

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2001-53

FOR

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

REDWOOD OIL COMPANY
ROBERT I. BARBIERI
PETER C. VAN ALYEA
PEGGY R. VAN ALYEA

455 YOLANDA AVENUE
SANTA ROSA

Sonoma County

For

Failure to Comply with Cleanup and Abatement Order No. R1-2000-34

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) gives notice that:

1. This Complaint is issued to Redwood Oil Company (ROC), Robert I. Barbieri (Barbieri), Peter C. Van Alyea (Van Alyea), and Peggy R. Van Alyea (hereinafter collectively referred to as Dischargers) based on violation of Cleanup and Abatement Order No. R1-2000-34 pursuant to California Water Code Section 13350, which authorizes the imposition of Administrative Civil Liability for violations of a Cleanup and Abatement Order.
2. Barbieri, Van Alyea and Peggy R. Van Alyea own property at 455 Yolanda Avenue in Santa Rosa (hereinafter Site). ROC operates a bulk facility at the Site. Barbieri and Van Alyea operate ROC.
3. On April 6, 2000, Regional Water Board staff met with Barbieri, Van Alyea and ROC representatives to discuss the issuance of a cleanup and abatement order (CAO) and identify tasks to be completed, and compliance dates. The CAO would replace CAO No. 90-184 issued in November 1990. At that time, a ROC card lock facility was under construction immediately adjacent to the Site at 459 Yolanda Avenue. Therefore, effort was made to coordinate corrective action and compliance dates with the card lock construction schedule due to engineering and logistical constraints. Barbieri, Van Alyea, and ROC representatives proposed the compliance dates identified in the CAO.
4. On May 5, 2000, the Regional Water Board Executive Officer issued CAO No. R1-2000-34 to the Dischargers. Thereafter, the Dischargers violated the following requirement of CAO No. R1-2000-34:

Task I. Begin operation of the soil and groundwater treatment and plume migration control systems by October 1, 2000.
5. On September 21, 2000, ROC requested a 30-day extension to begin operation of the soil and groundwater treatment and plume migration control systems. The extension request was due to the need to pressure test subsurface piping in the presence of Santa Rosa Fire Department (SRFD) staff prior to system operation. Regional Water Board staff denied the extension based on the Regional Water Board staff's verification that ROC failed to schedule the pressure test with SRFD staff in advance of the compliance date.

6. Beginning on October 24, 2000, ROC submitted periodic status reports. The proposed start date to begin operation of the soil and groundwater treatment and plume migration control systems was delayed with each status report. In these status reports, ROC reported that the air sparge system began intermittent and low flow operation on September 15, 2000 and groundwater extraction began on February 2, 2001.
7. On February 7, 2001, Regional Water Board staff conducted a Site inspection. Regional Water Board staff found that the system was being installed contrary to design, system installation was incomplete, the system was no longer operating and significant system changes had been made without notification of Regional Water Board staff.
8. On March 29, 2001, Regional Water Board staff met with Barbieri, Van Alyea and ROC representatives to discuss the status of system installation and violation of Task I. On April 10, 2001, ROC submitted documentation regarding their efforts to comply with CAO No. R1-2000-34, Task I. ROC indicates that:
 - “Permitting requirements delayed project startup (i.e., Planning Department public review, sound wall requirement), causing delays totaling 16 weeks (from time of Bldg. permit application 10/12/00 until Bldg. Dept. approval 1/30/0).”
 - “The complexity, size of this project and time to build were poorly estimated when we agreed to the date of system startup. Construction completion deadline should have been made pending permit acquisition.”
9. The Executive Officer has since determined that the October 1, 2000, compliance deadline in the CAO did not afford enough time to obtain the necessary permits to install and operate the treatment system. Accordingly, the Executive Officer has since extended the deadline from October 1, 2000, to January 20, 2001 allowing approximately a total of seven months to Obtain the necessary permits and install and operate the treatment system.
10. On April 27, 2001, ROC representatives submitted a report confirming Regional Water Board staff findings during the February 7, 2001 inspection: the system was not installed as designed, system installation is incomplete, the system is not fully operational as designed or required. ROC proposed system changes/modifications to rectify the situation. As of April 27, 2001, discrepancies between the system design and the installed system include:

Groundwater Extraction System (ten groundwater extraction wells)

- Locations do not conform to design. Although most locations are sufficiently close to the design locations, three groundwater extraction wells are installed in a cluster southeast of northern tank excavation and is a significant change.
- One well was installed to only 20 feet bgs rather than to 30 feet bgs.
- Numerous kinks, bends and twists were observed in the ¾” geoflex effluent return lines.

