

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0530

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF

MR. FRANK AND MRS. SHERRI GUINTA, GUINTA ENTERPRISES  
MR. JAMES AND MRS. MARILYN RAMSEY  
FRANK'S ONE STOP  
2072 W. YOSEMITE AVENUE, MANTECA  
SAN JOAQUIN COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Mr. Frank Guinta and Mrs. Sherri Guinta, doing business as (DBA) Guinta Enterprises and operators of Frank's One Stop (a full service fueling station, convenience store, and restaurant located at 2072 W. Yosemite Avenue in Manteca; referred to as the "Site" hereafter) when the release occurred and as current owners; and James and Marilyn Ramsey, former owners of the property when the release occurred (hereafter collectively referred to as the "Dischargers") based on findings of violations of Cleanup and Abatement Order (CAO) No. R5-2003-0713 and provisions of California Water Code Section 13350, which authorizes the imposition of an Administrative Civil Liability.

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region, (Regional Board) finds, with respect to the Dischargers' acts, or failure to act, the following:

1. James and Marilyn Ramsey are subject to this Complaint because they owned the property (from 1988 to 1996) at the time the tank system caused or permitted waste to be discharged to waters of the state where it has created a condition of pollution and nuisance (an Unauthorized Release Form was issued by San Joaquin County Environmental Health Department on 2 May 1992). The CAO also names James and Marilyn Ramsey as Dischargers.
2. Frank and Sherri Guinta are subject to this Complaint because, according to San Joaquin County Environmental Health Department records, they operated the tank system from 1988 to 1998 that caused or permitted waste to be discharged to waters of the state where it has created a condition of pollution and nuisance. The CAO also names Frank and Sherri Guinta as Dischargers. Frank Guinta purchased the station on his behalf from James and Marylin Ramsey in 1996.
3. Guinta Enterprises is named as a Discharger and subject to this Complaint, because it is the current owner of the property, knew of the discharge, and had the ability to control it. Frank Guinta incorporated as Guinta Enterprises in the State of California on 6 January 2003, prior to issuance of CAO No. R5-2003-0713 and, is the registered agent for service of process under the Secretary of State website for Guinta Enterprises. The registered agent is responsible for receiving important legal and tax documents including: notice of litigation (service of process), franchise tax forms and annual report forms for the property. The CAO also names Guinta Enterprises as a Discharger.
4. On 2 May 1992, San Joaquin County Environmental Health Department (SJCEHD) submitted an Unauthorized Release (Leak) Report for a gasoline leak detected at the Site fuel dispensers during

an inspection. SJCEHD directed the Dischargers to investigate the release to soil and groundwater, which included gasoline, diesel, benzene, toluene, ethylbenzene, xylenes, methyl tertiary butyl ether (MtBE), tertiary butyl alcohol, 1,2-dichloroethane (1,2-DCA), and tetrachloroethylene (PCE). Soil contamination was subsequently investigated and found to be limited to the source areas (USTs and piping/dispensers).

5. Despite numerous directives from SJCEHD between 1992 and 1997 to investigate the petroleum release and remove leaking tanks, the Dischargers conducted limited investigations but no remedial action. On 17 July 1997, the Dischargers' application to the State Water Resources Control Board Underground Storage Tank (UST) Cleanup Fund (CUF) was accepted. A limit of \$1,500,000 was legislatively mandated.
6. In June 1998, Remedy Construction removed two 10,000-gallon diesel USTs and four 10,000-gallon gasoline USTs from the Site. During excavation, soil staining and hydrocarbon odor were observed in the excavation. Soil and groundwater samples confirmed the presence of TPHg, TPHd, benzene, and MtBE in the tank excavation.
7. From 1999 to 2002, the maximum concentrations of pollutants in groundwater were reported as:

Constituent	Maximum Concentration (µg/L)	Numerical Water Quality Limits (µg/L)
Total Petroleum Hydrocarbons as gasoline	280,000	5 <sup>1</sup>
Total Petroleum Hydrocarbons as diesel	70,000	100 <sup>1</sup>
Benzene	1,500	0.15 <sup>2</sup>
Ethylbenzene	4,500	29 <sup>1</sup>
Toluene	18,000	42 <sup>1</sup>
Xylenes	25,000	17 <sup>1</sup>
Methyl Tertiary Butyl Ether (MtBE)	8,100	5 <sup>1</sup>
Tertiary Butyl Alcohol	1,100	12 <sup>3</sup>
1,2 Dichlorethane (1,2-DCA)	1.1	0.4 <sup>2</sup>
Tetrachloroethylene (PCE)	26	0.06 <sup>2</sup>

1 - Taste & Odor Threshold  
 2 - California Public Health Goal  
 3 - California State Action Levels

8. In August 2000, one groundwater extraction well and one air sparge well were installed to conduct a pilot study for the feasibility of using these technologies at the Site. In September 2000, one additional extraction well was installed, three piezometers were converted to extraction wells, and the groundwater pump and treat system began operating at the Site as an interim remedial action.
9. In September 2000, 12 domestic wells were discovered as impacted by MtBE release from the site and were disconnected from the residences (*Report of Area Well Sampling*). Temporary bulk water supply tanks were installed at each home and water delivery was initiated by the Dischargers. By

January 2002, 11 wellhead treatment systems were installed to protect public health at residences with impacted wells. One property owner refused to install wellhead treatment on a domestic well serving his tenants.

