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State Water Resources Control Board

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Edmund G. Brown Jr.
Governor

JUN 22 2011

Mr. and Mrs. Wayne and Lily Chun
Bill Chun Service Station
740 Canterbury Avenue
Livermore, CA 94550-6226

Dear Mr. and Mrs. Wayne and Lily Chun:

PETITION OF WAYNE AND LILY CHUN FOR REVIEW OF DENIAL OF PETROLEUM UNDERGROUND STORAGE TANK CASE CLOSURE, 2301 SANTA CLARA AVENUE, ALAMEDA, CALIFORNIA: REFUSAL TO REVIEW REQUEST FOR CASE CLOSURE, SWRCB/OCC FILE DWQP-0116

Mr. and Mrs. Wayne and Lily Chun (petitioner) seek review of the Alameda County Environmental Health Department's (County) decision to reject closure of petitioner's underground storage tank (UST) case at 2301 Santa Clara Avenue, Alameda, California (Site). After careful consideration, it is concluded that the petition in this matter fails to raise substantial issues that are appropriate for review by the State Water Resources Control Board (State Water Board). Accordingly, the State Water Board refuses to review your request for UST case closure. (See Cal. Code Regs., tit. 23, § 2814.7, subd.(d)(4); see also, *Johnson v. State Water Resources Control Board* (2004) 123 Cal.App.4th 1107; *People v. Barry* (1987) 194 Cal.App.3d 158.)

APPLICABLE LAW

Owners and operators of USTs and other responsible parties may petition the State Water Board for a review of their case if they believe the corrective action plan for their site has been satisfactorily implemented, but closure has not been granted. (Health & Saf. Code, § 25296.40, subd. (a)(1).)

Several statutory and regulatory provisions provide the State Water Board, Regional Water Quality Control Boards (Regional Water Boards) and local agencies with broad authority to require responsible parties to clean up a release from a petroleum UST. (See e.g., Health & Saf. Code, § 25296.10; Wat. Code, § 13304, subd. (a).) The State Water Board has promulgated regulations specifying corrective action requirements for petroleum UST cases. (Cal. Code Regs., tit. 23, §§ 2720-2728.)

California Environmental Protection Agency

The regulations define corrective action as “any activity necessary to investigate and analyze the effects of an unauthorized release, propose a cost-effective plan to adequately protect human health, safety, and the environment and to restore or protect current and potential beneficial uses of water, and implement and evaluate the effectiveness of the activity(ies).” (*Id.*, § 2720.)

Closure of a UST case is appropriate where the corrective action ensures the protection of human health, safety, and the environment and where the corrective action is consistent with: 1) chapter 6.7 (commencing with section 25280) of Division 20 of the Health and Safety Code and implementing regulations; 2) any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with section 13000) of the California Water Code; 3) all applicable state policies for water quality control; and 4) all applicable water quality control plans.

State Water Board Resolution 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304 is a state policy for water quality control and applies to petroleum UST cases. State Water Board Resolution 92-49 directs that water affected by an unauthorized release attain either background water quality or the best water quality that is reasonable if background water quality cannot be restored. (State Water Board Resolution 92-49, Section III.G.) Any alternative level of water quality less stringent than background must be consistent with the maximum benefit to the people of the state, not unreasonably affect current and anticipated beneficial use of affected water, and not result in water quality less than that prescribed in the water quality control plan for the basin within which the site is located. (*Ibid.*) Resolution 92-49 does not require, however, that the requisite level of water quality be met at the time of site closure. Resolution No. 92-49 specifies compliance with cleanup goals and objectives within a reasonable time frame. (*Id.*, § III.A.) Therefore, even if the requisite level of water quality has not yet been attained, a site may be closed if the level will be attained within a reasonable period of time.

The San Francisco Bay Regional Water Quality Control Board's (San Francisco Bay Water Board) Basin Plan (Basin Plan) designates existing and potential beneficial uses of groundwater as municipal and domestic supply (MUN), agricultural supply (AGR), industrial service supply (IND), and industrial process supply (PRO) in this basin. (San Francisco Bay Water Board and State Water Board, Water Quality Control Plan for the San Francisco Bay Region (2010) at p. 2-1.)

