

STAFF REPORT

ADMINISTRATIVE CIVIL LIABILITY ORDER FOR MR. FRANK GUINTA, MRS. SHARI GUINTA, AND MR. JAMES RAMSEY AND MRS. MARILYN RAMSEY FRANKS ONE STOP

SAN JOAQUIN COUNTY

Introduction

Mr. Frank Guinta, Ms. Shari Guinta, and Mr. James and Mrs. Marilyn Ramsey, (hereafter collectively known as the Dischargers) have failed to clean up and abate the discharge of petroleum hydrocarbon products at Frank's One Stop, AKA Frank's Exxon #3, located at 2072 West Yosemite Avenue in Manteca, San Joaquin County (Site), as required under the 18 August 2003 Cleanup and Abatement Order (CAO) No. R5-2003-0713.

The Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. R5-2005-0530 75 days before the 16/17 March 2006 Board meeting because the Dischargers failed to:

- Continue maintenance and testing of wellhead treatment systems for twelve (12) domestic water supply wells impacted by groundwater polluted with MtBE,
- Continue testing of all monitoring wells, and nearby domestic and irrigation wells, as required by the Regional Board Monitoring and Reporting Program,
- Submit an Additional Site Characterization Report providing information from the implementation of the approved Workplan assessing the vertical and lateral extent of the groundwater pollution in all impacted water-bearing zones,
- Submit a Final Corrective Action Plan (CAP), and
- Submit three quarterly monitoring reports, as required under CAO No. R5-2003-0713 to conduct monitoring of the existing wells and any additional wells in accordance with Monitoring and Reporting Program (MRP) No. 5-2003-0713.

The Dischargers waived their right to a hearing by 27 March 2006 and requested additional time to compile and submit records. The extension was granted on 8 March 2006. The Dischargers have not paid the \$400,000 civil liability proposed in the ACLC and therefore this matter is being brought to the Regional Board for a hearing.

The routine sampling and maintenance of domestic wells is necessary to protect public health and water quality impacted by the MtBE groundwater plume. The quarterly monitoring reports and additional investigation are necessary to determine the extent of groundwater pollution that has migrated off the site. The CAP is necessary to complete the remediation and to mitigate the pollution.

Regional Board Staff believe that the imposition of civil liability is necessary to ensure that the Dischargers comply with the CAO. State Emergency, Abandoned, and Recalcitrant (EAR) Account monies are now being spent for the emergency sampling and maintenance of the domestic wellhead treatment systems. In lieu of compliance by the Dischargers, additional

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staff time and EAR Account funding will be necessary to continue to provide treated domestic water to the affected neighbors, remediate the MtBE plume, and conduct the quarterly monitoring and necessary site investigation activities in a timely manner.

Historical Overview

On 21 May 1992 San Joaquin County Environmental Health Department (SJCEHD) submitted an Unauthorized Release (Leak) Report for a gasoline leak discovered at the Site fuel dispensers during an inspection. At that time, the Site was under the ownership of Mr. James and Ms. Marilyn Ramsey, and the underground storage tanks (USTs) were operated by Mr. Frank Guinta. SJCEHD directed the Dischargers to investigate the release. SJCEHD had previously discovered inconsistencies in prior monthly reconciliation reports of fuel supplies delivered to the USTs versus sales of petroleum products, an indicator of a leaking UST system. The dispensers were repaired but no investigation was conducted.

On 16 September 1994, three 1,000-gallon USTs reportedly containing used motor oil were removed from the Site. Total Petroleum Hydrocarbons (TPH) as Motor Oil (TPHmo), 150,000 in parts per billion (ppb) in soil as micrograms per kilogram ($\mu\text{g}/\text{kg}$) and TPH as Diesel (TPHd), 29,000 $\mu\text{g}/\text{kg}$ were detected in soil samples from the excavation.

On 20 September 1994 one waste oil UST was removed. Metals (including Lead) were detected in soil samples from the excavation.