10. In a letter dated 6 September 2001, the SJCEHD approved a remedial action plan consisting of soil vapor extraction/air sparging (SVE/AS), additional extraction wells for the pump and treat system, and domestic wellhead treatment. In January 2002, the SVE/AS system was installed and began operating.
11. On 1 January 2003, the Dischargers' consultant turned off the SVE/AS system and, after spending most of the UST CUF allotment of \$1,500,000, declared that insufficient State Cleanup Funds remained to operate the remedial system. On 25 February 2003 SJCEHD issued a directive to restart the remedial system immediately. The Dischargers did not comply to the SJCEHD directive.
12. In March 2003, the Regional Board obtained lead agency status from SJCEHD, and issued the draft CAO on 3 April 2003.
13. Subsequently, in a meeting with Frank Guinta's representatives (son John Guinta and Don Thompson acting on Frank Guinta's behalf in his absence), Frank Guinta's consultant AquaScience Engineers Inc. and SJCEHD staff on 9 April 2003, Regional Board staff discussed the draft CAO. Frank Guinta's representatives stated that James and Marylin Ramsey, as owners of the property at the time of the discharge, should also be named as Dischargers. Staff reviewed the record and agreed to send a second draft CAO, issued to the Guinta's and the Ramsey's on 30 April 2003. On 18 August 2003, the Regional Board Executive Officer issued CAO No. R5-2003-0713 to the Dischargers to ensure compliance with the following Tasks.
  1. *Continue maintenance and testing of wellhead treatment systems for twelve (12) domestic water supply wells impacted by polluted groundwater with MtBE.*
  2. *Continue required testing of all nearby domestic and irrigation wells, and any additional wells deemed necessary in the future, as required by revisions to the Regional Board Monitoring and Reporting Program.*
  3. *Continue operation of the on-site soil vapor extraction/air sparging system to treat the polluted groundwater.*
  4. *By **15 September 2003**, submit a workplan (Workplan) to complete the delineation of the lateral and vertical extent of pollution.*
  5. *By **15 November 2003**, submit an Interim Effectiveness Report (IER) evaluating the existing soil vapor extraction/air sparging (SVE/AS) system in the source area.*
  6. *By **1 February 2004**, submit an Additional Site Characterization Report (ASCR) providing information from the implementation of the approved Workplan assessing the vertical and lateral extent of the groundwater pollution in all impacted aquifer zones.*
  7. *By **1 April 2004**, submit a Final Corrective Action Plan (CAP).*

- 8. Within 60 days of Executive Officer approval of the Final Corrective Action Plan, the Dischargers shall implement the approved remedial actions.*
  - 9. Within 120 days of Executive Officer approval of the Final Corrective Action Plan, submit a report describing the status and results of the cleanup work (Cleanup Implementation Report).*
  - 10. Conduct monitoring of the existing wells and any additional wells in accordance with attached MRP No. R5-2003-0713 or any revised MRP issued by the Executive Officer.*
14. Emergency private wellhead treatment systems maintenance, sampling, and analyses (Tasks 1 and 2) are currently conducted at the State's expense and compensated by State funds from the State Water Resources Control Board's Emergency, Abandoned and Recalcitrant (EAR) Account under Regional Board staff oversight of contractors and laboratory contracts. Currently \$100,000 has been allocated for emergency funds through June 2006. Regional Board staff hours for contractor oversight, Quality Assurance sampling and analysis, and contracting are not compensated by the EAR Account, and have exceeded 100 hours thus far in 2005.
  15. The SVE/AS treatment system (Task 3) was restarted in May 2003 and ran continuously until low soil gas pollution levels justified treatment system shutdown in December 2003.
  16. The IER and Workplan (Tasks 4 and 5) were submitted and approved by Regional Board staff in 2003, although the Workplan was never implemented.
  17. The Dischargers requested and received three extensions to the ASCR and CAP (Tasks 6 and 7) in 2004, citing lack of funds, and stated that they were in the process of obtaining a loan on the property to continue the work. To date, the ASCR and the CAP have not been submitted to the Regional Board.
  18. Tasks 8 and 9, which are contingent upon completion of the CAP (Task 7), have not been accomplished due to failure to submit the CAP.
  19. Quarterly Monitoring (Task 10) continued until the First Quarter of 2005, when all work stopped on 31 January 2005.
  20. The Dischargers have failed to comply with CAO No. R5-2003-0713, in that they have not cleaned up and abated the effects of the discharge. Over the next two years, \$400,000 has been allocated from the State Emergency, Abandoned and Recalcitrant (EAR) Account to monitor and maintain well head treatment on the impacted private water supply wells. Additionally, Regional Board and State Board staff time will be required to oversee work funded by the EAR Account.

