

April 9, 2012

Express Mail

Lee and May Kwong
4444 Mead Avenue
Sacramento, CA 95822

State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



OCC

Subject: Lee and May Kwong's Supplement to Petition for Review and Request for Stay of Action

In response to the letter dated March 29, 2012 from the State Water Resources Control Board, Lee and May Kwong submit the following additional information requested:

1. Name, address, telephone, and email address of the petitioner:
Lee and May Kwong
4444 Mead Avenue
Sacramento, CA 95822
916-456-1969 (Lee and May Kwong) and 415-626-3882 (Steven Kwong, son)
2stevenkwong@gmail.com
2. Specific action of the regional board which the state board is requested to review and stay:
 - A. Petitioners challenge the Order To Submit Technical Reports, Former General Cleaners, 6019 Stockton Boulevard, Sacramento, Sacramento County, dated November 7, 2011, a true and correct copy of which is attached.
3. Date on which the regional board acted:
 - A. The date the regional board acted was November 7, 2011 which is the date of the order.
4. Statement of the reasons the action was inappropriate or improper:
 - A. Lee and May Kwong are not the "discharger" as defined in California Water Code Section 13267. Petitioners have no ownership interest in General Cleaners nor did Petitioners have the ability and authority to control discharges at such business. We are not aware that the California Water Code provides for vicarious liability, especially in the absence of knowledge and notice. There is no evidence that the Petitioners knew or reasonably should have known of the alleged discharge or that Petitioners' conduct was willful or with reckless

disregard or that they acted negligently or intentionally. Petitioners have not engaged in the business of dry cleaning to have discharged any hazardous waste in the region.

In the Technical Reporting Order R5-2011-0825, item 6, Petitioners question the incredible leap from fact to legal conclusion that as owners of the property that Petitioners are the "Discharger". We quote: "The Dischargers own the Site....Therefore, the Dischargers are a 'person who has discharged, or is suspected of having discharged waste' within the meaning of CWC section 13267". Please provide us immediately with your legal memorandum or the like, with legal authority and specific citations for the basis of such a conclusion.

- B. Petitioners states that they understand since 1980 that General Cleaners and subsequent owners operated a drop off cleaners business so that no chemical dry cleaning business was conducted at 6019 Stockton Blvd. for over 31 years. Petitioners could not contact the owner Jay F. Tarango of General Cleaners as his grandson said he past away many years go.
- C. Petitioners' neighbor to the north at 6001 Stockton Blvd operated a car repair shop which could have used PCE and Petitioners are not aware that the regional board has taken any action against our neighbor or similar types businesses in the area.
- D. The PCE Investigation Report, Phase 2, (available online from the state-wide Geotracker information system) which documents results of an investigation of the area which says there is PCE in the "vicinity" of the Petitioner's property is flawed as it just relies on a single boring SB026R. "Vicinity" is defined in the dictionary as being "near or close." Petitioners' property is nowhere "near or close" to the sole test boring SBO26R and is even outside of the original study area. The investigative report is totally deficient of historical records of the underground flow patterns, rate, direction or change of direction or of information of flooding, rain levels, or significant events during the referenced 31 year period. For example, a tanker truck containing PCE could have spilled its load in the "vicinity" of the bore site during one or more of the 31 years. After 31 years, any contaminant present at any place or point would have been washed away, to be only replaced by some other material washed in from some other distant area. Most importantly, there are no plume studies done which are relevant and done during the referenced 31 years. In the absence of such information and the points raised herein, it is impossible to determine where or when the discharge occurred. The report does not clearly show how the geological or topographic setting or gradient of petitioners' property as being the source of PCE. Therefore, the governmental agency's "identification" of General Cleaners, which closed its business 31 years ago, as a discharger is without any legal or factual basis.
- E. Due to the passage of over 31 years, petitioners believe any PCE, if any were used by General Cleaners, would have dissipated or degraded to a level that it would not be a public hazard. If PCE was currently detected at very high concentrations, petitioners suggest it is

more likely from a business that is currently or more recently used PCE at some other neighboring property.

