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FREDERICK BOLD, JR.
(RETIRED)

August 30, 1995

Alameda County Health Care Services Agency
Department of Environmental Health
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
1131 Harbor Bay Parkway
Alameda, CA 94502-6577

SPD 933

Attention: Thomas Peacock, Acting Chief

RE: Petition for Review of Decision by
Alameda County Health Care Services

Dear Mr. Peacock:

This office represents D.C. Metals, Inc. a corporation conducting business at 1414 Third Street in Oakland. On August 1, 1995, you sent to our client a Notice of Requirement to Reimburse. Our client takes exception to your agency's determination of responsibility because our client did not place the tank in the ground, has never made use of the tank, did not know of its existence until just recently, and is not the owner of the land under which the tank is located or any adjacent property.

Therefore, we have been requested to submit a Petition for Review to the State Board. A copy of the petition is enclosed.

As required for this review, we request that your agency prepare the local agency record for use in this petition. A copy of the local agency record should be sent to this office upon completion.

We would also like to discuss this matter in more detail with you prior to any formal hearing in hope of resolving this matter as economically and as expeditiously as possible.

BOLD, POLISNER, MADDOW, NELSON & JUDSON

Thomas Peacock, Acting Chief
Alameda County Health Care Services Agency
August 30, 1995
Page Two

Thank you very much. If you have any questions or comments,
please feel free to contact me.

Yours very truly,



CRAIG L. JUDSON

CLJ:mcl
Enclosure as noted.
cc: Client
Lori Casias, SWRCB

Petition by D.C. Metals, Inc.

of Decision by Alameda County Health Care Services Agency

**Re: Notice of Requirement to Reimburse for costs associated
with Removal of Underground Storage Tank**

1. Petitioner:

D.C. Metals, Inc., A California Corporation
1414 Third Street, Oakland, CA 94607
(510) 836-1655

Ray Cherry, Vice President
D.C. Metals, Inc., A California Corporation
1414 Third Street, Oakland, CA 94607
(510) 836-1655

Legal Counsel:

Craig L. Judson, Esq.
Bold, Polisner, Maddow, Nelson & Judson
A Professional Corporation
500 Ygnacio Valley Road, Suite 325
Walnut Creek, CA 94596
(510) 933-7777

2. Action Taken by local agency:

The Alameda County Health Care Services Agency, Department of Environmental Health, State Water Resources Control Board, Division of Clean Water Programs, UST Local Oversight Program has determined that Petitioner is the Responsible Party - Property Owner charged with responsibility to reimburse the State Water Resources Control Board (SWRCB) for oversite costs actually incurred in overseeing the removal and clean-up of an underground storage tank (UST) located under the sidewalk adjacent to the property located at 1414 Third Street, Oakland, California. That agency has also demanded that Petitioner remove that underground storage tank.

3. Date of Action By Local Agency:

August 1, 1995

4. Statement of Reasons Local Agency Action is Inappropriate:

Petitioner is not responsible for removal of the underground

storage tank or for payment of the cost to remove the tank because (1) Petitioner did not originally place the tank in the ground; (2) Petitioner was unaware of the presence of the tank until recently accidentally found by PG&E who was relocating utilities for Cal-Trans; (3) Petitioner has never made use of the underground storage tank; (4) Petitioner is not the owner of the property under which the tank is located - the tank is located under the public sidewalk which is owned and controlled by the City of Oakland; and (5) The local agency has not shown which individuals or entities are responsible for original placement of the tank because the local agency officials do not know which individuals or entities are responsible for original placement of the tank.

5. Manner In Which Petitioner is Aggrieved:

Petitioner is aggrieved because Petitioner will incur substantial costs and time associated with the removal of the underground storage tank (UST) and in reimbursing the local agency up to 150 percent of the total amount of site specific oversight costs actually incurred while overseeing the cleanup of the underground storage tank site, as set forth in the attached Notice of Requirement to Reimburse. The actual costs to be incurred have yet to be determined.

6. Specific Action by the State Board or Local Agency Requested by Petitioner:

Petitioner requests the State Board to order the local agency to rescind its decision requiring Petitioner to reimburse for oversight costs and ordering the removal of the tank at Petitioner's cost.

