

## STAFF REPORT

### ADMINISTRATIVE CIVIL LIABILITY ORDER FOR MR. ABDUL GHAFOOR AND MR. RAJBIR SARKARIA FORMER GAS FOR LESS

#### CONTRA COSTA COUNTY

#### Introduction

Mr. Abdul Ghafoor owns and Mr. Rajbir Sarkaria operated (hereby known as “Dischargers”) the former Gas For Less station at 924 West 10<sup>th</sup> Street in Antioch, Contra Costa County. Three underground storage tanks (USTs) were used at this site to store gasoline, a hazardous material and a waste under the California Water Code (CWC) Section 13050 (d). Upon removal in March 1999, significant holes were observed in the USTs and fuel hydrocarbon constituents were found in the soil and groundwater beneath the USTs.

The Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. R5-2005-0514 65 days before the 4/5 August 2005 Board meeting because the Dischargers failed to submit certain technical reports required pursuant to California Water Code (CWC) Section 13267. The Dischargers have not paid the \$50,000 ACLC and therefore this matter is being brought to the Regional Board for a hearing.

#### Historical Overview

On 29 March 1999, one 8,000-gallon gasoline and two 10,000-gallon gasoline USTs were removed from the property at 924 West 10<sup>th</sup> Street in Antioch. EnviroNet Consulting, the contractor for the Dischargers, filed an Unauthorized Release Report on 6 April 1999. According to EnviroNet’s 14 May 1999 report, Contra Costa County Health Services – Hazardous Materials personnel witnessed the tank removal and directed the sampling. Those who witnessed the tank removal noted significant holes in the tanks. Delta Environmental staff collected and the laboratory analyzed the groundwater and tank pit sidewall soil samples for total petroleum hydrocarbons as gasoline (TPHg), benzene, toluene, ethylbenzene, xylenes and MtBE. Eight soil samples and two groundwater samples were collected.

Analytical results from the two groundwater samples collected from the excavation pit are shown in the table below.

#### Analytical Results (µg/l)

Sample Identification	Date	TPH-g	MtBE	Benzene	Toluene	Ethylbenzene	Total Xylenes
Center	3/30/99	40,000	140,000	6,210	9,420	890	6,820
NW	3/30/99	130,000	272, 000	22,000	26,700	1,910	12,000

On the 14 May 1999 EnviroNet Consulting submitted a work plan to Contra Costa County Health Services. The work plan proposed:

- The removal of the former product lines and soil sample collection,

- Residual water be pumped from the UST excavation, characterized, and disposed,
- Over excavation of the UST pit and removal of residual contaminated soil,
- A drilling program be conducted, after the new tanks are installed, to define the extent of soil and groundwater contamination at the site, and
- The installation of nine soil borings to a depth of ten feet below ground surface with soil and Hydropunch groundwater samples collected from each boring.

The Dischargers did not comply with Contra Costa County Health Services requests to investigate the site and the case was turned over to the Regional Board. On 16 December 1999, Board staff phoned the RP's consultant to ascertain the status of the site investigation proposed in the May 1999 work plan. The consultant stated the work had not been implemented. However, because the station was upgraded with new tanks, product lines and dispensers prior to the implementation of the work plan, an addendum was needed.

Therefore, in a 19 January 2000 letter, Regional Board staff requested a short addendum to the 14 May 1999 work plan be submitted revising the proposed boring locations to characterize the horizontal and vertical extent of waste in the soil and groundwater.

EnviroNet submitted a 17 February 2000 *Revision to Work Plan for Remedial and Investigative Activities (Work Plan)* which included a proposal to drill 12 borings and sampling every five feet until groundwater is encountered. They also proposed collecting a Hydropunch groundwater sample from each boring.

RWQCB staff approved the *Work Plan* in their 25 February 2000 letter with two conditions:

1. That groundwater samples are analyzed for oxygenated compounds and gasoline additives ethylene dibromide (EDB) and 1,2-dichloroethane (1,2-DCA).
2. An additional work plan to install monitoring wells must be submitted by 25 April 2000.

The report of results was not submitted by 25 April 2000. On 23 June 2000, RWQCB senior staff sent a second request for the results of the investigation with a new deadline of 20 July 2000. This report was not submitted.

On 14 and 15 December 2000, a total of 17 soil borings were drilled (B-1 through B-17). Soil samples were collected at depths of 5 to 7 feet and 10 to 12 feet bgs. Native soil beneath the former excavation was sampled in borings B-2 and B-4 to determine if waste remained beneath the former tank pit. Soil sample results from 13 of the borings contained high concentrations of total petroleum hydrocarbons as gasoline (TPHg) with nine borings containing in excess of 1,000-mg/kg TPHg. The highest TPHg and benzene soil sample results were 18,000 mg/kg and 85 mg/kg, respectively. The soil sample results were non-detect for MtBE. The borings encountered free groundwater at depths ranging from 6.5 to at least 11 feet below ground surface (bgs).

