



ENVIRONMENTAL HEALTH SERVICES  
ENVIRONMENTAL PROTECTION  
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December 17, 2015

Ms. Elaine Kirk  
Marks Management Co.  
c/o Banker, Marks, & Kirk  
1721 Broadway, Suite 202  
Oakland, CA 94612  
(sent via electronic mail to:  
[EKirk.marks@earthlink.net](mailto:EKirk.marks@earthlink.net))

Mr. William H. Banker, Jr.  
San Pablo Avenue Venture  
c/o Banker, Marks, & Kirk  
1721 Broadway, Suite 202  
Oakland, CA 94612  
(sent via electronic mail to: [BillBanker@comcast.net](mailto:BillBanker@comcast.net))

Subject: Conditional Approval of Site Construction in Western Area of Site; Fuel Leak Case No. RO00002520 (Global ID #T06019788682), Maz Glass; 3800 San Pablo Avenue, Emeryville, CA 94608

Dear Ms. Kirk and Mr. Banker:

Alameda County Environmental Health (ACEH) staff has reviewed the site investigation and remediation data contained in the above-referenced case file, and has met multiple times with your consultant Mr. Jim Gribi of Gribi Associates and the consultant for the potential purchaser, Mr. Tom Graf of GrafCon. During this review, ACEH evaluated the data and recommendations presented in reports and in meetings, in conjunction with the case files, to determine if the site is eligible for closure as a low risk site under the State Water Resources Control Board's (SWRCBs) Low Threat Underground Storage Tank Case Closure Policy (LTCP).

Based on ACEH staff review, we have previously determined that the eastern portion of the site appears to meet the closure criteria specified in the Low Threat Closure Policy. However, it is the opinion of ACEH that the western portion of the site, predominantly overlain by the existing building, fails the Nuisance General Criteria due to the presence of potentially explosive concentrations of methane in the subsurface. Concentrations of methane appear to be principally located in a localized area in the southwestern area of the existing building immediately adjacent to a former heating oil underground storage tank (UST). Vapor analytical data collected after recent excavation activities conducted at the site in late September 2015 indicate that methane concentrations at vapor well SG-4 have been reduced to below explosive levels. However, the excavation did not extend beneath the building in the vicinity of the high methane concentrations as approved. Additionally, the source of the methane generation does not appear to have been removed based on an increasing vapor concentration of Total Petroleum Hydrocarbons as gasoline (TPHg) in SG-4, located within the building, since excavation and the lack of detectable concentrations of TPH in recently excavated material as documented in the *Low-Threat UST Case Closure Policy Evaluation*, by Gribi Associates, and dated November 11, 2015. At present, the concentration of TPHg is now higher at this vapor well than prior to recent excavation activities (rising from 485,000 to 576,000  $\mu\text{g}/\text{m}^3$  TPHg). Although the concentrations of methane collected subsequent to excavation activities are below explosive levels, sufficient data has not been collected to ensure that explosive levels will not return.

Based on discussions with the two consultants, and the project proponent Holliday Development, ACEH understands that the eastern portion of the site is under construction with two floors of garage space underlying five floors of residential space, while the western portion will be redeveloped, using the existing foundation, into three ground floor retail spaces and service areas (gallery hallways and an electrical room). ACEH further understands that Holiday Development / 3800 San Pablo LLC needs approval from ACEH to begin redevelopment of the western portion of the site by January 6, 2016. This schedule precludes the ability to collect sufficient data to allow a determination of the potential for methane re-generation prior to redevelopment.

To facilitate the start of redevelopment of the western portion of the property, the seismic upgrade (foundation improvements including grade beam installation) and tenant improvements to the existing

building can proceed provided the technical comments below are addressed. Please be aware that if upon review of this directive letter, the State Water Resource Control Board (SWRCB) disagrees with the ACEH nuisance determination under the LTCP, and finds that the site meets all criteria of the LTCP, ACEH may need to open a Voluntary Remedial Action Program (VRAP) case to manage regulatory oversight of residual contamination and potential methane generation at the site.

## **TECHNICAL COMMENTS**

**1. Short Term Site Management Plan** - Due to the potential to encounter and excavate contaminated soil during installation of seismic improvements (foundation including grade beam) and to complete the approved remedial excavation of potentially impacted soil near the former heating oil UST a Short Term Site Management Plan (SMP) must be generated and approved by ACEH in order to define excavation limits, provide protocols for excavation oversight, collection of confirmatory analytical samples, and potentially manage and dispose of the soil. The purpose of the Short Term SMP is two fold

- To provide for communication primarily with contractors who will be redeveloping the site, and
- To document removal of potential source material in accordance with the ACEH approved work plan.

