

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. 99-709

FOR

JESSEE M. LANGE DISTRIBUTING, INC.
BUTTE COUNTY

The California Regional Water Quality Control Board, Central Valley Region, (hereafter Board) finds that:

1. Jessee M. Lange Distributing, Inc. (hereafter Discharger), owns and operates a one acre retail and wholesale petroleum distribution facility at 11226 Midway in Chico, California. The facility is in Section 1, T21N, R1E, MDB&M (Assessor's Parcel No. 040-320-0072). Surface drainage is to Comanche Creek, a tributary of the Sacramento River.
2. The Discharger stores petroleum in aboveground storage tanks (ASTs) and underground storage tanks (USTs). The five ASTs have a total capacity of 120,000 gallons and contain kerosene, gasoline and diesel. Petroleum products are transferred from the ASTs by aboveground piping to a loading rack or by underground piping to fuel dispensers. The two 10,000 gallon USTs are adjacent to the ASTs. One UST contains gasoline which is transferred to a dispenser through underground piping. The other UST contains stoddard solvent which is transferred through underground and aboveground piping to the AST loading rack.
3. On 13 March 1995, the Discharger filed an Underground Storage Tank Unauthorized Release (LEAK)/Contamination Site Report following a subsurface investigation. The Discharger obtained the services of a consultant to determine the extent of the impacts from the unauthorized release.
4. On 13 June 1997, hazardous concentrations of petroleum vapors were detected in a utility vault in front of the Discharger's facility. Subsequently, the City of Chico collected soil and water samples beneath the adjacent roadway. Impacts from the unauthorized release (discharge) of petroleum were detected at all sample locations; however, the actual extent of impacts remains unknown. Due to the contamination, the City ceased construction planning for sanitary sewer and storm drainage improvements along Midway.
5. The subsurface geology consists of sandy silt to seven feet below ground surface with interbedded gravels to a depth of 20 feet. The geological conditions beyond

20 feet have not been explored.

6. The analyses of soil samples from the site reveals significant contamination by petroleum constituents, with concentrations ranging from 3 mg/kg to 840 mg/kg of methyl t-butyl ether (MTBE), <5 mg/kg to 11 mg/kg of tertiary amyl methyl ether (TAME), 0.8 mg/kg to 270 mg/kg of benzene, 1.4 mg/kg to 1,400 mg/kg of toluene, 1 mg/kg to 390 mg/kg of ethylbenzene, 0.62 mg/kg to 2,000 mg/kg of xylenes, 0.05 mg/kg to 22,000 mg/kg of total petroleum hydrocarbons (TPH) gasoline and <1.0 mg/kg to 3,800 mg/kg of TPH diesel. Shallow groundwater fluctuates from 10 to 16 feet below ground surface and flows to the northwest.
7. Free product, ranging from 0.06 feet to 7.0 feet, has been detected in the on-site monitoring wells. Analyses of groundwater samples obtained from the monitoring wells reveals contamination by petroleum constituents, with concentrations ranging from <5 $\mu\text{g/l}$ to 3,700 mg/l of MTBE, <0.5 $\mu\text{g/l}$ to 190 mg/l of benzene, <0.5 $\mu\text{g/l}$ to 180 mg/l of toluene, <0.5 $\mu\text{g/l}$ to 38 mg/l of ethylbenzene, 1 $\mu\text{g/l}$ to 210 mg/l of xylenes, <0.05 mg/l to 2,800 mg/l of TPH gasoline and <0.05 mg/l to 220 mg/l of TPH diesel.
8. An inspection by Regional Board staff on 6 August 1998 discovered an inactive private water well approximately 100 feet northwest of the Discharger's property (11254 Midway). Sampling activities confirmed 39,000 $\mu\text{g/l}$ of MTBE, 410 $\mu\text{g/l}$ of TAME, 67 $\mu\text{g/l}$ of benzene, 51 $\mu\text{g/l}$ of toluene, 2.8 $\mu\text{g/l}$ of ethylbenzene, 28 $\mu\text{g/l}$ of xylenes, and 0.31 $\mu\text{g/l}$ of TPH gasoline in this well. This improperly abandoned well is 95 feet deep; the screen interval is unknown.
9. The California Department of Health Services' (DHS) Secondary Maximum Contaminant Level (MCL) for MTBE is 5 $\mu\text{g/l}$. The MTBE Public Health Goal for chemicals in drinking water, adopted by the California Office of Environmental Health Hazard Assessment, is 13 $\mu\text{g/l}$. The California DHS Primary MCL for benzene, as a drinking water level, is 1.0 $\mu\text{g/l}$. The California Proposition 65 Regulatory Level for benzene is 3.5 $\mu\text{g/l}$.
10. On 1 September 1998, Regional Board staff issued a Proposition 65 disclosure to Butte County pursuant to §25180.7 of the California Health and Safety Code, based on the benzene concentrations detected in the groundwater.
11. The Discharger's consultant has submitted seven work plans for additional corrective action. On 3 February 1999, Regional Board staff requested the Discharger *immediately* implement the Work Plan for Dual-Phase Extraction for free product removal and submit the results by 1 March 1999. Staff also

