

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**ORDER No. R2-2016-0006**

**AMENDMENT OF SITE CLEANUP REQUIREMENTS (ORDER No. R2-2014-0042) for:**

**CHEVRON U.S.A. INC. and  
MB ENTERPRISES, INC.**

for the property located at:

1705 CONTRA COSTA BOULEVARD  
PLEASANT HILL, CONTRA COSTA COUNTY

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

1. **Regional Water Board Order:** The Regional Water Board adopted Site Cleanup Requirements for this site on November 12, 2014 (Order No. R2-2014-0042, hereinafter the “Order”). The Order names Chevron U.S.A. Inc. and MB Enterprises, Inc., as Dischargers. The Order requires the Dischargers to complete onsite and offsite remedial investigations and prepare a remedial action plan.
2. **Reasons for Amendment:** This Amendment is needed due to additional information obtained by the Dischargers while implementing tasks in the Order. To the extent the tasks in this Amendment are ordered pursuant to Water Code section 13267, the burden, including costs, of conducting these activities bears a reasonable relationship to the need for the information and the benefits to be obtained from it. Specifically, the contamination at the site poses a threat to human health and compliance with this Amendment will identify and abate those threats.

a. Remedial Investigation

Task 4 of the Order requires the Dischargers to submit a technical report, acceptable to the Executive Officer, to “define the vertical and lateral extent of pollution down to concentrations at or below typical cleanup standards for soil, soil vapor, and groundwater.” On October 22, 2015, Chevron U.S.A. Inc. issued a technical report (*Site Investigation Report and Updated Site Conceptual Model*), prepared by GHD, to comply with Task 4. The report indicates multiple chlorinated volatile organic compounds (CVOCs), including tetrachloroethylene (PCE), trichloroethylene (TCE), cis-1,2-dichloroethylene (cis-1,2-DCE), and vinyl chloride, were detected in onsite and offsite soil, soil vapor, and groundwater at concentrations significantly above risk-based standards (e.g., Maximum Contaminant Levels [MCLs] and Environmental Screening Levels [ESLs]).

During the most recent remedial investigation, PCE and TCE were detected at concentrations up to 4,100 µg/L and 840 µg/L in shallow groundwater. In comparison, the MCL for both PCE and TCE is 5 µg/L. Soil vapor samples were collected onsite and offsite above the shallow groundwater at depths of 5 and 7.5 feet below grade, and most of the CVOC concentrations in these samples exceeded applicable soil vapor ESLs.

The extent of CVOCs in groundwater and soil vapor remains undefined to applicable drinking water standards and relevant human health screening levels. The lateral extent of CVOCs in groundwater is undefined to the north, northwest, and west. The vertical extent

of CVOCs in groundwater is undefined, both onsite and offsite, below a depth of approximately 33 feet. The lateral and vertical extent of CVOCs in soil vapor remains undefined to the north, northwest, and west of the site. Additional remedial investigation is needed.

b. Interim Remedial Actions

The GHD report indicates that the recent soil vapor samples substantially exceeded the commercial ESLs for various CVOCs. The following table shows the maximum concentrations of PCE, TCE, cis-1,2-DCE, and vinyl chloride detected in the latest soil vapor samples, along with the corresponding commercial ESLs:

| CVOC           | Soil Vapor Concentration<br>( $\mu\text{g}/\text{m}^3$ ) | ESL<br>( $\mu\text{g}/\text{m}^3$ ) |
|----------------|--|-------------------------------------|
| PCE            | 74,000,000   | 2,100                               |
| TCE            | 3,300,000  | 3,000                               |
| cis-1,2-DCE    | 1,300,000  | 31,000                              |
| vinyl chloride | 790,000  | 160                                 |

Of particular note, in seven offsite soil vapor samples collected near existing commercial buildings, TCE was detected in excess of  $8,000 \mu\text{g}/\text{m}^3$ , the screening level recommended in Regional Water Board staff's October 16, 2014, technical memorandum to trigger the collection of indoor air data.

