND	ND	ND	4.24
STP-4 D1,D2,D3,D4	ND	30**	20***	ND	ND	ND	ND	ND	5.81
Reporting Limits	1.0	1.0	10	0.0050	0.0050	0.0050	0.0050	0.0050	0.50

* Hydrocarbons reported as TPHg do not exhibit typical gasoline chromatographic pattern for sample DSP7-3'

** Hydrocarbons reported as TPHd do not exhibit typical diesel chromatographic pattern for samples PT2-4', PT3-4', DSP9-3', DSP10-3' and STP-4 D1,D2,D3,D4

*** Hydrocarbons reported as TPHd do not exhibit typical motor oil chromatographic pattern for samples PT1-2.5', PT2-4', PT3-4', DSP1-3', DSP2-3', DSP3-3', DSP4-3', DSP5-3', DSP6-3', DSP8-3', DSP9-3', DSP10-3', DSP11-3', STP-3 C1,C2,C3,C4, and STP-4 D1,D2,D3,D4

Notes:

PHX	Benzene, Toluene, Ethylbenzene and Total Xylenes by U.S. EPA Method 8260B
Lead	Lead by U.S. EPA Method 6010
MTBE	Methyl tert-butyl ether by EPA Method 8260B
TPHd	Total petroleum hydrocarbons as diesel by U.S. EPA Method 8015 modified
TPHg	Total petroleum hydrocarbons as gasoline by U.S. EPA Method 8260B
TPHmo	Total petroleum hydrocarbons as motor oil by U.S. EPA Method 8015 modified
mg/kg	milligrams per kilogram (approximately equivalent to ppm)
ND	Not detected in concentrations exceeding the indicated laboratory reporting limit
PT	Pipe Trench Soil Sample, collected April 22, 2002
DSP	Dispenser soil sample, collected April 22, 2002
STP	Stockpile Soil Sample, composited in lab from 4 samples, collected April 22, 20002

When depths are listed in sample name (ex. PT2-4'), depth is below grade.

Samples were collected by Jim Jacobs, Environmental Bio-Systems, Mill Valley, California, on April 22, 2002

Samples were analyzed for petroleum by Kiff Analytical, Davis, California, and for lead by California Laboratory Services, Sacramento, California.

Samples were prepared by U.S. EPA Method 5030, and analyzed by U.S. EPA Methods 8015M and 8021B.

**TABLE 1
SUMMARY OF LABORATORY ANALYSES
UNDERGROUND STORAGE TANK SAMPLES**

Sunol Tree Gas
3004 Andrade Road
Sunol, California 94586

Sample No.	TPHg	TPHd	Benzene	Toluene	Ethylbenzene	Xylenes	MTBE	Lead
Geoprobe samples for UST converted into water storage tank (collected March 27, 2002), in mg/kg								
SP-1 - Soil	ND	12*	ND	ND	ND	ND	ND	NA
SP-2 - Soil	ND	8.4*	ND	ND	ND	ND	ND	NA
Reporting Limits	1.0	1.0	0.0050	0.0050	0.0050	0.0050	0.0050	
Underground Storage Tank Removal Soil Samples (collected April 2, 2002), in mg/kg								
S1-15' - Soil	ND	ND	ND	ND	ND	ND	ND	6.8
S2-15' - Soil	ND	ND	ND	ND	ND	ND	ND	4.4
S3-15' - Soil	ND	1.1*	ND	ND	ND	ND	ND	4.1
S4-15' - Soil	ND	ND	ND	ND	ND	ND	ND	4.5
S5-15' - Soil	9.5	2.6*	ND	ND	ND	0.040	ND	ND
S6-15' - Soil	ND	ND	ND	ND	ND	ND	0.025	4.7
S7-15' - Soil	ND	ND	ND	ND	ND	ND	ND	3.8
S8-15' - Soil	ND	ND	ND	ND	ND	ND	ND	5.1
S9-15' - Soil	ND	ND	ND	ND	ND	ND	0.0058	4.3
S10-15' - Soil	ND	ND	ND	ND	ND	ND	ND	5.3
Reporting Limits	1.0	1.0	0.0050	0.0050	0.0050	0.0050	0.0050	2.5
Underground Storage Tank Removal Water Sample (collected April 2, 2002), in µg/L								
WS-1 - Water	ND	290	ND	1.5	ND	2.7	84	ND
Reporting Limits	50	50	0.50	0.50	0.50	0.50	0.50	5.0

* Hydrocarbons reported as TPHd do not exhibit typical diesel chromatographic pattern for samples SP-1, SP-2, S3-15', and S5-15'

Notes:

BTEX	Benzene, Toluene, Ethylbenzene and Total Xylenes by U.S. EPA Method 8260B
Lead	Lead by U.S. EPA Method 6010
MTBE	Methyl tert-butyl ether by EPA Method 8260B
NA	Not analyzed
ND	Not detected in concentrations exceeding the indicated laboratory reporting limit
S1-15'	Soil sample from underground tank removal, collected April 2, 2002.
SP	Soil sample from Geoprobe, collected March 27, 2002.
TPHd	Total petroleum hydrocarbons as diesel by U.S. EPA Method 8015 modified
TPHg	Total petroleum hydrocarbons as gasoline by U.S. EPA Method 8260B
UST	Underground Storage Tank
WS	Water sample from tank pit, collected April 2, 2002.
mg/kg	milligrams per kilogram (approximately equivalent to ppm)
µg/L	micrograms per liter (approximately equivalent to ppb)

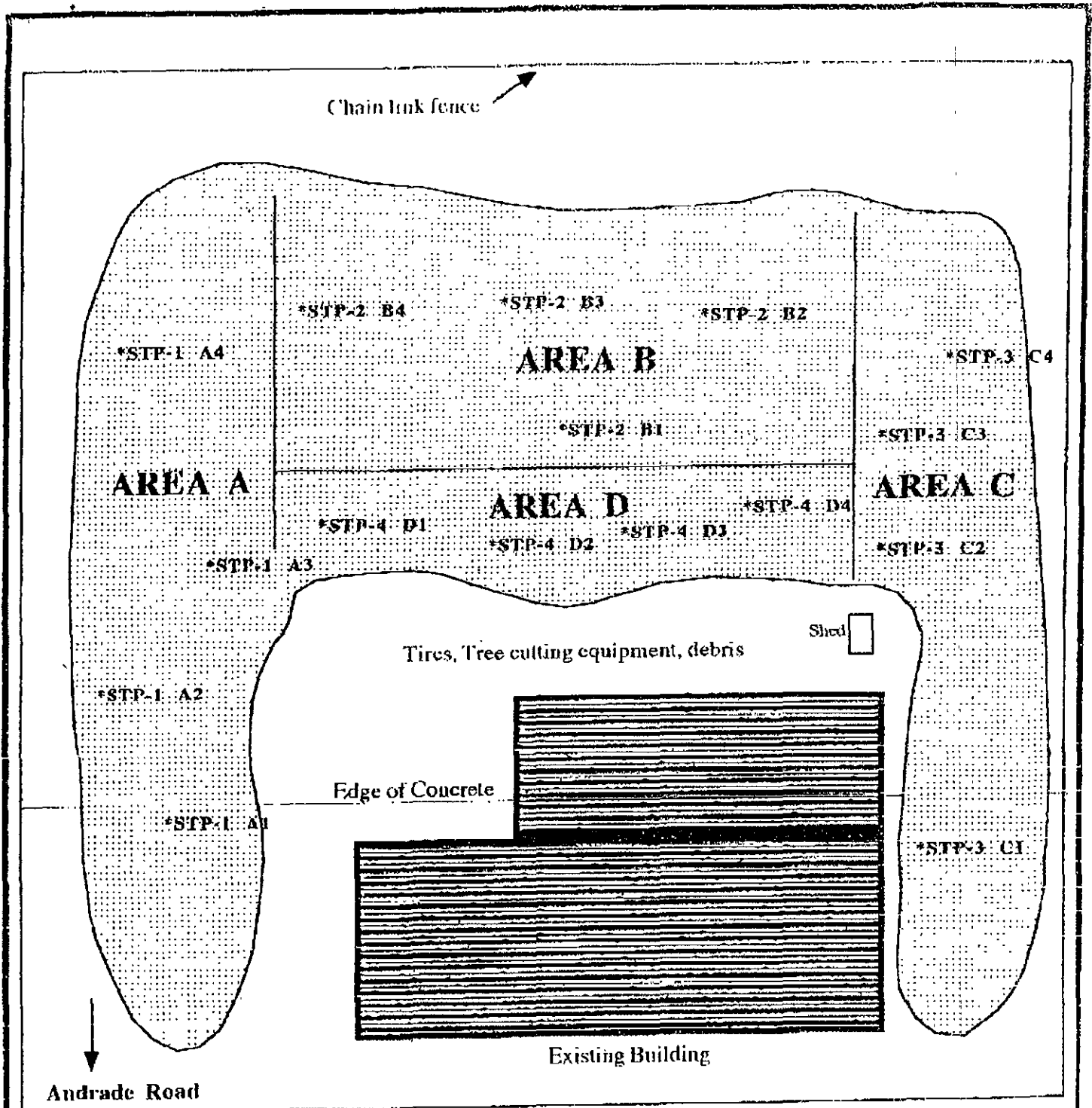
When depths are listed in sample name (ex. S1-15'), depth is below grade.

Samples were collected by Jim Jacobs, Environmental Bio-Systems, Mill Valley, California.

Samples were analyzed for petroleum by Kiff Analytical, Davis, California,

and for lead by California Laboratory Services, Sacramento, California.

Samples were prepared by U.S. EPA Method 5030, and analyzed by U.S. EPA Methods 8015M and 8021B.



*STP 3 C3 Sample location

Environmental Bio-Systems, Inc
 707 View Point Road
 Mill Valley, CA 94941
 Tel: 415-381-5195
 Fax: 415-381-5816

Sunol Tree Service
 3004 Andrade Road
 Sunol, California

FIGURE 4 - SOIL STOCKPILE SAMPLING MAP

JAJ

050902

EBS Project # 586

SILICON VALLEY LAW GROUP
A LAW CORPORATION

152 NORTH THIRD STREET
SUITE 900
SAN JOSE, CA 95112

TELEPHONE: (408) 286-6100
FACSIMILE: (408) 286-1400
www.svlg.com

FACSIMILE COVER SHEET

DATE: April 4, 2003

TO: Donna L. Drogos

FROM: Lisa Tornquist, Paralegal to Jeff Lawson

RE: Fuel Leak Case No. R02448/Sunol Tree Gas Station

FACSIMILE NO.: 510-337-9335 **TELEPHONE NO.:** 510-567-6700

Number of pages including Facsimile Cover Sheet: 4

COMMENTS: Please refer to the attached letter of today's date.

PRIVILEGED AND CONFIDENTIAL information intended only for the use of the addressee(s) named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any dissemination, distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify this office immediately by telephone and return the original message to this office at the above address via U.S. Mail.

**SVLG****SILICON VALLEY LAW GROUP**

A LAW CORPORATION

Jeffrey S. Lawson

jsl@svlg.com

April 4, 2003

Via Facsimile & U.S. Mail

Donna L. Drogos
LOP Program Manager
Environmental Health Services
Environmental Protection
1131 Harbor Bay Parkway, Ste. 250
Alameda CA 94502-6577

Re: Fuel Leak Case No. R02448
Sunol Tree Gas Station, 3004 Andrade Road, Sunol, CA

Dear Ms. Drogos:

This letter is in response to your letter of March 20, 2003 and also in follow up to our telephone conversation of March 26, 2003. I have been retained by Murray Kelsoe to assist him in complying with your agency's directives and to assist him in appealing the denial of coverage by the Underground Storage Tank Cleanup Fund (USTCF). As you know, Mr. Kelsoe has extremely limited financial resources. Although the extent of the release at Sun Tree Gas Station is currently unknown, generally MTBE releases are extremely expensive to investigate and remediate. The USTCF was created to insure the protection of public health and safety, to provide hard to obtain environmental insurance coverage, to provide financial assistance to small businesses that have limited financial resources and to ensure timely compliance with the law governing underground storage tanks. *California Health & Safety Code §25299.10*. Mr. Kelsoe has relied on the USTCF financial assurance provisions for almost ten years. It is important that the USTCF step up to its' obligations in regard to the Sunol Tree Gas Station and we request your assistance in obtaining fund coverage. In the meantime, despite his extremely limited financial resources, it is my client's goal to comply to the best of his ability with the directives of your agency.


I have been told that the video survey of the Sunol Tree Gas Station well has been completed and presented to Environmental Health Services. From our discussion, it is my understanding that the next most critical task set forth in your March 20, 2003 letter is the water supply well sampling. Yesterday, Clearwater Group, Sun Tree Gas Station's environmental consultant, provided me with a letter proposal for completing that task. The Clearwater letter is attached hereto. As you can see, it will take 3-4 weeks after your approval to complete this task and to present you with a report. We apologize for the delay, but it took until yesterday to scrape together the necessary funds to undertake that task.

Donna L. Drogos
April 4, 2003
Page 2 of 2

In regard to the due dates set forth in the March 20, 2003 letter, we respectfully request an extension of the date for submitting the water supply sampling report to May 9, 2003. We also request an extension of the April 4, 2003 date for completion of disposal of UST excavation soils pile and submission of a work plan to June 30, 2003.

We look forward to working with the Environmental Health Services to resolve this matter.

Very truly yours,
Silicon Valley Law Group



JEFFREY S. LAWSON

JSL/lt

Enclosure: Clearwater Proposal

Cc: Murray Kelsoe
John Reardon
Matt Katen
Roy Tovani
Betty Graham
Susan Torrence
Scott Haggerty

CLEARWATER

GROUP

Environmental Services

April 3, 2003

Mr. Murray Kelsoe
Sunol Tree Gas
3004 Andrade Rd.
Sunol, CA 94586

RE: Clearwater Group Agreement CG Project # CB021C

Dear Murray:

In response to Ms. Donna Drogos' letter dated March 20, 2003, regarding the sampling of five domestic/irrigation water wells. Clearwater proposes sending a field technician out to your site to collect and send to the laboratory for analysis water samples as described in the County's letter early next week, assuming there is no problem accessing the wells in question to complete the work. Please allow us 3-4 weeks afterward to report our findings to the Alameda County Health Care Services. Please be assured we will complete this task most expeditiously as possible. Clearwater will provide you a simple report to forward to Alameda County Health Care Services.