The results of the excavation are to be incorporated into the VMS design, and documented in a report by the date requested below. Please submit a Short Term SMP by the date requested below.

**2. Vapor Mitigation System Design** – Due to potentially explosive methane concentrations beneath the southwestern portion of the property, it is prudent to install a VMS to minimize risk to building occupants. A VMS Basis of Design Report, including system construction plans and specifications, Construction Quality Assurance Plan (CQAP) for installation of the system, and an Operations and Maintenance Plan must be submitted for ACEH for review and approval by the date specified below. Please submit a VMS design and CQAP by the date identified below.

The CQAP must specify the qualifications and experience for contractors and inspectors involved in the construction of the VMS, and provide procedures for construction monitoring and documentation, including responsibility and authority, construction inspections (i.e. smoke testing, etc.), and as-built documentation.

The Basis of Design Report must also include a construction schedule and sequencing plan that provides details on construction measures and sequencing events, designed to protect the VMS during site development activities.

**Following construction and prior to tenant occupancy** of the VMS, a report must be submitted to and approved by ACEH, which includes as-built drawings, copies of permits, construction monitoring and documentation, post-construction sub-slab and vent riser sampling results verifying system integrity, and other information relevant to the installation of the mitigation system. Based on the sub-slab or other results, indoor air sampling results may be warranted.

**3. Long Term Site Management Plan and Institutional Controls (ICs)** – Prior to building occupancy an SMP must be prepared and ICs implemented for the western portion of the site to prevent inappropriate activities and use of the property, with consideration of potential explosive risk due to residual soil contamination. The SMP and ICs will provide legal and administrative controls and methods for the dissemination of information to minimize risk during property development, future below ground construction and maintenance, and long-term site occupancy and use. Please submit a draft Long Term SMP by the date identified below.

- **Site Management Plan** - The SMP will be prepared as an element of long-term site management and will include a discussion of environmental conditions within the western portion of the site and the mitigation elements included in the VMS that must be maintained and protected during site redevelopment. Prior to redevelopment of the western portion of the site, an SMP must be submitted to ACEH for review and approval. The purpose of the SMP is to provide for

communication primarily with contractors who will be constructing and maintaining the site. The SMP must provide details regarding the location and construction of the VMS, precautions should subsurface work be required in the area of the VMS, precautions for handling potentially impacted soil or groundwater, and notification procedures should the VMS be damaged. The SMP should document proposed operations, maintenance, and monitoring of the system, emergency contact information, and protocols for approval of future modifications to the building in the areas of the VMS. The VMS design documents must be included as an attachment to the SMP. The SMP must be maintained at the site address by the property manager or designated representative and must be recorded at the Alameda County Clerk Recorder's office. The site owner will have responsibility for implementation of the SMP.

The SMP must address on-going system inspections to be arranged by the site owner to observe and document the integrity and maintenance of the mitigation system, including observation of roof turbines, auditing of building and system maintenance records, and confirming that required onsite documentation is available (e.g. copy of the SMP). The SMP must specify actions required by the owner should any action inconsistent with the SMP be discovered during site inspections, including, but not limited to notification of ACEH, and the submittal of documentation describing actions taken to correct the situation.

- **Land Use Covenant (LUCs), Activity Use Limitations (AULs), and Codes, Covenants, and Restrictions (CCRs)** – These documents will document legal and regulatory requirements for the site. As currently understood by ACEH the site redevelopment of the western portion of the site, will consist of commercial spaces. To minimize contact with impacted media, the recorded LUCs / AULs, and CCRs will prohibit alteration, disturbance, or removal of any component of the VI mitigation system. Additional components of the LUCs / AULs, and CCRs will include but may not be limited to:
  - i. Notification to the City of Emeryville Building Department of the VMS and the potential flagging of the property such that ACEH will be notified if building permits are to be issued (to prevent impacting the VMS);
  - ii. Prohibition of new construction activities that could encounter or breach the VMS without the express knowledge of ACEH and the City of Emeryville Building and Public Works Departments, including for utility repair and installation;
  - iii. Lease documents that include CCRs that will serve as the primary communication tool for the site's business occupants, including fact sheets; and
  - iv. The provision to maintain inspection and monitoring records associated with VMS.