The CVOCs detected in soil vapor pose a significant potential vapor intrusion threat to onsite and offsite building occupants. The GHD report prudently recommends "concurrent sub-slab, soil vapor, indoor air and outdoor air sampling" for several offsite commercial buildings, including 1710 Linda Drive, 1806 Linda Drive, and the southern part of the Gregory Village Shopping Center. The GHD report also states that "additional soil vapor assessment is warranted west of VP-8 and VP-9 and south of VP-9."

If soil vapor or indoor air concentration data obtained during the additional remedial investigation demonstrates a clear vapor intrusion threat, the Dischargers will need to implement Interim Remedial Measures (IRMs), such as HVAC optimization, indoor air treatment, sub-slab depressurization, or a combination of these controls, to protect human health.

c. Self-Monitoring Program

The Order does not include a Self-Monitoring Program. Because of the high levels of CVOCs detected at the site, recently installed and future soil vapor probes and groundwater monitoring wells must be sampled on a consistent basis to provide information on the nature and extent of CVOCs in soil vapor and groundwater and to assure adequate protection of public health and the environment. Data generated by the monitoring can further aid in identifying appropriate site-specific cleanup and abatement measures and aid in evaluating the effectiveness of interim and final remedial actions.

3. **California Safe Drinking Water Policy:** It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. The Order promotes that policy by requiring

discharges to be remediated such that MCLs (designed to protect human health and ensure that water is safe for domestic use) are met in existing and future supply wells.

4. **CEQA:** This action makes technical amendments to an order that enforces the laws and regulations administered by the Regional Water Board. Amendment of the Order is not a project as defined in the California Environmental Quality Act (CEQA). There is no possibility that the activity in question may have a significant effect on the environment. (Cal. Code Regs., tit. 14 §§ 15378 and 15061, subd. (b) (3).)
5. **Notification:** The Regional Water Board has notified the Dischargers and all interested agencies and persons of its intent under Water Code section 13304 to amend site cleanup requirements for the discharge and has provided them with an opportunity to submit their written comments.

**IT IS HEREBY ORDERED**, pursuant to sections 13304 and 13267 of the Water Code, that Order No. R2-2014-0042 shall be amended as follows:

A. Tasks 4.1 through 4.6 are added as follows:

**Task 4.1 – GROUNDWATER INVESTIGATION WORK PLAN**

COMPLIANCE DATE: 45 days following Executive Officer requirement

Submit a Work Plan acceptable to the Executive Officer to complete the definition of the vertical and lateral extent of onsite and offsite groundwater pollution. The Work Plan shall specify investigation methods and a proposed time schedule. The Executive Officer will require this work plan if the previous phase of the remedial investigation did not adequately define the vertical and lateral extent of groundwater pollution (e.g., preliminary cleanup goals were exceeded at the most distant groundwater sampling points).

**Task 4.2 – GROUNDWATER INVESTIGATION REPORT**

COMPLIANCE DATE: According to schedule in Task 4.1 Work Plan approved by the Executive Officer

Submit a technical report acceptable to the Executive Officer describing the implementation of the Task 4.1 Work Plan.

**Task 4.3 –VAPOR INTRUSION WORK PLAN**

COMPLIANCE DATE: 30 days following Executive Officer requirement

Submit a Work Plan acceptable to the Executive Officer to further characterize the extent of CVOCs in onsite and offsite soil vapor and to evaluate sub-slab soil vapor and indoor air concentrations, including 1705 Contra Costa Boulevard, 1710 Linda Drive, 1806 Linda Drive, and the southern part of the Gregory Village Shopping Center, as discussed in the GHD report. The Work Plan shall specify investigation methods and a proposed time schedule.

**Task 4.4 – VAPOR INTRUSION REPORT**

COMPLIANCE DATE: According to schedule in Task 4.3 Work Plan approved by the Executive Officer

Submit a technical report acceptable to the Executive Officer describing the implementation of the Task 4.3 Work Plan.

