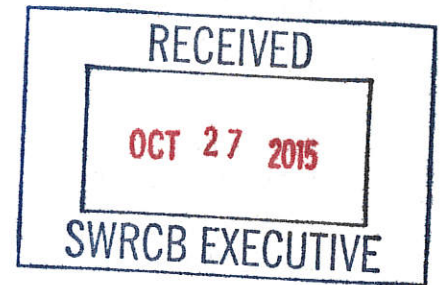




October 22, 2015

via e-mail and U.S. Mail



Jonathan Bishop
Chief Deputy Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Steven Bohlen
State Oil and Gas Supervisor
Department of Conservation, Division of Oil, Gas, and Geothermal Resources
801 K St., MS 20-21
Sacramento, CA 95814-3530

Re: Spill at E&B Resources' Alameda County Oil Production Facility

Dear Chief Deputy Director Bishop and Supervisor Bohlen:

We urge you to launch an immediate state investigation into a significant hazardous materials spill at E&B Natural Resources' oil field in Livermore, California. E&B Natural Resources ("E&B") violated state law by failing to immediately report this spill, which occurred near important water resources in Alameda County.

E&B, which operates oil wells in many California communities, has a disturbing statewide track record of oil spills, fines and legal violations. The company has previously been fined by California officials for illegal wastewater discharges and had six oilfield waste disposal wells shut down because of contamination threats to water supplies.

We therefore request that you undertake water sampling of groundwater in the vicinity of 8647 Patterson Pass Road, Patterson Reservoir, and other nearby surface water resources. We also request that you conduct a thorough investigation into all E&B operations at its Alameda County facilities to ensure compliance with all laws and regulations within each of your jurisdictions.

E&B has asserted that in April 2015 it discovered that a crude oil storage tank at its facility at 8647 Patterson Pass Rd, Livermore, in Alameda County was leaking,¹ leaching into the soil below the tank. E&B failed to immediately notify the state's Office of Emergency Services, as it was required by law to do.² In May the company arranged for testing of soil affected by the leak, which revealed contamination with substances including lead, toluene and ethyl benzene.³ After "investigative excavation," it was determined that the contamination was "beyond the capabilities of company personnel."⁴ At some point E&B moved 10 yards of soil from the contaminated site to another of E&B's facilities in Livermore, to be used as part of a secondary containment soil berm.⁵

By the time Alameda County Environmental Health officers inspected the site in June, the spill extended more than 12 feet deep, and went beyond the boundaries of E&B's leased property.⁶ The State Water Resources Control Board has identified that an aquifer used for drinking water supply may be affected by the spill.⁷ E&B did not report the leak to the Office of Emergency Services until July 29, 2015 — three months after it first discovered the spill.⁸

Concerningly, the voluntary work plan E&B has prepared to address the spill includes a chemical analysis from soil collected in March, 2015, which is inconsistent with E&B's report to the Office of Emergency Services that it only discovered the spill in April, 2015.⁹

We are concerned that this spill puts California's precious groundwater supplies at risk during an historic drought. The work plan shows that groundwater in the area where the spill occurred is extremely shallow – initial groundwater in saturated zone is anticipated to be less than 60 feet below grade, with the potential for even shallower zones.¹⁰ The depth of the spill is not currently known, but it is known to be at least 12 feet below ground surface. Residential wells are between 100 – 350 feet below ground surface, and municipal and irrigation wells are between 315-810 feet below ground surface.¹¹

¹ Governor's Office of Emergency Services, Hazardous Materials Spill Report Control Number Cal OES - 15-4361 NRC, <https://w3.calema.ca.gov/operational/mal haz.nsf/f1841a103c102734882563e200760c4a/736acb9e8379b22c88257e9100774b31?OpenDocument&Highlight=0,E,B,Natural,Resources>, *last visited* September 18, 2015.

² Cal. Health & Saf. Code § 25510(a).

³ Letter from Juan Magana, Project Manager, Zalco Laboratories to Jennifer Brady, E&B Natural Resources Corp, (Jun. 3, 2015).

⁴ Alameda County Health Care Services Request for Voluntary Remedial Action Agreement (Aug. 6, 2015), p. 1.

⁵ Alameda County Department of Environmental Health Inspection Report for 8467 Patterson Pass Road (Jun. 11, 2015), p. 4.