Soil Vapor Extraction System (twelve vapor extraction wells)

- Only seven of the twelve wells were installed.
- Six of the wells were installed as dual-phase GWE-SVE wells, contrary to design.
- PVC vapor return conduit is not properly attached and glued to the wellheads. When the system operates it draws mostly ambient air.
- Vacuum pressure gauges and sample ports were not installed as required by the design.

Air Sparge System (fourteen air injection points)

- Seventeen injection wells were installed. Of the seventeen, only eight are connected to the air supply.
- Sparge points and flow meters were not installed. The air injection wells were installed with slotted $\frac{3}{4}$ " PVC.
- Air injection wells were not properly grouted. During system testing, vapor odors were detected at ground surface.
- Kinks were observed in the copper air supply tubing.

On April 27, 2001, ROC proposed system changes/modifications; therefore, the date to begin operation of the soil and groundwater treatment, and plume migration control systems, is currently unknown.

11. Under Section 13350 of the California Water Code, civil liability may be imposed by a regional water board pursuant to article 2.5 (commencing with section 13323) for a violation of a cleanup and abatement order in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.
12. The dischargers failed to operate the soil and groundwater treatment system from January 21, 2001 (the extended compliance date) to April 30, 2001, during which period there has been ongoing discharges. Thus, there has been a total of 100 days of violation. Pursuant to California Water Code section 13350(d)(1), the maximum potential administrative civil liability for 100 days of violation is \$500,000. The minimum potential administrative civil liability is \$50,000.
13. Administrative Civil Liability Complaint No. R1-2001-39 was issued by the Executive Officer on May 4, 2001 to the Dischargers for 100 days of violation at \$500.00 per day totaling \$50,000.00.
14. On May 9, 2001, the Dischargers requested a hearing before the North Coast Regional Water Quality Control Board to appeal the issuance of Complaint No. R1-2001-39.
15. On May 16, 2001, Barbieri and ROC representatives met with the Executive Officer and Regional Water Board staff. Barbieri and ROC requested that the Executive Officer rescind Administrative Civil Liability Complaint No. R1-2001-39 or assess a reduced penalty for the following reasons:
 - a. System repairs/changes are in progress and the system will be operating as designed in the near future.
 - b. City of Santa Rosa permit and regulatory requirements during the construction of the card lock facility resulted in delays in the cleanup work and the issuance of Cleanup and Abatement Order No. R1-2001-34. Without the card lock construction delays, the CAO would not have been issued and their noncompliance status would not exist.
 - c. The groundwater extraction system, including plume migration control wells, began operation on February 7, 2001; therefore, the days of violation should not extend beyond February 7, 2001.
16. On June 1 2001, Barbieri and P.C. Van Alyea met with Regional Water Board staff. Regional Water Board staff explained that the CAO was issued due to the significant ongoing delays since 1989, the groundwater extraction system effectiveness as of February 7, 2001 was minimal and as of June 1, 2001 the system is still not completed. Regional

Water Board staff provided Barbieri and Van Alyea with information regarding supplemental environmental projects.

17. Based on the meetings with the Dischargers, this Complaint rescinds Complaint No. R1-2001-39 and proposes a new administrative civil liability amount and Van Alyea's and Barbieri's proposed supplemental environmental project, as detailed below.
18. In determining the amount of the civil liability, the Executive Officer of the Regional Water Board must take into consideration the factors described in Section 13327 of the California Water Code. The factors described include:
 - The nature, circumstance, extent, and gravity of the violation.
 - Whether the discharge is susceptible to cleanup or abatement,
 - The degree of toxicity of discharge.
 - With respect to the violators, the ability to pay and the effect on ability to continue in business.
 - Any voluntary cleanup efforts undertaken.
 - Any prior history of violations.
 - The degree of culpability.
 - The economic savings, if any, resulting from the violation.
 - Other such matters as justice may require.