**Task 4.5 – IRM WORK PLAN**

COMPLIANCE DATE: 45 days following Executive Officer approval of the Task 4.4 report

Submit a Work Plan acceptable to the Executive Officer to evaluate IRMs for soil vapor contamination, both onsite and offsite, and recommend alternatives for implementation. The Work Plan shall specify a proposed time schedule for implementation of the IRMs. The Executive Officer will require this Work Plan if the Task 4.4 report demonstrates that sub-slab and/or indoor air concentrations are above relevant ESLs for the contaminants of concern.

**Task 4.6 – IRM REPORT**

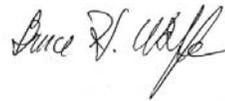
COMPLIANCE DATE: According to schedule in Task 4.5 Work Plan approved by the Executive Officer

Submit a technical report acceptable to the Executive Officer documenting completion of the Task 4.5 Work Plan. For ongoing IRMs, such as sub-slab depressurization, the report shall document startup, monitoring, and ongoing operations.

B. Provision 5 is revised as follows:

**Self-Monitoring Program:** The Dischargers shall comply with the attached Self-Monitoring Program, as may be amended by the Executive Officer.

I, Bruce H. Wolfe, 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 February 4, 2016.



Digitally signed by Bruce H. Wolfe  
DN: cn=Bruce H. Wolfe, o=SWRCB, ou=Region 2, email=bwolfe@waterboards.ca.gov, c=US  
Date: 2016.02.04 19:32:33 -08'00'

Bruce H. Wolfe  
Executive Officer

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FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO: IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER CODE SECTIONS 13268 OR 13350, OR REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY

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**Attachment:** Self-Monitoring Program

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**SELF-MONITORING PROGRAM for:**

**CHEVRON U.S.A. INC. and  
MB ENTERPRISES, INC.**

for the property located at:

1705 CONTRA COSTA BOULEVARD  
PLEASANT HILL, CONTRA COSTA COUNTY

1. **Authority and Purpose:** The Regional Water Board requests the technical reports required in this Self-Monitoring Program (SMP) pursuant to Water Code sections 13267 and 13304. This Self-Monitoring Program is intended to document compliance with Regional Water Board Order No. R2-2014-0042 (Site Cleanup Requirements) as amended.
2. **Groundwater Monitoring:** The Dischargers shall measure groundwater elevations quarterly in all monitoring wells, and shall collect and analyze representative samples of groundwater according to the following table:

| Well # | Sampling Frequency | Analyses | Well # | Sampling Frequency | Analyses |
|--------|--------------------|----------|--------|--------------------|----------|
| CW-1A  | Q                  | 8260B    | CW-7A  | Q                  | 8260B    |
| CW-1B  | Q                  | 8260B    | CW-7B  | Q                  | 8260B    |
| CW-2A  | Q                  | 8260B    | CW-8A  | Q                  | 8260B    |
| CW-2B  | Q                  | 8260B    | CW-8B  | Q                  | 8260B    |
| CW-3A  | Q                  | 8260B    | CW-9A  | Q                  | 8260B    |
| CW-3B  | Q                  | 8260B    | CW-10A | Q                  | 8260B    |
| CW-4A  | Q                  | 8260B    | CW-10B | Q                  | 8260B    |
| CW-4B  | Q                  | 8260B    | CW-11A | Q                  | 8260B    |
| EA-5   | Q                  | 8260B    | CW-12A | Q                  | 8260B    |
| CW-6A  | Q                  | 8260B    | CW-13A | Q                  | 8260B    |
| CW-6B  | Q                  | 8260B    |        |                    |          |

Key: Q = Quarterly  
8260B = U.S. EPA Method 8260B, full scan, or equivalent

The Dischargers shall sample any new monitoring or extraction wells quarterly and analyze groundwater samples for the same constituents as shown in the above table and including annual sampling of wells for TPH-gasoline, benzene, ethylbenzene, toluene, ethylbenzene, and MtBE. The Dischargers may provide a written proposal to change the sampling requirements in this Order; any proposed changes are subject to Executive Officer approval. Additionally, the

monitoring program described above may be modified for performance monitoring purposes when remedial actions are implemented.

