

202875

LAW OFFICES OF
ROBERT C. GOODMAN

2007 FEB -8 AM 9:51

ROBERT C. GOODMAN
ATTORNEY AT LAW

February 7, 2007

VIA FACSIMILE (510-337-9335) AND FED EX

David J. Kears, Agency Director
Alameda County Health Care Services Agency
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
ATT: Mr. Jerry Wickham

Re: Petition For Review of Responsible Party Determination by Alameda County: Request for Preparation of Local Agency Record

Dear Mr. Kears:

We represent Wickland Properties in connection with the above Notice of Responsibility issued to Wickland Properties, a copy of which is enclosed. Wickland is planning to file a Petition for Review of the Notice with the State Water Resources Control Board ("SWRCB"). Pursuant to SWRCB Resolution No. 88-23 this letter serves as a request that Alameda County prepare a Local Agency Record for this matter.

Please contact me if you have any questions.

Thank you.

Very truly yours,

ROBERT C. GOODMAN

RCG:da
Enclosure

cc (w/enclosure):
Jerry Wickham, Case Worker, Alameda County Health Care Services Agency

RECEIVED

LAW OFFICES OF
ROBERT C. GOODMAN

FEB 09 2007

ENVIRONMENTAL SERVICES

ROBERT C. GOODMAN
ATTORNEY AT LAW

February 7, 2007

VIA FACSIMILE (510-337-9335) AND FED EX

David J. Kears, Agency Director
Alameda County Health Care Services Agency
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
ATT: Mr. Jerry Wickham

COPY

Re: Petition For Review of Responsible Party Determination by Alameda
County: Request for Preparation of Local Agency Record

Dear Mr. Kears:

We represent Wickland Properties in connection with the above Notice of Responsibility issued to Wickland Properties, a copy of which is enclosed. Wickland is planning to file a Petition for Review of the Notice with the State Water Resources Control Board ("SWRCB"). Pursuant to SWRCB Resolution No. 88-23 this letter serves as a request that Alameda County prepare a Local Agency Record for this matter.

Please contact me if you have any questions.

Thank you.

Very truly yours,

ROBERT C. GOODMAN

RCG:da
Enclosure

cc (w/enclosure):

Jerry Wickham, Case Worker, Alameda County Health Care Services Agency

1 LAW OFFICES OF ROBERT C. GOODMAN
2 ROBERT C. GOODMAN (State Bar No. 111554)
3 177 Post Street, Suite 750
4 San Francisco, CA 94108
5 Telephone: (415) 777-2210
6 Facsimile: (415) 777-2215

7 Attorneys for Petitioner
8 Wickland Properties

9 STATE WATER RESOURCES CONTROL BOARD
10 STATE OF CALIFORNIA

11 In the Matter of)
12 WICKLAND PROPERTIES,) PETITION NO. _____
13 Petitioner,) **PETITION FOR REVIEW**
14 For Review of Alameda County's Notice of)
15 Responsibility to Wickland Properties)
16 _____)

17 Pursuant to California Health & Safety Code Section 25297.1(h), Title 23 of the California
18 Code of Regulations §§ 2050 *et seq*, and SWRCB Resolution No. 88-23, Petitioner Wickland
19 Properties ("Wickland") hereby petitions the State Water Resources Control Board ("State Board")
20 for review of the Alameda County Health Care Services Agency's Notice of Responsibility, dated
21 January 10, 2007 ("Notice"). The Alameda County Health Care Services Agency ("the County") is a
22 local oversight program, pursuant to Health & Safety Code Section 25297.1. The Notice designates
23 Wickland as a responsible party for a property located at 3875 Telegraph Avenue, Oakland,
24 California ("the Site"). Among other errors, and as more fully set forth below, the Notice improperly
25
26

1 names Wickland as a responsible party, and improperly fails to identify additional parties as being
2 responsible for the Site. Wickland requests a hearing in this matter.