In February 1995, prior to, and as a part of, the purchase of the bank note for the Site by Mr. Guinta, the Bank of Stockton hired consultant Geological Audit Services Inc., to perform a soil and groundwater investigation that resulted in a Preliminary Investigation and Evaluation Report (PIER). The PIER analytical results reported soil contamination and groundwater pollution from the release. Maximum concentrations detected in soil were: TPH as Gasoline (TPHg), 1,400,000 $\mu\text{g}/\text{kg}$; benzene, 2,500 $\mu\text{g}/\text{kg}$; toluene, 4,400 $\mu\text{g}/\text{kg}$; ethylbenzene, 2,400 $\mu\text{g}/\text{kg}$; and xylenes, 8,300 $\mu\text{g}/\text{kg}$. Maximum grab groundwater concentrations were: TPHg, 13,000 $\mu\text{g}/\text{L}$; TPHd, 2,500 $\mu\text{g}/\text{L}$; TPHmo, 110 $\mu\text{g}/\text{L}$; benzene, 83 $\mu\text{g}/\text{L}$; toluene, 840 $\mu\text{g}/\text{L}$; ethylbenzene, 230 $\mu\text{g}/\text{L}$; and xylenes, 1,900 $\mu\text{g}/\text{L}$.

Additional borings advanced in April 1997 and May 1998 confirmed releases of TPHg; TPHd; benzene; ethylbenzene; toluene; xylenes; and fuel oxygenates, including methyl tertiary butyl ether (MtBE) and tertiary butyl alcohol (TBA), in soil and groundwater.

During the May 1998 investigation in the area of the former waste oil tank, tetrachloroethylene (PCE) was detected in soil beneath, and adjacent to, the waste oil tank excavation. In a letter dated 20 August 1998, SJCEHD directed the Dischargers to investigate the PCE detected in soil near the waste oil tank. Subsequently, PCE was detected in four groundwater monitoring wells on-site from May 1999 until September 2000, when analysis for PCE was discontinued with SJCEHD approval after the State Board questioned in their letter of 16 September 2000 whether there was a non-petroleum source for the PCE.

In June 1998, Remedy Construction removed two 10,000-gallon diesel USTs and four

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10,000-gallon gasoline USTs from the Site. During excavation, hydrocarbon odors were noted, and soil staining was observed in the excavation and photographed by SJCEHD. Soil and groundwater sample results confirmed the presence of TPHg, TPHd, benzene, and MtBE in the tank excavation.

Between May 1999 and September 2000, Frank Guinta's consultant installed twenty monitoring wells (MW-1 through MW-20) and five piezometers (P-1 through P-5). Monthly hand bailing removed free product from two monitoring wells (MW-5 and MW-6) and one piezometer (P-4). Currently the off-site monitoring wells are located to the north within 200 feet of the Site, while the MtBE plume impacts to domestic wells extends over 600 feet to the north of the Site. Recently, water analyses from two domestic wells approximately 400 feet to the south of the Site have reported sporadic low level groundwater impacts from MtBE. The existing extent of the monitoring network does not adequately characterize vertical and lateral extent of the plume. CAO No. R5-2003-0713 requires that an adequate MtBE investigation be performed and additional monitoring wells be installed to characterize the vertical and lateral extent of the MtBE plume.

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 ¹
Total Petroleum Hydrocarbons as diesel	70,000	100 ¹
Benzene	1,500	0.15 ²
Ethylbenzene	4,500	29 ¹
Toluene	18,000	42 ¹
Xylenes	25,000	17 ¹
Methyl Tertiary Butyl Ether (MtBE)	8,100	5 ¹
Tertiary Butyl Alcohol	1,100	12 ³
1,2 Dichloroethane (1,2-DCA)	1.1	0.4 ²
Tetrachloroethylene (PCE)	26	0.06 ²

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

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.

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In a letter dated 6 September 2001, the SJCEHD approved a remedial action plan consisting of soil vapor extraction/air sparging (SVE/AS), additional recovery wells for the pump and treat system, and domestic wellhead treatment. In January 2002, the SVE/AS system was installed and began operating.

Private Well Investigation

In December 1999, forty-six (46) water supply wells were identified within a half-mile of the Site. In July, August, and September 2000, groundwater from thirty-eight domestic and two irrigation wells was sampled under written direction of SJCEHD (17 May 2000). Of the forty wells initially sampled, MtBE was detected in ten domestic wells and one irrigation well. This information and Site quarterly groundwater monitoring reports showed that the MtBE plume had moved across West Yosemite Avenue to the north and northwest over 600 feet from the Site. Available information indicates that most of the drinking water wells are screened through the shallow to intermediate water bearing zone (40 to 60 feet below ground surface).