3. **Soil Vapor Monitoring:** Permanent soil vapor probes shall be monitored as described in the following table to document trends in vapor concentrations for evaluating the soil vapor intrusion pathway for CVOCs. Soil vapor sampling activities shall be implemented in accordance with the *Advisory – Active Soil Gas Investigations* (DTSC, July 2015). Reporting limits shall be equal to or less than Environmental Screening Levels for shallow soil gas in a commercial land use setting.

The Dischargers shall collect and analyze representative samples of soil vapor in all probes according to U.S. EPA Method TO-15, or the equivalent, and the following schedule:

| Vapor Probe # | Sampling Frequency | Analyses | Vapor Probe # | Sampling Frequency | Analyses |
|---------------|--------------------|----------|---------------|--------------------|----------|
| VP-1          | Q                  | TO-15    | VP-8          | Q                  | TO-15    |
| VP-2          | Q                  | TO-15    | VP-9          | Q                  | TO-15    |
| VP-3          | Q                  | TO-15    | VP-10         | Q                  | TO-15    |
| VP-4          | Q                  | TO-15    | VP-11         | Q                  | TO-15    |
| VP-5          | Q                  | TO-15    | VP-12         | Q                  | TO-15    |
| VP-6          | Q                  | TO-15    | VP-13         | Q                  | TO-15    |
| VP-7          | Q                  | TO-15    |               |                    |          |

Key: Q = Quarterly  
 TO-15 = U.S. EPA Method TO-15, full scan, or equivalent

The Dischargers shall sample any new soil vapor probes quarterly and analyze samples for the same constituents as shown in the above table. The Dischargers may propose changes in the above table; any proposed changes are subject to Executive Officer approval. Additionally, the monitoring program described above may be modified for performance monitoring purposes when remedial actions are implemented.

4. **Monitoring Reports:** Beginning with the first calendar quarter of 2016, the Dischargers shall implement the above monitoring schedule and submit quarterly monitoring reports for both groundwater and soil vapor to the Regional Water Board no later than 45 days following a sampling event. The first quarterly monitoring report is due by May 15, 2016. Future quarterly monitoring reports for each calendar year are due by February 15, May 15, August 15, and November 15. The reports may be combined into a single report. Any requested change in the above schedule must be approved in writing by the Regional Water Board. The reports shall include:
  - a. Transmittal Letter: The transmittal letter shall discuss any violations during the reporting period and actions taken or planned to correct the problem. The letter shall be signed by the Discharger’s principal executive officer or his/her duly authorized representative, but not the environmental consultant, and shall include

a statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge.

- b. Groundwater Elevations: Groundwater elevation data shall be presented in tabular form with: depth to groundwater (in feet below ground surface), top of casing elevations, depths to the top of well screens, length of well screens, and total depth for each well included in the monitoring program. A groundwater elevation map shall be prepared for each monitored water-bearing zone with the groundwater flow direction and calculated hydrologic gradient(s) clearly indicated in the figure(s). A complete tabulation of historical groundwater elevations shall be included in the fourth quarterly report each year.
- c. Groundwater Analyses: Groundwater sampling data shall be presented in each quarterly report. Data shall be presented in tabular form. Isoconcentration maps shall be prepared that includes the analytical data for key contaminants (e.g., PCE and TCE) for each monitored water-bearing zone, as appropriate. The report shall indicate the analytical method used, detection limits obtained for each reported constituent, and a summary of QA/QC data. Historical groundwater sampling results shall be included in the fourth quarterly report each year. Each report shall provide a text discussion and technical interpretations of the groundwater data and describe any significant increases in contaminant concentrations since the last report, any measures proposed to address the increases, any changes to the Conceptual Site Model, and any conclusions and recommendations for future actions.
- d. Soil Vapor Analyses: Soil vapor sampling data shall be presented in each quarterly report. Data shall be presented in tabular form, and isoconcentration maps should be prepared for key contaminants (including PCE, TCE, and vinyl chloride). The report shall indicate the analytical method used, detection limits obtained for each reported constituent, and a summary of QA/QC data. Historical soil vapor sampling results shall be included in the fourth quarterly report each year. The report shall describe any significant increases in contaminant concentrations since the last report, and any measures proposed to address the increases.
- e. Groundwater Extraction: If applicable, the report shall include groundwater extraction results in tabular form, for each extraction well and for the site as a whole, expressed in gallons per minute and total groundwater volume for the quarter. The report shall also include contaminant removal results, from groundwater extraction wells and from other remediation systems (e.g., soil vapor extraction), expressed in units of chemical mass per day and mass for the quarter. Historical mass removal results shall be included in the fourth quarterly report each year.
- f. Status Report: The quarterly report shall describe relevant work completed during the reporting period (e.g., site investigation, interim remedial measures) and work planned for the next quarter.