7. Points and Authorities in Support of Petition:

Petitioner is not responsible for removal of the underground storage tank or for payment of the cost to remove the tank because (1) Petitioner did not originally place the tank in the ground; (2) Petitioner was unaware of the presence of the tank until recently accidentally found by PG&E who was relocating utilities for Cal-Trans; (3) Petitioner has never made use of the underground storage tank; (4) Petitioner is not the owner of the property or any adjacent property under which the tank is located. The tank is located under the public sidewalk which is owned and controlled by the City of Oakland; and (5) The local agency has not shown Petitioner which individuals or entities are responsible for original

placement of the tank because the local agency officials do not know which individuals or entities are responsible for original placement of the tank.

It is the stated standard procedure of the local agency to consider the property owner of land under which or land adjacent to underground storage tanks found below sidewalks to be the responsible party.

This determination by the local agency is arbitrary and capricious, violates Petitioner's right to due process, and denies Petitioner its legal property rights without adequate proof having been first made by the local agency of petitioner's responsibility.

The local agency has the burden of proving Petitioner is the responsible party, which burden has not been met by the local agency.

8. Persons Known by Local Agency Having an Interest in the Subject Petition:

It is unknown at this time who the local agency knows to have an interest in the subject petition.

9. Statement of Transmittal of Petition to Responsible Parties.

A copy of this Petition has been sent to the following persons or entities:

Alameda County Health Care Services Agency
Department of Environmental Health
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
1131 Harbor Bay Parkway
Alameda, CA 94502-6577

City of Oakland
City Clerk
505 Fourteenth Street
Suite 609
Oakland, CA 94612

Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612

The responsible party, besides the City of Oakland, is unknown to Petitioner.

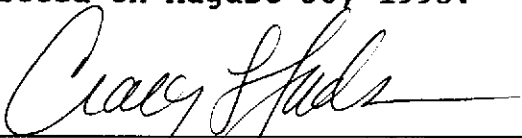
10. **Copy of Request to Local Agency for Preparation of the Local Agency Record:**

See Attached letter dated August 30, 1995.

11. **Request for Hearing**

Petitioner requests a hearing for the purpose of presenting additional evidence in support of Petitioner's position. This matter is presently being investigated by Petitioner, and Petitioner will have additional evidence to present upon completion of its independent investigation.

Respectfully Submitted on August 30, 1995.



CRAIG L. JUDSON
Attorney for Petitioner

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J KEARS, Agency Director



RAFAT A. SHAHID, DIRECTOR
DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
1131 Harbor Bay Parkway
Alameda, CA 94502-6577
(510) 567-6700

Certified Mail # Z 196 176 923
08/01/95
STID# 933

Notice of Requirement to Reimburse

Mr. Ray Cherry
D C Metals
1414-3rd St.
Oakland C A 94607

Responsible Party
Property Owner

DC Metals
1414 3rd St
Oakland , CA 94607

SITE Date First Reported 07/28/95
Substance: Gasoline
Petroleum: (X) Yes
Source: f

The federal Petroleum Leaking Underground Storage Tank Trust Fund (Federal Trust Fund) provides funding to pay the local and state agency administrative and oversight costs associated with the cleanup of releases from underground storage tanks. The legislature has authorized funds to pay the local and state agency administrative and oversight costs associated with the cleanup of releases from underground storage tanks. The direct and indirect costs of overseeing site investigation or remedial action at the above site are funded, in whole or in part, from the Federal Trust Fund. The above individual(s) or entity(ies) have been identified as the party or parties responsible for investigation and cleanup of the above site. **YOU ARE HEREBY NOTIFIED** that pursuant to Title 42 of the United States Code, Section 6991b(h)(6) and Section 25297.1 of the California Health and Safety Code, the above Responsible Party or Parties must reimburse the State Water Resources Control Board (SWRCB) not more than 150 percent of the total amount of site specific oversight costs actually incurred while overseeing the cleanup of the above referenced underground storage tank site, and the above Responsible Party or Parties must make full payment of such costs within 30 days of receipt of a detailed invoice from the SWRCB.

✓ | This agency's decision to name you responsible for corrective action is subject to petition to the SWRCB. Petitions must be filed within 30 days from the date of this notice. To obtain petition procedures, please fax request to Roni Riley at (916) 227-4349 or telephone (916) 227-4408. Please contact Jennifer EBERLE, Hazardous Materials Specialist at this office if you have any questions concerning this matter.