⁶ Alameda County Department of Environmental Health Inspection Report for 8467 Patterson Pass Road (Jun. 11, 2015), p. 3.

⁷ State Water Resources Control Board GeoTracker, GIG Facility Soil Cleanup (T10000007269), http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000007269, *last visited* September 16, 2015.

⁸ Governor's Office of Emergency Services, Hazardous Materials Spill Report Control Number Cal OES - 15-4361 NRC, <https://w3.calema.ca.gov/operational/mal haz.nsf/f1841a103c102734882563e200760c4a/736acb9e8379b22c88257e9100774b31?OpenDocument&Highlight=0,E,B,Natural,Resources>, *last visited* September 16, 2015.

⁹ Robert A. Booher Consulting, Soil Excavation and Groundwater Investigation Work Plan, (Sept. 16, 2015), Attachment B.

¹⁰ *Ibid*, p. 1.

¹¹ *Ibid*.

Despite the extremely shallow groundwater in the area, E&B's work plan proposes only *one* initial water sample to test for contamination.¹² The plan does not even attempt to identify water wells in the area, nor does it propose testing of those wells. The spill occurred less than half a mile from an aqueduct that transports water from the Delta to San Jose, and less than half a mile from Patterson Reservoir. We do not know what timeframe is expected for cleanup.

1. Details of Produced Water Spill at E&B Resources' Site at 8467 Patterson Pass Road

The leak was from a storage tank at E&B's facility at 8647 Patterson Pass Road. It was discovered when the tank was being removed. According to correspondence from E&B, all tanks that were removed were inspected for integrity by state oil officials, then transported to Bakersfield in late February and early March 2015, for reuse at other E&B sites.¹³ The leak "initially appeared to be a small release."¹⁴ However, further investigation revealed that the spill reached further than 12 feet deep, and went beyond the boundary of E&B's leased property/designated area.¹⁵ It was beyond the capacity of E&B to clean up by itself.¹⁶

On June 11, 2015, following a site visit by Alameda County Public Health officials, the County found that E&B Resources was in violation of section 25510(a) of the California Health and Safety Code because it failed to immediately notify the California Unified Program Agencies ("CUPA") and the California Office of Emergency Services Warning Service of a release of hazardous material.

Even after this notice of violation, E&B Resources did not contact the Office of Emergency Services for another seven weeks. It finally notified the Office of Emergency Services until July 29, 2015,¹⁷ approximately four months after the spill was first discovered.¹⁸

As of July 29, 2015, the quantity of produced water spilled was still unknown.¹⁹

As set out above, at some point E&B moved 10 yards of soil from the contaminated site to another of E&B's facilities in Livermore, at 8617 Patterson Pass Road, to use be used as part of a

¹² Ibid, p. 4: "A minimum of one boring will be drilled to groundwater where the former stock tank was located. If the soil sample collected ... is suspect of hydrocarbon impact ... then additional borings *may* be performed..." (emphasis added.)

¹³ Letter from Gary Richardson, Vice President of Land, E&B Natural Resources Management Corporation, to Phillip Marshall, Senior Vice President of Operations, M B Enterprises (May 6, 2015), p. 1.

¹⁴ Alameda County Department of Environmental Health Inspection Report for 8467 Patterson Pass Road (Jun. 11, 2015), p. 3.

¹⁵ Alameda County Department of Environmental Health Inspection Report for 8467 Patterson Pass Road (Jun. 11, 2015), p. 3.

¹⁶ Alameda County Health Care Services Request for Voluntary Remedial Action Agreement (Aug. 6, 2015), p. 1.

¹⁷ Governor's Office of Emergency Services, Hazardous Materials Spill Report Control Number Cal OES - 15-4361 NRC,

<https://w3.calema.ca.gov/operational/malhaz.nsf/f1841a103c102734882563e200760c4a/736acb9e8379b22c88257e9100774b31?OpenDocument&Highlight=0,E,B,Natural,Resources>, *last visited* September 16, 2015.

¹⁸ Ibid: "Per the Caller: The release came from a facility storage tank. The release was discovered in April 2015, date and time unknown."

