



# GETTLER - RYAN INC.

May 27, 2005

Mr. Jerry Wickham  
Alameda County Environmental Health Services  
1131 Harbor Bay Parkway, Suite 250  
Alameda, CA 94502-6577

RECEIVED  
MAY 27 2005  
ALAMEDA COUNTY

**Re: Notice of Petition Involving LOP and Request for Preparation of Record  
Site Address: 515 South Livermore Avenue, Livermore, California.**

Dear Mr. Wickham:

Please accept this letter as formal notification that Marie Schweickert, pursuant to State Water Resources Control Board Resolution 88-23, is petitioning the State Water Resources to review your May 5, 2005 request for further site investigation and corrective action at her former residence located at 515 South Livermore Avenue, Livermore, California.

A copy of the petition is enclosed.

Petitioner requests, pursuant to Resolution 88-23, that your agency provide the State Board with a list of all persons other than those shown in section 8 of the petition, if any, known to your agency to have an interest in the matter which is the subject of the petition.

Finally, pursuant to Resolution 88-23, your agency is hereby requested to prepare its record in the matter.

Very truly yours,

  
Robert Lauritzen

Cc: Regional Water Quality Control Board – S.F. Bay Area Region



# GETTLER - RYAN INC.

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May 31, 2005

(sent UPS overnight)

David Boyers  
State Water Resources Control Board  
Office of Chief Counsel  
1001 I Street, 22<sup>nd</sup> Floor  
Sacramento, California 95814

**Subject:      Petition for Site Review of Action by LOP**  
Fuel Leak Case No. RO0002595  
Schweickert Property  
515 South Livermore Avenue  
Livermore, California

Dear Mr. Boyers,

Gettler-Ryan Inc., on behalf of Marie Schweickert, pursuant to California Health and Safety Code section 25297.1, California Water Code Section 13320, and California Code of Regulations Title 23, Section 2050, is submitting the following petition to the State Water Resources Control Board for review of the recent actions requested by Alameda County Environmental Health Services (ACEH) at the above referenced site.

## **Background**

Petitioner is the owner of residential home at 515 South Livermore Avenue, Livermore, California. Petitioner removed an underground heating oil tank (UST) on or about July 29, 2003. The tank had been installed, operated and taken out of service in 1960. Gettler Ryan conducted compliance soil sampling during the tank removal. There were no indications of a release such as holes or cracks in the tank. No groundwater was observed in the excavation. One soil sample was collected at the base of the UST excavation at 5 feet below ground surface (bgs). Laboratory results indicated that a Total Petroleum Hydrocarbons as diesel (TPHd) concentration 36 parts per million was detected in the sample. Benzene, toluene, ethylbenzene and total xylenes and oil and grease were below laboratory method detection limits.

In November 2003, Gettler Ryan advanced one Geoprobe soil boring to 50 feet bgs. Soil samples were collected at depths of 10, 20, 30 and 40 feet bgs. A grab groundwater sample was collected from the soil boring at 50 feet bgs. The results of that investigation are presented in a December 2, 2003 report entitled, Limited Subsurface Assessment Report that has been submitted to ACEH.

Upon a request for further site investigation, Gettler Ryan conducted a second investigation on December 2004. To evaluate the extent of the petroleum hydrocarbons in the soil and groundwater beneath the site, Gettler Ryan completed 8 soil borings. A total of 55 soil samples and 8 grab groundwater samples were submitted for analysis. Six piezometers were installed. The results are summarized in the Gettler-Ryan February 23, 2005 report entitled Additional Subsurface Assessment Report.

Groundwater was monitored on April 26, 2005. See May 23, 2005 Gettler-Ryan Letter Report, Groundwater Monitoring and Sampling Event of April 26, 2005.

The lateral extent of the contamination has been defined and determined to be limited to the underground storage tank excavation area. Subsequent monitoring confirms that the contamination does not appear to be migrating from this location.

A review of the technical data will show that this site does not pose a threat to the environment and does not warrant the further work requested by ACEH.

#### **Petition Information**

Gettler Ryan Inc. on behalf of Marie Schweickert is submitting the following petition to the state Water Resources Control Board for review of the recent actions requested by Alameda County Environmental Health Services (ACEH) at the above referenced site.

1. *Name and address of petitioner.*

Marie Schweickert  
3834 Inverness Way  
Livermore, California 94551

2. *Specific action or inaction of local agency which the State Board is requested to review.*

ACEH requested a Corrective Action Plan (CAP), Remedial verification sampling, as well as additional subsurface assessment in a letter dated May 5, 2005 and as further clarified by email dated May 19, 2005 regarding a release of diesel-range petroleum hydrocarbons associated with a residential heating oil UST. A copy of the May 5, 2005 request and May 19, 2005 email are attached as Exhibit A.

3. *Date on which local agency acted or refused to act or which the local agency was requested to act.*

Additional work as described above was requested in a letter dated ACEH on May 5, 2005.