As always, Clearwater appreciates the opportunity to do business with you. If you have any questions regarding the project, feel free to call me at (510) 307-9943 extension 231.

Regards,
Clearwater,



Brian A. Pierskalla
Project Manager



Alameda County
APR 09 2003
Environmental Health

April 3, 2003

Mr. Murray Kelsoe
Sunol Tree Gas
3004 Andrade Rd.
Sunol, CA 94586

RE: Clearwater Group Agreement CG Project # CB021C

Dear Murray:

In response to Ms. Donna Drogos' letter dated March 20, 2003, regarding the sampling of five domestic/irrigation water wells. Clearwater proposes sending a field technician out to your site to collect and send to the laboratory for analysis water samples as described in the County's letter early next week, assuming there is no problem accessing the wells in question to complete the work. Please allow us 3-4 weeks afterward to report our findings to the Alameda County Health Care Services. Please be assured we will complete this task most expeditiously as possible. Clearwater will provide you a simple report to forward to Alameda County Health Care Services.

As always, Clearwater appreciates the opportunity to do business with you. If you have any questions regarding the project, feel free to call me at (510) 307-9943 extension 231.

Regards,
Clearwater,

A handwritten signature in cursive script that reads "Brian Pierskalla".

Brian A. Pierskalla
Project Manager

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



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

March 20, 2003

Mr. Murray Kelsoe
PO Box 176
Alamo, CA 94507

Dear Mr. Kelsoe:

Subject: Fuel Leak Case No. RO2448, Sunol Tree Gas Station, 3004 Andrade Road, Sunol, CA

Alameda County Environmental Health (ACEH) staff has reviewed the "Preliminary Site Assessment Report," dated March 14, 2003, prepared by the Clearwater Group for the subject site. Additionally, analytical data from the domestic wells on properties immediately adjacent to your site have been reviewed.

Methyl tert-Butyl Ether (MTBE) up to 130 ppb has been detected in the domestic well located approximately 750' in the apparent downgradient direction from your site. MTBE at 0.5 ppb has also been detected in a well on the golf course adjacent to your property. Limited investigation activities at your site have confirmed the presence of MTBE at up to 43 ppb in groundwater and 5.7 ppm in soil. Up to 17,000 ppb TPHG has also been confirmed in groundwater. We are very concerned with the impacts of MTBE to drinking water wells, the detections of petroleum hydrocarbons and MTBE at your site, the proximity of your site to other water supply wells in the vicinity, and the site's location within a groundwater basin used for drinking water.

This letter presents a request for three-dimensional characterization and monitoring of soil and groundwater contamination (MTBE, petroleum products, and associated blending compounds and additives) from the unauthorized releases from your site. Due to the impacts of MTBE to a drinking water well and to groundwater resources, apparently from your site, your case has been classified as a highest risk MTBE site.

TECHNICAL COMMENTS

1) Water Supply Well Sampling – Five domestic/irrigation supply wells have been identified in the apparent downgradient direction of your site. Well 04S01E20G2 detected 130 ppb MTBE, well 04S01E20A2 detected 0.5 ppb MTBE, and wells 04S01E20A1, 04S01E20B1, and 04S01E20H2 have not been sampled. We request that you collect groundwater samples from these five wells and analyze by EPA Method 8260 for TPHG, BTEX, MTBE, TAME, ETBE, DIPE, TBA, and EtOH. Please submit the results of your sampling in the Water Supply Well Sampling Report requested below.

2) UST Excavation Spoils Pile - Soil excavated during UST removal and replacement activities in April 2002 remains in stockpiles at your site. TPHG, BTEX, and MTBE have been detected in your stockpiled soil. Although the October 10, 2002, Preliminary Site Assessment Status Report stated that stockpile soil was to be characterized with removal activities commencing on October 30, 2002, to date this work has not been performed.

Due to its location the stockpiled soil will impede performance of the site investigation activities requested below. Additionally, runoff from the pile or water infiltrating the soil pile could have (and could still be) contributed petroleum hydrocarbons to the underlying soil and shallow

groundwater. In addition to this being a potential ongoing source of groundwater contamination, the introduction of contaminants from the soil stockpile may 'confuse the signal' of groundwater contamination due to subsurface releases when interpreting results during the next phases of investigation at your site. Therefore, it is imperative that you properly remove and dispose of this soil. We request that you complete your disposal activities by **April 4, 2003**. Document the results of your soil stockpile sampling and removal in the Soil and Water Investigation (SWI) Report requested below.

3) Site Conceptual Model - Appropriate plans for characterization and remediation and considerable cost savings can be realized if your consultant focuses on developing and refining a viable Site Conceptual Model (SCM) for the project. A SCM is a set of working hypotheses pertaining to all aspects of the contaminant release, including site geology, hydrogeology, release history, residual and dissolved contamination, attenuation mechanisms, pathways to nearby receptors, and likely magnitude of potential impacts to receptors. The SCM is used to identify data gaps that are subsequently filled as the investigation proceeds. As the data gaps are filled, the working hypotheses are modified, and the overall SCM is refined and strengthened. Subsurface investigations continue until the SCM no longer changes as new data are collected. At this point, the SCM is said to be "validated." The validated SCM then forms the foundation for developing the most cost-effective corrective action plan to protect existing and potential receptors.

When performed properly, the process of developing, refining and ultimately validating the SCM effectively guides the scope of the entire site investigation. We have identified in this letter, based on our review of existing data, some initial key data gaps and have described several tasks that we believe will provide important new data to refine the SCM. Starting with a review of the data available for this site we request that your consultant develop the initial SCM of site conditions and present it in the work plan requested below. We request that your consultant incorporate the results of the new work requested in this letter into their SCM, identify new and/or remaining data gaps, and propose supplemental tasks for future investigations. There may need to be additional phases of investigations, each building on the results of the prior work, to validate the SCM. Characterizing the site in this way will improve the efficiency of the work and limit its overall cost.

The SCM approach is endorsed by both industry and the regulatory community. Technical guidance for developing SCMs is presented in Strategies for Characterizing Subsurface Releases of Gasoline Containing MTBE, American Petroleum Institute Publication No. 4699, dated February 2000; "Expedited Site Assessment Tools for Underground Storage Tank Sites: A Guide for Regulators" (EPA 510-B-97-001), prepared by the U.S. Environmental Protection Agency (EPA), dated March 1997; and "Guidelines for Investigation and Cleanup of MTBE and Other Ether-Based Oxygenates, Appendix C," prepared by the State Water Resources Control Board, dated March 27, 2000.

4) Site Characterization and Monitoring - A review of supply well logs in the immediate vicinity of your site indicates that a productive groundwater basin is likely present beneath your site at depths of approximately 25' to 80' bgs. Calculations from supply well log data estimate a hydraulic conductivity of approximately 90 feet/day within this aquifer.

A review of the data from your site indicates that the upper 20' of the site are comprised of silts and clays. Although boring logs indicate that the formation becomes increasingly sandy at the 20' to 24' depth, your consultant completed the borings to those depths, thereby performing only a shallow investigation that did not penetrate the underlying productive aquifer, which is tapped by nearby water supply wells. Therefore, additional site investigation activities are needed to appropriately characterize your site.

a) **Define Groundwater Gradient** - We request that you establish groundwater gradient within the productive aquifer beneath and downgradient of your site. We recommend that you install temporary piezometers and monitor them over several days to establish gradient. We recommend that you explore to depths of at least 60' bgs during this work and collect and analyze soil and depth discrete groundwater samples from appropriate borings for TPHG, TPHD, BTEX, MTBE, TAME, ETBE, DIPE, TBA, and EtOH. We recommend expedited turnaround time for the analytical results. Describe your proposal to establish groundwater gradient in the Work Plan requested below.

b) **Transect of Monitoring Wells** - Once gradient has been established we request that you install a transect of monitoring devices such as well clusters, multi-level wells, etc.; capable of monitoring groundwater at multiple depths. The monitoring transect should be oriented perpendicular to the plume axis and should extend far and deep enough to fully encompass the contaminant plume. We anticipate that the spacing between the wells will be approximately 25 feet however the actual spacing should be based on the site conceptual model. Due to the impacted water supply well and your site's status as a highest risk MTBE site we strongly encourage you to perform your work using expedited site assessment (ESA) techniques (see API Publication No. 4699, referenced above). You may want to consider performing an initial investigation to quickly define the depth and width of the suspected contaminant plume downgradient from the release site prior to installing the permanent monitoring transect. That will allow you to optimize the location and depth of the permanent wells, thereby reducing the cost of the monitoring work. Collection of groundwater samples at multiple depths using a one-time direct push water sampling tool would be appropriate for this initial investigation. Using ESA methodology we foresee beginning the initial direct-push sampling investigation one week after establishing groundwater gradient and installation of the permanent monitoring transect within two weeks of the direct-push sampling investigation.

Please submit your proposal for the direct-push sampling investigation, sampling transect location, and design of your depth discrete monitoring network based upon your initial SCM in the work plan requested below. If revisions to transect location and well construction are needed based upon results from monitoring your piezometric network or supplemental direct-push groundwater sampling please contact us and submit proposed changes (sketches are acceptable) by fax (510-337-9335) for expedited regulatory review and concurrence.

Please refer to API Publication No. 4699 (referenced above) when proposing wells to monitor multiple groundwater zones. Additionally, expedited site assessment tools and methods are a scientifically valid and cost-effective approach to define the three-dimensional extent of the plume. Technical protocol for expedited site assessments are provided in the EPA's ESA document (EPA 510-B-97-001), referenced above.

5) **Preferential Pathway Study** - We request that you perform a preferential pathway study that details the potential migration pathways and potential conduits (wells, utilities, pipelines, etc.) for horizontal and vertical migration that may be present in the vicinity of the site. The purpose of the preferential pathway study is to locate potential migration pathways and conduits and determine the probability of the plume encountering preferential pathways and conduits that could spread contamination. Of particular concern is the identification of abandoned wells and improperly-destroyed wells that can act as vertical conduits to deeper water bearing zones, pumping wells in the vicinity of your site, and manmade conduits for shallow migration.

Discuss your analysis and interpretation of the results of the preferential pathway study (including the detailed well survey and utility survey requested below) and report your results in the SWI Report requested below. Include an evaluation of the probability of the dissolved phase plumes

for all constituents of concern encountering preferential pathways and conduits that could spread the contamination, particularly in the vertical direction to deeper drinking water aquifers. **As part of your analysis we request that you identify other water supply wells in the area that may need to be sampled.** The results of your study shall contain all information required by 23 CCR, Section 2654(b).

a) Utility Survey - An evaluation of all utility lines and trenches (including sewers, storm drains, pipelines, trench backfill, etc.) within and near the site and plume area(s) is required as part of your study. Submittal of map(s) and cross-sections showing the location and depth of all utility lines and trenches within and near the site and plume area(s) is required as part of your study.

b) Well Survey - The preferential pathway study shall include a **detailed well survey** of all wells (monitoring and production wells: active, inactive, standby, destroyed (sealed with concrete), abandoned (improperly destroyed); and dewatering, drainage, and cathodic protection wells) within a 1/2-mile radius of the subject site. **We specifically request that you review well log records at the Department of Water Resources (DWR) offices in addition to well information available at Zone 7 Water Agency or other sources.**

As part of your detailed well survey, please perform a background study of the historical land uses of the site and properties in the vicinity of the site. Use the results of your background study to determine the existence of unrecorded/unknown (abandoned) wells, which can act as pathways for migration of contamination at and/or from your site. Please review historical maps such as Sanborn maps, aerial photos, etc., when performing the background study. Submittal of map(s) showing the location of all wells identified in your study, and the use of tables to report the data collected as part of your survey are required. Include appropriate photographic prints, in stereo pairs, of historic aerial photos used as part of your study. We also request that you list by date all aerial photographs available for the site from the aerial survey company or library you use during your study. Please refer to the Regional Board's guidance for identification, location, and evaluation of potential deep well conduits (see Attachment) when conducting your preferential pathway study.

6) Video Survey of Impacted Water Supply Well 04S01E20G2 – The well located at 3000 Andrade Road on the property immediately adjacent to your site has known MTBE impacts. Information on the construction of this well is not available from the well owner or from Zone 7 Water Agency. We request that you obtain drillers report records for this well from DWR or other sources and submit to this office by **April 4, 2003**. If you are unable to locate a drillers log for this well we request that you perform a video survey of the well to identify its construction. Include your proposal for this work in the work plan requested below.

REQUEST FOR INFORMATION

1) Video Survey of Sunol Tree Gas Station Well – Your consultant performed a video survey on the water supply well located on the Sunol Tree Gas Station site on December 12, 2002. We request that you submit a copy of the video to this office for viewing by the date specified below.

TECHNICAL REPORT REQUEST

Please submit technical reports to Alameda County Environmental Health (Attention: Scott O. Seery), according to the following schedule:

March 28, 2003 – Video of Sunol Tree Gas Station water supply well.

April 4, 2003 - Water Supply Well Sampling Report

April 4, 2003 - Completion of disposal of UST excavation spoils pile

April 4, 2003 - Work Plan with SCM

60 days after Work Plan Approval - Soil and Water Investigation Report

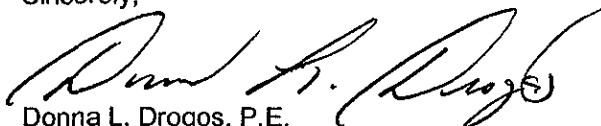
These reports are being requested pursuant to the Regional Board's authority under Section 13267 of the California Water Code. **Each report shall include conclusions and recommendations for the next phases of work required at the site.** We request that all required work be performed in a prompt and timely manner. Revisions to the schedule above shall be requested in writing with appropriate justification for anticipated delays.

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 follow up. Enforcement follow up may include administrative action or monetary penalties of up to \$10,000 per day for each day of violation of the California Health and Safety Code, Division 20, Chapter 6.75.