3
4 **1. Petitioner**

5 The name and address of Petitioner is:

6 Wickland Properties
7 Attn: Daniel E. Hall, President
8 3610 American River Drive, Suite 140
9 Sacramento, CA 95864

10 Wickland can be contacted through its legal counsel:

11 LAW OFFICES OF ROBERT C. GOODMAN
12 ROBERT C. GOODMAN
13 177 Post Street, Suite 750
14 San Francisco, CA 94108
15 Telephone: (415) 777-2210
16 Facsimile: (415) 777-2215
17 E-mail: rgoodman@rcg-law.com
18 gritter@rcg-law.com

19 **2. Action of the County To Be Reviewed**

20 Wickland requests that the State Board review the Notice, which designates Wickland as a
21 responsible party for the Site. A copy of the Notice is attached hereto as Exhibit A. This Petition is
22 a protective filing, and pursuant to 23 Cal. Code Regs. § 2050.5(d), Petitioner requests that this
23 Petition be held in abeyance by the State Board until further notice.

24 **3. Date Of The County's Action**

25 The Notice is dated January 10, 2007, although the envelope was postmarked January 18,
26 2007, and Wickland did not receive the Notice until January 22, 2007. A copy of the envelope and
return receipt are attached as Exhibit B.

1 **4. Statement Of Reasons Why Alameda County's Action Was Inappropriate Or**
2 **Improper**

3 As set forth more fully below, the action of the County with respect to Wickland is not
4 supported by the record, and was arbitrary, capricious, and in violation of law and policy.

5 **A. Background**

6 The Notice relates to a February 7, 2005, Underground Storage Tank Unauthorized
7 Release/Contamination Report that was submitted for the Site. The County alleges that Wickland
8 Oil operated a service station at the Site until 1985. The County alleges that an unauthorized release
9 occurred at some unspecified time while Wickland Oil operated a service station at the Site. The
10 Notice further alleges that Wickland is a successor to Wickland Oil.

11 **B. Wickland Should Not Have Been Named As A Responsible Party**

12 The evidence in the record does not support the naming of Wickland as a discharger for
13 petroleum hydrocarbons at the Site because, among other things, there is no evidence of an
14 unauthorized release at the Site while Wickland Oil operated a service station there. In addition, on
15 information and belief, Wickland alleges that entities other than Wickland Oil operated a service
16 station at the Site, and that there are numerous other on-site, and upgradient sources of the
17 contamination that has been discovered at the Site. Wickland's investigation is continuing.

18 **5. The Manner In Which Petitioner Has Been Aggrieved**

19 Wickland has been aggrieved by the County's action because Wickland will be subjected to
20 provisions of an arbitrary and capricious Notice unsupported by evidence in the record. As a result
21 of being named a responsible party, Wickland will be forced to shoulder significantly costs of
22 compliance, to bear a heavier burden of regulatory oversight and to suffer other serious economic
23 consequences to its business operations.
24
25
26

1 **6. State Board Action Requested By Petitioner**

2 As discussed above, Wickland requests that this Notice be held in abeyance. If it becomes
3 necessary for Wickland to pursue its appeal, Wickland will request that the State Board determine
4 that the County's issuance of the Notice was arbitrary and capricious or otherwise inappropriate and
5 improper, and will request that the State Board amend the Notice to delete Wickland as a responsible
6 party. If the State Board declines to delete Wickland as a responsible party, Wickland requests the
7 State Board to designate Wickland as a secondarily liable party rather than a primarily liable party
8 and to identify additional parties as primarily responsible parties; namely the current property owner
9 and past operators.
10

11 **7. Statement of Points And Authorities In Support Of Legal Issues Raised In the**
12 **Petition**

13 For purposes of this protective filing, the Statement of Points and Authorities is subsumed in
14 section 4 of this Petition. If Wickland elects to pursue this appeal, Wickland reserves the right to file
15 a Supplemental Statement of Points and Authorities, including references to the complete
16 administrative record, which is not yet available. Wickland also reserves its right to supplement its
17 request for a hearing to consider testimony, other evidence and argument.