4. *A full and complete statement of the reasons the action or failure to act was inappropriate or improper.*

ACEH has requested remediation and further assessment at the above referenced residence where a release from a 350-gallon heating oil tank has occurred. We find this action inappropriate for the following reasons:

- Separate phase hydrocarbons have not been observed in any site wells.
- The dissolved TPHd plume in groundwater is well delineated and most likely has been stable since the heating oil UST was taken out of service in 1960 when the home furnace was converted to natural gas (see GR Letter Report, Groundwater M&S Event of April 26, 2005).
- Heating oil contamination present beneath the site for the last 40 or more years is most likely undergoing natural attenuation/biodegradation in place.
- The residual TPHd in the subsurface does not represent significant risk to human health or the environment. Elevated TPHd concentrations are in deeper (30 feet or greater), low permeability clay/silt type sediments which are difficult to effectively remediate.
- The nearest municipal well is approximately 750 feet upgradient from the site. A second municipal supply well is 1,600 feet north (cross gradient) from the site. The third, a domestic supply well is approximately 1,000 feet northwest (downgradient) from the site. The municipal wells are screened at depths greater than 192 feet below ground surface.
- A copy of all of the reports prepared by Gettler-Ryan is attached as Exhibit B.

5. *The manner in which the petitioner is aggrieved.*

The work requested by ACEH is not necessary or appropriate based on current environmental conditions at the site. The Petitioner is 80 years old and desires to sell the home. She is unable to sell the home until she can obtain closure. Though the Petitioner is in the State Underground Storage Tank Cleanup Fund, due to the fact that the Fund can only reimburse expenses that are incurred, the Petitioner is having to borrow money to initially finance each stage of the work. At her age and on a fixed income, this is causing her economic damage.

6. *The specific action by the State Board or the local agency which the petitioner requests.*

Petitioner requests that no further assessment or remediation work be required due to the small volume of the release, low contaminant mobility and low risk that

heating oil contamination represents to human health and the environment and that the Board stay the May 5, 2005 ACEH request for further site assessment, remediation and a corrective action plan. Petitioner proposes as a reasonable and technically viable alternative, that Petitioner conduct a one time groundwater sampling event to demonstrate that the contaminant is biodegrading (e.g. DO, ORP, nitrates, sulfates, etc.) in place followed by a subsequent sampling event to support low mobility and natural attenuation of the TPHd concentrations. Upon Petitioner establishing that the contaminant is naturally attenuating, Petitioner be allowed to obtain site closure even though the requisite level of water quality is not met at the time of site closure. (Resolution No. 92-49).

7. *A statement of points and authorities in support of legal issues raised in the petition.*

A RIGHT TO REVIEW

Water Code Section 13320 provides that within 30 days of any action or failure to act by a regional board ..., any aggrieved party may petition the state board to review that action or failure to act.

Petitioner received the ACEH request for further investigation and a corrective action plan on May 5, 2005. Petitioner is filing this petition within the 30 day limit set by Water Code Section 13320.

B STANDARD OF REVIEW

Water Code section 13220(c), which governs the State Board's review of a regional board's (or a local agency such as Alameda County acting on behalf of and in lieu of a regional board as is the case with local oversight programs) actions or inactions, states that:

(c) ... Upon a finding that the action of the regional board ... was inappropriate or improper, the state board may direct the appropriate action be taken by the regional board ...

This standard of review has been construed as equivalent to the courts' "independent judgment rule" criterion which permits a court (and the State Board) to "take a fresh look at the facts to see if the weight of the evidence supports the decision." Under this standard of review, the State Board will not defer to the regional board if it disagrees with the regional board's conclusion. See In Re Exxon Company, U.S.A., WQ 85-7.

Petitioner submits that an independent review of the data presented in the reports prepared by Gettler Ryan will establish that the site does not pose a risk to human health or the environment. Therefore, ACEH's request for additional site investigation and a corrective action plan is inappropriate and a stay of that

request should be granted. Petitioner should proceed with the alternative plan outlined in Section 6 above.

8. *A list of persons, if any, other than the petitioner, know by the local agency to have an interest in the subject matter of the petition.*

No other persons are known to have an interest in the subject matter of the petition.

9. *A statement that the petition has been sent to the local agency, the appropriate Regional Board, and to any responsible parties other than the petitioner, known to the petitioner or the local agency.*

A copy of this petition has been forwarded to the Regional Water Quality Control Board, Bay Area Region, 1151 Clay Street, suite 1400, Oakland, CA 94612 and to Jerry Wickham at Alameda County Environmental Health Services, 1131 Harbor Bay Parkway, Suite 200, Alameda, CA 94502-6577. A copy of the cover letter is attached hereto as Exhibit C.

10. *A copy of the request to the local agency for preparation of the local agency record.*

A copy of the petition has been sent to ACEH along with a request that the agency prepare its record of this matter. (Exhibit C)

If you have any comments or questions regarding this letter please call (916-631-1300).

Sincerely,  
Gettler-Ryan Inc.



Greg A. Gurss  
Senior Project Manager



Robert A. Lauritzen, R.G. #7504  
Senior Geologist

Cc: Mr. Jerry Wickham, Alameda County Environmental Health Services  
Ms. Marie Schweickert