Waste constituents in soil in excess of 1000 mg/kg (up to a maximum of 18,000 mg/kg) TPHg were detected to the west, east and northeast of the site. No soil data was collected to the south of the site. A sample collected in native soil at 15 feet bgs in the tank pit contained results that showed residual waste remains beneath the excavated area. The soil sample analytical results show a declining trend that waste

concentrations are decreasing to the west and northwest of the site, however the extent of waste in soil remains undefined in all directions.

Sixteen of the seventeen borings contained polluted groundwater. TPHg groundwater-sampling results ranged from 19,000 ug/l to 430,000 ug/l. Benzene results ranged from 3,300 ug/l to 99,000 ug/l. MtBE results ranged from 7.5 ug/l to 16,000 ug/l. These concentrations far exceed applicable water quality objectives.

Groundwater data show gasoline hydrocarbons in groundwater beneath the entire site. The extent of groundwater pollution decreases near the south edge of the property, and in boring B-12 to the west; however, the plume is still undefined in all directions. The concentration of gasoline hydrocarbons detected in numerous samples exceeds the solubility of gasoline in water. This indicates that free product is either floating on the water, or is entrained in soil just above the water table beneath the site.

EnviroNet summarized in their 26 February 2001 *Report on Investigative Activities and Work Plan for Additional Investigation* that the extent of waste in soil and groundwater at the site are undefined both laterally and vertically. They recommended additional site investigation activities to define only the lateral extent of waste in soil and groundwater including:

1. The installation of an additional 11 borings.
2. The installation of six permanent groundwater wells in six of the borings to provide groundwater sampling and monitoring for the site.

Regional Board staff reviewed EnviroNet's 26 February 2001 *Report* and requested the following in their 3 April 2001 letter:

1. All eleven proposed borings be converted to monitoring wells due to the serious nature of the waste plume.
2. Deeper groundwater wells be installed to determine the vertical extent of pollution.
3. An interim remediation plan for groundwater pollution be implemented as soon as practical. Four-inch diameter wells be installed on-site for possible remediation purposes. A short addendum be submitted that includes a plan for interim remediation and a revised map showing proposed locations for vertical and lateral plume definition by 20 April 2001. The on-site monitoring wells be installed by 20 May 2001, and interim remediation system be initiated by 20 June 2001. The proposed off-site wells be installed by 20 July 2001.
4. A sensitive receptor survey must be submitted.
5. Fuel additives and fuel oxygenates, other than MtBE, do not need to be analyzed for because these compounds were below detection limit in previous groundwater samples.
6. Once the monitoring wells are installed, monitoring and sampling reports must be submitted on a quarterly basis. The first quarterly monitoring report is due 30 July 2001.

On 25 June 2001, senior staff at the Regional Board sent a second request for the addendum and well installation report, because the work plan addendum was not submitted, and the monitoring wells were not installed.

Mr. Patrick Lamb, environmental scientist for EnviroNet, faxed Regional Board staff a site status update on 15 March 2002 and reported that Environet had numerous problems collecting payment from Mr. Ghafoor, even after the UST Cleanup Fund had reimbursed Mr. Ghafoor for work completed by EnviroNet. On 22 March 2002, Environet sent Regional Board staff an *Update on the Site Status and Revised Monitoring Well Locations* in response to Regional Board staff's 3 April 2001 letter requesting the previously mentioned six items. Regional Board staff approved the 22 March 2002 addendum in their 28 June 2002 letter and requested a report of the work by 20 September 2002, and that quarterly monitoring be initiated. In addition, staff requested all groundwater samples also be analyzed for 1,2-DCA. The requested report of results was not received.

On 3 January 2003, Regional Board staff sent a second request for the results report. Environet sent a letter on 29 January 2003 detailing the four outstanding Environet invoices that need to be paid by Mr. Ghafoor, and for which he is eligible for reimbursement or has been reimbursed by the UST Cleanup Fund. Environet also sent a copy of the contract to conduct the next stage of work at the site based on the understanding that the remaining balance will be paid in full by Mr. Ghafoor at the end of February 2003.

### **Recent Violations**

On 12 September 2003 the Regional Board Executive Officer sent Mr. Ghafoor and Mr. Sarkaria an Order to submit technical reports in accordance with Section 13267 of the California Water Code. The soil boring and monitoring well installation report was due 26 November 2003 and the first quarterly monitoring report was due 30 January 2004.

On 3 February 2004 SCS Engineers sent a letter to Mr. Ghafoor stating they would like to implement the next scope of work but he owes \$2,372.50 to EnviroNet and needs to pay a \$2000.00 retainer to SCS Engineers to satisfy a previous contractual agreement.

On 23 March 2004 the UST Program Manager sent Mr. Ghafoor and Mr. Sarkaria a Notice of Violation (NOV) for not submitting the monitoring well installation results report and the quarterly monitoring report. The past due reports were to be submitted by 29 April 2004. To date the reports have not been submitted.