If you have any questions, please call Mr. Scott Seery at (510) 567-6783.

Sincerely,



Donna L. Drogos, P.E.
LOP Program Manager

Enclosures

cc:

Mr. Barney Popkin (w/enc)
Clearwater Group
229 Tewksbury Ave
Point Richmond, CA 94801

Ms. Betty Graham
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Mr. Matt Katen
Zone 7 Water Agency
5997 Parkside Drive
Pleasanton, CA 94588-5217

Susan Torrence, Esq.
Alameda County District Attorneys' Office
7677 Oakport Suite 650
Oakland, CA 94621

Mr. Roy Tovani
PO Box 333
Sunol, CA 94586

Mr. Scott Haggerty
Alameda County Board of Supervisors
1221 Oak Street, Suite 536
Oakland, CA 94612

S. Seery (w/orig enc), A. Levi, D. Drogos

Seery, Scott, Env. Health

From: Barney [barneyp@clearwatergroup.com]
Sent: Thursday, March 13, 2003 12:15 PM
To: Scott O. Seery/ACHCSA (E-mail)
Cc: Brian Pierskalla/Clearwater (E-mail)
Subject: Status of Sunol Tree Service PSA report

Dear Mr. Seery,

I'm sending you this email to bring you up-to-date on the status of the Sunol Tree Service Preliminary Site Assessment (PSA) report. My role at Clearwater is as Clearwater's Technical Director and Registered Geologist. I reviewed the Clearwater draft PSA report for Sunol Tree Service, prepared by Brian Pierskalla, on Saturday and the revisions this morning. Clearwater is preparing the accompanying figures and should complete the report within the next few hours. I apologize for any delays that we incurred. I left you a voice mail message this morning to bring you up-to-date.

In addition, although I have not seen any offsite groundwater quality data, I spoke with Mr. Roy Tovani yesterday afternoon at 925-862-2340 to discuss various technical options he might consider to provide non-MTBE-impacted water to his 8-acre property which includes a horse boarding stable for 50 horses and three resident families. There are several technical options, including, for example: 1) treatment at the well head to remove MTBE by aqueous phase carbon or oxygenation; 2) haul in offsite water to a Baker tank for onsite distribution through a pressure system; 3) tie-in to municipal or county water as per Hetch Hetchy system. Probably the quickest option is to install carbon filters at the well head, which Mr. Tovani already had estimates from suppliers for approximately \$10,000. Mr. Tovani said that he contacted the Hetch Hetchy system and said that they told him they could provide him with water but he would have to provide the pipeline to the system which he says is 1 1/2 miles away and would be prohibitively expensive.

In addition, I advised Mr. Tovani that he should not use MTBE-impacted water for drinking, bathing, showering, watering horses, etc., until further determinations are made and appropriately evaluated. Mr. Tovani told me that three groundwater samples from his shallow well had 130 ppb MTBE, according to tests from three different laboratories. If this true, groundwater from this well may be expected to pose a long-term human and animal health risk, as EPA web pages note that "20 to 40 ppb in drinking water would cause negative health effects." I could not find anything online specific to horses, as all studies I've seen were on mice and rats.

Barney P. Popkin, RG, REA, CHMM
Principal Geologist, Technical Director
Clearwater Group - Environmental Services
229 Tewksbury Avenue
Point Richmond (nr San Francisco), CA 94801
Office 510.307.9943 x 227, fax 510.232.2823
Mobile 415.378.4365, bpopkin@clearwatergroup.com

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Wednesday, March 05, 2003 1:55 PM
To: 'Betty Graham (E-mail)'; 'jdw@rb2.swrcb.ca.gov'; 'sah@rb2.swrcb.ca.gov'
Cc: Levi, Ariu, Env. Health; Seery, Scott, Env. Health; Tung, Mee Ling, Env. Health; Haggerty, Scott, Supv BOS Dist 1
Subject: FW: Update on Sunol wells

FYI -

Regarding sampling of additional water supply wells, as Zone 7's lab cannot accommodate sampling, ACEH will pursue sampling through the LUFT RP or by ACEH if problems with LUFT RP arise. Donna

-----Original Message-----

From: Winey, Colleen [mailto:cwiney@zone7water.com]
Sent: Wednesday, March 05, 2003 10:15 AM
To: 'Drogos, Donna, Env. Health'
Cc: Katen, Matt; Scott Seery (E-mail); Ariu Levi (E-mail)
Subject: RE: Update on Sunol wells

Hi Donna,

Unfortunately, it doesn't look like we will be able to accommodate the additional sampling. We don't have a budget for this type of sampling. We can sneak a few samples in occasionally for situations like 20G 2, but can't justify larger scale sampling. Maybe you can add the sampling of the other domestic wells in the area to the request for work letter to the RP and consultant.

I'll fax over the lab data when I receive it. Thanks for the update.
Colleen

-----Original Message-----

From: Drogos, Donna, Env. Health [mailto:ddrogos@co.alameda.ca.us]
Sent: Wednesday, March 05, 2003 9:21 AM
To: 'Winey, Colleen'
Cc: Levi, Ariu, Env. Health; Seery, Scott, Env. Health; Katen, Matt
Subject: RE: Update on Sunol wells

Hi Colleen,

Thanks for accommodating our request and collecting and analyzing samples from domestic wells A2 & G2. As we discussed Monday it appears appropriate to collect and analyze samples from the other 3 wells in the vicinity (A1, B1 & H2) now that the presence of MTBE has been confirmed. Can you do this also?

Please give me copies of final analytical results for A2 & G2 when available; fax 510-337-9335.

The initial site investigation was performed on 11/27/02, we have draft results from that work, with the final report to be submitted early next week. I have already discussed the site & future work needed with both the RP & consultant and our office will be issuing the next request for work letter in a few days. I will keep you posted on the site.

Thanks, Donna

-----Original Message-----

From: Winey, Colleen [mailto:cwiney@zone7water.com]
Sent: Tuesday, March 04, 2003 1:27 PM
To: Donna L. Drogos (E-mail)
Cc: Scott Seery (E-mail); Katen, Matt
Subject: Update on Sunol wells

Donna,

I wanted to let you know that the Zone 7 lab has started the analysis of the water samples collected from the domestic wells in Sunol. They don't have exact numbers yet, but because of the situation they called with preliminary data. The well at T-Bear Ranch (4S/1E 20G 2) has MtBE at levels >100 ug/L and the well at the golf course (4S/1E 20A 2) has trace amounts of MtBE. Well 4S/1E 20A 2 has upper perforations at 25 feet bgs. We still have not found any well records for 4S/1E 20G 2. The owner is looking for records but the well was already installed when he purchased the property so he's not sure if he has any records. Now that the data from 20G 2 has been confirmed it might be beneficial for the owners of 4S/1E 20B 1 at Sunset Riding Academy to have their well sampled. The upper screen zone is at 23 feet bgs in 20B 1 and it appears that the groundwater is flowing in that direction.

I'll send over the lab results when the final data is in. Even though this site is outside of our main groundwater basin, Zone 7 is very concerned about this site since drinking water has been impacted within our service area. I'd appreciate it if you could keep us informed of any developments in this case. Let me know if I can do anything else to help.

Thanks,
Colleen

Colleen V. Winey
Hydrogeologist
Zone 7 Water Agency
5997 Parkside Drive
Pleasanton, CA 94588-5127
(925)484-2600 x258

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Wednesday, March 05, 2003 1:47 PM
To: 'Betty Graham'
Subject: RE: MTBE detection in domestic well in Sunol

around 350' will be going on a site visit to verify

-----Original Message-----

From: Betty Graham [mailto:BG@rb2.swrcb.ca.gov]
Sent: Wednesday, March 05, 2003 1:33 PM
To: ddrogos@co.alameda.ca.us
Subject: Re: MTBE detection in domestic well in Sunol

Thanks for the news.

How close are the supply wells to the tank pit?

>>> "Drogos, Donna, Env. Health" <ddrogos@co.alameda.ca.us> 03/05/03
11:20AM >>>
Hi Betty,

This is to follow-up on our phone conversation last Thursday re: the detection of 73 ppb MTBE in the domestic well in Sunol.

Background:

04/10/02 - Six 15,000 gal USTs removed at Sunol Tree Gas Station, 3004 Andrade Rd. Up to 150 ppm THPG, 1300 ppm TPHD, and 5.9 ppm MTBE detected in soil. Up to 290 ppb TPHD and 84 ppb MTBE were detected in water. USTs appeared intact upon removal. Excavated soil appeared contaminated. 210,000 gal. of impacted water was pumped from the excavation. Six new 15,000 gal. USTs were installed in the excavation.

11/27/02 - The initial site investigation was performed. Draft results from that work have been submitted, with the final report to be submitted early next week (03/11/03). Five soil borings were installed at the site and soil & GW were analyzed. Results indicate up to 250 ppm TPHG, 1.2 ppm MTBE, and 1 ppm TBA are present in soil. Up to 17,000 ppb TPHG and 43 ppm MTBE are present in water.

* Results-
* The upper 20' of the site are comprised of silts and clays. Although PSA boring logs indicate the formation was becoming more sandy at the 20' to 24' depths the consultant completed the borings to these depths performing only a shallow investigation and did not establish GW

gradient.

* A review of supply well logs in the immediate vicinity of the LUFT site indicates that clays are present to 20' - 25' bgs then underlain by sands and gravels from 20' to 80' bgs. I performed some preliminary calculations with well test data from the well logs and calculated a fairly high hydraulic conductivity of 89 ft/d (approx.) for the formation. With a high K, a pumping well in the immediate vicinity, and the presence of MTBE, the mass flux could well be high enough to impact a nearby supply well.

* ACEH will be asking for additional work at the site. Groundwater analysis within the sands and gravel is needed as well as establishing the GW gradient. The potential for other contaminant sources in the area will also be evaluated, i.e., private USTs.

02/13/03 - A property owner adjacent to the Sunol Tree Gas LUFT site collected and analyzed a sample from their domestic well, T-Bear Ranch (4S/1E 20G 2). Apparently the property owner was having a real estate appraisal performed on his property. The appraiser noted the presence of the adjacent gas station voicing potential environmental concerns which lead to sampling of the domestic well. The lab detected 73 ppb MTBE and <5 ppb BTEX by EPA 8260B in the sample.

02/27/03 - The property owner informed ACEH of the MTBE detection. Due to questions relating to proper sample collection (property owner collected sample in a plastic bottle, etc.) we asked Zone 7 if they could collect and analyze a confirmation sample from this well and another 4 domestic/irrigation wells in the immediate vicinity.

03/03/03 - Zone 7 collected and analyzed samples from the two nearest domestic wells.

03/04/03 - Zone 7 informed us of the preliminary MTBE results. The well at T-Bear Ranch, 3000 Andrade Road, (4S/1E 20G 2) has MTBE at levels >100 ppb. The water is no longer being used for human consumption but is still being used as drinking water for horses boarded at the property.

An additional well sampled at the golf course, (4S/1E 20A 2) has trace amounts of MTBE. This well is mostly used for irrigation but may be a water supply for a residence although the owner says its not used for drinking.

Final analytical results are pending.

03/05/03 - Asked Zone 7 if they could collect and analyze samples from the other 3 domestic/irrigation wells in the vicinity (4S/1E 20A1, 4S/1E 20B1 & 4S/1E 20H2) now that the presence of MTBE has been confirmed.

03/05/03 - ACEH has already discussed the site & future work needed with both the RP & consultant and our office will be issuing the next request for work letter in a few days.

Let me know if you have any questions.

Thanks, Donna

Donna L. Drogos, P.E.
Supervising Hazardous Materials Specialist
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502-6577

office 510-567-6721
fax 510-337-9335
<mailto:ddrogos@co.alameda.ca.us> ddrogos@co.alameda.ca.us

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Wednesday, March 05, 2003 11:20 AM
To: Betty Graham (E-mail); 'jdw@rb2.swrcb.ca.gov'; 'sah@rb2.swrcb.ca.gov'
Cc: Levi, Ariu, Env. Health; Seery, Scott, Env. Health; Tung, Mee Ling, Env. Health; Haggerty, Scott, Supv BOS Dist 1
Subject: MTBE detection in domestic well in Sunol

Hi Betty,

This is to follow-up on our phone conversation last Thursday re: the detection of 73 ppb MTBE in the domestic well in Sunol.

Background:

04/10/02 - Six 15,000 gal USTs removed at Sunol Tree Gas Station, 3004 Andrade Rd. Up to 150 ppm THPG, 1300 ppm TPHD, and 5.9 ppm MTBE detected in soil. Up to 290 ppb TPHD and 84 ppb MTBE were detected in water. USTs appeared intact upon removal. Excavated soil appeared contaminated. 210,000 gal. of impacted water was pumped from the excavation. Six new 15,000 gal. USTs were installed in the excavation.

11/27/02 - The initial site investigation was performed. Draft results from that work have been submitted, with the final report to be submitted early next week (03/11/03). Five soil borings were installed at the site and soil & GW were analyzed. Results indicate up to 250 ppm TPHG, 1.2 ppm MTBE, and 1 ppm TBA are present in soil. Up to 17,000 ppb TPHG and 43 ppb MTBE are present in water.

- Results-
- The upper 20' of the site are comprised of silts and clays. Although PSA boring logs indicate the formation was becoming more sandy at the 20' to 24' depths the consultant completed the borings to these depths performing only a shallow investigation and did not establish GW gradient.
- A review of supply well logs in the immediate vicinity of the LUFT site indicates that clays are present to 20' - 25' bgs then underlain by sands and gravels from 20' to 80' bgs. I performed some preliminary calculations with well test data from the well logs and calculated a fairly high hydraulic conductivity of 89 ft/d (approx.) for the formation. With a high K, a pumping well in the immediate vicinity, and the presence of MTBE, the mass flux could well be high enough to impact a nearby supply well.
- ACEH will be asking for additional work at the site. Groundwater analysis within the sands and gravel is needed as well as establishing the GW gradient. The potential for other contaminant sources in the area will also be evaluated, i.e., private USTs.