## VIOLATIONS

21. To date, the Dischargers have not complied with the CAO. By failure to maintain and test the domestic wellhead treatment systems, the dischargers have created a Public Health Emergency for the domestic well users. State emergency funds are currently being expended to mitigate the effects of the Discharger's refusal to maintain and test the domestic wellhead treatment systems. Additionally, not all CAO-required reports have been submitted.
22. The Dischargers have failed to:
  - Conduct the continuous maintenance of wellhead treatment systems and submit reports for sampling required for domestic water wells impacted by the groundwater plumes, since 31 January 2005.
  - Submit three quarterly monitoring reports (due 1 May 2005, 1 August 2005, and 1 November 2005).
  - Submit the Additional Site Characterization Report providing information from the approved *Workplan*, to assess the vertical and lateral extent of petroleum hydrocarbons, including Methyl tert-Butyl Ether (MtBE) and 1,2-Dichloroethane (1,2-DCA) pollution emanating from Underground Storage Tanks (USTs) removed from the site (due 1 February 2004).
  - Submit a Corrective Action Plan (CAP, due 1 April 2004).
23. The Dischargers failed to comply with the requirements of their deadline extensions and have benefited financially from the delays. Each time an extension was requested, Regional Board staff met with the Dischargers and emphasized the potential for penalties that would be calculated back to the original dates required under CAO No. R5-2003-0173. Additionally, all letters granting extensions from the Regional Board reiterated the potential for penalties for each incidence of non-compliance, including daily amounts per violation under California Water Code Section (CWC) 13350, calculated from the original dates due as specified in CAO No. R5-2003-0713. At each of the three meetings on 12 March 2004, 26 July 2004, and 3 December 2004 respectively, the Dischargers indicated that they had read CAO No. R5-2003-0713 and understood the meaning of penalties for failure to complete the Tasks required under CAO No. R5-2003-0713.
24. On 16 November 2004, Regional Board staff issued a Notice of Violation (NOV) for failure to meet the last extension, and requested a meeting by 3 December 2004. During that meeting, Regional Board staff again stressed that the consequences of failure to comply with the CAO No. R5-2003-0713 might include penalties. Subsequently, during the meeting, the Dischargers agreed to comply with the CAO.
25. On 31 January 2005, the Dischargers submitted a letter to Regional Board staff stating that no further work would be funded by the Dischargers. Regional Board staff immediately contacted and informed the Dischargers that, as a consequence of their decision, formal enforcement action against them was imminent.

26. On 3 February 2005, the Dischargers submitted a faxed request for a Regional Board determination of No Further Action (NFA) necessary to indicate that the service station Site is now clean and to allow the Dischargers to sell the property. The Dischargers also offered to reimburse the State for the cost of the cleanup after sale of the property. In a letter dated 16 May 2005, Regional Board staff replied that a NFA letter would release the Dischargers from further responsibility for the unauthorized release, that the Dischargers are continuing to violate CAO R5-2003-0713, and that failure to comply with the CAO R5-2003-0713 subjects the Dischargers to civil liabilities (penalties) for each day of violation.
27. State EAR Account funds have been, and are continuing to be, spent to maintain and sample domestic wellhead treatment systems impacted by the Dischargers' groundwater plume. Since then, Regional Board staff has expended significant staff-hours in contracting engineering services for, and conducting oversight of, the wellhead treatment systems, including maintenance, sampling, and reporting to property owners and residents of the neighborhood. In addition to the domestic wellhead treatment systems maintenance, the reports as specified in the CAO are necessary to determine the extent and migration pathways of groundwater pollution beneath the site.
28. In violation of the CAO, the Dischargers have failed to and continue to fail to maintain and sample the domestic wellhead treatment systems, characterize the lateral and vertical extent of petroleum hydrocarbon impacts to groundwater, and implement corrective action measures. As stated in Finding 25, the Dischargers refused to maintain the domestic wellhead treatment systems, characterize the lateral and vertical extent of petroleum hydrocarbon impacts to groundwater, and implement corrective action measures due to lack of funding. The letter also requested that the State implement the requirements (conduct the work) of the CAO expeditiously under the EAR account, and said the State would be reimbursed for EAR Account expenses of the cleanup after the sale of the property.