18 **8. List of Persons Known by the local Agency to Have an Interest in the Subject**
19 **Matter of the Petition**

20 Wickland believes that the following persons, who have been named as responsible parties,
21 also have an interest in the subject matter of this petition:

22 Larry Fusch
23 The Surgery Center
24 3875 Telegraph Avenue
25 Oakland, CA 94609

26 Robert Petrina
 EBSC LP
 c/o Alta Bates Summit Medical Center
 350 Hawthorne Avenue, Suite G100
 Oakland, CA 94609-3108

1 **9. Statement Regarding Service Of The Petition On The County**

2 A copy of this Petition is being sent to: The County, to the attention of David J. Kears,
3 Agency Director, Alameda County Health Care Services Agency, with a copy to caseworker Jerry
4 Wickham; the California Regional Water Quality Control Board, San Francisco Bay Region, to the
5 attention of Bruce H. Wolfe, Executive Officer; and to each of the parties identified in Paragraph 8
6 above. By copy of this Petition, Wickland is also notifying each party of Wickland's request that the
7 State Board hold the Petition in abeyance.
8

9 **10. Request for Preparation of Local Agency Record**

10 Wickland has requested that the County prepare the local agency record. A copy of the
11 request is attached hereto as Exhibit C.

12 **11. Statement Regarding Issues Presented To The County**

13 The County issued the Notice to Wickland without providing it with an opportunity to
14 provide comments and objections prior to its issuance. Wickland anticipates presenting additional
15 evidence at the hearing of the activities of other entities which are responsible for the alleged
16 unauthorized release.

17 For all of the foregoing reasons, if Wickland pursues its appeal, Wickland respectfully
18 requests that the State Board review the Notice and grant the relief as set forth above.

19 DATED: February 8, 2007

Respectfully submitted,

LAW OFFICES OF ROBERT C. GOODMAN

21
22
23 By: 

ROBERT C. GOODMAN

Attorneys for Petitioner Wickland Properties

EXHIBIT A

ALAMEDA COUNTY
HEALTH CARE SERVICES



AGENCY
DAVID J. KEARS, Agency Director

Certified Mail #: 7002 2030 0006 9574 1778
January 10, 2007

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:

**REGAL #120 / EAST BAY SURGERY CENTER
3875 TELEGRAPH AVE
OAKLAND, CA 94609**

Local ID: **RO0002875**
Related ID: **NA**
RWQCB ID:
Global ID: **T06019716388**

Responsible Party:

**DAN HALL
WICKLAND PROPERTIES
PO BOX 13648
SACRAMENTO CA 95853-4648**

Date First Reported: **2/7/2005**
Substance: **12034,8006619 Multiple Releases**

Funding for Oversight: **LOPF - LOP Funding 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 WICKLAND PROPERTIES 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 WICKHAM, JERRY, at this office at (510)567-6791 if you have questions regarding your site.

ARIJU LEVI, Chief
Contract Project Director

Date: 1/10/07

Action: Add
Reason: Add

Attachment A: Responsible Parties Data Sheet
cc: Jenniffer Jordan, SWRCB, D. Drogos,

ALAMEDA COUNTY ENVIRONMENTAL HEALTH
LUFT LOCAL OVERSIGHT PROGRAM

ATTACHMENT A - RESPONSIBLE PARTIES DATA SHEET

January 10, 2007

Site Name & Address:

REGAL #120 / EAST BAY SURGERY CENTER
3875 TELEGRAPH AVE
OAKLAND, CA 94609

Local ID: RO0002875
Related ID: NA
RWQCB ID:
Global ID: T06019716388

All Responsible Parties

RP has been named a Primary RP - DAN HALL
WICKLAND PROPERTIES
PO BOX 13648 | SACRAMENTO, CA 95853-4648

RP has been named a RP - LARRY FUSCH
THE SURGERY CENTER
3875 TELEGRAPH AVENUE | OAKLAND, CA 94609 | Phone (510) 547-2244

RP has been named a RP - ROBERT PETRINA
EBSC LP C/O ALTA BATES SUMMIT MED CTR
350 HAWTHORNE AVE, SUITE G100 | OAKLAND, CA 94609-3108

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."

