

WENDEL
ROSEN
BLACK
& DEAN
LLP
ATTORNEYS AT LAW

1111 Broadway, 24th Floor
Oakland, CA 94607-4036

Post Office Box 2047
Oakland, CA 94604-2047

Telephone: (510) 834-6600
Fax: (510) 834-1928
cjohnson@wendel.com

RECEIVED
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ENVIRONMENTAL HEALTH SERVICES

May 15, 2008

VIA EMAIL AND U.S. MAIL

Donna Drogos
Alameda County Environmental Health
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94501-6577

Re: **Fuel Leak Case No. RO0000317 Global ID #T0600102278. Mashhoon
Property/Union 76, 5725 Thornhill Drive, Oakland, CA**

Dear Ms. Drogos:

I am writing on behalf of Mash Petroleum, Inc. ("MPI") to respond to the ACEH's April 15, 2008 letter to MPI regarding the above-referenced property ("Property"). In its April 15th letter, ACEH requested the preparation of a Work Plan for Soil and Groundwater Investigation ("Work Plan") by May 15, 2008. **Please be advised that MPI has filed an appeal of the ACEH's request with the SWRCB.** MPI intends to continue to cooperate with the ACEH, but MPI believes that the work requested in the ACEH's April 15th letter is unwarranted.

Pending the resolution of this appeal, we request a meeting with the ACEH to evaluate whether we can reach an accommodation with the ACEH about any future work that may be necessary at the Property. Please let me know if and when you are available to meet. Meanwhile, we want to clarify and expand on some of the issues raised in the ACEH's April 15, 2008 letter.

Factual Background

The Property has been operating as a gasoline service station since the 1950s – long before MPI purchased the Property some nine years ago. Upon acquiring the Property in 1999, MPI promptly took steps to minimize any future releases from the Property and to remediate any prior releases. First, MPI arranged for the removal of a bare-steel waste oil tank at the Property. Second, MPI installed fiberglass non-jointed piping from the pre-existing fiberglass tanks to the pumps. Third, upon discovering contamination in the excavation pit of the waste oil tank, MPI excavated the contaminated soil and backfilled it with pea gravel.

Some eight years ago, MPI began working with the ACEH to investigate the extent of the release from the waste oil tank. Over the last few years, MPI installed approximately twenty borings, including cone penetrometer test (CPT) and membrane interface probe (MIP) – both at the Property and downgradient of the Property. MPI has collected in excess of 84 field data points. Various samples have been analyzed for total petroleum hydrocarbons as gasoline, motor oil and diesel, for MTBE, gasoline oxygenates, volatile organic compounds, and various metals, (lead scavengers). The results of these investigations were used to evaluate the site hydrogeology as well as the extent of petroleum hydrocarbons in on and off-site areas. MPI analyzed samples at shallow depths, intermediate depths, and even down to 34 to 40 feet below ground surface. MPI used the results of these studies to prepare a Site Conceptual Model (“SCM”), which identifies the site’s hydrogeology, distribution of chemicals of concern (COCs) as well as exposure pathways, sensitive receptors and preferential flow pathways. The results of the sensitive receptor survey did not identify the presence of any drinking water, domestic, or irrigation wells within a quarter-mile radius of the Property.

More recently, MPI arranged for the installation and sampling of an off-site groundwater monitoring well immediately adjacent to Temescal Creek along Thornhill Drive – a busy street in the heart of Montclair, an active urban area. This work involved securing an excavation permit, an encroachment permit, an obstruction permit, a well boring permit, and approval of a traffic control plan, resulting in a lane closure on Thornhill Drive during drilling activities.

The work conducted by MPI over the last eight years has been substantial, both in the scope of the work and the costs incurred. To date, MPI has incurred fees in excess of \$200,000 (most of which have been reimbursed by the UST Cleanup Fund). After much time and effort spent delineating the problem, recent sampling collected from borings both on and downgradient from the Property indicate that there are no contaminants in excess of San Francisco Bay Regional Water Quality Control Board (“RWQCB”) Environmental Screening Levels (“ESLs”) (where groundwater is not used for drinking water purposes).

Discussion

SOMA has previously submitted reports that form the basis for MPI’s request that ACEH close the site. Some of that data is summarized here.

1. Summary of Basis for Closure Request

Five monitoring wells sampled on March 4, 2008 yielded results all below the applicable ESL’s (i.e., where the groundwater is not used for drinking water). See Exhibit A, Table 1. These five wells are located downgradient and crossgradient from the former waste oil tank and from the operating USTs and include borings on the Property and downgradient of the Property. The farthest downgradient monitoring well (SOMA-5) is located adjacent to a culvert through which the Temescal Creek runs. SOMA-5 is completed within the perched zone located next to boring BH-C, where Aqua Science Engineering (ASE), in 2000, reported elevated levels of MTBE. MTBE was detected in SOMA-5 at 8.96 ppb, a level close to the drinking water standards of 5 ppb for MTBE based on taste and odor – and significantly below the standard of

1,800 ppb for MTBE where the groundwater is not a source of drinking water. The results of subsequent investigations since 2004 have not indicated the presence of elevated levels of MTBE in soil and groundwater as reported by ASE. According to SOMA, such discrepancy between the ASE investigation results and the results of subsequent investigations conducted by SOMA can be attributed to the natural bio-attenuation activities over the last eight years.

Further, MPI notes that while the ESLs are used as screening level, the SWRCB has approved closure of sites where the levels of gasoline and MTBE are above the ESLs. *See, e.g., In the Petition of Landis Incorporated*, Order WQ98-13-UST (November 19, 1998). In *Landis*, the SWRCB acknowledged that the time frame under which the MTBE at the site would likely degrade to drinking water standards could be “several decades” – and “possibly hundreds of years” for the gasoline. Nonetheless, under the circumstances, the SWRCB found that closure was appropriate.