¹⁹ Governor's Office of Emergency Services, Hazardous Materials Spill Report Control Number Cal OES - 15-4361 NRC,

<https://w3.calema.ca.gov/operational/malhaz.nsf/f1841a103c102734882563e200760c4a/736acb9e8379b22c88257e9100774b31?OpenDocument&Highlight=0,E,B,Natural,Resources>, *last visited* September 16, 2015.

secondary containment soil berm.²⁰ We do not know what testing has been conducted in respect of the this transferred soil, if any, nor what cleanup has been or will be undertaken in respect of this soil.

2. Other Violations of State Law at the Alameda County Sites

These were not the only violations of state law and regulations found at E&B Resources' Alameda County sites. In addition to the failure to report the produced water spill, Alameda County Public Health Inspectors found that E&B Resources had failed to determine if waste from seven of its tanks was hazardous before disposing of the waste as non-hazardous.²¹ Water analysis for the tank bottom sludge of one tank showed lead levels of 6.4 mg/L, which requires disposal as hazardous waste; and results for three other tanks showed differentiating hazard levels. All this waste was disposed of as non-hazardous.²²

The failure to determine whether its waste was hazardous, and to maintain analysis results for three years, was contrary to section 66262.11 and 66262.40(c) of Title 22 of the California Code of Regulations. E&B's failure to determine whether its waste was restricted from land disposal was contrary to section 66268.7(a) of Title 22 of the California Code of Regulations.²³

The company also failed to include on its annotated site maps of the locations of its fire extinguishers at 8467 Patterson Pass Road,²⁴ and its hazardous material storage, fire extinguishers and spill kits at 8617 Patterson Pass Road,²⁵ contrary to sections 25505(a)(2) and 25508(a)(1) of the California Health & Safety Code. Further, it failed to submit a Hazardous Materials Inventory Chemical Description page to the California Unified Program Agencies ("CUPA"), contrary to section 25506 of the California Health & Safety Code.²⁶ Finally, the hazardous waste generator EPA identification number for 8617 Patterson Pass Road was inactive, contrary to section 66262.12 of Title 22 of the California Code of Regulations.²⁷

In 2014, E&B's facilities in Alameda County were fined a total of \$7,500 by the Bay Area Air Quality Management District in relation to its storage of organic liquids.²⁸

3. Other Violations Related to Waste Water Disposal

E&B has a worrying track record of oilfield wastewater disposal problems across the state. In May, 2015, the Central Valley Regional Water Quality Control Board issued an order closing four of E&B's injection wells in the Central Valley because those wells were unlawfully injecting fluids into aquifers not designated as exempt under the federal Safe Drinking Water

²⁰ Alameda County Department of Environmental Health Inspection Report for 8467 Patterson Pass Road (Jun. 11, 2015), p. 4.

²¹ Alameda County Department of Environmental Health Inspection Report for 8617 Patterson Pass Road (Jun. 11, 2015), p. 1.

²² Ibid.

²³ Ibid, p. 2.

²⁴ Alameda County Department of Environmental Health Inspection Report for 8467 Patterson Pass Road (Jun. 11, 2015), p. 2.

²⁵ Alameda County Department of Environmental Health Inspection Report for 8617 Patterson Pass Road (Jun. 11, 2015), p. 2.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Bay Area Air Quality Management District, Board of Directors Regular Meeting Agenda (Sept. 3, 2015), pp. 29, 33, available at http://www.baaqmd.gov/~media/files/board-of-directors/2014/brd_agenda_090314.pdf?la=en

Act.²⁹ This followed the closure in March, 2015 of two of E&B's injection wells³⁰ that were injecting oilfield waste water, also containing oil and trace chemicals, into aquifers that may have been suitable for drinking or agricultural uses.³¹

In October 2014, E&B agreed to pay almost \$40,000 to settle charges brought by the Central Valley Water Board that E&B illegally dumped about 5,000 gallons of oilfield wastewater and crude oil into two unlined pits in the Poso Creek Oil Field.³²

4. Other Spills and Oil and Gas Production Violations

In May, 2013, the County of Los Angeles ordered J. and H. Drilling Co., a sub-contractor working on an E&B site at Hermosa Beach,³³ to cease drilling without the required Public Health Permit.³⁴ An E&B spokesperson acknowledged that E&B was supposed to file the required permits.³⁵ According to the California Office of Emergency Services HazMat Spill Notifications Database, since 2010, E&B has reported 11 other spills at its oil production facilities across California.³⁶

