
San Francisco Bay Regional Water Quality Control Board

December 27, 2012
File No. 01-1060 (BGS)

Mr. John Berry
2900 Main Street
Alameda, CA 94501

**SUBJECT: Requirement for a Technical Report - Alameda Gateway Ltd, 2900 Main Street,
Alameda, Alameda County**

Dear Mr. Berry:

This letter requires you to submit a technical report documenting current environmental condition at the site to the San Francisco Bay Regional Water Quality Control Board (Regional Water Board).

On March 29, 2012, the Alameda County Health Care Agency (ACHCA), that had overseen the initial site cleanup, referred the case to the Regional Water Board for further oversight. The site has been contaminated by hydrocarbons from the former underground storage tanks (USTs). The USTs were removed in 1990. Subsequent environmental investigations confirmed that significant hydrocarbon contamination is present in soil and groundwater beneath the site. The site borders Oakland Inner Harbor. In early 2000, the northern portion of the site was reconstructed into the Oakland Inner Harbor turning basin.

Three groundwater monitoring wells were installed at the site in 1992, and sporadically sampled until 2001. In 2001, free product was observed on groundwater in well MW-2, located approximately 60 feet from the turning basin, and up to 360 ug/L of lead was present in well MW-3 located approximately 300 feet from the basin. On September 29, 2006, the *Revised Workplan for Limited Site Investigation and Well Installation Activities* was submitted to the ACHCA, but it appears that the proposed additional investigative work has never been completed. The current status of the free product, contaminant concentrations in soil and groundwater, and the extent of the dissolved hydrocarbon plume beneath the site is unknown. The site contamination may pose an ecological and human health threat.

You have been identified the responsible party for site cleanup, as the current/former property owner/operator. Therefore, you are required to submit information that will allow us to properly evaluate the site environmental condition and related human health and ecological risks. The required information includes the data on current soil and groundwater condition beneath the site, an updated conceptual site model, and risk assessment. If such information is not available, you may consider implementing tasks proposed in the September 29, 2006, work plan to collect data and reporting the investigation results, or you may submit a new work plan for collecting information to address the existing data gaps.

The described above environmental investigation report or work plan is due in our office by April 5, 2013.

This requirement for a report is made pursuant to Water Code Section 13267, which allows the Regional Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. The attachment provides additional information about Section 13267 requirements. Any extension in the above deadline must be confirmed in writing by Regional Water Board staff.

You are required to submit all documents in electronic format to the State Water Resources Control Board's GeoTracker database. Guidance for electronic information submittal is available at http://www.waterboards.ca.gov/water_issues/programs/ust/electronic_submittal/. All reports submitted should have the Regional Water Board file number 01-1060 on the first page of the report. A copy of any submittal should also be sent to the ACDEH in Alameda.

Your site is enrolled in the UST Cleanup Fund Program for reimbursement of corrective action costs. Please note that failure to comply with our requirements may result in your ineligibility for reimbursement of corrective action cost incurred at the site from the UST Cleanup Fund. Once removed from the Cleanup Fund, the costs associated with the subsurface investigation and/or cleanup work that may be required at your site will not be reimbursed.

Please direct all questions and correspondence regarding this matter to Barbara Sieminski at 510-622-2423 or via e-mail at bsieminski@waterboards.ca.gov.

Sincerely,

Bruce H. Wolfe
Executive Officer

Attachment: Fact Sheet – Requirements For Submitting Technical Reports Under Section 13267 of the California Water Code

cc:

Ms. Donna Drogos, ACEH, donna.drogos@acgov.org

MS. Karel Detterman, ACEH: karel.detterman@acgov.org

Mr. Walter Bahm, SWRCB, UST Cleanup Fund: wbahm@waterboards.ca.gov

San Francisco Bay Regional Water Quality Control Board

Fact Sheet – Requirements for Submitting Technical Reports Under Section 13267 of the California Water Code

What does it mean when the Regional Water Board requires a technical report?

Section 13267¹ of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

The requirement for a technical report is a tool the Regional Water Board uses to investigate water quality issues or problems. The information provided can be used by the Regional Water Board to clarify whether a given party has responsibility.

Are there limits to what the Regional Water Board can ask for?

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The Regional Water Board is required to explain the reasons for its request.

What if I can provide the information, but not by the date specified?

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

Are there penalties if I don't comply?

Depending on the situation, the Regional Water Board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

Do I have to use a consultant or attorney to comply?

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

What if I disagree with the 13267 requirements and the Regional Water Board staff will not change the requirement and/or date to comply?

You may ask that the Regional Water Board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the Regional Water Board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

If I have more questions, whom do I ask?

Requirements for technical reports include the name, telephone number, and email address of the Regional Water Board staff contact.

Revised May 2012

¹ All code sections referenced herein can be found by going to www.leginfo.ca.gov.