On 28 September 2004 staff spoke with Mr. Ghafoor and requested he meet at the Regional Board office with staff to discuss the status of this site by 1 October 2004. Mr. Ghafoor neither contacted, nor met with staff.

On the 18 and 21 March 2005 the Regional Board UST Program Manager made numerous phone calls to Mr. Ghafoor's business and residence that were unanswered or unreturned.

To date, the Dischargers have not submitted seven of the technical reports as required by the 12 September 2003 CWC 13267 Order. Those reports include: (a) a technical report describing the installation of numerous soil borings and groundwater wells and proposed site remediation (b) the fourth Quarter 2003 Monitoring Report, (c) the first Quarter 2004 Monitoring Report, (d) the second Quarter 2004 Monitoring Report, (e) the third Quarter 2004 Monitoring Report, (f) the fourth Quarter 2004 Monitoring Report and (g) the first Quarter 2005 Monitoring Report.

### **Administrative Civil Liability Complaint**

The Dischargers have violated CWC Section 13267 by not submitting the required technical reports, and are subject to a civil liability action. On 31 May 2005, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. R5-2005-0514 for \$50,000 to Mr. Abdul Ghafoor and Mr. Rajbir Sarkaria. The ACLC required that payment be made by 1 July 2005, or a hearing would be scheduled before the Regional Board.

In determining the amount of any civil liability pursuant to CWC Section 13327, the Regional Board must take into account the nature, circumstances, 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 savings, if any, resulting from the violation, and other matters as justice may require.

These factors were considered as follows:

#### ***Nature and Circumstances***

The nature of the violation is that the Dischargers were required, pursuant to CWC Section 13267, to submit seven technical reports. These reports are necessary to delineate the extent of wastes in soil and groundwater beneath this site and determine the magnitude of the threat to human health, the environment and beneficial uses of local groundwater. The circumstances are such that the Dischargers were aware of the necessity to provide the required technical reports, but failed to do so.

#### ***Extent***

The extent of the violation is that the Dischargers were required, pursuant to CWC Section 13267, to submit those seven technical reports described above. These reports have not been submitted to date. As of 4 August 2005 the total number of days of violation for the lack of submittal of reports is 2560.

#### ***Gravity***

The gravity of the violation is that the Dischargers failure to complete the site investigation and submit the reports has prevented Regional Board staff from assessing the threat that the hydrocarbon release and the waste in soils pose to the waters of the State of California.

#### ***Susceptibility of the discharge to cleanup***

The clean up of hydrocarbon constituents is a well established process.

#### ***Toxicity***

Benzene, a component of gasoline, is a known carcinogen and, with exposure, is hazardous to human health.

#### ***Ability to Pay/Continue in Business***

With respect to the violator, it has not been demonstrated that there is an inability to pay or to continue in business.

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***Voluntary Cleanup Efforts Undertaken***

This ACL Order addresses failure to submit technical reports and, therefore, the Dischargers have voluntarily chosen not to do the work.

***Prior History of Violations***

Not Applicable.

***Degree of Culpability***

The Dischargers are responsible for the submittal of the seven technical reports and are culpable for the violations cited.

***Economic Savings***

By failing to submit certain technical reports as required by the CWC Section 13267 Order, the Dischargers realized an economic benefit by avoiding the expenditure of funds necessary to fully assess the impacts on water quality from this unauthorized discharge of waste. The Cleanup Fund would then reimburse all legitimate costs. The Dischargers must still submit the technical reports and is delaying the site investigation, so the economic benefit is simply the interest it has saved on any loans. This is estimated to be no more than \$5,000.

***Other Matters as Justice May Require***

Staff expended approximately 120 hours or \$9,600 in staff costs, in generation of the ACL Complaint and preparation of the agenda material for the Regional Board presentation.

***Determination of Amount***

Water Code Section 13268 authorizes the imposition of administrative civil liability for violation of Water Code Section 13267. The maximum liability for each day of violation is one thousand dollars (\$1,000). As of 4 August 2005, the required technical reports will be a cumulative total of 2,560 days late. Therefore, the total maximum administrative civil liability amount available to the Regional Board for the violations noted in the Complaint is \$2,560,000. No minimum liability is required to be imposed under Section 13268(b)(1).

***Summary***

The failure to submit the technical reports has grave consequences, as the lack of action may lead to degradation of the groundwater. Even if the Dischargers submit the required technical reports prior to the Board hearing, it is still appropriate for the Regional Board to adopt an ACL Order due to the Dischargers' failure to comply with the CWC Section 13267 Order. It is imperative that the Dischargers comply with all directives of the Board, including submitting technical reports in a timely manner. The Executive Officer issued the Administrative Civil Liability Complaint in the amount of \$50,000, and staff recommends that the Regional Board adopt an ACL Order for this same amount.