

MEMORANDUM

August 3, 2011

TO: Andrew Massey and Rob Reiter, Alameda County Counsel's Office

FROM: Christine K. Noma

**RE: Pleasanton Transportation Corridor: Requirement for Remedial Action
Completion Certification**

Background

Alameda County ("County") and the City of Pleasanton ("City") entered into a Purchase Agreement on July 8, 2008 for the sale of surplus property owned by the County commonly referred to as the Pleasanton Transportation Corridor ("Corridor") to the City.

When the purchase transaction between the County and the City was being negotiated and finalized, the presence of contamination on or near the Corridor was known, and the agreement referenced pending oversight by the Alameda County Environmental Health Agency ("ACEH") relating to a former Conoco Phillips 76 ("Conoco") gas station site. At the time the agreement was entered into, ACEH had directed Conoco to address the contamination. On February 20, 2011 Conoco submitted a Revised Remedial Action Plan ("RAP") which was conditionally approved by ACEH on March 17, 2011. The RAP anticipates that the active remediation of the contamination from the operations of the Conoco gas station will take from 1 to 3 years, and that groundwater monitoring will then continue for at least one year, and potentially for ten years, thereafter.

Remedial Action Completion Certificate

Under the terms of the Purchase Agreement, with respect to the obligation of the City to purchase Segment 7 of the surplus property, a condition of the purchase was the issuance of a Remedial Action Completion Certification. During the purchase negotiations, the City was adamant that the "Remedial Action Completion Certification Form" language be included in the agreement. The Remedial Action Completion Certification is referenced in the State Regional Water Quality Control Board UST Local Oversight Program (LOP) Guidebook ("Guidebook"). But, as a matter of practice that term is rarely used by the local environmental community. Health and Safety Code Section 25296.10(g) which is the genesis of the "form" states that the Water Board shall issue a "uniform closure letter", but does not refer to it as a Remedial Action

Completion Certificate. The term that the environmental community and the local San Francisco Bay Region Regional Water Quality Control Board ("RWQCB") uses to grant environmental closure of a site is a "no further action letter" or "no further action status". From the RWQCB SF Bay Region website:

Case Closure

A UST site qualifies to receive a "No Further Action" (closure) letter once the owner or operator meets all appropriate corrective action requirements. After this occurs, the local regulatory agency or Water Board will inform the responsible party in writing that no further work is required.

The "Remedial Action Completion Certification Form" referenced in the Guidebook requires that the certificate state that "no further action related to the petroleum release(s) at the site is required." Typically, "no further action" means exactly that, no remediation activity and no further groundwater monitoring.

Groundwater Monitoring

In the Conoco RAP, while active remediation is expected to be completed within 3 years, we expect that groundwater monitoring would be required for a minimum of 1 year, with a potential outside time frame of ten years or more. Long term monitoring is required when the residual levels of petroleum contamination do not pose a serious threat to the environment or human health or safety, and the responsible party (i.e. the polluter) convinces the environmental regulator that it is "safe" to allow the residual contamination to biodegrade or naturally attenuate. Natural attenuation is typically the preferred and allowed long term remediation strategy for addressing petroleum fuel releases because petroleum is not itself carcinogenic, as long as the elevated levels of constituents, such as benzene and toluene which are fuel additives, are below a certain threshold. Many gas station underground storage sites have 10 years or more of groundwater monitoring. Therefore, a typical scenario is for the regulatory agency to issue a "no further action, except for annual (or semi-annual) groundwater monitoring" letter to the oil companies. In addition, oftentimes, the property will be subject to a deed restriction prohibiting the residential, school, daycare or hospital use and a recorded operations and maintenance agreement which sets forth particular health and safety measures which must be taken if the soils are excavated or groundwater is disturbed by construction activity.

Pursuant to California Code of Regulations Sections 2727 and 2728, it appears that completion of corrective action is allowed with long term groundwater monitoring. While there is no express statement to that effect, Section 2728 states in part that notice must be given to the public if "The regulatory agency does not intend to require additional corrective action, except for monitoring in accordance with Section 2727." Section 2727 states that in the Verification Monitoring Phase, "(c) The responsible party shall submit monitoring data and an evaluation of the results of such monitoring in writing on a schedule and for a duration agreed upon by the regulatory agency."

Conditional No Further Action

While the statutes and the regulatory guidelines refer to “remedial action completion”, “no further action” or “closure”, since many environmental clean ups require long term groundwater monitoring, in practice, the RWQCB has issued “conditional no further action” letters. These conditional closures are typically requested by property owners in order to complete the sale of contaminated property or to obtain financing. The Chief of the Toxic Clean Up Division of the RWQCB has confirmed that the RWQCB has and will issue such “conditional no further action” letters when appropriate.

Based upon the information from the RWQCB, since the requirement under the Purchase Agreement is to obtain a Remedial Action Completion Certification, rather than “wait and see” what happens in 3 years, the County may wish to take the following proactive steps at this time:

- 1) The County can ask ACEH whether it would agree to issue a Remedial Action Completion Certification as a "conditional no further action" letter when the active remediation work being conducted by Conoco has been completed and the only remaining requirement is long term groundwater monitoring, the imposition of a deed restriction and an operations and maintenance agreement; and
- 2) Request the City to accept the conditional no further action letter, with groundwater monitoring and a deed restriction and the operations and maintenance agreement, as satisfying the Remedial Action Completion Certificate requirement.

If the County has any additional questions about these steps or its environmental legal obligations, Les Hausrath and I would be happy to further discuss these issues with you.

cc. Les Hausrath