

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

ORDER NO. 01-034

ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

MR. KELLY ENGINEER / ALL STAR GAS, INC.  
1791 PINE STREET  
CONCORD, CA 94520  
CONTRA COSTA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Board), finds that:

1. Mr. Kelly Engineer / All Star Gas, Inc. (the discharger) has operated a gasoline dispensing station at this site since at least 1994. The property is owned by Mrs. Perrin Engineer, mother of Kelly Engineer.
2. Background: In May 1998 three underground storage tanks (USTs) were removed from the site. Soil and groundwater samples collected during the removal contained elevated concentrations of petroleum hydrocarbons and MTBE. Soil samples contained 810 parts per million (ppm) petroleum hydrocarbons as gasoline (TPH-g), 7.9 ppm benzene and 190 ppm MTBE. Groundwater samples collected in the tank pit contained 3200 parts per billion (ppb) of MTBE.
3. County requests: In February 1999 the Contra Costa Health Services Department requested a work plan to investigate an unauthorized release by April 30, 1999. No work plan was prepared for the County.
4. Board requests: On February 22, 2000, the Board, pursuant to Water Code Section 13267, required the discharger to submit by March 31, 2000: (i) a Work Plan to define the horizontal and vertical extent of soil and groundwater pollution; and, (ii) a completed Site Summary Form. The Work Plan was just submitted two days prior to the Board Meeting considering this Order.
5. Violation description: The discharger has failed to submit the technical reports described above on a timely basis as required by the Board's letter of February 22, 2000. Failure to comply with the requirements of a letter issued pursuant to Water Code Section 13267 is enforceable under Water Code Section 13268. The discharger has been in violation for 353 days (the period from March 31, 2000 to March 19, 2001).

6. ACL Complaint: On January 22, 2001, the Executive Officer issued Complaint No. 01-007 to the discharger. The complaint proposed the Administrative Civil Liability be imposed by the Board in the amount of \$30,000 including \$2,200 for staff costs, pursuant to Section 13268(b)(1) of Water Code. On February 21 the Board agreed to continue the item to the March 21 meeting. The requested work plan has only recently been received by the Board (March 19, 2001). The discharger has not signed the ACL Complaint (waiver of hearing).
7. Water quality and public health effects: The delays incurred by not submitting a work plan and implementing the investigation, have likely resulted in further migration of pollutants. Further migration of pollutants is considered an on-going discharge.
8. Culpability: The discharger was made aware of the Board requirements but chose not to comply with them. On April 19, 2000, the Board sent Mr. Kelly Engineer a Notice of Violation letter for the failure to submit a technical report. The discharger did not respond. Board staff, on several occasions tried to contact the discharger via telephone, leaving messages with employees of Kelly Engineer. Again, no calls or response of any kind was received until February 15, 2001 via a letter from the discharger's attorney requesting a postponement of the hearing before the Board for 60 days.
9. Prior history of violations: No documented violations occurred prior to those previously described.
10. Economic savings: The discharger, by delaying and not complying with the requirements of the Board's letters, has realized an economic benefit by not expending funds to address the release. Typically, costs expended for investigation to full remediation of cases such as this (with the SWRCB Cleanup Fund Unit) range from \$50,000 to \$300,000. Interest earned, assuming an investment return of only 5%, gives an economic saving ranging from \$2,500 to \$15,000.
11. Voluntary cleanup efforts: Once a petroleum hydrocarbons release has been confirmed, a voluntary cleanup effort could have been undertaken. No action regarding site condition characterization has been taken.
12. Ability to pay: The Board has no reason to believe that the proposed penalty amount (below) is beyond the discharger's ability to pay. The discharger has not provided the Board any specific information to the contrary.
13. Other matters As Justice May Require: The Board incurred \$3,500 in staff costs in order to prepare the Complaint and supporting information. This amount is computed based on an hourly rate of \$100 per hour for 35 hours.

14. The Board has fully considered the factors to be considered in determining the amount of civil liability set forth in Water Code Section 13327.
15. This action is an order to enforce the laws and regulations administered by the Board. This action is categorically exempt for the provisions of CEQA pursuant to Section 15321 of the Resources Agency Guidelines
16. The Board has notified the discharger and all interested agencies and persons that it would hold a public hearing on this matter and has provided them with an opportunity to submit written comments.
17. The Board, at a public hearing, heard and considered all comments pertaining this case.

IT IS HEREBY ORDERED, PURSUANT TO CALIFORNIA WATER CODE SECTION 13268, that the discharger is civilly liable for this violation and shall pay administrative civil liability in the amount of \$36,800. This amount includes \$3,500 for staff costs. One half of the liability in the amount of \$18,400 shall be paid to the State Water Resource Pollution Cleanup and Abatement Account within 30 days of the date of this Order. The remainder of the liability shall be paid by December 31, 2001.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on March 21, 2001.

  
Loretta K. Barsamian  
Executive Officer