02/13/03 - A property owner adjacent to a the Sunol Tree Gas LUFT site collected and analyzed a sample from their domestic well, T-Bear Ranch (4S/1E 20G 2). Apparently the property owner was having a real estate appraisal performed on his property. The appraiser noted the presence of the adjacent gas station voicing potential environmental concerns which lead to sampling of the domestic well. The lab detected 73 ppb MTBE and <5 ppb BTEX by EPA 8260B in the sample.

02/27/03 - The property owner informed ACEH of the MTBE detection. Due to questions relating to proper sample collection (property owner collected sample in a plastic bottle, etc.) we asked Zone 7 if they could collect and analyze a confirmation sample from this well and another 4 domestic/irrigation wells in the immediate vicinity.

03/03/03 - Zone 7 collected and analyzed samples from the two nearest domestic wells.

03/04/03 - Zone 7 informed us of the preliminary MTBE results. The well at T-Bear Ranch, 3000 Andrade Road, (4S/1E 20G 2) has MTBE at levels >100 ppb. The water is no longer being used for human consumption but is still being used as drinking water for horses boarded at the property.

3/6/2003

An additional well sampled at the golf course, (4S/1E 20A 2) has trace amounts of MTBE. This well is mostly used for irrigation but may be a water supply for a residence although the owner says its not used for drinking.

Final analytical results are pending.

03/05/03 - Asked Zone 7 if they could collect and analyze samples from the other 3 domestic/irrigation wells in the vicinity (4S/1E 20A1, 4S/1E 20B1 & 4S/1E 20H2) now that the presence of MTBE has been confirmed.

03/05/03 - ACEH has already discussed the site & future work needed with both the RP & consultant and our office will be issuing the next request for work letter in a few days.

Let me know if you have any questions.

Thanks, Donna

Donna L. Drogos, P.E.
Supervising Hazardous Materials Specialist
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502-6577

office 510-567-6721
fax 510-337-9335
ddrogos@co.alameda.ca.us

Drogos, Donna, Env. Health

From: Drogos, Donna, Env. Health
Sent: Wednesday, March 05, 2003 9:21 AM
To: 'Winey, Colleen'
Cc: Levi, Ariu, Env. Health; Seery, Scott, Env. Health; Katen, Matt
Subject: RE: Update on Sunol wells

Hi Colleen,

Thanks for accommodating our request and collecting and analyzing samples from domestic wells A2 & G2. As we discussed Monday it appears appropriate to collect and analyze samples from the other 3 wells in the vicinity (A1, B1 & H2) now that the presence of MTBE has been confirmed. Can you do this also?

Please give me copies of final analytical results for A2 & G2 when available; fax 510-337-9335.

The initial site investigation was performed on 11/27/02, we have draft results from that work, with the final report to be submitted early next week. I have already discussed the site & future work needed with both the RP & consultant and our office will be issuing the next request for work letter in a few days. I will keep you posted on the site.

Thanks, Donna

-----Original Message-----

From: Winey, Colleen [mailto:cwiney@zone7water.com]
Sent: Tuesday, March 04, 2003 1:27 PM
To: Donna L. Drogos (E-mail)
Cc: Scott Seery (E-mail); Katen, Matt
Subject: Update on Sunol wells

Donna,

I wanted to let you know that the Zone 7 lab has started the analysis of the water samples collected from the domestic wells in Sunol. They don't have exact numbers yet, but because of the situation they called with preliminary data. The well at T-Bear Ranch (4S/1E 20G 2) has MtBE at levels >100 ug/L and the well at the golf course (4S/1E 20A 2) has trace amounts of MtBE. Well 4S/1E 20A 2 has upper perforations at 25 feet bgs. We still have not found any well records for 4S/1E 20G 2. The owner is looking for records but the well was already installed when he purchased the property so he's not sure if he has any records. Now that the data from 20G 2 has been confirmed it might be beneficial for the owners of 4S/1E 20B 1 at Sunset Riding Academy to have their well sampled. The upper screen zone is at 23 feet bgs in 20B 1 and it appears that the groundwater is flowing in that direction.

I'll send over the lab results when the final data is in. Even though this site is outside of our main groundwater basin, Zone 7 is very concerned about this site since drinking water has been impacted within our service area. I'd appreciate it if you could keep us informed of any developments in this case. Let me know if I can do anything else to help.

Thanks,
Colleen

Colleen V. Winey
Hydrogeologist
Zone 7 Water Agency
5997 Parkside Drive
Pleasanton, CA 94588-5127
(925)484-2600 x258

Drogos, Donna, Env. Health

From: Winey, Colleen [cwiney@zone7water.com]
Sent: Tuesday, March 04, 2003 1:37 PM
To: Chris Jonas (E-mail)
Cc: Katen, Matt; Ron Torres (E-mail); Scott Seery (E-mail); Donna L. Drogos (E-mail)
Subject: MtBE in domestic well

Chris,

I just wanted to let you know that a well (4S/1E 20G 2) at 3000 Andrade Road in Sunol has tested positive for MtBE. The property is adjacent to a gas station which had a leaking UST removed. The owners of the domestic well had collected a water sample and had it analyzed not expecting to find any contamination. The lab results showed 73 ug/L of MtBE. Because the sampling technique was questionable Scott Seery of ACEHS asked me to collect a confirmation sample. The Zone 7 lab is processing the sample. The preliminary results show >100 ug/L of MtBE. The water is no longer being used for human consumption but is still being used as drinking water for horses boarded at the property.

A sample was also collected from a well (4S/1E 20A 2) at a neighboring property, 3004 Andrade Road. This well is mostly used for irrigation but I think it is the water supply for a residence although the owner says they don't drink it. The preliminary data for this well shows trace amounts of MtBE.

There are additional domestic supply wells in the area that may benefit from being tested.

If you have any questions feel free to contact me. Donna Drogos will be handling the case for ACEHS while Scott Seery is out of the office.

Colleen

Colleen V. Winey
Hydrogeologist
Zone 7 Water Agency
5997 Parkside Drive
Pleasanton, CA 94588-5127
(925)484-2600 x258

Drogos, Donna, Env. Health

From: Winey, Colleen [cwiney@zone7water.com]
Sent: Tuesday, March 04, 2003 1:27 PM
To: Donna L. Drogos (E-mail)
Cc: Scott Seery (E-mail); Katen, Matt
Subject: Update on Sunol wells

Donna,

I wanted to let you know that the Zone 7 lab has started the analysis of the water samples collected from the domestic wells in Sunol. They don't have exact numbers yet, but because of the situation they called with preliminary data. The well at T-Bear Ranch (4S/1E 20G 2) has MtBE at levels >100 ug/L and the well at the golf course (4S/1E 20A 2) has trace amounts of MtBE. Well 4S/1E 20A 2 has upper perforations at 25 feet bgs. We still have not found any well records for 4S/1E 20G 2. The owner is looking for records but the well was already installed when he purchased the property so he's not sure if he has any records. Now that the data from 20G 2 has been confirmed it might be beneficial for the owners of 4S/1E 20B 1 at Sunset Riding Academy to have their well sampled. The upper screen zone is at 23 feet bgs in 20B 1 and it appears that the groundwater is flowing in that direction.

I'll send over the lab results when the final data is in. Even though this site is outside of our main groundwater basin, Zone 7 is very concerned about this site since drinking water has been impacted within our service area. I'd appreciate it if you could keep us informed of any developments in this case. Let me know if I can do anything else to help.

Thanks,
Colleen

Colleen V. Winey
Hydrogeologist
Zone 7 Water Agency
5997 Parkside Drive
Pleasanton, CA 94588-5127
(925)484-2600 x258

Sunol Trce
3004 Andrade Rd
Sunol

12-12-02

MEMO to FIG:

On site today while a company named "WELL SPY" performed a down-hole camera survey to determine screen intervals and total well depth. Although a complete report will be forthcoming, roughly speaking, total depth was ~150' BG, with perforations (rotary knife cut) beginning @ ~60', ~~at~~ ~75' and ~100'. This 10" steel cased well may be open-ended, and terminated in soft sediments.

807

RO 2445
SEENY



State Water Resources Control Board



Winston H. Hickox
*Secretary for
Environmental
Protection*

Division of Clean Water Programs
1001 I Street • Sacramento, California 95814
P.O. Box 944212 • Sacramento, California • 94244-2120
(916) 341-5714 ♦ FAX (916) 341-5806 ♦ www.swrcb.ca.gov/cwphome/ustcf

Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov.

Alameda County

DEC 11 2002

Environmental Health

DEC -9 2002

Murray Kelsoe
229 Tewksbury Ave
Point Richmond, CA 94801

UNDERGROUND STORAGE TANK CLEANUP FUND (FUND), STAFF DECISION TO REJECT CLAIM: CLAIM NUMBER 017309; FOR SITE ADDRESS: 3004 ANDRADE RD, SUNOL

Your claim is ineligible for placement on the Priority List for the following reason:

On June 25, 2002, the Fund received your application for participation in the Fund's reimbursement program. After careful review of your application, it has been determined that your claim is being denied for the following reasons:

Section 25299.57(d)(3)(A) of the Health and Safety Code (H&SC) states, in part, that a claimant may be paid if:

“...the claimant has complied with...the permit requirements of Chapter 6.7 (commencing with Section 25280).”

In addition, Section 25284(a)(1) states, in part:

“...no person shall own or operate an underground storage tank unless a permit for its operation has been issued by the local agency...”

With regard to eligibility for a permit waiver, Section 25299.57 (d)(3)(B)(i) states, in part:

“The claimant was unaware of the permit requirements prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit”

You requested the State Water Resources Control Board (SWRCB) grant a permit waiver in order to access the Fund.

Background

In 1985, you identified yourself as the owner and operator of the subject USTs. As a tank owner, it was your responsibility to comply with all applicable laws regarding USTs. Specifically,

permits for the operation of the subject USTs. Discussions with Alameda County Department of Environmental Health, Hazardous Materials Division (County), confirmed that the County began implementing their Underground Storage Tank (UST) Program in 1987. In 1988, the County began to notify all known UST owners of the UST law and operating permit requirements. On April 24, 1991, the County issued you a "NOTICE OF VIOLATION", based on your non-compliance with the H&SC and Title 23 of the California Code of Regulations. The County's letter stated that you were to register your USTs by May 24, 1991. On June 5, 1991 the County sent you a "**SECOND NOTICE OF VIOLATION**" for failure to respond to submit a Plan of Correction as required by the H&SC. Since you failed to respond to the County's "NOTICE OF VIOLATION", the County referred you to the District Attorney's Office for enforcement action.

On August 17, 1994, the Alameda County District Attorney's Office sent you a "**NOTICE TO ABATE PUBLIC NUISANCE.**" The District Attorney's "**NOTICE TO ABATE PUBLIC NUISANCE**" stated that the UST system was installed in 1984 and was used to store motor vehicle fuel for the purpose of retail sales. Since 1984, the subject USTs that you have owned and operated have not been permitted as required by the H&SC, Section 25284. In 1994, ten years later and after the District Attorney's enforcement letter a permit for the USTs was obtained.

On November 1, 1994, the County informed you that you did not meet the Financial Responsibility requirement as required by the H&SC Section 25292.2. The County requested that within ten days of your bankruptcy proceeding that you demonstrate another financial mechanism. On November 4, 1994, the County issued a "NOTICE OF VIOLATION" for failure to provide proof that you were in compliance with financial responsibility. You were notified to correct the violation within 30 days.

On December 20, 1995, the County notified you of the requirements for USTs regarding leak detection monitoring. The manual inventory reconciliation and annual tank integrity testing is a condition for the permit at the subject site because the groundwater is within 20 feet from the bottom of the USTs. On October 31, 1996 the County issued a "NOTICE OF VIOLATION" for failure to properly monitor and operate the USTs. The County requested printouts to demonstrate compliance for each of the USTs at the subject site. The reports were due on November 10, 1996.

On August 14, 2002, the County issued a "NOTICE OF VIOLATION" for failure to submit a work plan regarding the unauthorized release of petroleum and details for the on-site domestic well. The County requested the information due within ten days or your case would be turned over to the District Attorney's Office for enforcement action. Notification from the County confirmed that on August 29, 2002, a Preliminary Site Assessment was received.

Conclusion

The Fund is denying your claim because you did not obtain a permit for the USTs until 1994, ten years after operation of the USTs. Secondly, the SWRCB cannot grant the Permit Waiver to access the Fund since you were aware of the requirement to obtain a permit.

NOTE: Sections cited are found in the Petroleum Underground Storage Tank Cleanup Fund Regulations, Title 23, Division 3, Chapter 18, of the California Code of Regulations.

If you disagree with this Staff Decision, you may appeal to the Division Chief pursuant to Section 2814.1 of the Petroleum Underground Storage Tank Cleanup Fund Regulations. If you would like review of the decision by the Fund Manager, please submit your request along with any additional documentation to:

Allan V. Patton, Fund Manager, Claim #017309
Underground Storage Tank Cleanup Fund
State Water Resources Control Board
Division of Clean Water Programs
P.O. Box 944212
Sacramento, CA 94244-2120

A request to the Fund Manager must include, at a minimum: (1) a statement describing how the claimant is damaged by the prior Staff Decision; (2) a description of the remedy or outcome desired; and (3) an explanation of why the claimant believes the Staff Decision is erroneous, inappropriate or improper.

If you do not a request review by the Fund Manager within thirty (30) calendar days from the date of this letter, the Staff Decision will then become final and conclusive.

If you have any questions, please call me at (916) 341-5714.

Sincerely,
ORIGINAL SIGNED BY
Shari Knieriem
Claims Review Unit
Underground Storage Tank Cleanup Fund

cc: Mr. Steve Morse
RWQCB, Region 2
1515 Clay Street, Ste. 1400
Oakland, CA 94612

Ms. Donna Drogos
Alameda County EHD
1131 Harbor Bay Pkway, 2nd Fl.
Alameda, CA 94502-6577


CLEARWATER
G R O U P
Environmental Services

October 10, 2002

Mr. Scott Seery
Alameda County Health Care
Services Agency
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
Ph: (510) 567-6783
Fx: (510) 337-9335

Alameda County
OCT 14 2002
Environmental Health

Re: Sunol Tree Gas, 3004 Andrade Road, Sunol Preliminary Site Assessment Status
Clearwater Project Number CB021C

Dear Scott:

Per our conversation on October 8, 2002. Clearwater would like to present a status and schedule update for the subject site's Preliminary Site Assessment (PSA).