**5. Electronic Data Submittals/GeoTracker Reporting:** Pursuant to Title 23 of the California Code of Regulations, sections 3890-3895, the following information shall be submitted electronically to the State Water Board's GeoTracker database:

- a. All chemical analytical results for soil, water, and vapor samples;
  - b. The latitude and longitude of any permanent sampling point for which data is reported, accurate to within 1 meter and referenced to a minimum of two reference points from the California Spatial Reference System, if available;
  - c. The surveyed elevation relative to a geodetic datum of any permanent sampling point;
  - d. The elevation of groundwater in any permanent monitoring well relative to the surveyed elevation;
  - e. A site map or maps showing the location of all sampling points;
  - f. The depth of the screened interval and the length of screened interval for any permanent monitoring well;
  - g. PDF copies of boring logs; and
  - h. PDF copies of all reports, work plans, and other documents, including the signed transmittal letter and professional certification by a California-licensed Professional Engineer (PE) or Geologist (PG).
- 6. Violation Reports:** If the Dischargers violate conditions in the Order as amended, then the Dischargers shall notify the Regional Water Board office by telephone and email as soon as practicable once the Dischargers have knowledge of the violation. Regional Water Board staff may, depending on violation severity, require the Dischargers to submit a separate technical report on the violation within five working days of telephone notification.
- 7. Other Reports:** The Dischargers shall notify the Regional Water Board in writing prior to any site activities, such as construction or underground tank removal activities, which have the potential to cause further migration of contaminants or which would provide new opportunities for site investigation.
- 8. Record Keeping:** The Dischargers or their agents shall retain data generated for the above reports, including lab results and QA/QC data, for a minimum of six years after origination and shall make them available to the Regional Water Board upon request. The six-year period of retention shall be extended during the course of any unresolved litigation regarding this discharge or when requested by the Regional Water Board.
- 9. SMP Revisions:** Revisions to this SMP may be ordered by the Executive Officer, either on his/her own initiative or at the request of the Dischargers. Prior to making SMP revisions, the Executive Officer will consider the burden, including costs, of associated self-monitoring reports relative to the benefits to be obtained from these reports.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**RESPONSE TO COMMENTS**

**TO:** Bruce H. Wolfe  
Executive Officer  
February 4, 2016  
File No. 07S0204 (KEB)

**FROM:** Kevin D. Brown, CEG #2180  
Engineering Geologist

**CONCUR:** Laurent Meillier, P.G.  
Section Leader  
Toxics Cleanup Division  
Stephen A. Hill  
Division Chief  
Toxics Cleanup Division

**SUBJECT:** **Responses to Comments on Tentative Order (Amendment) for Order No. R2-2014-0042, 1705 Contra Costa Boulevard, Pleasant Hill, Contra Costa County**

This document provides the Regional Water Board Cleanup Team's *Response to Comments* received on the Tentative Order (TO) to amend Order No. R2-2014-0042 for the property located at 1705 Contra Costa Boulevard, Pleasant Hill (Site).