requested the Discharger submit a revised work plan for additional on-site monitoring wells and off-site investigation by 1 March 1999 and the results for video-logging the inactive private water well by 15 March 1999. The Discharger failed to comply with these requests.

12. The unauthorized releases of petroleum and petroleum constituents constitute a discharge of waste pursuant to Water Code 13304. As a result of the activities described in Findings 2 through 8, Jessee M. Lange Distributing, Inc., has caused or permitted waste to be discharged or deposited where it has or probably will be discharged to waters of the State and has created, and continues to threaten to create, a condition of pollution or nuisance.
13. The Discharger is near two other petroleum facilities. Western Petroleum Marketers owns and operates an AST facility at 11204 Midway. SFPP, L.P and Kinder Morgan Energy Partners L.P., own and operate the AST bulk storage terminal at 2570 Hegan Lane. Petroleum discharges from all three facilities threaten groundwater, several private, public and small community water systems. Separate cleanup and abatement orders have been issued for each facility.
14. The Regional Board does not expect Jessee M. Lange Distributing, Inc., Western Petroleum Marketers, SFPP, L.P., or Kinder Morgan Energy Partners L.P., to duplicate each other's work or the requirements of their respective Cleanup and Abatement Orders, but encourages the parties to work cooperatively in sharing information to understand the regional hydrogeology, extent of degradation and develop regional maps for the use of all parties to comply with this Order.
15. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, establishes beneficial uses of waters of the State and water quality objectives to protect those uses. The beneficial uses of the groundwater are domestic, municipal, industrial and agricultural supply.
16. Section 13304(a) of the California Water Code provides:

“Any person who has discharged or discharges waste into the waters of this State in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates, or threatens to create, a condition or pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup

or abatement order, the Attorney General, at the request of the board, shall petition the Superior Court of the County for the issuance of an injunction requiring the person to comply with the order. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”

17. Section 13304(c) (1) of the California Water Code provides:

“If the waste is cleaned up or the effects of the waste are abate, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervision cleanup or abatement activities, or taking other remedial actions. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter’s contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.”

18. Section 13267(b) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

19. The unauthorized releases of petroleum and petroleum constituents constitute a discharge of waste under Section 13304 of the California Water Code.

20. Section 13050 of the California Water Code provides in part:

“‘Pollution’ means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

- (A) The waters for beneficial uses.
- (B) Facilities which serve these beneficial uses.
- (2) ‘Pollution’ may include ‘contamination’.