5. Conclusion

E&B has a history of spills across California. It has a history of violating state law at its facilities across California, and in particular at its sites at Alameda County. It has failed to comply with state law in relation to this spill. The extent of the spill from E&B's storage tank is still unknown, and it is not known whether an aquifer used for drinking water supply has been contaminated. Faced with these worrying facts, and because California is in the midst of an historic drought, it is imperative that state agencies act with all diligence to protect our precious water resources. Accordingly, we request that the State Water Resources Control Board undertake, as a matter of urgency, its own testing of ground and surface water resources in Livermore, Alameda County. In particular we request that water resources near 8467 Patterson Pass Road, where the spill occurred, and 8617 Patterson Pass Road, where E&B relocated some contaminated soil, be tested.

We also request that the Board and the Division undertake their own investigations into violations by E&B Resources of regulations within each agency's jurisdiction, to ensure that

²⁹ Central Valley Regional Water Quality Control Board, Order Pursuant to California Water Code section 13267 (May 15, 2015).

³⁰ California Department of Conservation, Division of Oil, Gas and Geothermal Resources, *Calif. Division of Oil, Gas and Geothermal Resources Seeks End to Injection in Kern, Tulare County Wells* (Mar. 3, 2015), available at <http://www.conservation.ca.gov/index/news/Documents/2015-03%20Division%20of%20Oil,%20Gas,%20and%20Geothermal%20Resources%20orders%20UIC%20wells%20shut%20in.pdf>.

³¹ David Baker, *State Shuts 12 Oil Company Wells That Pumped Waste into Aquifers*, SF Gate (Mar. 3, 2015), available at <http://www.sfgate.com/business/article/State-shuts-12-oil-company-wells-that-pumped-6112846.php>.

³² Casey Christie, *Oxy Settles Charges it Illegally Dumped Waste*, The Bakersfield Californian, (Oct. 7, 2014), available at <http://www.bakersfield.com/news/blogs/2014/10/07/oxy-settles-charges-it-illegally-dumped-waste.html>.

³³ Chelsea Schreiber, *Hermosa Beach Residents Catch E&B Drilling Without County Permit*, Easy Reader News, (May 15, 2015), available at <http://www.easyreadernews.com/70181/hermosa-beach-residents-catch-eb-drilling-without-county-permit/>.

³⁴ County of Los Angeles Public Health, Notice of Violation and Order (May 10, 2013), p. 1.

³⁵ *Ibid.*

³⁶ California Office of Emergency Services HazMat Spill Notifications Database, [https://w3.calema.ca.gov/operational/mal haz.nsf/\\$defaultview](https://w3.calema.ca.gov/operational/mal haz.nsf/$defaultview) (last visited Sept. 16, 2015).

E&B is brought to account for any and all violations that may have occurred at 8647 and 8617 Patterson Pass Road, Livermore, in Alameda County.

Should you have any questions, please do not hesitate to contact me.

Yours sincerely,



Clare Lakewood
Staff Attorney, Climate Law Institute
Center for Biological Diversity

Enclosures

County of Los Angeles Public Health, Notice of Violation and Order (May 10, 2013)

Letter from Gary Richardson, Vice President of Land, E&B Natural Resources Management Corporation, to Phillip Marshall, Senior Vice President of Operations, M B Enterprises (May 6, 2015)

Central Valley Regional Water Quality Control Board, Order Pursuant to California Water Code section 13267 (May 15, 2015)

Letter from Juan Magana, Project Manager, Zalco Laboratories to Jennifer Brady, E&B Natural Resources Corp, (Jun. 3, 2015).

Alameda County Department of Environmental Health Inspection Report for 8467 Patterson Pass Road (Jun. 11, 2015)

Photographs of 8467 Patterson Pass Road (Jun. 11, 2015)

Alameda County Department of Environmental Health Inspection Report for 8617 Patterson Pass Road (Jun. 11, 2015)

Photographs of 8617 Patterson Pass Road (Jun. 11, 2015)

Alameda County Department of Environmental Health Inspection Report Addendum for 8617 Patterson Pass Road (Jun. 11, 2015)

Alameda County Health Care Services Request for Voluntary Remedial Action Agreement (Aug. 6, 2015)

Robert A. Booher Consulting, Soil Excavation and Groundwater Investigation Work Plan, (Sept. 16, 2015)