Thomas Peacock, Acting Chief
Contract Project Director

c: Mike Harper, SWRCB
Add: Reason: new
Delete: Reason: _____
Change: Reason: _____

Standard Form UST03 (6/93) ;Report: Reimb 5/95

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY



DAVID J. KEARS, Agency Director

RAFAT A. SHAHID, DIRECTOR

August 2, 1995
STID 933

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
1131 Harbor Bay Parkway
Alameda, CA 94502-6577
(510) 567-6700

Attn: Mr. Ray Cherry
DC Metals
1414-3rd St.
Oakland CA 94607

Dear Mr. Cherry,

As you know, an Underground Storage Tank (UST) was discovered below the sidewalk, West of your driveway on 3rd St. This UST was discovered by PG&E while trenching in the area in June 1995. PG&E was apparently hired by CalTrans to do this work. As per telecon on 7/28/95, Kate Liega of CalTrans indicated to me that she understood that PG&E lowered a weighted string into the UST when it was discovered, and that a black, thick, viscous liquid appeared on the string. This was done to determine whether the UST contained gasoline, which would possibly indicate an explosion hazard. The appearance of the black, thick, viscous liquid indicates that the UST may be storing waste oil or a heavy type of fuel oil, but not likely gasoline.

Odors were noted during the trenching operations by PG&E workers. For this reason, soil samples were obtained as follows. Borings were drilled to a depth of 6' below ground surface (bgs). Two of these borings were drilled below the sidewalk on either side of the driveway. The boring on the west side of the driveway, known as BS2, had the following maximum concentrations of contaminants: 2.7 parts per million (ppm) benzene, 32 ppm ethylbenzene, 690 ppm toluene, 190 total xylenes, 300 ppm Oil and Grease, and 3700 ppm Total Petroleum Hydrocarbons as gasoline (TPH-g) 0.760 ppm 1,2-dichloroethene (trans), and 1.90 ppm 1,1,1-trichloroethane. These contaminants fall into the general categories of petroleum hydrocarbon and halogenated volatile organic compounds (HVOCs). A copy of the laboratory report and chain of custody are attached.

Due to the presence of contamination in proximity to the existing UST below the sidewalk, this case was created and transferred to the Local Oversight Program (LOP). The LOP is a federal and state petroleum underground storage tank cleanup program and the billing is done by the State Water Quality Control Board. A separate Notification letter is being sent to you.

As per our telecon on 8/1/95, I understand that you do not consider yourself responsible for this UST. However, it has been standard procedure in this office to consider the property owner(s) of land adjacent to USTs found below sidewalks as responsible party(ies). The property owner usually owns the adjacent sidewalk area, although the sidewalk is in the public right of way, so that the City can gain access to keep the sidewalk in repair. **Therefore, you are requested to either permit or remove this UST.** Since the existence of this UST was heretofore unknown, it appears that you will not want to permit it, but rather remove it. A blank UST Closure Plan was sent to you in the attachments to our letter dated 7/25/95, signed by Pam Evans. [The 7/25/95

AUG 4 1995 FRI 10:55 D C METALS 415 763-5466 P.04

August 2, 1995
STID 933
Attn: Mr. Ray Cherry
DC Metals
page 2 of 2

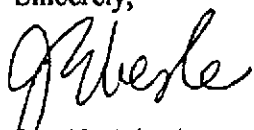
letter was sent to you requesting an investigation of two 10,000-gallon USTs that are believed to exist onsite.] Please make a copy of this form, and use it for the tank removal. Note that a licensed contractor must be hired to perform this work. **Please submit the UST Closure Plan within 45 days, or by September 17, 1995.**

Please be advised that this is a formal request for a UST Closure Plan, pursuant to 23 CCR, Div 3, Ch 16, Section 2670. Any extensions of the stated deadlines, or modifications of the required tasks, must be confirmed in writing by this agency.

Lastly, an **Unauthorized Release Form (URF)** must be completed and submitted within **5 days, or by 8/7/95**, as per 23 CCR, Div 3, Ch 16, Section 2652. A blank copy has been enclosed; please use a ballpoint pen and press heavily; please submit the entire form; a copy will be sent to you after I receive and sign it.

I understand that Pam Evans has already sent you a list of contractors and consultants. In addition, on 8/1/95, I faxed you nine pages of documentation from our files that two 10,000-gal USTs existed onsite in 1986, 1988. This was as per your request, due to your lack of information regarding these tanks. Please contact me at (510) 567-6761 if you have any questions.

Sincerely,



Jennifer Eberle
Hazardous Materials Specialist

cc: Tom Peacock/Acting Chief/file
Pam Evans

je.933
enclosures