Task 1 of the Preliminary Site Assessment was to create a work plan to be sent to Alameda County Environmental Health. Task was completed August 27, 2002.

Task 2 of the PSA was to complete the disposal of stored groundwater in 20,000-gallon aboveground tanks (ASTs) and dispose of stockpiled soils.

Currently Clearwater has been proceeding with removing (in an order that allows progress to be made by the general contractor) and properly disposing of the groundwater in the ASTs starting September 3, 2002. Approximately 140,000 gallons will be transported to Dublin San Ramon Services District as non-hazardous waste. Each individual tank needs to then be cleaned with a crew geared up in level C personnel protective equipment. Each tank needs to be certified clean by a Rain-for-Rent (RforR) representative before RforR will demobilize the tanks. Currently, Clearwater has dewatered four, cleaned three, and demobilized three out of eight (8) ASTs. We anticipate completion of water removal and disposal to be completed by October 17, 2002.

Clearwater anticipates completing bid proposals and profiling of the soil pile by October 18, 2002. We need to complete extra analytical analysis on the soil piles because of the relative size for proper profiling to a non-hazardous landfill. Anticipated removal of soil

Alameda County

OCT 14 2002



Environmental Health

piles to commence on October 30, 2002. Clearwater will provide weighted sandbags on top of visqueen plastic to prevent soil pile erosion.

Task 3 of the PSA designates to drill 5 strategically placed borings in and around the pump dispenser islands and tanks.

Clearwater has applied for drilling permits from Alameda County Health Care Services to initiate the work to complete task 3. We will move ahead with this phase of the workplan immediately upon issuance of permits, but do not expect to actually receive the permits until October 25, 2002. We then can proceed to schedule approximately two (2) fieldwork days to complete the subsurface investigation commencing on or around October 28, 2002.

Clearwater is in the process of accepting bids from subcontractors for the pump removal (to gain access to the on site domestic well) to complete the well completion data including total depth, and zones of perforation. We are also attempting to glean as much information as possible from driller and pump service records. We anticipate this activity to be completed by October 25, 2002.

A Preliminary Site Assessment report will be prepared by Clearwater, a copy should be ready for your review by November 15, 2002.

Thank you for your patience and understanding regarding this site. Please call me with any questions at (510) 307-9943 x 229.

Sincerely,

A handwritten signature in cursive script that reads "Brian Pierskalla".

Brian Pierskalla
Project Manager
Clearwater Group, Inc.

Cc: Mr. Murray Kelsoe, P.O. Box 176, Alamo, CA 94507

ALAMEDA COUNTY
HEALTH CARE SERVICES



AGENCY
DAVID J. KEARS, Agency Director

August 29, 2002

RO 2448

Mr. Murray Kelsoe
P.O. Box 176
Alamo, CA 94507

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

RE: Sunol Tree Gas, 3004 Andrade Road, Sunol – Preliminary Site Assessment Work Plan

Dear Mr. Kelsoe:

The August 23, 2002 Clearwater Group *Workplan for Preliminary Site Assessment* has been received by this office and reviewed to determine whether the proposed scope satisfies project objectives for the initial investigation of the subject site. Three tasks are proposed as a part of the cited workplan, but only one task, Task 3, will be addressed in this correspondence.

Task 3 of the cited workplan proposes the advance of five (5) push-tool soil probes in the vicinity of the underground storage tank (UST) complex, and within the dispenser area drive slab. Both soil and groundwater samples will be collected for analyses. Samples will be analyzed for the presence of a range of petroleum hydrocarbons, plus methyl tert-butyl ether (MtBE).

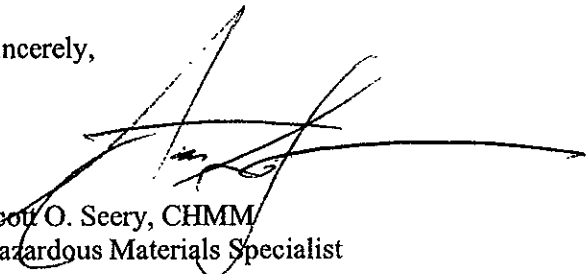
Task 3 of the cited workplan is accepted, with the following changes:

- Target compounds sought in soil and water samples analyzed by EPA Method 8260 (624) shall also include TAME, ETBE, DIPE, TBA, EDB, and EDC, in addition to those compounds already proposed.

This workplan shall be implemented with 45 days of the date of this letter.

Please call me at (510) 567-6783 to inform me when field work has been scheduled.

Sincerely,



Scott O. Seery, CHMM
Hazardous Materials Specialist

cc: Chuck Headlee, RWQCB
Shari Knieriem, SWRCB UST Fund
Robert Weston, ACDEH
Brian Pierskalla, Clearwater Group, 229 Tewksbury Ave., Pt. Richmond, CA 94801

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



August 14, 2002

RO 2448

Mr. Murray Kelsoe
Sunol Tree Gas
3004 Andrade Road
Sunol, CA 94586

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

NOTICE OF VIOLATION

RE: Sunol Tree Gas, 3004 Andrade Road, Sunol – Well construction details

Dear Mr. Kelsoe:

In correspondence from this office dated June 27, 2002, you were requested to submit, in addition to a work plan for the initial assessment of the underground storage tank (UST) release at this site, the construction details for the on-site domestic well. This information was supposed to be submitted within 30 days of the date of that letter.

To date, the requested well information has not been received. You are currently in violation of this request. This information is to be submitted within 10 days.

Please be advised that you are jeopardizing your eligibility in the UST Fund by failing to remain in compliance with directives from this office. In addition, continued failure to comply with this or other requests will result in your case being referred to the Alameda County District Attorney for enforcement action.

Please call me at (510) 567-6783 should you have any questions.

Sincerely,



Scott O. Seery, CHMM
Hazardous Materials Specialist

cc: Chuck Headlee, RWQCB
Shari Knieriem, SWRCB UST Fund
Robert Weston, ACDEH

20 2448
Scott



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Clean Water Programs

1001 I Street • Sacramento, California 95814
P.O. Box 944212 • Sacramento, California • 94244-2120
(916) 341-5714 • FAX (916) 341-5806 • www.swrcb.ca.gov/cwphome/ustcf

Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov.

JUL 30 2002

Murray Kelsoe
229 Tewksbury Ave
Point Richmond, CA 94801

AUG 02 2002

UNDERGROUND STORAGE TANK CLEANUP FUND (FUND), REQUEST FOR FURTHER DOCUMENTATION DURING INITIAL REVIEW: CLAIM NUMBER 017309; FOR SITE ADDRESS: 3004 ANDRADE RD, SUNOL

After reviewing your claim application to the Cleanup Fund, we find that the following additional information is needed to determine your eligibility for placement on the Priority List:

FINANCIAL RESPONSIBILITY

Claimant is required to have current financial responsibility documents on file. Please submit the original documents to the local regulatory agency and forward a copy to the Fund. If you have any questions regarding the requirements for financial responsibility, please contact Barbara Rinker of our office at (916) 341-5648.

UPGRADE CERTIFICATE

Submit a copy of the Underground Storage Tank Upgrade Certificate for the subject facility identifying the site is in compliance with December 22, 1998 upgrade requirement. Claimant must demonstrate that the following actions were completed prior to December 22, 1998.

1. Operation of USTs had ceased.
2. USTs were emptied.
3. Claimant applied for a temporary/permanent closure permit for the USTs.

PRIORITY CLASS B (ADDENDUM & EMPLOYEE VERIFICATION) WITH ENCLOSED FORM

- Claimant is requesting priority class "B" and must complete the enclosed Priority Class B Addendum. For all non manufacturers, claimant must provide employee verification (i.e., Department of Employment Development (DE6) for the last four quarters or a declaration letter signed by an officer of the company). Provide complete tax documents for the respective three years of gross receipts that claimant has listed on the addendum.

CURRENT PERMIT

Submit a copy of the current permit to own or operate the UST from the local regulatory agency (Air Pollution permits are not acceptable).

PRE 1990 OWNER/OPERATOR PERMIT

A copy of the permit to own or operate the UST from the local implementing agency dated between January 1, 1984 and January 1, 1990 (pursuant to Chapter 6.7 of the Health and Safety Code).

If you were not subject to the permit requirement, submit documentation to confirm this claim. Situations where the permit was not required by January 1, 1990, can include: a) you removed all USTs prior to January 1, 1990; and not replaced; b) you decommissioned all USTs pursuant to the direction of the regulatory agency prior to January 1, 1984; c) you sold the property and tanks by January 1, 1990.

If you were subject to the permit requirement but failed to comply by January 1, 1990, you can request the State Board to waive the requirement as a condition for eligibility. To request a waiver, complete the enclosed "Permit Waiver Request" form and return with any additional information requested below.

NOTE: Failure to respond to this request within thirty (30) calendar days from the date of this letter may result in an ineligibility determination of your claim.

If you have any questions, please contact me at (916) 341-5714.

Sincerely,



Shari Knieriem
Claims Review Unit
Underground Storage Tank Cleanup Fund

cc: Mr. Steve Morse
RWQCB, Region 2
1515 Clay Street, Ste. 1400
Oakland, CA 94612

Ms. Donna Drogos
Alameda County EHD
1131 Harbor Bay Pkway, 2nd Fl.
Alameda, CA 94502-6577



202448
SWT



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Clean Water Programs
1001 I Street • Sacramento, California 95814
P.O. Box 944212 • Sacramento, California • 94244-2120
(916) 341-5714 • FAX (916) 341-5806 • www.swrcb.ca.gov/cwphome/ustcf

Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov

Murray Kelsoe
229 Tewksbury Ave
Point Richmond, CA 94801

UNDERGROUND STORAGE TANK CLEANUP FUND (FUND), REQUEST FOR FURTHER DOCUMENTATION DURING INITIAL REVIEW: CLAIM NUMBER 017309; FOR SITE ADDRESS: 3004 ANDRADE RD, SUNOL

After reviewing your claim application to the Cleanup Fund, we find that the following additional information is needed to determine your eligibility for placement on the Priority List:

BOARD OF EQUALIZATION FEES

Claimant is required to provide documentation that all current and prior UST fees due on or after January 1, 1991 imposed by Section 25299.41 of the Health and Safety Code have been paid. If any of the USTs owned or operated had product placed in them on or after January 1, 1991, attach the most recent copy of the UST Fee Return Form filed with the State Board of Equalization (BOE) with proof of payment (copy of canceled check).

TAX IDENTIFICATION NUMBER

Claimant's tax identification number must correspond with the claimant name (e.g. individual-social security number; corporation, partnership, estate, trust-federal tax identification number). What entity is paying for the cleanup costs?

FINANCIAL RESPONSIBILITY

Claimant is required to have current financial responsibility documents on file. Please submit the original documents to the local regulatory agency and forward a copy to the Fund. If you have any questions regarding the requirements for financial responsibility, please contact Barbara Rinker of our office at (916) 341-5648.

DIRECTIVE

Copy of the **first** letter from the local regulatory agency naming you a responsible party and directing you to cleanup the contamination at the subject site.

UPGRADE CERTIFICATE

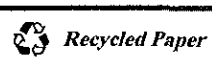
Submit a copy of the Underground Storage Tank Upgrade Certificate for the subject facility identifying the site is in compliance with December 22, 1998 upgrade requirement.

REMOVAL PERMIT

Submit a removal permit for all underground storage tanks listed in claim application.

PRIORITY CLASS C

Claimant is requesting priority class "C" and must submit documentation verifying that claimant does not employ more than 500 full time or part time employees. Submit documentation supporting the number of employees (i.e. Department of Employment Development (DE6) for the last quarter or a declaration letter signed by an officer of the company).



CURRENT PERMIT

Submit a copy of the current permit to own or operate the UST from the local regulatory agency (Air Pollution permits are not acceptable).

PRE 1990 OWNER/OPERATOR PERMIT

A copy of the permit to own or operate the UST from the local implementing agency dated between January 1, 1984 and January 1, 1990 (pursuant to Chapter 6.7 of the Health and Safety Code).

If you were not subject to the permit requirement, submit documentation to confirm this claim. Situations where the permit was not required by January 1, 1990, can include: a) you removed all USTs prior to January 1, 1990; and not replaced; b) you decommissioned all USTs pursuant to the direction of the regulatory agency prior to January 1, 1984; c) you sold the property and tanks by January 1, 1990.

If you were subject to the permit requirement but failed to comply by January 1, 1990, you can request the State Board to waive the requirement as a condition for eligibility. To request a waiver, complete the enclosed "Permit Waiver Request" form and return with any additional information requested below.

NOTE: Failure to respond to this request within thirty (30) calendar days from the date of this letter may result in an ineligibility determination of your claim.

If you have any questions, please contact me at (916) 341-5714.

Sincerely,

Shari Knieriem
Claims Review Unit
Underground Storage Tank Cleanup Fund

cc: Mr. Steve Morse
RWQCB, Region 2
1515 Clay Street, Ste. 1400
Oakland, CA 94612

Ms. Donna Drogos
Alameda County EHD
1131 Harbor Bay Pkway, 2nd Fl.
Alameda, CA 94502-6577



State Water Resources Control Board
Underground Storage Tank Cleanup Fund

PERMIT WAIVER REQUEST FORM

CLAIM NO.: 017309

CLAIMANT NAME: MURRAY KELSOE

SITE ADDRESS: 3004 ANDRADE RD, SUNOL

Claimants who were subject to the permit requirement but failed to comply by January 1, 1990, can request the State Water Resources Control Board (SWRCB) to waive the requirement as a condition for eligibility if the four requirements listed below have been met. Where the SWRCB grants the waiver, the level of required deductible is twice the amount otherwise required. In this case, the above-named claimant will be responsible for the first \$ of eligible corrective action costs before Fund coverage begins.