### **REGULATORY CONSIDERATIONS**

29. By the acts and omissions cited above, the Dischargers have violated the Regional Board's CWC Section 13304 Order. CWC Section 13304(a) provides that: *“Any person who has discharged or discharges waste into 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 of 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 for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”*

30. Existing data and information about the Site indicate that waste has been discharged or is discharging at the Site, which is owned or operated, or was formerly owned or operated by the Dischargers named in this Order. CWC Section 13304(c)(1) provides that: “. . . *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 governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action.*”
31. Due to the recalcitrance of the Dischargers, the Regional Board is currently conducting work required by the Order. Section 13304(b)(1) of the CWC provides that: “*The regional board may expend available money to perform any cleanup, abatement , or remedial work required under the circumstances set forth in subdivision (a), including, but not limited to, supervision of cleanup and abatement activities that, in its judgment, is required by the magnitude of the endeavor or the urgency for prompt action needed to prevent substantial pollution, nuisance, or injury to any waters of the state. The action may be taken in default of, or in addition to, remedial work by the waste discharger or other persons, and regardless of whether injunctive relief is being sought.*”
32. CWC Section 13267(b)(1) 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 having discharged or 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 having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters 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. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.*”
33. CWC Section 13350 states, in part, that: “*(a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited in or on any waters of the state, or (3) causes or permits any oil or any residual product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other*

*actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e) . . .”*

*“(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.”*

*“(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs...”*

*“(B) The civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.”*

34. As of 15 December 2005, the Dischargers have been in violation of the CAO for failure to implement the following Tasks:
- a. Maintenance of wellhead treatment, which is 319 days late and is currently being done by the State. Submittal of reports for routine sampling required for domestic water wells impacted by the groundwater plumes is included under quarterly reports (Tasks a. and b.).
  - b. Submittal of the first quarter 2005 monitoring report, which is 228 days late.
  - c. Submittal of the second quarter 2005 monitoring report, which is 136 days late.
  - d. Submittal of the third quarter 2005 monitoring report, which is 48 days late.
  - e. Submittal of the Additional Investigation Report, which is 682 days late.
  - f. Submittal of the Corrective Action Plan, which is 623 days late.
35. The total number of days of the six violations is 2,036. The maximum liability for the non-submittal of these technical reports and failure to maintain the domestic wellhead treatment systems is ten million, one hundred eighty thousand dollars (\$10,180,000), based upon 2,036 days late. The minimum liability amount, \$100.00 per day per violation, is two hundred three thousand, six-hundred dollars (\$203,600).
36. CWC Section 13327 states: *“In determining the amount of civil liability, the regional board . . . shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”*



MR. FRANK AND MRS. SHERRI GUINTA, AND MR. JAMES AND MRS. MARILYN RAMSEY  
GUINTA ENTERPRISES  
FRANKS ONE STOP  
SAN JOAQUIN COUNTY

37. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

**MR. FRANK AND MRS. SHERRI GUINTA, GUINTA ENTERPRISES, AND MR. JAMES AND MRS. MARYLIN RAMSEY, ARE HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the Dischargers be assessed Administrative Civil Liability in the amount of four-hundred thousand dollars (\$400,000). The amount of the liability proposed is based upon a review of the factors set forth in CWC Section 13327 cited in Finding No. 36, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on **16 or 17 March 2006** unless the Dischargers agree to waive the hearing and pay the imposed civil liability in full.
3. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In lieu of a hearing, the Dischargers may waive the right to a hearing. If you wish to waive the hearing, please sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Resources Control Board Waste Discharge Permit Fund*), to the Regional Board's office at 11020 Sun Center Drive #200, Rancho Cordova, Sacramento, CA 95670-6114, Attn: Janice Tanaka, by **30 January 2006**. The check must also contain a reference to Administrative Civil Liability Complaint No. R5-2005-0530.

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THOMAS R. PINKOS, Executive Officer

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(Date)

**WAIVER OF HEARING FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Mr. Frank and Mrs. Sherri Guinta, DBA Guinta Enterprises, and/or Mr. James and Mrs. Marylin Ramsey (hereinafter “Dischargers”) in connection with Administrative Civil Liability Complaint No. R5-2005-0530 (hereinafter the “Complaint”);
2. I am informed of the right provided by Water Code Section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Dischargers’ right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. I agree to remit payment for the civil liability imposed in the amount of four-hundred thousand dollars (\$400,000) by check, which contains a reference to “ACL Complaint No. R5-2005-0530” and is made payable to the “*State Water Resources Control Board Waste Discharge Permit Fund.*”
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement.
7. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Dischargers to further enforcement, including additional civil liability.

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(Name)

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(Title)

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(12/30/2005)