‘Contamination’ means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. ‘Contamination’ includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

‘Nuisance’ means anything which meets all of the following requirements:

- (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, so as to interfere with the comfortable enjoyment of life or property.
 - (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
 - (3) Occurs during, or as a result of, the treatment or disposal of wastes.”
21. The issuance of this Order is an enforcement action by a regulatory agency and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15231(a)(2), Title 14, California Code of Regulations.
 22. Any person affected adversely by this action of the Board may petition the State Water Resources Control Board to review the action. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Board, any person affected adversely by this Order, may request the Regional Board to review the Order prior to State Board action on the petition. Such request should be made within 30 days of the date of this Order. Note that even if review is sought with the Regional Board, filing a petition with the State Board within the statutory time period is necessary to preserve the petitioners legal rights.
 23. If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, or issue a complaint for Administrative Civil Liability.
 24. Failure to comply with a cleanup and abatement order or dates specifies may result in further enforcement actions under Section 13350 of the California Water Code, which may result in civil monetary penalties up to a maximum of five thousand dollars (\$5,000) to fifteen thousand dollars (\$15,000) for each day of violation.

IT IS HEREBY ORDERED THAT, pursuant to Section 13304 of the California Water Code, Jessee M. Lange Distributing Inc. shall comply with the following:

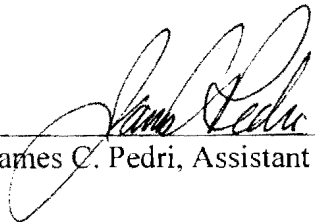
1. Cleanup and abate the effects, forthwith, of the discharge of waste to subsurface soil and groundwater.

2. Compliance with No. 1 above shall include, but not be limited to, the following measures:
 - a. Install a free product removal system, **by 1 June 1999**. Continuously operate the system until free product is removed from the shallow groundwater, to the maximum extent practicable.
 - b. Submit, **by 1 July 1999**, a report prepared by a Registered Engineer documenting that the aboveground storage tanks, loading rack, aboveground piping, underground piping, and fuel dispensers have an adequate secondary containment and monitoring system to prevent petroleum releases. If the Engineer determines the secondary containment and monitoring system is inadequate, then a time schedule to bring the facility into compliance shall be included in the report.
 - c. Submit, **by 1 July 1999**, a Work Plan to determine the horizontal and vertical extent of the discharge of waste to subsurface soil and groundwater. Implement the approved Work Plan in accordance with the approved time schedule.
 - d. Submit, **by 1 September 1999**, local and regional plan view maps that include potential sources of waste discharged, the extent of discharge of waste, direction of flow and groundwater gradient, and the location of sensitive receptors. A neighborhood canvas to identify wells within $\frac{1}{4}$, $\frac{1}{2}$, and one mile of the site shall be included.
 - e. Submit, **by 1 January 2000**, a Corrective Action Plan to clean up and abate the discharge of waste to subsurface soil and groundwater. Implement the approved Corrective Action Plan in accordance with the approved time schedule.
 - f. Implement, forthwith, a quarterly groundwater monitoring program which includes both monitoring wells and private water supply wells impacted or potentially threatened by the discharge of waste. Submit the results of the monitoring **within 30 days from the end of each calendar quarter** until the discharge of waste is abated.
 - g. The Discharger shall submit to the Board on or before each compliance report date, a report detailing compliance or noncompliance with the specific schedule date and task. If noncompliance is being reported, the reasons for

such noncompliance shall be stated, plus an estimate of the date when the Discharger will be in compliance. The Discharger shall notify the Board by letter when they are again in compliance with the time schedule.

3. The Discharger shall reimburse the Regional Board for reasonable costs associated with the oversight of investigation, cleanup, and abatement of petroleum discharged from 11226 Midway, Chico, California. **By 1 June 1999**, the Discharger shall provide the Regional Board with the name and addresses of the appropriate person to receive the billing for the oversight costs.

GARY M. CARLTON, Executive Officer


By: James C. Pedri, Assistant Executive Officer

April 28, 1999
Dated

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