I, MURRAY KELSOE, HEREBY REQUEST THE SWRCB TO GRANT A PERMIT WAIVER. TO QUALIFY FOR THIS WAIVER, I AM SUBMITTING DOCUMENTATION SHOWING THAT THE FOLLOWING FOUR PERMIT WAIVER REQUIREMENTS HAVE BEEN MET:

1. The claimant was unaware of the permit requirement prior to January 1, 1990, and did not intend to avoid the permit requirement or the associated fees.

DOCUMENTATION: Provide a brief history of the UST(s) and an explanation as to why the UST(s) were not permitted by January 1, 1990. Explain when and how you became aware of the law requiring a permit to own or operate the UST(s). (Attach additional sheets as necessary.)

2. Prior to filing a claim, the claimant has complied with the financial responsibility requirements of Section 25299.31 of the Health & Safety Code (H&SC).

DOCUMENTATION: Attach a copy of the Certificate of Financial Responsibility that is on file with the local regulatory agency.

3. The claimant has obtained and paid for all currently required permits.

DOCUMENTATION: If you owned or operated the UST(s) at the time of submitting the claim application, **attach** a copy of the permit to own or operate the UST(s) or a copy of the application to the local agency for a permit indicating that you are diligently pursuing the acquisition of a permit. If the UST(s) were removed prior to submitting your claim application, **attach** evidence that the UST(s) were removed, and the local regulatory agency notified, and a copy of the removal permit.

4. The claimant has paid all current UST fees imposed by Section 25299.41 of the H&SC, and all prior fees due on and after January 1, 1991.

DOCUMENTATION: If any of the USTs owned or operated had product placed in them on or after January 1, 1991, **attach** the most recent copy of the UST Fee Return Form filed with the State Board of Equalization with proof of payment.

CLAIMANT SIGNATURE: _____

PRINT SIGNATURE _____ DATE: _____

Note: Mail completed "Permit Waiver Request" and documentation to the address on the cover letter.

-Drogos, Donna, Env. Health

From: SHARI KNIERIEM [SKNIERIE@cwpswrcb.ca.gov]
Sent: Wednesday, July 10, 2002 2:06 PM
To: ddrogos@co.alameda.ca.us
Subject: RO0002448: Murray Kelso: Fund's Claim # 17309



17309clm_add.doc

FYI...For your file

Shari Knieriem
UST Cleanup Fund
(916) 341-5714
Fax (916) 341-5806
sknierie@cwpswrcb.ca.gov

FROM: MURRAY KELSOE
SUNOL TREE GAS
3004 ANDRADE RD.
SUNOL, CALIF. 94586

JULY 16TH, 2002

TO: ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 HARBOR BAY PARKWAY SUITE 250
ALAMEDA, CALIF. 94502-6577
ATTENTION: SCOTT SEERY

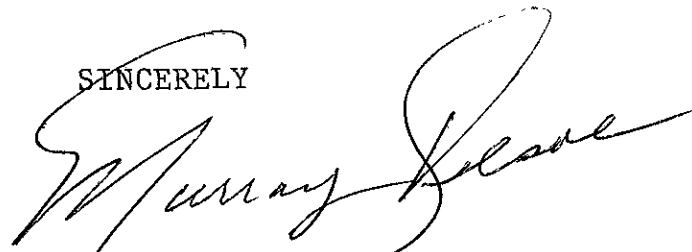
RE: RECEIPT OF CERTIFIED DATED 7-01-02

THIS LETTER IS TO INFORM THE ENVIRONMENTAL HEALTH SERVICES
THAT THE RECORDED OWNER OF THE SERVICE STATION PROPERTY AT
3004 ANDRADE ROAD SUNOL, CALIF. IS:

MURRAY KELSOE

THE LOCAL AGENCY HAS NOTIFIED MURRAY KELSOE (PROPERTY OWNER),
AT THE TIME OF CLEANUP, THAT THE NOTICE OF RESPONSIBILITY
BELONGS TO MURRAY KELSOE.

SINCERELY

A handwritten signature in cursive script that reads "Murray Kelsae". The signature is written in dark ink and is positioned below the word "SINCERELY".

MURRAY KELSOE

202448

JUN 17 2002

S.U.T.S.
Superior Underground Tank Service

PO Box 1487
San Ramon, CA 94583-1487
(925) 551-7887 Fax: (925) 551-7895 Cell: (925) 519-7887

June 12, 2002

Alameda County Health Care Services Agency
Environmental Health Services
Environmental Protection
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
Attn: Robert Weston
Sr. Hazardous Materials Specialist

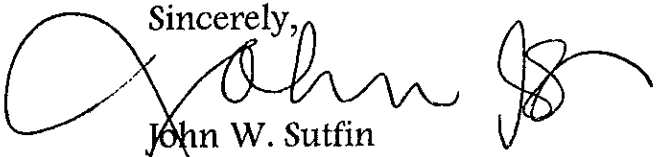
RE: Tank Disposal for Sunol Tree Gas

Dear Mr. Weston,

Please find enclosed copies of the Hazardous Waste Manifests for the transporting of the tanks and the certificate of disposal from Ecology Control Industries for the disposal of the tanks.

Should you have any questions please do not hesitate to contact me on my cell phone at 925-519-7887.

Sincerely,



John W. Sutfin

JS/ss

enc

IN CASE OF EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8802 WITHIN CALIFORNIA, CALL 1-800-852-7550

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No. CA0002528991803	Manifest Document No. 3461 of 1	2. Page 1 of 1	Information in the shaded areas is not required by Federal law.	
3. Generator's Name and Mailing Address Small Tree Co 3004 Yubaide Road Co. 94586			A. State Manifest Document Number 21080346		B. State Generator's ID	
4. Generator's Phone 925-862-2288			C. State Transporter's ID [Reserved]		D. Transporter's Phone (510) 235-1393	
5. Transporter 1 Company Name Ecology Control Industries			6. US EPA ID Number CA0982030173		E. State Transporter's ID [Reserved]	
7. Transporter 2 Company Name			8. US EPA ID Number		F. Transporter's Phone	
9. Designated Facility Name and Site Address Ecology Control Industries 255 Parr Blvd Richmond, CA 94801			10. US EPA ID Number CA0009466392		G. State Facility's ID CA0009466392	
			H. Facility's Phone 510-235-1393			
11. US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)		12. Containers No. Type	13. Total Quantity	14. Unit Wt/Vol	1. Waste Number	
Non-RCRA hazardous waste, solid (waste empty storage tank)		991 TP	017500	P	State 512 EPA/Other NONE	
b					State EPA/Other	
c					State EPA/Other	
d					State EPA/Other	
J. Additional Descriptions for Materials Listed Above 11a. QTY. 1 EMPTY STORAGE TANK # 29067			K. Handling Codes for Wastes Listed Above a. 99		b.	
TANKS HAVE BEEN INERTED WITH 15 LBS DRY ICE PER 1000 GALLONS CAPACITY			c.		d.	
15. Special Handling Instructions and Additional Information Wear proper protective equipment while handling. Weights or volumes are approximate. 24 Hour emergency contact: 24 Hour emergency telephone number: DOT ERG#11a)171						
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment. OR if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.						
Printed/Typed Name MURRAY KELSEO		Signature <i>Murray Kelseo</i>		Month Day Year 04 0 20 2		
17. Transporter 1 Acknowledgement of Receipt of Materials Printed/Typed Name FLOYD APODACA		Signature <i>Floyd Apodaca</i>		Month Day Year 04 0 2 0 2		
18. Transporter 2 Acknowledgement of Receipt of Materials Printed/Typed Name		Signature		Month Day Year		
19. Discrepancy Indication Space						
20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19. Printed/Typed Name James Wilcox						
Signature <i>James Wilcox</i>		Month Day Year 04 0 2 0 2				

DO NOT WRITE BELOW THIS LINE.

IN CASE OF EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8802. WITHIN CALIFORNIA, CALL 1-800-852-7550

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No. CA C 00254899		Manifest Document No. 1803451 of 1		2. Page 1 of 1		Information in the shaded areas is not required by Federal law					
3. Generator's Name and Mailing Address Sunol Tree Oaks 3009 Kuykendall Road Sunol - 94586				A. State Manifest Document Number 21080345									
4. Generator's Phone 925-862-2288				B. State Generator's ID									
5. Transporter 1 Company Name Ecology Control Industries		6. US EPA ID Number CA D 982030173		C. State Transporter's ID (Reserved)									
7. Transporter 2 Company Name		8. US EPA ID Number		D. Transporter's Phone (510) 235-1393									
9. Designated Facility Name and Site Address Ecology Control Industries 255 Parr Blvd Richmond, CA 94801		10. US EPA ID Number CA D 009466392		E. State Transporter's ID (Reserved)									
				F. Transporter's Phone									
				G. State Facility's ID CA D 009466392									
				H. Facility's Phone 510-235-1393									
11. US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)				12. Containers		13. Total Quantity		14. Unit Wt/Vol		15. Waste Number			
Non-RCRA hazardous waste, solid (waste empty storage tank)				No.		Type				State			
						001 TP		02/5/02		P		512	
												EPA/Other	
												NONE	
												State	
11a. QTY: 1 EMPTY STORAGE TANK # 29665				16. Handling Codes for Wastes Listed Above 99									
TANKS HAVE BEEN INERTED WITH 15 LBS DRY ICE PER 100 GALLONS CAPACITY													
15. Special Handling Instructions and Additional Information Wear proper protective equipment while handling. Weights or volumes are approximate. 24 Hour emergency contact: 24 Hour emergency telephone number: DOT ERG#11a)171													
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.													
If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment, OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.													
Printed/Typed Name Murray Kelsoe				Signature <i>Murray Kelsoe</i>				Month Day Year 04 02 02					
17. Transporter 1 Acknowledgment of Receipt of Materials Printed/Typed Name GENTRY ELLIOTT				Signature <i>Gentry Elliott</i>				Month Day Year 04 02 02					
18. Transporter 2 Acknowledgment of Receipt of Materials Printed/Typed Name				Signature				Month Day Year					
19. Discrepancy Indication Space													
20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19													
Printed/Typed Name James Wilcox				Signature <i>James Wilcox</i>				Month Day Year 04 02 02					

DO NOT WRITE BELOW THIS LINE

IN CASE OF EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8802. WITHIN CALIFORNIA, CALL 1-800-852-7550

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No. C4C00252899	Manifest Document No. 18 03 47 1	2. Page 1 of 1	Information in the shaded areas is not required by Federal law	
3. Generator's Name and Mailing Address Sunol Tree Cys 3004 Anderson Road Sunol Ca. 94584			A. State Manifest Document Number 21080347		B. State Generator's ID JUN 1 2002	
4. Generator's Phone 925-862-2288		6. US EPA ID Number CAD982030173		C. State Transporter's ID [Reserved]		D. Transporter's Phone (510) 235-1393
5. Transporter 1 Company Name Ecology Control Industries		7. Transporter 2 Company Name		E. State Transporter's ID [Reserved]		F. Transporter's Phone
9. Designated Facility Name and Site Address Ecology Control Industries 255 Parr Blvd Richmond CA 94801		10. US EPA ID Number CAD009466392		G. State Facility's ID CAD009466392		H. Facility's Phone 510-235-1393
11. US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number) Non-RCRA hazardous waste, solid (waste empty storage tank)		12. Containers		13. Total Quantity	14. Unit Wt/Vol	15. Waste Number
		No.	Type			State EPA/Other
		09		TP	07560	P
b						State EPA/Other
c						State EPA/Other
d						State EPA/Other
16. Additional Descriptions for Materials Listed Above 116 QTY / EMPTY STORAGE TANKS 0900S			17. Handling Codes for Wastes Listed Above 99			
18. Special Handling Instructions and Additional Information TANKS HAVE BEEN INERTED WITH 1200S DRY ICE PER 10 GALLONS CAPACITY			19. DOT ERG# 11a)171			
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.						
If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.						
Printed/Typed Name Murray Kersoe		Signature <i>Murray Kersoe</i>		Month 04	Day 02	Year 2002
17. Transporter 1 Acknowledgement of Receipt of Materials Printed/Typed Name Robert Ekblom		Signature <i>Robert Ekblom</i>		Month 09	Day 22	Year 2002
18. Transporter 2 Acknowledgement of Receipt of Materials Printed/Typed Name		Signature		Month	Day	Year
19. Discrepancy Indication Space						
20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in item 19						
Printed/Typed Name James Wilcox		Signature <i>James Wilcox</i>		Month 04	Day 02	Year 2002

DO NOT WRITE BELOW THIS LINE

IN CASE OF EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8802. WITHIN CALIFORNIA, CALL 1-800-852-7550

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No. CA 90252899180344		2. Page(s) 1 of 1		Information in the shaded areas is not required by Federal law.	
3. Generator's Name and Mailing Address Sundt Tree Gas 3004 Unkade Road Sundt Ca 94586				A. State Manifest Document Number 21080344			
4. Generator's Phone 925-862-2288				B. State Generator's ID			
5. Transporter 1 Company Name Ecology Control Industries		6. US EPA ID Number CA D982030173		C. State Transporter's ID (Reserved)		D. Transporter's Phone (510) 235-1393	
7. Transporter 2 Company Name		8. US EPA ID Number		E. State Transporter's ID (Reserved)		F. Transporter's Phone	
9. Designated Facility Name and Site Address Ecology Control Industries 255 Parr Blvd Richmond CA 94801				10. US EPA ID Number CA D009466392		G. State Facility's ID CA D009466392	
				H. Facility's Phone 510-235-1393			
11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number) Non-RCRA hazardous waste, solid (waste empty storage tank)		12. Containers		13. Total		14. Unit	
		No.		Quantity		Wt./Vol.	
		Type					
		Waste Number					
		State					
EPA/Other						State	
EPA/Other						State	
EPA/Other						State	
EPA/Other						State	
EPA/Other						State	
J. Additional Descriptions for Materials Listed Above				K. Handling Codes for Wastes Listed Above			
11a. QTY. 1 EMPT. STORAGE TANK # 29664				a. 99		b.	
TANKS HAVE BEEN INERTED WITH 15 LBS DRY ICE PER 1000 GALLONS CAPACITY.				c.		d.	
15. Special Handling Instructions and Additional Information Wear proper protective equipment while handling. Weights or volumes are approximate. 24 Hour emergency contact: 24 Hour emergency telephone number: DOT ERG#11a)171							
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.							
Printed/Typed Name Murray Kelsoe		Signature <i>Murray Kelsoe</i>		Month 04		Day 02	
Year 02							
17. Transporter 1 Acknowledgement of Receipt of Materials				Month 04		Day 02	
Printed/Typed Name Vincent Burns Flor		Signature <i>Vincent Burns Flor</i>		Year 02			
18. Transporter 2 Acknowledgement of Receipt of Materials				Month		Day	
Printed/Typed Name		Signature		Year			
19. Discrepancy Indicator Space							
20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest (see cap) as noted in Item 19:							
Printed/Typed Name James Wilcox		Signature <i>James Wilcox</i>		Month 04		Day 02	
Year 02							

