

Detterman, Mark, Env. Health

From: Dai Watkins [daiw@sanjoco.com]
Sent: Monday, January 02, 2012 3:56 PM
To: Detterman, Mark, Env. Health
Cc: Markus Niebanck; Marilyn Ponte
Subject: Comments on on ACEH Nov. 2011 Letter regarding Oak Walk.
Attachments: CommentsonACEHNov2011Letter.docx

Mark:

I have reviewed the letter you sent on Nov. 18, 2011 to Marilyn Ponte regarding Oak Walk.

I must say it concerns me greatly. My comments are attached.

If I can make anything more clear or help you find relevant material that supports my view in or huge stack of reports, please call me.

Dai

Tel.: (510) 336-9118

Comments on Letter Dated 28 November 2011 sent to Ms. Marilyn Ponte and others regarding the Oak Walk Site

Thank you for approving the series of Geotracker uploads for the Oak Walk Site. As Brooke explained, we can see all the required data being present in on the Geotracker site. It is a mystery as to why you cannot. As Brooke also explained, we concur with you that the units in one of the soil gas data records uploaded to Geotracker are incorrect. This is because the laboratory, after re-issuing their report for those analyses, did not send a corrected zip file with that data for a Geotracker upload. Brooke contacted the lab in early December, but as of now we have had no response. I will make a further effort to get that problem resolved.

I have reviewed the letter you sent to Marilyn Ponte and others on November 28, 2011 and am greatly concerned. I will address your issues below.

Electronic Reports and Data Upload Compliance

Every single technical report generated for the Oak Walk site (including those from the time prior to the July 1, 2005 when Geotracker report filing was not required) has been posted to Geotracker and every report and document generated prior to the existence of the ACEH internet site had been filed with the ACEH. That includes all of the files cited in your letter. As I noted above, the only issue we currently have with Geotracker files is the incorrect units in one of the lab's electronic data files, which I am currently trying to resolve.

Feasibility Study/Corrective Action Plan

There are NO unknown on-site sources or off-site sources beyond those already identified. Our exploratory investigation as well as our Site Characterization Report showed that to be the case. The Site Characterization Report included complete Sanborn Fire map and aerial photograph reviews. (Key maps and photographs were included in that report.) It was submitted to your office on April 27, 2005. In addition, the site remediation and geotechnical site preparation work included excavation to depth over the whole area of the site. Over the greater area of the site, the excavation was to a depth of six feet. Over other areas it was more than deep enough to have exhumed any sources of hydrocarbons. The Remediation Report was uploaded to your site and to Geotracker in August 2009.

For the reasons stated above, there is no known source near MW-16. If you carefully study our net permeable facies map and track the changing isocons through the succession of reports that include groundwater results, you will readily conclude that what is present at MW-16 are elevated chemical concentrations that have flowed onto the site, similar to those previously present at other isolated points on the site. There is no source near MW-16.

Please note that we are already in compliance with the SWRCB Basin Plan. As we have repeatedly documented in our reports (with citations), the SWRCB does not consider the area of the Oak Walk site a source of drinking water. That agency only requires a reasonable effort to reduce groundwater contamination in the area and avoid making contamination worse. That we did, as directed by the Corrective Action Plan, which was approved by the ACEH.

With respect to your indication that more work is required, you will recall that I met with you to discuss the results of post-remediation health risk analyses that we have made, which demonstrated that there was, indeed, NO risk. It is true that I still owe you a Post Remediation Risk Assessment Report based on that analysis, which written report is now very late. What happened is that I fell ill with kidney disease early in 2011 and found it very difficult to work. I have recently been able to work a little and make some progress with the report and will get it to you as soon as I can.

You will recall that our post-remediation risk analyses did not consider the Liquid Boot membrane that is installed under all residential and commercial space at Oak Walk. Liquid Boot was used on the specific instruction of the ACEH case officer and was thus included in our Corrective Action Plan, which was fully approved by the ACEH. In addition we have fully documented its technical properties in our reports including citations to long duration tests of the membrane with highly concentrated liquid benzene on one side and vapor detectors on the other as well as citation to regulatory approvals of Liquid Boot use in conditions similar to that at Oak Walk.

With respect to investigations beneath 40th Street, maps in our submitted reports show that the number of wells, exploratory pits, and remedial excavations under that street gave the appearance of a target on a shotgun range. For several years we have included the results of the analyses of samples recovered by others as well as ourselves from beneath that street. As has been repeatedly documented in our reports, the Section of 40th Street between Adeline and San Pablo Avenue was not constructed until the 1990's. The only utilities beneath 40th Street are electrical power lines under the north- and south-side sidewalk that supply power to the street lights. These are shallow and well above the water table. There are no sewers, gas, or other electrical lines beneath the subject section of 40th Street. All sewer gas and electrical connections from the Oak Walk and Andante sites are made from San Pablo Avenue.

You also requested a well survey. That is amazing! Our reports including the maps, tables, and well logs have included information on every well ever drilled on and in the neighborhood of the Oak Walk site. In addition, the Site Characterization Report included all historical uses of the site and its neighbors. At my client's expense, due to other dischargers' failure to do so, we responded to a request by AECH to provide documentation of all extant and historical wells. All of that data is already in our filed reports and on Geotracker. For example, just look in our latest groundwater sampling report for a complete map and tables with all the sampling history of all wells in the area.

Coordinated Groundwater Sampling

We fully responded to an ACEH request to coordinate groundwater sampling with the Celis, Dunne, and Boysen Paint sites. The responsible parties for the Dunne and Boysen Paint sites refused to cooperate with us. The City of Emeryville (Celis site) fully cooperated until, as we understand it, the ACEH case officer told them that they need not continue.

Deed Restriction Issue

Finally, let me draw your attention to the failure of ACEH to issue a deed restriction for the site. It is over a year now since we met with your director in an attempt to resolve the issue, but we have heard nothing despite her promises. A similar meeting was held a year before that and resulting in a similar unfulfilled promise. Time is now of the essence because my client cannot get a final Occupancy Permit from the City of Emeryville without it.

Here are the facts. We did not write the draft deed restriction. The ACEH case officer did. It is true that I edited it in minor ways to correct APN numbers after the re-subdivision of the site by Alameda County. I also made separate versions for the single family home sites so that the deed restrictions for them would comply with their status. I also revised the notary statement on the ACEHD draft so that it would comply with the extant State of California notary regulations. However, those edits were minor and did not revise the restrictions intended by the ACEH case officer. When, many years ago, I sent the edit draft to the ACEH case officer, he stated that it met with ACEH approval and it would proceed to signing. It is beyond our understanding as to why we have not received direction to have it signed and notarized, particularly after so many meetings and year after year of promises by Ms. Drogos. If for some reason you need to rewrite it, please do so ASAP so that we can progress this issue in a prompt and businesslike manner.

Dai Watkins, PhD, PE
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01/02/12