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December 12, 1988

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BY FEDERAL EXPRESS

Mr. Ariu Levi
Hazardous Materials Program
Alameda County Health Care
Services Agency
Department of Environmental Health
470 27th Street, Third Floor
Oakland, California 94612

RECEIVED
DEC 14 1988
HAZARDOUS MATERIALS/
WASTE PROGRAM

Re: Results of Site Assessment and Proposed Compliance
Plan for Learner Company Property at 768 46th
Avenue in Oakland, California

Dear Mr. Levi:

In light of our meeting on December 6, 1988, I am enclosing another copy of the Dames and Moore report dated August 26, 1988, wherein these environmental consultants set forth the results of their investigation of the above-captioned property. I regret that the prior submission did not make its way to your files.

Given these results and in light of the results of our meeting, I am writing on behalf of the Learner Company ("Learner") to outline the proposed action steps that Learner will conduct to resolve the question of whether the affected soils constitute hazardous waste and what, if any, further remediation steps will be taken in light of these results.

As I discussed in my letter of December 2, 1988, California law requires that hazardous waste be lawfully treated and disposed. [Cal. Health and Safety Code Section 25142] Hazardous wastes are to be defined by the California Department of Health Services ("DHS"). [Cal. Health and Safety Code Section 25141] Regulations adopted by the DHS, while not crystal clear, suggest that "waste (or slop) oil" as well as "oil and water" constitute hazardous wastes. [22 Cal.Admin.Code Section 66680(e)].

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As we noted on December 6, there is no empirical evidence of impact on groundwater at this site. Clean dirt was discovered after the 4.5 foot level, with the significant levels of elevated TPH occurring at the 2 foot and above levels. Clearly the cursory analysis of this site indicates a garden-variety surface spillage from machinery of heavy, viscous material that seeped into the shallow soils, but has not penetrated the deeper soils, which are clay and not silty in nature.

Notwithstanding the probable outcome that these materials will be found to be non-hazardous waste, Learner proposes to conduct a Total Threshold Limit Test through a Waste Extraction Test process, with acute aquatic toxicity testing, ignitibility and corrosivity tests as well, pursuant to the attached outline prepared for Learner by Kleinfelder, Inc. Contingent upon the outcome of these results, which will be reported to you, Learner will fashion an appropriate remediation plan.

Please review this letter and attached work plan as soon as you can, and give me a call at (213) 689-7507 with your comments or questions. Upon receipt of your comments, Learner will proceed with the Kleinfelder work plan.

Thank you for your assistance in this matter.

Sincerely,



Roger Lane Carrick

Attachments

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However, as we pointed out on December 6, whether hydraulic fluid or its resultant total petroleum hydrocarbon ("TPH") contamination in soils meets this regulatory definition is ambiguous. Generally the regulations have been interpreted to create a rebuttable assumption that such contamination is a hazardous waste. [22 Cal.Admin.Code Section 66300(a)(2) and (3)] To assess what facts would permit this assumption to be rebutted, an analysis of the soils pursuant to so-called "Article 11" standards would be required. [22 Cal.Admin.Code Sections 66693-66746]

You noted that Alameda County uses the figure of 1,000 parts-per-million ("ppm") for total hydrocarbons as a threshold definition of TPH as hazardous waste. While the 1,000 ppm is not written into regulation or statute, DHS and apparently the Regional Water Board has applied this standard in cleanups and site closure requirements in Alameda County. However, the most common occurrence of soils contaminated with TPH occurs in the context of leaking underground tanks. The State and Regional Water Quality Control Boards ("Board") are charged with the enforcement of California's Leaking Underground Tank law, [Cal. Health and Safety Code Section 25280] To facilitate the application of this law, the State Board issued the "Leaking Underground Fuel Tank Field Manual: Guidelines for Site Assessment, Cleanup, and Underground Storage Tank Closure" in May of 1988 ("LUFT Manual").

While the LUFT Manual does not apply directly to our situation, it is important to note that the LUFT Manual suggests a figure of 10,000 ppm for diesel fuel contamination as the ceiling for permitting TPH-contaminated soils to be left in place, though such allowable levels are dependent on specific site characteristics which influence the migration of contaminants to the water table. Hydraulic oil is similar to diesel fuels in terms of its hydrocarbon make-up, which generally does not include heavy metals or solvents like benzene.

The Regional Board for the Oakland area has utilized the LUFT Manual to provide guidance for soil cleanup standards, including issuing on June 2, 1988, a document entitled "Regional Board Staff Recommendations for Initial Evaluation and Investigation of Underground Tanks," which notes that "the level of cleanup is to be determined by assessing the potential impact of residual soil contamination on the ground water." [Id., at 7]