The TO was circulated for a 30-day public review, which opened on December 16, 2015, and closed on January 15, 2016. Regional Water Board staff (Staff) received comments from representatives of the named dischargers, Chevron U.S.A. Inc. (Chevron) and MB Enterprises, Inc. (MBE), and also from an offsite property owner. The table below assigns a number to each significant comment received by Staff, in the order received.

| <b>Comment No.</b> | <b>Date Received</b> | <b>Commenter</b>  |
|--------------------|----------------------|---|
| 1, 2               | 12-11-15             | Shelby Lathrop of Chevron Environmental Management Company (CEMC), on behalf of Chevron               |
| 3, 4               | 1-14-16              | Shelby Lathrop of Chevron Environmental Management Company (CEMC), on behalf of Chevron               |
| 5                  | 1-14-16              | Kevin Lally, Esq., on behalf of James Howe, owner of 1710 Linda Drive, Pleasant Hill (telephone call) |
| 6                  | 1-15-16              | James Howe, owner of 1710 Linda Drive, Pleasant Hill (telephone call)                                 |
| 7                  | 1-15-16              | Rinehart Law Offices (Rusty Rinehart, Esq.), on behalf of MBE   |

Below we have summarized the comments and provided responses. Appendix A contains copies of the comments received, with the exception of telephone conversations.

## **COMMENTS FROM CHEVRON**

1. **Comment:** Chevron maintains it is not a discharger at the Site and should not have been named in either the original order or this TO. However, Chevron understands the TO must be issued based on the significant issues associated with the chlorinated volatile organic compounds (CVOCs) beneath the Site and in the vicinity of the Site.

**Response:** In our Response to Comment 4 below, we address in more detail the basis for naming Chevron as a discharger for CVOC releases at the Site associated with a former waste oil underground storage tank (UST) and a former dry cleaner.

2. **Comment:** Chevron requested the first groundwater and soil vapor monitoring event associated with the TO be conducted in the First Quarter 2016, with the associated report due on May 15, 2016.

**Response:** We agree. The TO was modified to reflect this recommendation.

3. **Comment:** The schedules for preparing the work plans described in the TO are too aggressive. For Task 4.3, Chevron proposes increasing the time from 30 days to 45 days. For Tasks 4.1 and 4.5, Chevron proposes additional time from 45 days to 60 days.

**Response:** We disagree. The TO includes several recommendations outlined in Chevron's October 22, 2015, technical report, including a recommendation to complete soil vapor and vapor intrusion studies for several offsite buildings. In their access agreement proposals to several offsite property owners, Chevron has tentatively identified the locations of new offsite soil vapor sampling points and groundwater monitoring wells. This information indicates Chevron is actively developing work plans to satisfy the tasks outlined in the TO.

After careful consideration of the proposal to alter the work plan due dates, we conclude the time frames, as presented in the TO, are achievable. Therefore, Staff did not alter the due dates for submittals under critical tasks required by the TO.

4. **Comment:** Chevron disputes being named as a responsible party before the adoption of the Regional Water Board's Order No. R2-2014-0042. In response to the TO, Chevron incorporates by reference comments it submitted in response to the original order, including, without limitation the following: a letter from Todd Littleworth to Executive Officer Bruce Wolfe dated August 4, 2014; a letter from Brandon S. Wilken of Conestoga-Rovers & Associates (now GHD) to Bruce Wolfe dated August 4, 2014 (with attachments); a letter from Todd Littleworth to Assistant Executive Office Dyan C. Whyte dated November 1, 2014; and Chevron's Petition for Review of Order No. R2-2014-0042, submitted to the State Water Board on December 12, 2014.

**Response:** The proposed Amendment to the Site Cleanup Requirements only changes the portion of the original order pertaining to investigation, remedial actions and monitoring; there are no modifications to the section identifying the named dischargers. Any objections to the identification of Chevron as a discharger should have been raised in a petition timely filed after the issuance of the original order. (Water Code § 13320.)

Chevron has petitioned the State Water Board on this matter. Chevron's objections to being identified as a discharger are not timely or germane to this Amendment.

We acknowledge the above documents. Staff considered all of Chevron's comments before recommending the issuance of the original order (with the exception of the Petition, which was submitted after the original order was adopted).

