

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION

CLEANUP AND ABATEMENT ORDER N O. 99-017
AGAINST
CLAYTON FAIRCHILD
Winterhaven, Imperial County

The Executive Officer of the California Regional Water Quality Control Board, Colorado River Basin Region, finds that:

1. Mr. Clayton Fairchild, (hereinafter referred to as the discharger) is the owner and operator of the grocery store and former gas station located at 9043 Mehring Road, Winterhaven, California
2. This office received an Underground Storage Tank Unauthorized Release Report prepared by Imperial County Planning Department on October 8, 1987. This report indicates that gasoline had leaked from an underground storage tank impacting both soil, groundwater, and drinking water.
3. On October 20, 1987, the Regional Board's Executive Officer issued a formal request to the discharger to conduct a remedial investigation and submit the result of this investigation to the Regional Board by December 15, 1987, pursuant to Section 13267 of the California Water Code.
4. On December 19, 1987, the discharger contacted Regional Board staff to request a time schedule extension to submit the report required by the letter dated October 8, 1987. A time extension was granted until January 4, 1987.
5. On January 21, 1988, Regional Board staff received a letter from Imperial County Department of Environmental Health Service (ICDEHS). This letter stated that ICDEHS ordered a closure of the discharger's food establishment due to gasoline that polluted the groundwater used by the market and beer bar. Also, attached to this letter was a technical report prepared for the discharger by Hess Geotechnical Corporation dated December 29, 1987. This report indicated that both soil and groundwater was polluted by gasoline. The highest soil pollution levels reported were 72 ppm Total Hydrocarbons with groundwater levels of 4 ppm.
6. On January 28, 1988, the Regional Board's Executive Officer issued Cleanup and Abatement Order No. 88-042. This order required the discharger to:
 - Cleanup and abatement the effects of the discharge of gasoline from the underground storage tanks.
 - By March 15, 1988, submit a technical report containing the results of the complete subsurface investigation requested by letter dated October 20, 1987.
 - Submit a cleanup proposal for the recovery of free product and extraction of the polluted groundwater.
7. On April 7, 1988, Regional Board staff received a telephone call from Mr. Don Scoville, counsel for the discharger. Mr. Scoville stated that his client was having money troubles, as well as trouble finding a consultant. Staff provided Mr. Scoville with a list of consultants.
8. On April 12, 1988, Mr. Tony Sawyer of Geotechnical contacted Regional Board staff. Mr. Sawyer stated that his company was hired by the discharger to conduct a complete subsurface investigation.

9. On May 20, 1988, the Regional Board's Executive Officer granted a time extension until July 15, 1988 to submit the results of a complete subsurface investigation by a certified letter.
10. On May 4, 1993, Regional Board staff conducted a site investigation. During this investigation, water samples were collected from the grocery store tap. These samples were analyzed for volatile organics. The results of these analyses indicated elevated levels of toluene, a constituent of gasoline.
11. On May 18, 1993, a letter from Regional Board staff notified the discharger to remove all investigative derived waste from the site in an approved fashion.
12. On June 20, 1997 a letter from the Regional Board's Executive Officer requested the discharger to test the ground water for Methyl Tertiary Ether (MTBE).
13. On January 13, 1998, Regional Board staff conducted a site inspection. This inspection indicated that the discharger has failed to comply with past directives to cleanup and abate gasoline pollution.
14. On February 10, 1999, Regional Board staff telephoned the discharger to determine compliance. The discharger stated that funds remain a problem. However, the discharger has not applied for state funding.
15. Depth to the first groundwater at the site is less than ten feet below ground surface. Due to the shallow groundwater at this site, and the sample results indicating elevated levels of gasoline pollution, the groundwater may have been impacted or at least is threatened.
16. The site lies within the Yuma Hydrologic Unit, as depicted on Interagency Hydrologic Maps prepared by the Department of Water Resources in August 1986. The beneficial uses of groundwater in the Yuma Hydrologic Unit, as described in the Water Quality Control Plan for the Colorado River Basin Region (Basin Plan) are:
 - Municipal supply
 - Agricultural Supply
 - Industrial Supply
17. Water Code Section 13050 states that "Pollution" may include "contamination". It defines each of these terms and "nuisance" as:
 - "(k)" 'Contamination' means an impairment of the quality of the water of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease.
 - "(l)" 'Pollution' means an alteration of the quality of the water of the state by waste to a degree which unreasonable affects...(1) the waters for beneficial uses (or)...(2) Facilities which serve these beneficial uses..."
 - "(m)" 'Nuisance' means anything which meets all of the following requirements:
 - Is injurious to health, or is indecent or offensive to the senses, or obstruction to the free use of the property, so as to interfere with the comfortable enjoyment of lie or property.
 - 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.
 - Occurs during, or as a result of, the treatment or disposal of water.

18. Section 13304(a) of the California Water Code states:

"Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirements 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 waters of the state and creates, or threatens to create a condition of pollution or nuisance, shall upon order of the regional board cleanup 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".

19. In conducting an investigation of the quality of any water of the state within its region, 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 political agency or entity of its state who has discharged, discharges or is suspect of discharging, or who proposes to discharge, waste outside its region that could effect the quality of the 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 [California Water Code Section 13267(b)(1)].

20. In overseeing all cleanup and abatement efforts, the Regional Board is a governmental agency that must expend limited staff resources to assure compliance with the law. Section 13304(c) of the California Water Code states, in part:

"...Any person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of waste within the meaning of the subdivision(a) which are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleanup the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action".

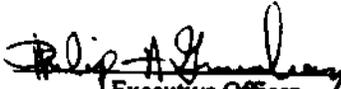
21. Issuance of this Cleanup and Abatement Order is an enforcement action taken by a regulatory agency and is exempt from the provision of the California Environmental Quality Act [Public Resources Code, Section 2100, et seq., in accordance with Title 14, CCR, Section 15321(a)(12)].

IT IS HEREBY ORDERED that Cleanup and Abatement Order No. 88-042 is rescinded and that, pursuant to Section 13267 and 13304 of the California Water Code the discharger, his agents, assigns, or designees, shall cleanup and abate the pollution and threatened pollution described above by complying with the following:

1. By April 15, 1999 provide a technical report in the form of a Remedial Action Plan (RAP) along with a time schedule for the implementation to:
 - Cleanup all affected soils that may cause groundwater degradation or demonstrate that affected soils that remain do not present a threat to groundwater.
 - Determine the total extent of groundwater pollution including the lateral and vertical extent.
2. By June 15, 1999 initiate soil and groundwater cleanup and submit a technical report that certifies compliance with this item.
3. By September 15, January 15, April 15 and July 15 of each year, provide technical reports on the effectiveness of the soil and groundwater cleanup efforts.

4. Complete these tasks in accordance with the prescribed time schedule. All work outlined above shall be performed under the direction of a California Registered Engineer or Certified Engineering Geologist or Geologist. All plans and time schedules are subject to review and approval by the Regional Board's Executive Officer. Submitted time schedules become part of the Cleanup and Abatement Order once approved or revised by the Regional Board's Executive Officer.

If, in the opinion of the Regional Board's Executive Officer, the discharger violates this Cleanup and Abatement Order, the Regional Board's Executive Officer may apply to the Attorney General for judicial enforcement, or issue a complaint for Administrative Civil Liability.


Executive Officer

3-1-99
Date