DO NOT WRITE BELOW THIS LINE

While TSDR SENDS THIS COPY TO DTSC WITHIN 30 DAYS
 P.O. Box 3000, Sacramento, CA 95812

IN CASE OF EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8602; WITHIN CALIFORNIA, CALL 1-800-852-7550
 GENERATOR
 TRANSPORTER
 FACILITY

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No. CAC00252899180348		Manifest Document No. 180348		2. Page 1 of 1		Information in the shaded areas is not required by Federal law.			
3. Generator's Name and Mailing Address Sund Tree Gas Road Sund 3009 Woodside Road Sund 925-862-2288						A. State Manifest Document Number 21080348					
4. Generator's Phone						B. State Generator's ID					
5. Transporter 1 Company Name Ecology Control Industries						6. US EPA ID Number CAD982030173		C. State Transporter's ID (Reserved)		D. Transporter's Phone (510) 235-1393	
7. Transporter 2 Company Name						8. US EPA ID Number		E. State Transporter's ID (Reserved)		F. Transporter's Phone	
9. Designated Facility Name and Site Address Ecology Control Industries 255 Parr Blvd Richmond CA 94801						10. US EPA ID Number CAD009486392		G. State Facility's ID CAD009466392		H. Facility's Phone 510-235-1393	
11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number) Non-RCRA hazardous waste, solid (waste empty storage tank)						12. Containers		13. Total Quantity		14. Unit	
						No. Type		Quantity		Wt/Vol	
						001 TP		07560		P	
b.										Waste Number State: 512 EPA/Other: NONE	
c.										State: EPA/Other:	
d.										State: EPA/Other:	
12. Additional Description for Manifest Purposes TANKS HAVE BEEN INERTED WITH MILB SERVICE PER MFG CAPACITY						13. Handling Codes for Wastes Listed Above 99					
15. Special Handling Instructions and Additional Information Wear proper protective equipment while handling. Weights or volumes are approximate. 24 Hour emergency contact: 24 Hour emergency telephone number: DOT ERG#11a)171											
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.											
Printed/Typed Name MURRAY KELSE				Signature <i>Murray Kelse</i>				Month Day Year 04 02 02			
17. Transporter 1 Acknowledgement of Receipt of Materials Printed/Typed Name JAMES MAITLAND				Signature <i>James Maitland</i>				Month Day Year 04 02 02			
18. Transporter 2 Acknowledgement of Receipt of Materials Printed/Typed Name				Signature				Month Day Year			
19. Discrepancy Indication Space											
20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19. Printed/Typed Name James Wilcox											
Signature <i>James Wilcox</i>				Month Day Year 04 02 02							

DO NOT WRITE BELOW THIS LINE.

North
PHONE
(415) 241-1393

CERTIFICATE CERTIFIED SERVICES COMPANY

NO. 37304

255 Parr Boulevard • Richmond, California 94801

CUSTOMER
JOB NO. 5242951
SUPERIOR UND. TANK

FOR: ECOLOGY CONTROL IND TANK NO. 29666

LOCATION: RICHMOND, CA DATE: 5/10/2002 TIME: 1:53:23

VISUAL GASTECH/1314 SMPN LAST PRODUCT UNLEADED GASOLINE

TEST METHOD

This is to certify that I have personally determined that this tank is in accordance with the American Petroleum Institute and have found the condition to be in accordance with its assigned designation. This certificate is based on conditions existing at the time the inspection herein set forth was completed and is issued subject to compliance with all qualifications and instructions.

TANK SIZE 15,000 Gal Tank CONDITION SAFE FOR FIRE

REMARKS: OXYGEN 20.9% LOWER EXPLOSIVE LIMIT LESS THAN 0.1% ECOLOGY CONTROL INDUSTRIES
HERBY CERTIFIES THAT THE ABOVE NUMBERED TANK HAS BEEN CUT OPEN, PROCESSED,
AND THEREFORE DESTROYED AT OUR PERMITTED HAZARDOUS WASTE FACILITY
ECOLOGY CONTROL INDUSTRIES HAS THE APPROPRIATE PERMITS FOR, AND HAS ACCEPTED
THE TANK SHIPPED TO US FOR PROCESSING.

In the event of any physical or atmospheric changes affecting the gas-free conditions of the above tanks, or if in any doubt, immediately stop all hot work and contact the undersigned. This permit is valid for 24 hours if no physical or atmospheric changes occur.

STANDARD SAFETY DESIGNATION

SAFE FOR MEN: Means that in the compartment or space so designated (a) The oxygen content of the atmosphere is at least 19.5 percent by volume; and that (b) Toxic materials in the atmosphere are within permissible concentrations; and (c) In the judgment of the Inspector, the residues are not capable of producing toxic materials under existing atmospheric conditions while maintained as directed on the Inspector's certificate.

SAFE FOR FIRE: Means that in the compartment so designated (a) The concentration of flammable materials in the atmosphere is below 10 percent of the lower explosive limit; and that (b) In the judgment of the Inspector, the residues are not capable of producing a higher concentration that permitted under existing atmospheric conditions in the presence of fire and while maintained as directed on the Inspector's certificate, and further, (c) All adjacent spaces have either been cleaned sufficiently to prevent the spread of fire, are satisfactorily inerted, or in the case of fuel tanks, have been treated as deemed necessary by the Inspector.

The undersigned representative acknowledges receipt of this certificate and understands the conditions and limitations under which it was issued.

Raula M. Arceves
REPRESENTATIVE

TITLE

James Wilcox
INSPECTOR

CERTIFICATE
CERTIFIED SERVICES COMPANY

NO. 37306

255 Parr Boulevard • Richmond, California 94801

CUSTOMER
JOB NO. 5242951
SUPERIOR UIND TANK

FOR: ECOLOGY CONTROL IND. TANK NO. 29665

LOCATION: RICHMOND, CA DATE: 5/10/2002 TIME: 1:56:43

TEST METHOD VISUAL GASTECH/1314 SMPN LAST PRODUCT UNLEADED GASOLINE

This is to certify that I have personally determined that this tank is in accordance with the American Petroleum Institute and have found the condition to be in accordance with its assigned designation. This certificate is based on conditions existing at the time the inspection herein set forth was completed and is issued subject to compliance with all qualifications and instructions.

TANK SIZE	15,000 Gal Tank	CONDITION	SAFE FOR FIRE
REMARKS:	OXYGEN 20.9% LOWER EXPLOSIVE LIMIT LESS THAN 0.1% ECOLOGY CONTROL INDUSTRIES HERBY CERTIFIES THAT THE ABOVE NUMBERED TANK HAS BEEN CUT OPEN, PROCESSED AND THEREFORE DESTROYED AT OUR PERMITTED HAZARDOUS WASTE FACILITY ECOLOGY CONTROL INDUSTRIES HAS THE APPROPRIATE PERMITS FOR, AND HAS ACCEPTED THE TANK SHIPPED TO US FOR PROCESSING		

In the event of any physical or atmospheric changes affecting the gas-free conditions of the above tanks, or if in any doubt, immediately stop all hot work and contact the undersigned. This permit is valid for 24 hours if no physical or atmospheric changes occur.

STANDARD SAFETY DESIGNATION

SAFE FOR MEN: Means that in the compartment or space so designated (a) The oxygen content of the atmosphere is at least 19.5 percent by volume; and that (b) Toxic materials in the atmosphere are within permissible concentrations; and (c) In the judgment of the Inspector, the residues are not capable of producing toxic materials under existing atmospheric conditions while maintained as directed on the Inspector's certificate.

SAFE FOR FIRE: Means that in the compartment so designated (a) The concentration of flammable materials in the atmosphere is below 10 percent of the lower explosive limit; and that (b) In the judgment of the Inspector, the residues are not capable of producing a higher concentration than permitted under existing atmospheric conditions in the presence of fire and while maintained as directed on the Inspector's certificate, and further, (c) All adjacent spaces have either been cleaned sufficiently to prevent the spread of fire, are satisfactorily inerted, or in the case of fuel tanks, have been treated as deemed necessary by the Inspector.

The undersigned representative acknowledges receipt of this certificate and understands the conditions and limitations under which it was issued.

Laura M. Arnes
REPRESENTATIVE

TITLE

James Wilcox
INSPECTOR

DAY OR NIGHT
TELEPHONE
(510) 235-1393

CERTIFICATE CERTIFIED SERVICES COMPANY

255 Parr Boulevard • Richmond, California 94801

NO. 37303

CUSTOMER

JOB NO. 5242951
SUPERIOR UND. TANK

FOR: ECOLOGY CONTROL INDUSTRIES TANK NO. 29667

LOCATION: RICHMOND, CA DATE: 5/10/2002 TIME: 1:52:14

TEST METHOD VISUAL GASTECH/1314 SMPN LAST PRODUCT UNLEADED GASOLINE

This is to certify that I have personally determined that this tank is in accordance with the American Petroleum Institute and have found the condition to be in accordance with its assigned designation. This certificate is based on conditions existing at the time the inspection herein set forth was completed and is issued subject to compliance with all qualifications and instructions.

TANK SIZE 15,000 Gal Tank CONDITION SAFE FOR FIRE

REMARKS: OXYGEN 20.9% LOWER EXPLOSIVE LIMIT LESS THAN 0.1% ECOLOGY CONTROL INDUSTRIES
HERBY CERTIFIED THAT THE ABOVE NUMBERED TANK HAS BEEN CUT OPEN, PROCESSED,
AND THEREFORE DESTROYED AT OUR PERMITTED HAZARDOUS WASTE FACILITY.
ECOLOGY CONTROL INDUSTRIES HAS THE APPROPRIATE PERMITS FOR AND HAS ACCEPTED
THE TANK SHIPPED TO US FOR PROCESSING.

In the event of any physical or atmospheric changes affecting the gas-free conditions of the above tanks, or if in any doubt, immediately stop all hot work and contact the undersigned. This permit is valid for 24 hours if no physical or atmospheric changes occur.

STANDARD SAFETY DESIGNATION

SAFE FOR MEN: Means that in the compartment or space so designated (a) The oxygen content of the atmosphere is at least 19.5 percent by volume; and that (b) Toxic materials in the atmosphere are within permissible concentrations; and (c) In the judgment of the Inspector, the residues are not capable of producing toxic materials under existing atmospheric conditions while maintained as directed on the Inspector's certificate.

SAFE FOR FIRE: Means that in the compartment so designated (a) The concentration of flammable materials in the atmosphere is below 10 percent of the lower explosive limit; and that (b) In the judgment of the Inspector, the residues are not capable of producing a higher concentration than permitted under existing atmospheric conditions in the presence of fire and while maintained as directed on the Inspector's certificate, and further, (c) All adjacent spaces have either been cleaned sufficiently to prevent the spread of fire, are satisfactorily inerted, or in the case of fuel tanks, have been treated as deemed necessary by the Inspector.

The undersigned representative acknowledges receipt of this certificate and understands the conditions and limitations under which it was issued.

Kevin M. Cooper
REPRESENTATIVE

TITLE

James Wilcox
INSPECTOR

CERTIFICATE
CERTIFIED SERVICES COMPANY

255 Parr Boulevard • Richmond, California 94801

NO. 37307

CUSTOMER
JOB NO. 5242951
SUPERIOR UND. TANK

FOR: ECOLOGY CONTROL IND TANK NO. 29664

LOCATION: RICHMOND, CA DATE: 5/10/2002 TIME: 1:39:00

TEST METHOD VISUAL GASTECH/1314 SMPN LAST PRODUCT UNLEADED GASOLINE

This is to certify that I have personally determined that this tank is in accordance with the American Petroleum Institute and have found the condition to be in accordance with its assigned designation. This certificate is based on conditions existing at the time the inspection herein set forth was completed and is issued subject to compliance with all qualifications and instructions.

TANK SIZE 15,000 Gal Tank CONDITION SAFE FOR FIRE

REMARKS: OXYGEN 20.9% LOWER EXPLOSIVE LIMIT LESS THAN 10% ECOLOGY CONTROL INDUSTRIES
HERBY CERTIFIES THAT THE ABOVE NUMBERED TANK HAS BEEN GUT OPEN, PROCESSED
AND THEREFORE DESTROYED BY THE ABOVE NAMED PARTY AND IS NOT TO BE REUSED.
ECOLOGY CONTROL INDUSTRIES HAS THE APPROPRIATE DEPTHS OF PLANNING / ASSESSED
THE TANK SHIPPED TO US FOR FREE GASOLINE

In the event of any physical or atmospheric changes affecting the gas-free conditions of the above tanks, or if in any doubt, immediately stop all hot work and contact the undersigned. This permit is valid for 24 hours if no physical or atmospheric changes occur.

STANDARD SAFETY DESIGNATION

SAFE FOR MEN: Means that in the compartment or space so designated (a) The oxygen content of the atmosphere is at least 19.5 percent by volume; and that (b) Toxic materials in the atmosphere are within permissible concentrations; and (c) In the judgment of the Inspector, the residues are not capable of producing toxic materials under existing atmospheric conditions while maintained as directed on the Inspector's certificate.

SAFE FOR FIRE: Means that in the compartment so designated (a) The concentration of flammable materials in the atmosphere is below 10 percent of the lower explosive limit; and that (b) In the judgment of the Inspector, the residues are not capable of producing a higher concentration that permitted under existing atmospheric conditions in the presence of fire and while maintained as directed on the Inspector's certificate, and further, (c) All adjacent spaces have either been cleaned sufficiently to prevent the spread of fire, are satisfactorily inerted, or in the case of fuel tanks, have been treated as deemed necessary by the Inspector.