The ACEH has asserted that the applicable ESLs in this case should be the ESLs applicable where groundwater is an actual or potential source of drinking water. Here, however, the Property in question is located in a well-developed urban area where the community is connected to a municipal water supply that does not depend on the underground aquifer. A survey of the area conducted by SOMA indicates that there are no domestic, irrigation, or water wells with a quarter mile radius of the Property. Nor is there any reasonable expectation that such wells would ever be installed in this well-developed urban area. In *In the Petition of Lois Green and Patricia Kelly*, WQ Order 2005-0002-UST (January 20, 2005), the SWRCB found that drinking water standards did not apply where “there is no evidence that groundwater at or down-gradient of petitioner’s site is being used presently or that it has any likelihood of being used in the future, for domestic or municipal water supply.”

We also note that SOMA submitted the Further Site Investigation for Updating Site Conceptual Model and Site Closure Request (“Closure Request”) on October 15, 2007 – a few weeks before the RWQCB adopted its most recent ESLs. The November 2007 ESLs adopted by the RWQCB incorporate less stringent ESLs for petroleum products than the earlier ESLs in place when SOMA submitted the Closure Request. For your convenience we include Exhibit A, which compares the recent sampling data at SOMA-1 through SOMA-5 with the current ESLs.

2. Response to ACEH Letter.

We also want to clarify several points raised in the ACEH’s April 15th letter.

The ACEH asserts that the recent installation of SOMA-5 (the monitoring well closest to Temescal Creek) and the observation of a hydrocarbon odor detected during well installation indicate that contamination is present at this location. We understand that where there are odors, sampling is warranted to define the extent of any contamination. Here, however, the well was sampled and those results have been reported to the ACEH – and those results are still below the applicable ESLs (i.e., where there is no source of drinking water). Moreover, not only was this well sampled, it was sampled at 15 feet below ground surface – the very interval which the

ACEH letter identifies as warranting special concern. SOMA informs us that the intensity of the odor as indicated is a qualitative term and may differ from one field person to another.

The ACEH letter repeatedly refers to the findings in samples collected from groundwater at boring BH-C in 2000 – where MPI's former consultant, AquaScience reported MTBE was present in the perched water zone at 5,300 ppb. According to the ACEH, "ACEH does not agree that higher concentrations reported previously are not still valid."

The prior sampling data at BH-C, however, cannot be considered valid because the sampling data is now over eight years old. It is highly unlikely that the sampling results reported in 2000 still represent site conditions. Moreover, recent sampling data clearly refutes the prior sampling data. **Samples recently collected from the same shallow perched water-bearing zone where the eight year old BH-C samples were collected**, show levels of 8.96 ppb MTBE – well below the applicable ESL of 1,800 ppb and only slightly above the ESL of 5 ppb for drinking water (which take odor and taste into account). Moreover, the sampling results collected in 2000 could not be verified in any other subsequent sampling of this area.

The ACEH requests in their April 15th letter that MPI install a soil boring at a location known as CPT-6 – an area where SOMA was unable to previously install a soil boring due to heavy traffic and an obstruction encountered. To avoid the traffic would require the closure of Thornhill Drive and securing multiple permits again – as MPI recently secured for the installation of SOMA-5. Even then, the obstruction previously detected may not permit safe drilling at this location. MPI believes it is unnecessary to install the CPT-6 boring. There are several boring points in the immediately vicinity of proposed CPT-6, including SOMA-4, SOMA-5, and HP-10. The SWRCB has held in the past that where there are substantial disruptions, such as substantial disruption of streets, and minimal benefits to be derived, further work is unnecessary. *See Landis.*

The ACEH also concludes that based on their review of historic groundwater data, including HP-10 and BH-C, "impacted groundwater may have discharged via subflow into Temescal Creek." Obviously, it would be unfortunate if any discharges were made to the Creek – particularly after MPI has spent eight years and over \$200,000 complying with ACEH directives to further investigate the extent of a release caused by prior owners of the Property. According to SOMA, natural bio-attenuation activities can account for decreased levels of contaminants. If, however, ACEH's only explanation for the decreasing level of contaminants is that the hot spots of the plume were previously discharged and are no longer present in soil or groundwater, then the ACEH should instead close the site rather than spending more UST Fund public monies on monitoring contaminants that are no longer present.

Whatever may have happened years ago, or whatever may be the source of the MTBE and gasoline releases along Thornhill Drive – a road well-traveled where such releases from vehicles would not be surprising – MPI is committed to working cooperatively with ACEH to close this site expeditiously and cost-effectively in compliance with California law.

Conclusion

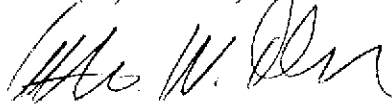
MPI believes that the area has been extensively sampled and that further delineation of the area is unwarranted. Eight years of monitoring and sampling show that the levels of contaminants at the Property and downgradient of the Property have been decreasing and are below applicable screening levels adopted to protect health, safety, and the environment.

For these reasons, MPI has appealed this case to the SWRCB. Pending the possibility of resolving this matter with the ACEH, we have requested that the SWRCB hold our petition in abeyance. Thus, we would like to meet with the ACEH to see if we can reach some resolution of this matter pending an appeal. After our meeting, if we are unable to resolve these issues, we will ask that the ACEH prepare an administrative record such that our appeal can be activated.

Thank you in advance for your time. We look forward to hearing from you and to resolving this matter.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP



Catherine W. Johnson

cc: Steven Plunkett