The Basin Plan specifies the following “Organic and Inorganic Chemical Constituents” narrative water quality objective:

[G]roundwater designated for use as MUN shall not contain concentrations of constituents in excess of the maximum (MCLs) or secondary maximum contaminant levels (SMCLs) specified in the following provisions of Title 22, which are incorporated by reference into this plan: Tables 64431-A (Inorganic Chemicals) of Section 64431, Table 64433.2-A (Fluoride) of Section 64433.2, and Table 64444-A (Organic Chemicals) of Section 64444. This incorporation-by-reference is prospective, including future changes to the incorporated provisions as the changes take effect. (See Table 3-5.) (*Id.*, p. 3-9.)

The Basin Plan also contains the following narrative water quality objective for "Taste and Odor":

[G]roundwater designated for use as MUN shall not contain concentrations in excess of the SMCLs specified in Tables 64449-A (Secondary MCLs-Consumer Acceptance Limits) and 64449-B (Secondary MCLs-Ranges) of Section 64449 of Title 22, which is incorporated by reference into this plan. This incorporation-by-reference is prospective, including future changes to the incorporated provisions as the changes take effect. (See Table 3-5.) (*Id.*, p. 3-10.)

BACKGROUND

- Petitioner's site is the location of a decommissioned gasoline service station, which formerly contained three USTs that were removed in 1992.
- Approximately 50 cubic yards of contaminated soil has been excavated and removed.
- Concentrations of total petroleum hydrocarbons as gasoline (TPHg), benzene, toluene, ethylbenzene, and xylenes (BTEX), 1,2 dichloroethene (1,2 DCA) and methyl tertiary butyl ether (MTBE) remain above water quality objectives (WQOs)¹.
- Average depth to water is approximately 8.6 feet below ground surface (bgs).
- A water supply well is located approximately 600 feet northwest (upgradient) and two irrigation wells and two industrial supply wells are located within ½ mile.
- The groundwater plume has migrated offsite and below a neighboring building (commercial first level, residential second level.)
- Indoor air sampling of the neighboring building in 2006 resulted in low concentrations of toluene (1.3 ppbv) and xylenes (0.6 ppbv) reported from the first level and concentrations of BTEX (2.5 ppbv, 5.6 ppbv, 0.6 ppbv, and 1.9 ppbv,) respectively, reported from the second level.

¹ WQOs provided in San Francisco Bay Water Board's Basin Plan.

The State Water Board's Local Oversight Program (LOP) provides for local agency abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from USTs.

In implementing the LOP, the State Water Board is authorized to enter into contracts with local agencies to oversee site cleanup of unauthorized releases. (Health & Saf. Code, § 25297.1, subd. (b).)

The County has a contract with the State Water Board and is participating in the LOP. On July 8, 2009, Franklin Goldman, on behalf of petitioner, filed a petition with the State Water Board that included a request for UST case closure from the County, the regulatory agency overseeing corrective action.

On October 8, 2009, the County responded to the petition and denied the request for UST case closure on the grounds that a significant residual source remains beneath the Site and poses a potential risk to human health and the environment at the adjacent property and that additional corrective action is necessary.

DISCUSSION

Petitioner contends that the corrective action ensures the protection of human health, safety, and the environment and that case closure is appropriate.

When directing closure of a UST case, the State Water Board must find that the corrective action performed ensures the protection of human health, safety, and the environment and that it is consistent with any waste discharge requirements, other orders issued pursuant to the Porter Cologne Water Quality Control Act, and all applicable state policies for water quality control.

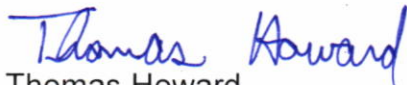
The requirements for case closure have not been met at this time and, therefore, closure of the UST case is not appropriate. Available data indicate that a substantial mass of contaminants released from the petitioner's UST system remain below the Site and adjacent property. Site conditions (high concentrations of volatile organic compounds combined with shallow groundwater) support a potential vapor intrusion threat to the neighboring building. At this point in time, insufficient data are available to indicate that water quality objectives will be met within a reasonable period of time required by Resolution 92-49 or that corrective action ensures the protection of health, safety and the environment. Case closure is, therefore, not appropriate at this time.

JUN 22 2011

CONCLUSION

Because the petition fails to raise substantial issues that are appropriate for review by the State Water Board, the State Water Board declines to review petitioner's request for UST case closure. If you have any questions about this matter, please contact Mr. Kevin Graves, Acting Groundwater Branch Chief at (916) 341-5782 (kgraves@waterboards.ca.gov).

Sincerely,



Thomas Howard
Executive Director

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JUN 22 2011

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