On 3 August 2000, Regional Board staff were notified by SJCEHD that water supply wells were impacted by MtBE. Subsequently, in a letter dated 14 August 2000 and after discussion with the SJCEHD, Regional Board staff required an interim groundwater extraction system be installed within 30 days to address the MtBE, notification of MtBE impacts to groundwater and provision of an alternative water supply be given to all domestic well owners, and continuation of the remedial investigation. The Dischargers started interim ground water extraction, notified impacted owners, and provided bottled water to residents within the required time.

On 16 August 2000, SJCEHD staff met with City of Manteca Public Works (City of Manteca) to discuss installation of a public water supply and sanitary sewer line for the City of Manteca and unincorporated area residents impacted by the MtBE plume. The installation of a sanitary sewer line is required by San Joaquin County for new public water supplies, due to the close proximity of the active private septic systems. The City of Manteca estimated a cost of approximately \$2,000,000 to construct a public water supply system and a sanitary sewer service to residents. Time to annex and connect public water supply system and sanitary sewer service was estimated to take up to two years. As a result of this meeting, SJCEHD decided to supply bulk water in tanks in the short term, until completion of construction of the wellhead treatment systems provided a long-term solution. To date, the City of Manteca has annexed the neighborhood but has not provided connections to public water supply system and sanitary sewer service. The City of Manteca has stated publicly that they do not have plans to upgrade services within the next ten years, and if so, would require the landowners to pay for the water and sewer connections.

In September 2000, 12 domestic wells impacted by MtBE were disconnected from the residences. Bulk water supply tanks were installed at each home as a temporary water supply. The MtBE groundwater plume, extending over 600 feet from the service station, was reported in the media as the largest plume in San Joaquin County.

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In January 2002, 11 wellhead treatment systems were installed to protect public health at residences with impacted wells. Domestic wellhead treatment consists of two or three granulated activated carbon (GAC) units connected inline between the well and the domestic user. Due to declining MtBE concentrations at 17950 Airport Way, the wellhead treatment system's air stripper is no longer used before the GAC units to reduce MtBE treatment cost. The domestic well supplying the property at 17933 Airport Way was properly abandoned in April 2001. This residence is now served by a treated domestic water supply well located at the rear of the property at 17933 Airport Way.

Former property owner Ray Fulton of Reno, Nevada refused to allow access for the installation of a treatment system on the domestic well serving the tenants of 17971, 17983, and 17995 Airport Way. Data from quarterly monitoring conducted in May 2006 of the untreated domestic well water show that MtBE was detected at a concentration of 3.6 µg/L, down from 7.3 µg/L reported in April 2005.

In February 2002, the groundwater extraction system was turned off, in conjunction with the startup of the SVE/AS system, per the approved Remedial Action Plan. By August 2002, TPHg and MtBE concentrations began to increase in both groundwater and the influent air of the SVE/AS system. MtBE concentrations also began to increase in the domestic well located at 17950 Airport Way, immediately north across Yosemite Avenue and hydraulically downgradient of the Site (closest domestic well). Subsequently, SJCEHD's California licensed professional geologist created geologic cross sections from the Cone Penetrometer Testing logs and noted that the second sand unit of the water bearing zone between 30 and 60 feet depth is not currently monitored by monitoring wells, which may represent a migration pathway to the MtBE-impacted domestic wells. SJCEHD noted that an investigation of the second sand unit was warranted.

Events Preceding The Cleanup And Abatement Order

Work progressed slowly until 1 January 2003, at which time the Dischargers' consultant turned off the SVE/AS system and declared, in a letter dated 15 January 2003, to SJCEHD and Regional Board staff that inadequate State Cleanup Funds remain in the account to operate the remediation system, conduct groundwater monitoring, and maintain domestic wellhead treatment systems.

In a letter dated 25 February 2003, SJCEHD directed the Dischargers to restart both the soil and groundwater treatment systems within 10 days. Regional Board staff concurred with SJCEHD that the treatment systems were necessary to properly and effectively remove waste constituents, and the pump/treat system was required to reduce MtBE concentrations and off-site transport toward downgradient domestic supply wells.

In March 2003, the Regional Board obtained lead agency status from SJCEHD. On 3 April 2003, Regional Board staff mailed the first draft Cleanup and Abatement Order to Frank Guinta and Guinta Enterprises.

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Subsequently, in a meeting on 9 April 2003 with Regional Board and SJCEHD staff, Frank Guinta's representatives John Guinta (his son) and Don Thompson (his environmental manager), and Frank Guinta's consultant AquaScience Engineers Inc., agreed to restart the SVE system and reevaluate the need for the pump/treat system. Groundwater monitoring resumed on 3 May 2003 and the SVE/S system was restarted on 13 May 2003. John Guinta and Don Thompson also stated that Mr. James and Ms. Marilyn Ramsey should be included in the CAO as former owners of the Site at the time of the unauthorized release.