The Regional Water Board's July 2, 2014, Cleanup Team Staff Report discussed multiple lines of evidence as to why the former waste oil UST, which was owned by Chevron, is a source of CVOC contamination (including soil, soil vapor, and groundwater data) at the Site. The original order appropriately and plainly describes the basis for naming Chevron as responsible party under the California Water Code. On November 12, 2014, a hearing was conducted at the Regional Water Board's offices where the Regional Water Board considered adoption of the original order. The Regional Water Board affirmed the findings and recommendations from Staff and unanimously adopted the original order naming both Chevron and MBE as dischargers for the releases of CVOCs at the Site. Appendix D of the original order's agenda package considered by the Regional Water Board includes comments from Chevron, along with detailed responses addressing the naming issues both Chevron and MBE are contesting.

During summer 2015, Chevron completed additional investigations, as part of Task 3 of the original order, to further evaluate the lateral and vertical extent of CVOCs in soil, soil vapor, and groundwater beneath the Site and surrounding commercial area. Data from this investigation indicates the highest concentrations of onsite CVOCs in shallow groundwater and soil vapor coincide with the locations of the previous waste oil UST and the former dry cleaner, with the highest concentrations detected in shallow soil vapor and groundwater in the location of the former waste oil UST. The 2015 data affirms the conclusion, discussed in detail in the Staff Report and described in the original order, that the former waste oil UST is a source of CVOCs at the Site.

#### **COMMENTS FROM JAMES HOWE**

5. **Comment:** The attorney for Mr. James Howe (the owner of an offsite property located at 1710-1718 Linda Drive, Pleasant Hill, which is located west of the Site), has indicated the access agreement issued by Chevron to conduct an environmental investigation is unacceptable for several reasons, mainly related to compensation and indemnification matters.

**Response:** An access agreement is necessary to conduct soil, soil vapor, and groundwater characterization at 1710-1718 Linda Drive. Access to this property is necessary for the implementation of the original order and the TO. We recommend good-faith negotiations between the interested parties in order to resolve the current dispute in an expeditious manner. If the parties cannot reach an agreement, Staff will require that each party provide the basis of their disagreement. Staff will then evaluate the responses and make a determination about whether one or both proposals are unreasonable. Should the parties disagree with that determination, they will be provided an opportunity to make their case to the Assistant Executive Officer. If we conclude that the dischargers' proposal is unreasonable, we will consider the dischargers to be in violation of Task 3 of the original order and will consider enforcement options. If we conclude that Mr. Howe's proposal is

unreasonable, we will consider issuing an enforceable directive, pursuant to Water Code section 13267, requiring Mr. Howe to conduct work necessary to comply with Task 3.

6. **Comment:** The owner of 1710-1718 Linda Drive has requested that Staff provide an explanation about the specific laws and regulations that require an offsite property owner to provide access to another party to conduct environmental investigations.

**Response:** There is nothing specific in the Water Code regarding access agreements and the role an offsite property owner performs in granting access to its property to conduct environmental investigations. We generally expect offsite property owners to cooperate with a discharger who is investigating the extent of soil and groundwater pollution. Due to the potential vapor intrusion threat at the 1710-1718 Linda Drive commercial building, we hope that Chevron and Mr. Howe can negotiate a mutually-agreeable access agreement. Such cooperation is also needed to ensure the extent of soil vapor and groundwater pollution is properly defined in accordance with the original order.

Generally speaking, the Regional Water Board does not name offsite property owners as dischargers in a cleanup and abatement order, where the offsite owner did not contribute to the source of the contamination. To the extent an offsite owner refuses to permit access to the property for the purposes of site investigation or remediation, however, the Water Code and precedential State Water Board orders would support naming the offsite property owner as a discharger. *In the Matter of the Petition of Zoecon Corporation* (State Water Board Order No. WQ 86-2), provides precedent for the finding that a landowner of a contaminated site may be a “discharger” under the Water Code, even in circumstances where they never contributed to the contamination in any active manner, such as a spill or discharge of chemicals from equipment. *Zoecon* and *In the Matter of the Petition of Harold and Joyce Logsdon* (State Water Board Order No. 84-6) explain that a landowner may be named as a discharger in circumstances involving the ongoing spread of contamination or continuing degradation of groundwater. These orders also review the above criteria concerning a discharger’s knowledge of and ability to control the discharge.