- F. Thirty-one years ago, PCE was not designated a hazardous waste. California Water Code section 13267 did not exist 31 years ago. And if the governmental agency is attempting to impose its current restrictions for acts allegedly occurring 31 years ago; such is an ex post facto law and is unconstitutional.
- 5. The manner in which the petitioners are aggrieved:
 - A. The Order will cause substantial harm to petitioners as it will involve spending substantial sums of money to do drilling and soils investigation which will disrupt the business activities of the tenants at 6019 Stockton Blvd.
 - B. General Cleaner is no longer operating at 6019 Stockton Blvd. and there is currently no cleaning business being conducted on the property so there is no substantial harm to the public.
 - 6. Specific action requested by petitioners:
 - A. Pursuant to Water Code Section 13321, Petitioners request that the State Board immediately stay the order to submit technical reports.
 - 7. Statement of points and authorities in support of this petition:
 - A. Petitioners' points and authorities are stated in the nine points herein.
 - 8. Statement that the Petition has been sent to the regional board and to the discharger, if not the petitioner:
 - A. A true and correct copy of petitioners' petition to review and request for stay of action is attached which was received by the board as shown by the attached certified receipt form.
 - 9. Statement that the substantive issues or objections raised in the petition were raised before the regional board:
 - A. Petitioners are not aware that there was a hearing on this matter before the November 7, 2011 order or that petitioners were notified of such a hearing. Consequently, petitioners' objections and comments were never considered. In the absence of such notice of hearing, Petitioners' equal protection and due process rights as guaranteed by the United States Constitution were violated.

Lee and May Kwong, declare under penalty of perjury that the matters stated herein are true and to the best of their information, knowledge and belief.

Date:

Lee Kwong

Lee Kwong

May Kwong

May Kwong



7 November 2011

Lee Kwong and Mary Kwong
4444 Mead Avenue
Sacramento, CA 95822

**ORDER TO SUBMIT TECHNICAL REPORTS, FORMER GENERAL CLEANERS,
6019 STOCKTON BOULEVARD, SACRAMENTO, SACRAMENTO COUNTY**

Central Valley Regional Water Quality Control Board is issuing the enclosed Technical Reporting Order (Order) for the former General Cleaners property at 6019 Stockton Boulevard, Sacramento, Sacramento County (Site). The enclosed Order was issued in response to the identification of the Site as a source of chemicals commonly used in dry cleaning operations found to be polluting soil and groundwater beneath the Site.

In the course of a groundwater and soil gas investigation conducted in the vicinity of Fruitridge Road and Stockton Boulevard, tetrachloroethylene (PCE) was detected at concentrations exceeding water quality standards and soil gas screening levels adjacent to the Site. A review of current and past businesses operating at the site indicates dry cleaners operated at the site from the 1960's through at least the 1980's. The report documenting results of this environmental investigation is available online from the state-wide Geotracker information system at the following web address:

http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000003316

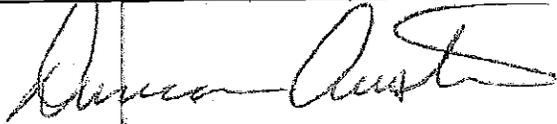
Alternatively, a paper copy of the report is available for review at the Central Valley Water Board offices.

The enclosed Order requires preparation of a Site Investigation Work Plan, to be submitted to this office by **31 December 2011**. **Prior to preparation of the Work Plan, please contact this office so we may discuss the scope of work to ensure that work conducted is adequate to comply with this Order.**

In addition to the Work Plan, the Order requires submission of a Site Historical Activity Report. This report should provide names and contact information for current and past owners of the property, current and past operators of dry cleaning businesses that operated at the Site, details of dry cleaning equipment used at the Site, details of purchase, use and disposal of dry cleaning solvents used at the Site, and details of any other current or past activities at the Site that may have resulted in discharge of PCE or other volatile organic compounds to the surface or subsurface.

California Environmental Protection Agency

If you have questions or would like to discuss the enclosed Order, you can contact the project manager, Durin Linderholm, by phone at (916) 464-4657, or by email at dlinderholm@waterboards.ca.gov.



Duncan Austin, P.E.
Site Cleanup Program Manager
Central Valley Regional Water Quality Control Board

Enclosure

cc: Barry Marcus, SCEMD
Steve Nebozuk, SASD
Lisa Travis, SASD Counsel
Margaret Hendrick, Hendrick Law

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TECHNICAL REPORTING ORDER R5-2011-0825
FOR
GENERAL CLEAN CENTER,
6019 STOCKTON BOULEVARD
SACRAMENTO COUNTY

This Order is issued to Lee Kwong and May Kwong (Dischargers) pursuant to California Water Code (CWC) section 13267, which authorizes the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) to issue Orders requiring the submittal of technical reports.