Nature, Circumstance, Extent and Gravity of the Violation

Failure to operate the system allows the continual leaching of petroleum hydrocarbons from soil to groundwater and the uncontrolled lateral and vertical migration of Methyl tertiary Butyl Ether (MtBE) and Tertiary Butyl Alcohol (TBA). Soil beneath the former underground storage tank system contained total petroleum hydrocarbons as gasoline (TPHg) at up to 22,000 parts per million (ppm). Groundwater in the former tank pit contained TPHg at 1,300,000 parts per billion (ppb). MtBE has been detected in groundwater beneath the Site at up to 600,000 ppb. Two water supply wells were impacted and abandoned; the onsite well contained up to 0.48 feet of separate phase hydrocarbons and the well located at 459 Yolanda Avenue contained dissolved phase petroleum hydrocarbons.

MtBE and TBA are gasoline oxygenate additives which have migrated offsite laterally and vertically and have been detected in groundwater to a depth of approximately 180 feet below ground surface (bgs). The discharge threatens actively used water supply wells. The vertical and lateral extent of MtBE and TBA have not been defined.

Susceptibility to Cleanup and Abatement

Site conditions are susceptible to cleanup and abatement through the proper installation and operation of the soil and groundwater treatment and plume migration control systems.

Degree of Toxicity of Discharge

Benzene has been detected in groundwater beneath the Site at up to 36,000 ppb. Benzene is a human carcinogen with a Department of Health Services Maximum Contaminant Level of 1.0 ppb.

MtBE has been detected in groundwater beneath the Site at up to 600,000 ppb. MtBE has also been detected at 210 parts per billion in shallow groundwater immediately adjacent to a public water system supply well located at 468 Yolanda Avenue. The well is 200 feet

deep with perforations extending from 160 to 180 feet bgs and is the water source for a commercial business complex serving 35 businesses and up to 115 occupants. MtBE has been detected in close proximity to the well ranging from 13 to 2,100 ppb to a depth of 165.5 feet bgs. The health effects of MtBE are not completely known. The office of Environmental Health Hazards Assessment has established a public health goal of 14 ppb. The State Department of Health Services secondary drinking water standard is 5 ppb.

Ability to Pay and Ability to Continue in Business

ROC, according to the August 2000 news article in the Press Democrat, has yearly revenues of one hundred and fifty million dollars (\$150,000,000.00) and owns five fleet fueling stations, seventeen Chevron Stations, and eighteen tank trucks. The Underground Storage Tank Cleanup Fund reimburses eligible costs for the groundwater investigation and cleanup.

Voluntary Cleanup Efforts Undertaken

Regional Water Board staff has no information regarding any voluntary cleanup efforts undertaken.

Prior History of Violations

The following violations occurred:

- In 1983, the Department of Fish and Game (DFG) inspected the Site and issued a Notice of Actual/Potential Unlawful Discharge to Waters of the State (Notice) to ROC due to the discharge of petroleum hydrocarbons from a wash rack into an offsite drainage ditch.
- In 1984, DFG and Regional Water Board staff inspected the Site. Violations included the discharge of heavy hydrocarbons to the drainage ditch, heavy hydrocarbons in soil in the drum storage area, heavy oil build up in soil by the bulk storage tanks and the spillage of solvent to the ground surface. DFG cited ROC for violation of Fish and Game Code Section 5650, the unlawful discharge of oil to state waters.
- In 1985, DFG issued a Notice to ROC due to the discharge of approximately 1000 gallons of kerosene from an above ground tank into the offsite drainage ditch.
- In 1988, Regional Water Board and Santa Rosa Fire Department inspected the Site and observed contaminated soil and strong petroleum orders in an excavation exposing the manifold piping for the underground storage tank complex.
- In October 1994, the Department of Toxic Substances Control issued Enforcement Order Docket No. 94/95 2-003 ROC for violations of the California Health and Safety Code and California code of Regulations with a set penalty of \$58,000.
- In 1995, the U.S Environmental Protection Agency, Emergency Response Division issued a Notice of Non-Compliance ROC regarding violations of Spill Prevention Control and Countermeasure Regulations.