The second draft CAO was reissued on 30 April 2003 and included the Ramseys as Dischargers. However, James and Marilyn Ramsey's current address was not available, as the Post Office forwarding order had expired. Consequently, the second draft CAO package was returned unopened. When Regional Board staff contacted SJCEHD for a current address, they provided the name and phone number of the Ramsey's' 1999 bankruptcy attorney. In a phone conversation with Regional Board staff on 19 May 2003, attorney Mr. Richard Hastings verbally acknowledged knowing the Ramseys whereabouts and stated that he was representing them, and that he would look up their address for the draft CAO. Regional Board staff verbally offered to provide copies of the draft and final CAO to Mr. Hastings, and Mr. Hastings verbally accepted the offer. On 22 May 2003 a copy of the draft CAO was sent to Mr. Hastings. The cover letter for the draft CAO reiterated Regional Board staffs' understanding of Mr. Hastings verbal statements on 19 May 2003 that he was their legal representative and requested that Mr. Hastings forward the copy to his clients, Mr. James and Ms. Marilyn Ramsey. Regional Board staff did not receive a written response to the second draft CAO or the correct address for the Ramsey's, from the Ramsey's or their attorney Mr. Hastings.

Events Subsequent To The Cleanup And Abatement Order

On 18 August 2003, the Regional Board Executive Officer issued CAO Order No. R5-2003-0713 to Frank Guinta, and to James and Marylin Ramsey at their old address. A copy of CAO R5-2003-0713 was also sent to the Ramsey's attorney Mr. Hastings for his review. Again, there was no response to CAO Order No. R5-2003-0713 from the Ramsey's or their attorney Mr. Hastings.

The SVE/AS system operated until declining soil gas concentrations justified treatment shutdown in December 2003. Compliance with CAO Order No. R5-2003-0713 continued until 1 February 2004, when the Dischargers failed to meet the Regional Board staff deadline to submit an additional Site Characterization Report for the MtBE groundwater plume. At that time the Dischargers began requesting a series of extensions to CAO Order No. R5-2003-0713, to allow Mr. Guinta time to secure a loan to fund the cleanup.

In 2004 and 2005, Mr. Guinta repeatedly asked staff, verbally and in writing, for site closure. The rational given for each request was to facilitate the sale of the property. Staff denied the closure request, stating that to do so would relieve the Dischargers from the responsibility for the cleanup.

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On 16 November 2004, the UST Program Manager issued a Notice of Violation to the Dischargers for failure to submit reports per CAO Order No. R5-2003-0713, and requested a meeting with Frank Guinta by 3 December 2004. During the meeting on 3 December 2004 with Frank and John Guinta, and his consultant AquaScience Engineers, Inc., Frank Guinta agreed to comply with the CAO and schedule the additional site characterization fieldwork for January 2005. Frank Guinta also stated that the reported nine percent interest rate for the new loan to conduct the work was higher than his current loan interest rate; therefore he decided to not secure the new loan. On 31 January 2005, Frank Guinta notified Regional Board staff in writing that no further work would be funded by him until the property was sold.

As a result of the Dischargers failure to continue the work required under CAO Order No. R5-2003-0713 and to protect human health, Regional Board staff, with Executive Officer approval, has contracted at the State's expense through the State Water Resources Control Board Emergency Abandoned and Recalcitrant Account program, to maintain and sample the domestic well treatment systems as necessary, and continue sampling domestic wells near the MtBE plume.

Recent Violations

To date, the Dischargers have not conducted maintenance of the treatment systems and have not submitted technical reports, an additional investigation report, and a corrective action plan as required by CAO Order No. R5-2003-0713.

Administrative Civil Liability Complaint

The Dischargers have violated CAO Order No. R5-2003-0713 by not maintaining the treatment systems and not submitting the required technical reports, and are subject to civil liability.

In determining the amount of any civil liability pursuant to CWC Section 13350, 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 CAO Order No. R5-2003-0713, to maintain the domestic well treatment systems, conduct quarterly monitoring, submit technical reports, an additional investigation report, and a corrective action plan. The domestic well treatment systems are necessary to protect the health of the residents. The reports are necessary to determine the effectiveness of the domestic well treatment systems, 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 domestic well treatment systems maintenance and technical reports, but failed to do so.