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

Existence of Unauthorized Release

On February 7, 2005, an Underground Storage Tank Unauthorized Release/Contamination Site Report was submitted for The Surgery Center site at 3875 Telegraph Avenue. During a Phase II Environmental Site Assessment, total petroleum hydrocarbons as gasoline were detected in soil at concentrations up to 670 milligrams per kilogram and were detected in groundwater at concentrations up to 130,000 micrograms per liter. The petroleum contamination is within and downgradient of the area occupied until 1985 by Regal gas station #102.

Responsible Party Identification

Wickland Oil owned the USTs and property and operated the USTs until the service station was demolished and the site sold in 1985. Wickland Properties, which is a successor to Wickland Oil, is the primary responsible party because the unauthorized release occurred during the time that Wickland Oil was the owner of property where an unauthorized release occurred (Definition 3) and had control of USTs at the time of or following an unauthorized release (Definition 4).

East Bay Surgery Center LP c/o Alta Bates Summit Medical Center is a responsible party because they are the current owner of the property where an unauthorized release has occurred (Definition 3).

The Surgery Center is a responsible party because they were the former owner of the property (from 1984 to 1992) where an unauthorized release has occurred (Definition 3).

EXHIBIT B



ALAMEDA COUNTY
 HEALTH CARE SERVICES AGENCY
 Department Of Environmental Health
 Environmental Protection Division
 1131 Harbor Bay Parkway
 Alameda, CA 94502-6677

DEFINITE MAIL™



7002 2030 0006 9574 1778



DAN HALL
 WICKLAND PROPERTIES
 P O BOX 13648
 SACRAMENTO, CA 95853-

Received 1/22/07

85832+3648-48



SENDER: 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:

Dan Hall
 Wickland Properties
 P.O. Box 13648
 Sacramento, CA 95853-4648

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Will Twitchell

- Agent
- Addressee

B. Received by (Printed Name)
Will Twitchell

C. Date of Delivery
JAN 2 2006

D. Is delivery address different from Item 1?

If Yes, enter delivery address below:

ENVIRONMENTAL

JAN 2



3. Service Type

- Certified Mail
- Registered Mail
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery (Extra Fee)

Yes

2. Article Number

(Transfer from service label)

7002 2030 0006 9574-1778

PS Form 3811, February 2004

Domestic Return Receipt

102500-02-M-1540

Attachment A: Responsible Parties Data Sheet

cc: Jennifer Jordan, SWRCB, D. Drogos,

the State Water Board at (916) 341-

party may request the designation of
contact this office for further information

8791 if you have questions regarding

Action: Add
 Reason: Add

EXHIBIT C

Wickham, Jerry, Env. Health

To: Norman Carlin (norman.carlin@pillsburylaw.com); Rita Chan (rita.chan@pillsburylaw.com); Gary Jensen (gjensen@BART.gov)

Cc: Mark Gomez (mmgomez@oaklandnet.com); Levi, Ariu, Env. Health; Drogos, Donna, Env. Health

Subject: Letter regarding MacArthur BART parking lot

Mr. Carlin, Ms. Chan, and Mr. Jensen,

As discussed in our December 7, 2006 meeting, attached is a draft of the letter that Alameda County Environmental Health will issue regarding the petroleum contamination discovered in the MacArthur BART parking lot area. If you have any comments on the letter, please send them to my attention by December 29, 2006.

Regards,

Jerry Wickham

Alameda County Environmental Health

1131 Harbor Bay Parkway

Alameda, CA 94502-6577

510-567-6791 phone

510-337-9335 fax

jerry.wickham@acgov.org