

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



R0355

ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
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June 16, 2009

Mr. Robert Ehlers
Valero
685 West Third Street
Hanford, CA 93230

Mr. Ken Mateik
Horizon Environmental
4970 Windplay Drive #C5
El Dorado Hills, CA 95762

NOTICE OF VIOLATION

Re: Former Beacon #12574, 22315 Redwood Rd., Castro Valley, CA 94546

Dear Messrs. Ehlers and Mateik:

This "Notice of Violation" (NOV) is being issued as a consequence of a recent violation of Ordinance No. 92-51, amending Chapter 13.08, *Stormwater Management and Discharge Control*, of Title 13 of the Alameda County General Ordinance Code. The program that draws its authority from this ordinance is commonly referred to as the *Clean Water Program (CWP)*.

On May 19, 2009, I observed an above ground storage tank and Cal Clean truck at the site while conducting CWP inspections of businesses located within this retail strip center. I spoke briefly to a Cal Clean technician, who advised me about the aquifer testing that was occurring at the time, and reminded him that security measures should be in place to prevent vandalism and a potential release of tank contents to the storm drain system. However, on or about May 29, 2009, the valve to the aboveground tank was opened by unknown persons, reportedly releasing approximately 1100 gallons of petroleum contaminated water to the county storm drain system. An OES Hazardous Materials Spill Report (CA EMA #09-4061) was filed on June 1, 2009 documenting this release.

*****Please be advised that provisions of Ordinance No. 92-51, amending Chapter 13.08, Stormwater Management and Discharge Control, of Title 13 of the Alameda County General Ordinance Code, have been violated, as follows:***

Sec. 13.08.070(A) - Discharge of pollutants. Discharge of non-stormwater discharges to the waters of the United States or to the county storm drain system is prohibited.

Sec. 13.08.080 - Discharge in violation of NPDES permit. Any discharge that would result in or contribute to a violation of the county NPDES permit is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge.

Sec. 13.08.100 - Reduction of pollutants in stormwater. Any person engaged in activities that could result in pollutants entering waters of the United States or the county storm drain system *shall undertake all practicable measures to reduce or eliminate such pollutants.* [Emphasis added]

Sec. 13.08.120 - Violations constituting misdemeanors. Unless otherwise specified, the violation of any provision of this chapter, or failure to comply with any of the mandatory requirements of this chapter,

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shall constitute a misdemeanor; except that notwithstanding any other provisions of this chapter, any such violation constituting a misdemeanor under this chapter may, at the discretion of the authorized enforcement officer, be charged and prosecuted as an administrative penalty.

Section 13.08.130 – Penalty for violation. Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in California Government Code Section 25132. Upon a person's first violation of this chapter charged as an administrative violation, the person shall be subject to a fine of not more than one hundred dollars (\$100). Upon a second violation within a one-year period, the violator shall be subject to a fine of not more than two hundred dollars (\$200). Upon a third violation within a one-year period, the violator shall be subject to a fine of not more than five hundred dollars (\$500).

Sec. 13.08.190 – Civil actions. In addition to any other remedies provided in this section, any violation of this section may be enforced by civil action brought by the county. In any such action, the county may seek, and the court may grant, as appropriate, any or all of the following remedies:

- A. A temporary and/or permanent injunction;
- B. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which lead to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;
- C. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;
- D. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life.

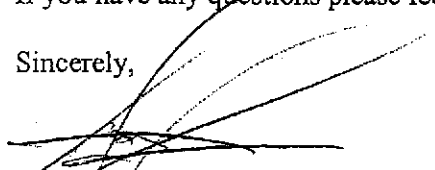
Sec. 13.08.200 – Administrative enforcement actions. All agency costs associated with enforcement through final resolution will be sought, including current pay rate, benefits, and overhead.

**** Please be advised that this case has been referred to the enforcement arm of the Clean Water Program for initiation of an enforcement action.** An enforcement officer will contact you, shortly, regarding the steps necessary to address the referenced violation, administrative hearing procedures, and/or referral to another enforcement agency.

****At this time you are directed to promptly institute appropriate BMPs (Best Management Practices) to prevent any future unauthorized non-stormwater discharges. Your cooperation is greatly appreciated.**

If you have any questions please feel free to contact me at (510) 567-6783.

Sincerely,



Scott O. Seery, P.G.
Senior Hazardous Materials Specialist
Alameda County Clean Water Program

C: Susan Hugo, ACDEH CUPA
Barney Chan, ACDEH Enforcement
J. Wickham, D. Drogos, ACDEH-LOP
Sharon Gosselin, ACPWA CWP
Banya Investments LLC, 3001 Cabrillo Ave., San Ramon, CA 94583