### **TECHNICAL REPORT REQUEST**

Please upload technical reports to the ACEH ftp site (Attention: Mark Detterman), and to the State Water Resources Control Board's Geotracker website, in accordance with the specified file naming convention below, according to the following schedule:

- **January 8, 2015** – Short Term Site Management Plan  
File to be named: RO2520\_SITE\_MANAGE\_R\_yyyy-mm-dd
- **February 1, 2016** – Vapor Mitigation System Design and CQAP  
File to be named: RO2520\_RDIP\_R\_yyyy-mm-dd
- **February 1, 2015** – DRAFT Long Term Site Management Plan  
File to be named: RO2520\_SITE\_MANAGE\_R\_yyyy-mm-dd
- **February 1, 2015** – Excavation Results  
File to be named: RO2520\_EX\_R\_yyyy-mm-dd

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These reports are being requested pursuant to California Health and Safety Code Section 25296.10. 23 CCR Sections 2652 through 2654, and 2721 through 2728 outline the responsibilities of a responsible party in response to an unauthorized release from a petroleum UST system, and require your compliance with this request.

Online case files are available for review at the following website: <http://www.acgov.org/aceh/index.htm>.

Thank you for your cooperation. If you have any questions, please call me at (510) 567-6876 or send me an electronic mail message at [mark.detterman@acgov.org](mailto:mark.detterman@acgov.org).

Sincerely,

Mark E. Detterman, PG, CEG  
Senior Hazardous Materials Specialist

Enclosures: Attachment 1 – Responsible Party (ies) Legal Requirements / Obligations and Electronic Report Upload (ftp) Instructions

cc: James Gribi, Gribi Associates, 1090 Adams Street, Suite K, Benicia, CA 94510, (sent via electronic mail to: [JGribi@gribiassociates.com](mailto:JGribi@gribiassociates.com))

Tom Graf, GrafCon, P.O. Box 1105, Tiburon, CA 94920, (sent via electronic mail to [Tom@grafcon.us](mailto:Tom@grafcon.us))

Kevin Brown, 3800 San Pablo LLC, 1201 Pine Street, #151, Oakland, CA 94507 (sent via electronic mail to [kb@hollidaydevelopment.com](mailto:kb@hollidaydevelopment.com))

Dilan Roe, ACEH, (sent via electronic mail to [dilan.roe@acgov.org](mailto:dilan.roe@acgov.org))

Mark Detterman, ACEH, (sent via electronic mail to [mark.detterman@acgov.org](mailto:mark.detterman@acgov.org))

Electronic File, GeoTracker

## Attachment 1

### Responsible Party(ies) Legal Requirements / Obligations

#### REPORT REQUESTS

These reports are being requested pursuant to California Health and Safety Code Section 25296.10. 23 CCR Sections 2652 through 2654, and 2721 through 2728 outline the responsibilities of a responsible party in response to an unauthorized release from a petroleum UST system, and require your compliance with this request.

#### ELECTRONIC SUBMITTAL OF REPORTS

ACEH's Environmental Cleanup Oversight Programs (LOP and SLIC) require submission of reports in electronic form. The electronic copy replaces paper copies and is expected to be used for all public information requests, regulatory review, and compliance/enforcement activities. Instructions for submission of electronic documents to the Alameda County Environmental Cleanup Oversight Program FTP site are provided on the attached "Electronic Report Upload Instructions." Submission of reports to the Alameda County FTP site is an addition to existing requirements for electronic submittal of information to the State Water Resources Control Board (SWRCB) GeoTracker website. In September 2004, the SWRCB adopted regulations that require electronic submittal of information for all groundwater cleanup programs. For several years, responsible parties for cleanup of leaks from underground storage tanks (USTs) have been required to submit groundwater analytical data, surveyed locations of monitoring wells, and other data to the GeoTracker database over the Internet. Beginning July 1, 2005, these same reporting requirements were added to Spills, Leaks, Investigations, and Cleanup (SLIC) sites. Beginning July 1, 2005, electronic submittal of a complete copy of all reports for all sites is required in GeoTracker (in PDF format). Please visit the SWRCB website for more information on these requirements ([http://www.waterboards.ca.gov/water\\_issues/programs/ust/electronic\\_submittal/](http://www.waterboards.ca.gov/water_issues/programs/ust/electronic_submittal/)).

#### PERJURY STATEMENT

All work plans, technical reports, or technical documents submitted to ACEH must be accompanied by a cover letter from the responsible party that states, at a minimum, the following: "I declare, under penalty of perjury, that the information and/or recommendations contained in the attached document or report is true and correct to the best of my knowledge." This letter must be signed by an officer or legally authorized representative of your company. Please include a cover letter satisfying these requirements with all future reports and technical documents submitted for this fuel leak case.