The undersigned representative acknowledges receipt of this certificate and understands the conditions and limitations under which it was issued.

REPRESENTATIVE *Ranka M. Owen*

TITLE

INSPECTOR *James Wilcox*

DAY, OR NIGHT
TELEPHONE
(510) 235-1393

CERTIFICATE
CERTIFIED SERVICES COMPANY
255 Parr Boulevard • Richmond, California 94801

NO. 37308

CUSTOMER
JOB NO. 5242951
SUPERIOR LIND TANK

FOR: ~~ECOLOGY CONTROL IND.~~ TANK NO. 29663

LOCATION: RICHMOND, CA DATE: 5/10/2002 TIME: 2:00:22

TEST METHOD VISUAL GASTECH/1314 SMPN LAST PRODUCT UNLEADED GASOLINE

This is to certify that I have personally determined that this tank is in accordance with the American Petroleum Institute and have found the condition to be in accordance with its assigned designation. This certificate is based on conditions existing at the time the inspection herein set forth was completed and is issued subject to compliance with all qualifications and instructions.

TANK SIZE 15,000 Gal Tank CONDITION SAFE FOR FIRE

REMARKS: ~~OXYGEN 20.6% LOWER EXPLOSIVE LIMIT LESS THAN 0.1% ECOLOGY CONTROL INDUSTRIES~~
~~HERBY CERTIFIES THAT THE ABOVE NUMBERED TANK HAS BEEN CUT OPEN, PROCESSED,~~
~~AND THEREFORE DESTROYED AT OUR PERMITTED HAZARDOUS WASTE FACILITY.~~
~~ECOLOGY CONTROL INDUSTRIES HAS THE APROPRIATE PERMITS FOR, AND HAS ACCEPTED~~
~~THE TANK SHIPPED TO US FOR PROCESSING.~~

In the event of any physical or atmospheric changes affecting the gas-free conditions of the above tanks, or if in any doubt, immediately stop all hot work and contact the undersigned. This permit is valid for 24 hours if no physical or atmospheric changes occur.

STANDARD SAFETY DESIGNATION

SAFE FOR MEN: Means that in the compartment or space so designated (a) The oxygen content of the atmosphere is at least 19.5 percent by volume; and that (b) Toxic materials in the atmosphere are within permissible concentrations; and (c) In the judgment of the Inspector, the residues are not capable of producing toxic materials under existing atmospheric conditions while maintained as directed on the Inspector's certificate.

SAFE FOR FIRE: Means that in the compartment so designated (a) The concentration of flammable materials in the atmosphere is below 10 percent of the lower explosive limit; and that (b) In the judgment of the Inspector, the residues are not capable of producing a higher concentration that permitted under existing atmospheric conditions in the presence of fire and while maintained as directed on the Inspector's certificate, and further, (c) All adjacent spaces have either been cleaned sufficiently to prevent the spread of fire, are satisfactorily inerted, or in the case of fuel tanks, have been treated as deemed necessary by the Inspector.

The undersigned representative acknowledges receipt of this certificate and understands the conditions and limitations under which it was issued.

Ronald M. Owens
REPRESENTATIVE

TITLE

James Wilcox
INSPECTOR

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



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

June 27, 2002

RO 2448

Mr. Murray Kelsoe
Sunol Tree Gas
3004 Andrade Road
Sunol, CA 94586

RE: Sunol Tree Gas, 3004 Andrade Road, Sunol – Request for Preliminary Site Assessment Work Plan

Dear Mr. Kelsoe:

Five 15,000-gallon underground storage tanks (UST) were removed from this site on April 2, 2002, along with their appurtenant vent and product piping and dispensers. A sixth 15,000 gallon UST was retained intact for storage of fire suppression water.

It has been reported that some evidence of an unauthorized release was identified during tank removals in the form of stained soil/backfill that also exhibited hydrocarbon odor. This apparent unauthorized release was substantiated through analyses of water samples collected from the base of the resultant UST excavation and from the contents of several, large-capacity, above-ground holding tanks into which groundwater was pumped to facilitate both UST removals and their subsequent replacement. Up to 190 micrograms per liter (ug/l) methyl tert-butyl ether (MtBE) was identified in water sampled from the above-ground holding tanks, while 84 ug/l was identified in a water sample collected from within the UST excavation. Soil samples collected from the base of the excavation were unremarkable; however, up to 1300 parts per million (ppm) of total petroleum hydrocarbons as diesel (TPH-d) was identified in sample DSP7-3', collected near one of the removed dispensers. Few aromatics were identified in any soil or groundwater samples collected during the course of the confirmatory sampling activities. Benzene was not at all detected.

A reported 3500 cubic yards of soil/backfill was removed from around the USTS and stockpiled on Visqueen behind the facility during the course of the removal project. A reported 210,000 gallons of extracted groundwater was stored in 10 above-ground tanks. Stockpiled soil and stored water are still located on-site at the time of this correspondence.

In addition, it has been reported that a private supply well is located on the subject property. Review of Zone 7 well permit records failed to turn up evidence of a permitted well at this location. It is possible that the noted well was installed sans permit. Details of its construction are unknown at this time. Nonetheless, we have been informed that water from this well is not

Mr. Kelsoe
Re: 3004 Andrade Rd., Sunol
June 27, 2002
Page 2 of 3

used for drinking water purposes, but only for other supply needs as they arise (e.g., toilet flushing, etc.). We have also been informed that all current drinking water is derived from bottled water sources.

Consistent with provisions of Article 11, *Corrective Action Requirements*, Section 2720 et seq., Title 23, California Code of Regulations (CCR), a Preliminary Site Assessment (PSA) must be conducted to initially assess the extent of the release at the site. The PSA typically involves the installation of several soil borings and construction of an array of monitoring wells strategically located to track contaminant location. However, in this case it will be acceptable to begin the project with a series of push-tool (i.e., GeoProbe) sampling points.

In order to facilitate this task, you are required to hire a California-registered engineer or geologist with the appropriate experience conducting such environmental projects to draft and submit a PSA workplan. Such licensing and registration is by provision of the California Business and Professions Code. The PSA work plan will present the anticipated scope of work necessary to complete this phase of the site assessment. Attached to this letter please find "Appendix A", a guide you may give to your chosen consultant to assist them in the submittal of an appropriate PSA work plan.

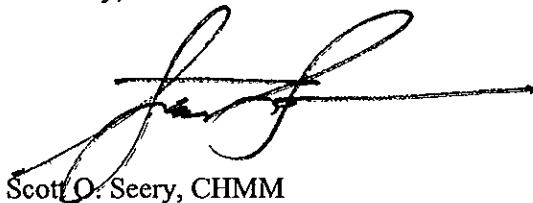
The PSA work plan is due within 60 days of the date of this letter.

We are aware that the soil stockpiles and water generated during the April UST excavation activities are still located at the site. I understand that you are currently in contact with the State UST Fund in an attempt to seek monies to assist with their lawful disposal. Please be advised that even absent assistance from the Fund, these waste materials will need to be properly handled and disposed.

Further, within 30 days of the date of this letter, you are requested to determine the specific construction characteristics of the noted private well located at this site, and submit this information to this office. Such requested information would include drillers logs, depth and length of screened interval(s), and sanitary seal interval, among other relevant facts. Please be advised that you may be required by this agency and/or Zone 7 to destroy this well under permit issued by Zone 7 at some point in the near future.

Please call me at (510) 567-6783 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott O. Seery", written over a horizontal line.

Scott O. Seery, CHMM
Hazardous Materials Specialist

Mr. Kelsoe
Re: 3004 Andrade Rd., Sunol
June 27, 2002
Page 3 of 3

Attachment (addressee, only)

cc: Chuck Headlee, RWQCB
Shari Knieriem, SWRCB UST Fund
Robert Weston, ACDEH

UNDERGROUND STORAGE TANK UNAUTHORIZED RELEASE (LEAK) / CONTAMINATION SITE REPORT

EMERGENCY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		HAS STATE OFFICE OF EMERGENCY SERVICES REPORT BEEN FILED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		FOR LOCAL AGENCY USE ONLY (HEREBY CERTIFY THAT I HAVE DISTRIBUTED THIS INFORMATION ACCORDING TO THE DISTRIBUTION SHOWN ON THE INSTRUCTION SHEET ON THE BACK PAGE OF THIS FORM.)		
REPORT DATE 04/17/02		CASE #		SIGNED: <i>[Signature]</i> DATE: 4-22-02		
REPORTED BY	NAME OF INDIVIDUAL FILING REPORT Muzzy Kelsoe		PHONE (925) 862-2288		SIGNATURE <i>[Signature]</i>	
	REPRESENTING <input type="checkbox"/> LOCAL AGENCY <input checked="" type="checkbox"/> OWNER/OPERATOR <input type="checkbox"/> REGIONAL BOARD <input type="checkbox"/> OTHER		COMPANY OR AGENCY NAME SUNOL TREE GAS			
	ADDRESS 3004 Andrus Road STREET, Sunol CITY, Ca. 94584 STATE ZIP					
RESPONSIBLE PARTY	NAME Muzzy Kelsoe <input type="checkbox"/> UNKNOWN		CONTACT PERSON Muzzy Kelsoe		PHONE (925) 862-2288	
	ADDRESS 3004 Andrus Road STREET, Sunol CITY, Ca. 94584 STATE ZIP					
SITE LOCATION	FACILITY NAME (IF APPLICABLE) Sunol Tree Gas		OPERATOR Muzzy Kelsoe		PHONE (925) 862-2288	
	ADDRESS 3004 Andrus Road STREET, Sunol CITY, Alameda COUNTY, Ca. 94584 STATE ZIP					
	CROSS STREET Hwy 680					
IMPLEMENTING AGENCIES	LOCAL AGENCY COUNTY OF ALAMEDA		AGENCY NAME		CONTACT PERSON ROBERT WESTON	
	REGIONAL BOARD SF REGION SWRCB				PHONE (510) 5676781	
SUBSTANCES INVOLVED	(1) NAME GASOLINE				QUANTITY LOST (GALLONS) <input checked="" type="checkbox"/> UNKNOWN	
	(2) NAME DIESEL				QUANTITY LOST (GALLONS) <input checked="" type="checkbox"/> UNKNOWN	
DISCOVERY/ABATEMENT	DATE DISCOVERED 04/10/02		HOW DISCOVERED <input type="checkbox"/> INVENTORY CONTROL <input type="checkbox"/> SUBSURFACE MONITORING <input type="checkbox"/> NUISANCE CONDITIONS <input type="checkbox"/> TANK TEST <input type="checkbox"/> TANK REMOVAL <input checked="" type="checkbox"/> OTHER Tank Removal			
	DATE DISCHARGE BEGAN <input checked="" type="checkbox"/> UNKNOWN		METHOD USED TO STOP DISCHARGE (CHECK ALL THAT APPLY) <input type="checkbox"/> REMOVE CONTENTS <input type="checkbox"/> CLOSE TANK & REMOVE <input type="checkbox"/> REPAIR PIPING <input type="checkbox"/> REPAIR TANK <input type="checkbox"/> CLOSE TANK & FILL IN PLACE <input type="checkbox"/> CHANGE PROCEDURE <input checked="" type="checkbox"/> REPLACE TANK <input type="checkbox"/> OTHER			
	HAS DISCHARGE BEEN STOPPED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF YES, DATE					
SOURCE/ CAUSE	SOURCE OF DISCHARGE <input type="checkbox"/> TANK LEAK <input checked="" type="checkbox"/> UNKNOWN <input type="checkbox"/> PIPING LEAK <input type="checkbox"/> OTHER		CAUSE(S) <input type="checkbox"/> OVERFILL <input type="checkbox"/> RUPTURE/FAILURE <input type="checkbox"/> SPILL <input type="checkbox"/> CORROSION <input checked="" type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER			
	CASE TYPE CHECK ONE ONLY <input type="checkbox"/> UNDETERMINED <input type="checkbox"/> SOIL ONLY <input checked="" type="checkbox"/> GROUNDWATER <input type="checkbox"/> DRINKING WATER - (CHECK ONLY IF WATER WELLS HAVE ACTUALLY BEEN AFFECTED)					
CURRENT STATUS	CHECK ONE ONLY <input type="checkbox"/> NO ACTION TAKEN <input type="checkbox"/> PRELIMINARY SITE ASSESSMENT WORKPLAN SUBMITTED <input type="checkbox"/> POLLUTION CHARACTERIZATION <input type="checkbox"/> LEAK BEING CONFIRMED <input checked="" type="checkbox"/> PRELIMINARY SITE ASSESSMENT UNDERWAY <input type="checkbox"/> POST CLEANUP MONITORING IN PROGRESS <input type="checkbox"/> REMEDIATION PLAN <input type="checkbox"/> CASE CLOSED (CLEANUP COMPLETED OR UNNECESSARY) <input type="checkbox"/> CLEANUP UNDERWAY					
	REMEDIAL ACTION CHECK APPROPRIATE ACTION(S) (SEE BACK FOR DETAILS) <input checked="" type="checkbox"/> EXCAVATE & DISPOSE (ED) <input type="checkbox"/> REMOVE FREE PRODUCT (FP) <input type="checkbox"/> ENHANCED BIO DEGRADATION (IT) <input type="checkbox"/> CAP SITE (CD) <input type="checkbox"/> EXCAVATE & TREAT (ET) <input checked="" type="checkbox"/> PUMP & TREAT GROUNDWATER (GT) <input type="checkbox"/> REPLACE SUPPLY (RS) <input type="checkbox"/> CONTAINMENT BARRIER (CB) <input type="checkbox"/> NO ACTION REQUIRED (NA) <input type="checkbox"/> TREATMENT AT HOOKUP (HU) <input type="checkbox"/> VENT SOIL (VS) <input type="checkbox"/> VACUUM EXTRACT (VE) <input type="checkbox"/> OTHER (OT)					
COMMENTS	(Empty space for additional notes)					