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San Francisco Bay Regional Water Quality Control Board

August 28, 2013  
File No. 01-1724 (JMJ)

Children's Hospital of Oakland  
Attn: Mr. James Jackson  
747 52<sup>nd</sup> Street  
Oakland, CA 94609

**SUBJECT: Denial of Case Closure Request and Requirement for a Technical Report**  
Children's Hospital of Oakland, Parking Lot at 4701 Martin Luther King Jr. Way,  
Oakland, Alameda County

Dear Mr. Jackson:

This letter denies your case closure request and requires you to submit a technical report consisting of a work plan to characterize the groundwater pollution downgradient of the former USTs.

The subject site consists of a gated and fenced parking lot for Children's Hospital. From the 1930s until conversion to a parking lot by Children's Hospital in the 1990s, a two-story commercial building was present on the site. In October 1990, three USTs (one gasoline and two heating oil USTs) were removed from beneath the sidewalk adjacent to the site. Following over-excavation to 19 feet (October 1990) below ground surface, soil confirmation samples contained up to 1,100 mg/kg of TPH-g, 2,700 mg/kg of TPH-d, and non-detectable (ND) concentrations of benzene. On June 27, 2000, four soil borings were advanced at the site. Grab groundwater samples from the borings contained up to 5,900 ppb of TPH-mo, 150,000 ppb of TPH-d, 24,000 ppb of TPH-g, and ND concentration of benzene. Three monitoring wells were installed on April 26, 2002. Groundwater samples from the monitoring wells in 2002 (the only time they were sampled) contained 298 ppb of TPH-d, 231 ppb of TPH-g, and ND concentration of benzene. Depth to groundwater was between 17 and 18 feet below. None of these three monitoring wells are located downgradient of the USTs and are, therefore, not useful in determining the downgradient extent and magnitude of the contaminant plume.

In the March 2013 "*No Further Action Request*" report, you requested closure for the site. **Regional Water Board staff denies your closure request because the site is not adequately characterized (see above).** Groundwater flow as determined by the three site monitoring wells in 2002 indicates that the groundwater flow is to the northwest. Temescal Creek is located about 100 feet north of 47<sup>th</sup> Street, downgradient of the former USTs. There are no wells at the site that tell us if the petroleum hydrocarbon contamination at the site poses a risk for Temescal Creek.

**You are hereby required to submit a technical report to this office by November 15, 2013, consisting of a workplan for characterizing the groundwater pollution downgradient of the former USTs.**

This requirement for a technical report is made pursuant to Water Code Section 13267, which allows the Regional Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. The attachment provides additional information about Section 13267 requirements. Any extension in the above deadlines must be confirmed in writing by Regional Water Board staff.

You are required to submit all documents in electronic format to the State Water Resources Control Board's Geotracker database. Guidance for electronic information submittal is available at [http://www.waterboards.ca.gov/water\\_issues/programs/ust/electronic\\_submittal/](http://www.waterboards.ca.gov/water_issues/programs/ust/electronic_submittal/). Please note that this requirement includes all analytical data, monitoring well latitudes, longitudes, and elevations, water depths, site maps, boring logs (PDF format), and complete copies of reports and correspondence including the signed transmittal letters and professional certifications (PDF format).

All reports submitted should have the Regional Water Board file number 01-1724 on the first page of the report. Copies of all reports and correspondence should be sent to Ms. Barbara Jakub of the Alameda County Environmental Health Services. You are responsible for obtaining any necessary approvals or permits from all agencies having jurisdiction over any aspect of the proposed work. These agencies may include the local Building Department, Planning Department, Public Works, and the Alameda County Environmental Health Services Department (contact number 510-567-6700).

Please direct all questions and correspondence regarding this matter to John Jang of my staff at (510) 622-2366 (email address [jjang@waterboards.ca.gov](mailto:jjang@waterboards.ca.gov)).

Sincerely,

Bruce H. Wolfe  
Executive Officer

Attachment: Fact Sheet – Requirements For Submitting Technical Reports Under Section 13267 of the California Water Code (Revised January 2008)

cc w/ attachment:

Shari Knieriem, Claims Review Unit, Underground Storage Tank Cleanup Fund  
PO Box 944212  
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Children's Hospital & Research Center at Oakland  
747 52<sup>nd</sup> Street  
Oakland, CA 94609

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San Francisco Bay Regional Water Quality Control Board

## Fact Sheet – Requirements for Submitting Technical Reports Under Section 13267 of the California Water Code

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### **What does it mean when the Regional Water Board requires a technical report?**

Section 13267<sup>1</sup> of the California Water Code provides that “...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”

### **This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?**

The requirement for a technical report is a tool the Regional Water Board uses to investigate water quality issues or problems. The information provided can be used by the Regional Water Board to clarify whether a given party has responsibility.

### **Are there limits to what the Regional Water Board can ask for?**

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The Regional Water Board is required to explain the reasons for its request.

### **What if I can provide the information, but not by the date specified?**

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

### **Are there penalties if I don't comply?**

Depending on the situation, the Regional Water Board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

### **Do I have to use a consultant or attorney to comply?**

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

### **What if I disagree with the 13267 requirements and the Regional Water Board staff will not change the requirement and/or date to comply?**

You may ask that the Regional Water Board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the Regional Water Board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

### **If I have more questions, whom do I ask?**

Requirements for technical reports include the name, telephone number, and email address of the Regional Water Board staff contact.

*Revised May 2012*

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<sup>1</sup> All code sections referenced herein can be found by going to [www.leginfo.ca.gov](http://www.leginfo.ca.gov).