#### PROFESSIONAL CERTIFICATION & CONCLUSIONS/RECOMMENDATIONS

The California Business and Professions Code (Sections 6735, 6835, and 7835.1) requires that work plans and technical or implementation reports containing geologic or engineering evaluations and/or judgments be performed under the direction of an appropriately registered or certified professional. For your submittal to be considered a valid technical report, you are to present site specific data, data interpretations, and recommendations prepared by an appropriately licensed professional and include the professional registration stamp, signature, and statement of professional certification. Please ensure all that all technical reports submitted for this fuel leak case meet this requirement.

#### UNDERGROUND STORAGE TANK CLEANUP FUND

Please note that delays in investigation, later reports, or enforcement actions may result in your becoming ineligible to receive grant money from the state's Underground Storage Tank Cleanup Fund (Senate Bill 2004) to reimburse you for the cost of cleanup.

#### AGENCY OVERSIGHT

If it appears as though significant delays are occurring or reports are not submitted as requested, we will consider referring your case to the Regional Board or other appropriate agency, including the County District Attorney, for possible enforcement actions. California Health and Safety Code, Section 25299.76 authorizes enforcement including administrative action or monetary penalties of up to \$10,000 per day for each day of violation.

<b>Alameda County Environmental Cleanup Oversight Programs (LOP and SLIC)</b>	<b>REVISION DATE:</b> May 15, 2014
	<b>ISSUE DATE:</b> July 5, 2005
	<b>PREVIOUS REVISIONS:</b> October 31, 2005; December 16, 2005; March 27, 2009; July 8, 2010, July 25, 2010
<b>SECTION:</b> Miscellaneous Administrative Topics & Procedures	<b>SUBJECT:</b> Electronic Report Upload (ftp) Instructions

The Alameda County Environmental Cleanup Oversight Programs (LOP and SLIC) require submission of all reports in electronic form to the county's ftp site. Paper copies of reports will no longer be accepted. The electronic copy replaces the paper copy and will be used for all public information requests, regulatory review, and compliance/enforcement activities.

## REQUIREMENTS

- **Please do not submit reports as attachments to electronic mail.**
- Entire report including cover letter must be submitted to the ftp site as **a single portable document format (PDF) with no password protection.**
- It is **preferable** that reports be converted to PDF format from their original format, (e.g., Microsoft Word) rather than scanned.
- **Signature pages and perjury statements must be included and have either original or electronic signature.**
- **Do not password protect the document.** Once indexed and inserted into the correct electronic case file, the document will be secured in compliance with the County's current security standards and a password. **Documents with password protection will not be accepted.**
- Each page in the PDF document should be rotated in the direction that will make it easiest to read on a computer monitor.
- Reports must be named and saved using the following naming convention:

RO#\_Report Name\_Year-Month-Date (e.g., RO#5555\_WorkPlan\_2005-06-14)

## Submission Instructions

- 1) Obtain User Name and Password
  - a) Contact the Alameda County Environmental Health Department to obtain a User Name and Password to upload files to the ftp site.
    - i) Send an e-mail to [deh.loptoxic@acgov.org](mailto:deh.loptoxic@acgov.org)
  - b) In the subject line of your request, be sure to include "**ftp PASSWORD REQUEST**" and in the body of your request, include the **Contact Information, Site Addresses**, and the **Case Numbers (RO# available in Geotracker) you will be posting for.**
- 2) Upload Files to the ftp Site
  - a) Using Internet Explorer (IE4+), go to <ftp://alcoftp1.acgov.org>
    - (i) Note: Netscape, Safari, and Firefox browsers will not open the FTP site as they are NOT being supported at this time.
  - b) Click on Page located on the Command bar on upper right side of window, and then scroll down to Open FTP Site in Windows Explorer.
  - c) Enter your User Name and Password. (Note: Both are Case Sensitive.)
  - d) Open "My Computer" on your computer and navigate to the file(s) you wish to upload to the ftp site.
  - e) With both "My Computer" and the ftp site open in separate windows, drag and drop the file(s) from "My Computer" to the ftp window.
- 3) Send E-mail Notifications to the Environmental Cleanup Oversight Programs
  - a) Send email to [deh.loptoxic@acgov.org](mailto:deh.loptoxic@acgov.org) notify us that you have placed a report on our ftp site.
  - b) Copy your Caseworker on the e-mail. Your Caseworker's e-mail address is the entire first name then a period and entire last name @acgov.org. (e.g., firstname.lastname@acgov.org)
  - c) The subject line of the e-mail must start with the RO# followed by **Report Upload**. (e.g., Subject: RO1234 Report Upload) If site is a new case without an RO#, use the street address instead.
  - d) If your document meets the above requirements and you follow the submission instructions, you will receive a notification by email indicating that your document was successfully uploaded to the ftp site.