Extent

The extent of the violation is that the Dischargers were required, pursuant CAO Order No. R5-2003-0713, to maintain the domestic well treatment systems and submit the required technical reports. The domestic wells treatment system maintenance was not conducted by the Dischargers in 2005, and technical reports have not been submitted to date. As of 15 December 2005, the total number of days of violation for the lack of domestic well treatment systems maintenance and submittal of reports is 2036.

Gravity

The gravity of the violation is that the Dischargers failure to maintain the domestic well treatment systems, complete the site investigation and submit the reports has prevented Regional Board staff from assessing the threat that the hydrocarbon release and the wastes in soils pose to the waters of the State of California. State funds are currently being used to maintain the domestic well treatment systems. Without State intervention, the public health of the domestic well users would have been endangered. Failure to maintain wellhead treatment systems threatens to allow the use, including consumption, of polluted groundwater by nearby residences.

Susceptibility of the discharge to cleanup

MtBE is highly soluble, diffuses readily in groundwater, and tends to travel farther than the majority of petroleum hydrocarbon constituents in groundwater, potentially causing larger groundwater plumes. Even so, there are many technologies available to treat MtBE effectively.

Toxicity

The current California Primary and Secondary (Taste and Odor) MCLs for MtBE are 13 µg/L and 5 µg/L, respectively. The most recent (second quarter 2006) MtBE concentrations from domestic wells within the groundwater plume range from 3.6 µg/L in one untreated well (owner declined treatment) to 29 µg/L influent (pre-treatment) in treated wells, with a maximum one-well annual influent concentration of 35 µg/L in February 2006.

Ability to Pay/Continue in Business

In a memo dated 1 August 2006, State Water Resources Control Board's staff economist states that, after evaluating the financial information received from Frank Guinta and from Shari Guinta, that, with respect to these violators, it has not been demonstrated that there is an inability to pay or to continue in business. To date, James and Marylin Ramsey have not submitted financial information to demonstrate their inability to pay.

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Voluntary Cleanup Efforts Undertaken

The ACL Order addresses failure to maintain the domestic well treatment systems and submit technical reports and, therefore, the Dischargers have voluntarily chosen not to do the work.

Prior History of Violations

The Dischargers received a Notice of Violation for failure to comply with CWC Section 13304 in November 2004.

Degree of Culpability

The Dischargers are responsible for the maintenance of the domestic well treatment systems, the investigation and remediation of the MtBE plume(s), and submittal of technical reports, and are culpable for the violations cited.

Economic Savings

By failing to submit quarterly reports as required by the CWC Section 13304 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 Dischargers have not maintained and tested the domestic well treatment systems, at a savings of at least \$35,000 per year. The Dischargers have not conducted quarterly monitoring for three quarterly monitoring events, at least \$5,000/monitoring event, for a savings of \$15,000. The Dischargers have not submitted a report of additional groundwater investigation at an estimated savings of \$113,000. The Dischargers have not submitted a Corrective Action Plan, at a savings of \$7,000. The cost savings to the Dischargers is estimated to be more than \$170,000 for FY 2005, and \$25,000 for one 2005 report and four 2006 reports FY 2006. At 7% per year interest on two years for FY2005, the economic benefit would be \$23,800.

Other Matters as Justice May Require

Staff costs including oversight to the State EAR Account and hours since the original due dates in 2004 under the Order, in generation of the ACL Complaint and preparation of the agenda material for the Regional Board presentation are \$90 X 542 hours = \$48,780.

Determination of Amount

Water Code Section 13350 authorizes the imposition of administrative civil liability for violation of Water Code Section 13304. As of 15 December 2005, the maximum liability amount (\$5,000.00 per day per violation times six violations = 2,036 days total) per Water Code Section 13350 is **\$10,180,000**. The minimum liability amount is \$100.00 per day per violation, or **\$203,600**.

Summary

The failure to maintain the domestic well treatment systems and submit the technical reports has grave consequences, as the lack of action without State intervention may lead to additional degradation of the groundwater and potential threats to public health and the environment. Even if the Dischargers maintain the domestic well treatment systems and 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

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Section 13304 Order. It is imperative that the Dischargers comply with all directives of the Board, including investigation and remediation of the MtBE plume, and submitting technical reports in a timely manner. The Executive Officer issued the Administrative Civil Liability Complaint in the amount of \$400,000, and staff recommends that the Regional Board adopt an ACL Order for this same amount.