In addition, our records show ongoing delays in the investigation and cleanup.

- The initial subsurface investigation including the drilling of 20 soil borings was conducted in April 1989. The report was submitted in February 1990, approximately 10 months later.
- The installation of four groundwater monitoring wells took approximately 9 months to complete from May 1990 to February 1991.
- The drilling of 10 borings and the installation of two groundwater monitoring wells took approximately 3 years to complete beginning in January 1994 to February 1997.

- The drilling of 11 borings took approximately 13 months from November 1997 to December 1998.
- The initial directive to define the lateral and vertical extent of contamination was provided in July 1993. The directive to define the lateral and vertical extent of contamination specific to MtBE contamination was provided in October 1999. As of this date, the lateral and vertical extent has not been defined.
- The contract to install the soil and groundwater treatment system was awarded on July 7, 2000. As of the date of this Complaint, system installation has not been completed and the system is not operating as designed.

Violations of other orders at other Redwood Oil facilities exist. Cleanup and Abatement Order No. R1-2000-34 was issued because of delays in investigation and cleanup at the Site and threat to neighboring water supply wells.

Degree of Culpability

Redwood Oil Company, Barbieri, Van Alyea and/or Peggy R. Van Alyea failed to operate the soil and groundwater treatment and plume migration control systems because of delays and incomplete oversight of their contractor.

Economic Savings

The economic savings to Redwood Oil Company, Barbieri, Van Alyea and Peggy R. Van Alyea, as a result of the violation are unknown.

Other Matters as Justice May Require

While the Regional Board Executive Officer has determined that four months given to obtain the necessary permits was sufficient, ROC did not diligently pursue permit acquisition. For example, ROC applied for two of the permits after the October 1, 2000 compliance date.

Regional Water Board staff has expended approximately \$20,000 in staff costs in this matter.

19. On June 1, 2001, Barbieri and Van Alyea informed Regional Water Board staff that they do not wish to appeal Complaint No. R1-2001-39 at a public hearing and proposed payment of \$25,000 for penalties and staff costs, and the completion of a supplemental environmental project with a value of not less than \$25,000. On June 4, 2001, Barbieri and Van Alyea proposed the dedication of 2250 square feet of property located adjacent to the Laguna de Santa Rosa and behind 5640 Sebastopol Road with a value of \$25,000 (valued at \$10/square foot) as open space. Open space adjacent to the Laguna will increase habitat for species in the wetlands of the Laguna.
20. The issuance of a Complaint for Administrative Civil Liability is an enforcement action by a regulatory agency, and is, therefore, exempt from the provision of the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq. in accordance with Title 14, California Code of Regulations, Section 15321 (a)(2).

Proposed Civil Penalty

Based on the above factors, I hereby propose that ROC, Barbieri, Van Alyea, Peggy R. Van Alyea collectively pay an Administrative Civil Liability in the amount of \$25,000.00, with the remaining \$25,000 civil liability (as proposed in Complaint R1-2001-39) to be suspended contingent upon the satisfactory completion of a supplemental environmental project involving

the dedication of the property behind 5640 Sebastopol Road (the value of which shall not be less than \$25,000) as open space in accordance with Attachment 1, incorporated herein by this reference. Failure to complete the supplemental environmental project in accordance with this Complaint, including Attachment 1, shall result in the automatic imposition of the suspended \$25,000 civil liability.

Waiver of Hearing

Barbieri, Van Alyea, Peggy R. Van Alyea and ROC may waive their right to a hearing. If these parties wish to waive the hearing, a representative should sign the enclosed waiver and return it together with a cashier's check or money order in the amount of \$25,000, made payable to the "State Water Resources Control Board" by July 15, 2001 to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403. Any such settlement shall not become effective until after the 30-day public comment period commencing upon the date of issuance of this Complaint.

Ordered by _____

Lee A. Michlin
Executive Officer

June 18, 2001