The Executive Officer finds:

INTRODUCTION

1. The property located at 6019 Stockton Boulevard is currently owned by Lee Kwong and May Kwong. As the current property owners, the Dischargers have the ability and authority to control discharges at the property.
2. The facility is located at 6019 Stockton Boulevard in a mixed commercial and residential neighborhood of south Sacramento, Sacramento County. Various dry cleaning businesses operated at the Site from the 1950s through at least the 1980s.
3. Groundwater at the Site is encountered at a depth ranging from approximately 35 to 45 feet below ground surface (bgs). Regional groundwater flow is generally to the south, with a relatively flat gradient ranging from of 0.001 to 0.002 ft/ft.
4. A soil gas and groundwater investigation was conducted in the vicinity of the Site by the Sacramento Area Sewer District between 2009 and 2011. In the course of the investigation, tetrachloroethylene (PCE) and other volatile organic compounds (VOCs) were detected at elevated concentrations in the vicinity of the Site. PCE was detected at a maximum concentration of 38,000 parts per billion by volume (ppbv) in soil gas (approximately 257,000 $\mu\text{g}/\text{m}^3$), and 540 micrograms per liter ($\mu\text{g}/\text{L}$) in groundwater.

LEGAL PROVISIONS

5. The Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (Basin Plan) designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The designated beneficial uses of the groundwater beneath the Site are domestic, municipal, industrial, and

agricultural supply.

6. CWC section 13267 states, in part:

(b)(1) In conducting an investigation . . . , 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 . . . 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.

The Dischargers own the Site where dry cleaning operation occurred, which resulted in the discharge of wastes, specifically PCE and other volatile organic compounds, to groundwater. Therefore, the Dischargers are a "person who has discharged, or is suspected of having discharged waste" within the meaning of CWC section 13267. The reports required herein are necessary to delineate the nature and extent of the contamination beneath the Site, to assure protection of waters of the state, and to protect public health and the environment.

7. CWC section 13268 states, in part:

(a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267 . . . or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly fails or refuses to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or who knowingly falsifies any information provided in those technical or monitoring program reports, is guilty of a misdemeanor, may be civilly liable in accordance with subdivision (d), and is subject to criminal penalties pursuant to subdivision (e).

(d)(1) Civil liability may be administratively imposed by a regional board . . . for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

8. Failure to submit the required report to the Central Valley Water Board according to the schedule detailed herein may result in enforcement action(s) being taken against you, which may include the imposition of administrative civil liability pursuant to CWC section 13268. Because PCE is a hazardous waste, administrative civil liability of up to \$5,000 per

violation per day may be imposed by the Central Valley Water Board for non-compliance with the directives contained herein.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to California Water Code section 13267, Dischargers shall submit the following technical reports:

1. A Site Investigation Work Plan proposing environmental investigation designed to define the extent of groundwater and soil gas polluted with PCE and other VOCs in the vicinity of the Site. ~~The Investigation Work Plan must include, at a minimum, the following:~~
 - a) Collection of soil gas samples as necessary to assess the vertical and lateral extent of VOCs in soil gas at the Site.
 - b) Collection of groundwater samples as necessary to delineate the vertical and lateral extent of the groundwater impacted by VOCs.
2. A Site Historical Activity Report documenting current and past uses of the Site, dry cleaning equipment used at the site, types and amounts of dry cleaning solvent used at the Site, and records of PCE purchases and waste disposal.

The Site Investigation Work Plan and Historical Activity Report shall be submitted no later than **31 December 2011**. Following approval of the Investigation Work Plan by the Central Valley Water Board, the work plan shall be implemented and a report of investigation results shall be submitted no later than **30 April 2012**.

REPORTING

3. When reporting data, the Discharger shall arrange the information in tabular form so that the date, the constituents, and the concentrations are readily discernible. The data shall be summarized in such a manner as to illustrate clearly the compliance with this Order.
4. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, all reports shall be prepared by a registered professional or their subordinate and signed by the registered professional.
5. All reports must be submitted to the Central Valley Water Board. Electronic copies of all reports and analytical results are to be submitted over the Internet to the State Water

Board Geographic Environmental Information Management System database (GeoTracker) at <http://geotracker.swrcb.ca.gov>. Electronic copies are due to GeoTracker concurrent with the corresponding hard copy. Electronic submittals shall comply with GeoTracker standards and procedures as specified on the State Water Board's web site.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control Board's (State Water Board) to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day.

Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

This Order is effective upon the date of signature.

Ordered by:

Frederick I. Moss

PAMELA C. CREEDON, Executive Officer

7 November 2011

(Date)