



**David Patten**  
EMC -Environmental  
Project Manager  
Marketing Business Unit

**Chevron Environmental  
Management Company**  
6101 Bollinger Canyon Road  
San Ramon, CA 94583  
Tel (925) 790-6491  
drpatten@chevron.com

Mr. Paresh Khatri  
Alameda County Environmental Health  
1131 Harbor Bay Parkway, Suite 250  
Alameda, California 94502-6577

Re: 167<sup>th</sup> Gas Station  
Former Texaco Station  
16690 E. 14<sup>th</sup> Street  
San Leandro, California ("Site")  
Fuel Leak Case No. RO2997

**RECEIVED**

4:20 pm, Mar 11, 2011

Alameda County  
Environmental Health

Dear Mr. Khatri:

This responds to your February 25, 2011 Notice of Violation ("NOV") addressed to Chevron Environmental Management Company ("EMC") and various other "Responsible Parties" for their failure to comply with the Alameda County Health Care Services Agency's ("Agency's") request to "claim" the Site on the State Water Resources Control Board's Geotracker database. As the agent for Texaco Downstream Properties Inc. ("TDPI") - one of several parties with potential responsibility for any required environmental investigation/remediation at the Site - EMC, for the reasons articulated below, believes that the Agency should rescind the NOV and close the environmental case apparently opened for this Site.

### **Factual Background**

Prior to its receipt of the NOV, the only correspondence received by EMC with regard to the Site related to the Agency's request for information regarding the environmental condition of the property. Specifically, EMC (and various other parties) received a May 22, 2009 letter requesting additional reports or documentation related to "a former Texaco" service station that operated on the Site until no later than 1984.

In response to the Agency's request, on July 6, 2009, EMC voluntarily (and without acknowledging that it was a Responsible Party) provided all available information that TDPI had with regard to operation of the former Texaco-branded service station, which no longer operated by 1984 at the latest. Based on the information available on the Agency's website, EMC does not believe that any of the other parties provided a response to the Agency's request.

On July 24 2009, the Agency sent a Notice to Comply ("NTC") to various "Responsible Parties" requesting that one of them claim the Site on Geotracker. The Agency did not send this letter to EMC (despite having sent EMC its May 22, 2009 letter). Most significantly, the Agency identified the Responsible Parties of record as of July 22, 2009. The Agency did not include either TDPI or EMC on this list.



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In an August 13, 2009 letter addressed to EMC (and the Responsible Parties identified in its July 24, 2009 letter), the Agency acknowledged EMC's submission of information responsive to its May 22, 2009 request. This letter stated that the Agency would evaluate the Site for closure.

On September 30, 2010, the Agency indicated in a letter (to the same addresses) that it could not issue a case closure without information regarding the potential presence of MTBE in the Site's soil and/or groundwater.<sup>i</sup> The Agency requested submission of a work plan to investigate the presence of MTBE on the Site.

The Agency's next correspondence was the February 25, 2011 NOV reiterating its request that the Responsible Parties claim the Site on Geotracker. The NOV was the first time that the Agency appears to have included EMC on correspondence related to the Geotracker issue. Interestingly, the NOV references a July 3, 2008 Agency letter that had also apparently requested that the Site be claimed on Geotracker. EMC has no record of ever receiving this letter, and it is not available on either Geotracker or the Agency's website.

### Discussion

California's underground storage tank ("UST") regulations (Title 23, Division 3, Chapter 16) require that "Responsible Parties" take corrective action and meet the other obligations of the UST regulations, including making submissions electronically to the Geotracker database (*see* 23 CCR, Division, 3, Chapter 30). The Agency's July 24, 2009 letter did not identify TDPI (or its agent, EMC) as a Responsible Party. Given that the February 25, 2011 correspondence was EMC's first notice of this issue and that the Agency had not previously identified TDPI (or EMC) as a Responsible Party, EMC believes that it should not receive a NOV.

Apart from the basic fact the Agency never identified either TDPI or EMC as a Responsible Party, the corrective action requirements (and associated electronic submission requirements) apply only in instances where there has been a reportable release of a hazardous substance from an underground storage tank. *See* 23 CCR 2721(a). Despite the Agency having apparently opened a case, EMC was unable to locate an Underground Storage Tank Unauthorized Release (Leak)/Contamination Site Report (URL) form for this Site. Without a release having occurred at the Site, the Agency cannot validly identify either TDPI (or its agent EMC) as a Responsible Party for which there is an obligation to claim the Site on Geotracker or perform any further investigation with regard to MTBE.

The opening of an environmental matter, moreover, does not appear consistent with available data. Based on the reports generated for this Site (none of which were commissioned by EMC or TDPI), the only petroleum hydrocarbons detected in soil during the 1994 investigation were a maximum of 9 milligrams per kilogram (mg/kg) total petroleum hydrocarbons as motor oil, which is below current applicable environmental screening levels.<sup>ii</sup> In addition, no total petroleum hydrocarbons as gasoline (TPHg), benzene, toluene, ethylbenzene, and xylenes (BTEX) were detected in Site soil. Given that no release was ever reported and no



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independent data exist to suggest a gasoline release at the Site, the Agency does not appear to have a reasonable basis to have opened an environmental matter to investigate potential petroleum hydrocarbon contamination. Accordingly, because no matter should have been opened to begin with, requiring an investigation of potential MTBE in Site soil/groundwater appears unjustified.

In addition, if the Agency considers the simple fact that MTBE is a component of gasoline, there is also no technical justification for an investigation of MTBE. As a component of gasoline, if MTBE were present at the Site, the Agency would also expect TPHg and BTEX to have been detected. However, no TPHg or BTEX were detected at the Site. This data is also consistent with the fact that MTBE was not generally used as an oxygenate by the time the station infrastructure was demolished in early 1984. These technical considerations further support not requiring an assessment of MTBE in soil and groundwater.

## CLOSING

Based on the reasons outlined in this letter, EMC does not believe that the Agency should issue it a NOV for not having claimed the Site on Geotracker. Moreover, given that no release appears to have occurred at this Site, no environmental matter should have been opened and therefore, the Agency's requested investigation of the MTBE should be rescinded.

Before taking any further action with regard to the NOV or the requested MTBE assessment, EMC kindly requests a meeting with the Agency (and, if the Agency believes appropriate, the other parties with potential responsibility for the Site) to discuss these issues further.

I thank you in advance for your consideration.

A handwritten signature in black ink that reads "Dave Patten".

Dave Patten  
Environmental Project Manager

cc: Mr. Sergio I. Borgiotti, Senior Counsel, Environmental Practice Group, Chevron Law  
Department, 6111 Bollinger Canyon Road, Rm. 4184, San Ramon, Ca 94583  
Mr. Nathan Lee, P.G., Conestoga-Rovers & Associates (CRA)  
Alameda County Environmental Health Department (ftp upload site)

<sup>i</sup> The Agency cites HSC section 25299.37.1 for this proposition, but this section no longer exists. The provision that the Agency may have intended to cite is 25296.15.

<sup>ii</sup> *Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater*; Regional Water Quality Control Board- San Francisco Bay Region, interim final May 2008.