In this case, Mr. Howe is aware of the contamination, ongoing investigation, and remediation. Data provided to the Regional Water Board establishes the presence of contamination that continues to migrate off of the Site. And, similar to the facts in *Zoecon*, Mr. Howe has the ability to control access to investigate and clean up the property.

#### **COMMENT FROM MBE**

7. **Comment:** MB Enterprises, Inc. again objects to being named as a discharger in the original order, as noted in its July 1, 2015, and January 15, 2016, letters to Executive Officer Bruce Wolfe.

**Response:** MB Enterprises, Inc. is a discharger as determined by the Regional Water Board and as recorded in the original order. MBE had the opportunity to address the Regional Water Board during the public hearing on November 12, 2014, and provide its reasoning as to why it was inappropriate to be named as a discharger; MBE did not attend the hearing. The proposed Amendment to the Site Cleanup Requirements only amends

the portion of the original order pertaining to investigation, remedial actions, and monitoring; there are no modifications to the section identifying dischargers. Any objections to the identification of MBE as a discharger should have been raised in a petition timely filed after the issuance of the original order (Water Code § 13320). MBE has not petitioned the State Water Board on this issue. MBE's objections to being identified as a discharger are not timely or germane to this Amendment.

MBE is appropriately identified as a discharger in this case. As stated in the original order, the key criteria established by precedential State Water Board orders and considered in this case are:

MBE is named as a discharger because it is the current owner of the property on which there is an ongoing discharge of pollutants, has knowledge of the discharge, and the ability to control the discharge.

*In the Matter of the Petition of Zoecon Corporation* (State Water Board Order No. WQ 86-2), provides precedent for the finding that a current landowner may be a "discharger" under the Water Code, even in circumstances where it never contributed to the contamination in any active manner, such as a spill or discharge of chemicals from equipment. *Zoecon* and *In the Matter of the Petition of Harold and Joyce Logsdon* (State Water Board Order No. 84-6) explain that a landowner may be named as a discharger in circumstances involving the ongoing spread of contamination or continuing degradation of groundwater. These orders also review the above criteria concerning a discharger's knowledge of and ability to control the discharge.

In the case of MBE, the current property owner, there is no question it is aware of the contamination, ongoing investigation, and remediation on the Site. Data provided to the Regional Water Board establishes the presence of contamination that continues to migrate across the property. And similar to the facts in *Zoecon*, MBE has the ability to control access to and clean up the property:

[T]he petitioner characterizes itself as the "mere landowner" in the situation. Yet it is this very role that puts *Zoecon* in the position of being well suited to carrying out the needed onsite cleanup. The petitioner has exclusive control over access to the property. As such, it must share in responsibility for the clean up.

Based on its current ownership of the property and the findings referenced in Response to Comment 4 above, there is sufficient evidence of ongoing migration of CVOCS from multiple source areas on the Site to allow the Regional Water Board to exercise its authority under the Water Code in naming MBE as a discharger in the TO.

## **Brown, Kevin@Waterboards**

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**From:** Lathrop, Shelby <SLathrop@chevron.com>  
**Sent:** Thursday, January 14, 2016 7:26 AM  
**To:** Brown, Kevin@Waterboards  
**Cc:** Meillier, Laurent@Waterboards  
**Subject:** Comments to 07S0204, Transmittal of Tentative Order to Amend SCR Order No. R2-2014-0042 - 1705 Contra Costa Boulevard, Pleasant Hill, Contra Costa County CA

Hi Kevin,

I'm submitting these comments on behalf of Chevron U.S.A. Inc. (CUSA), who has been named as a discharger in the referenced Tentative Order – Amended Site Cleanup Requirements for 1705 Contra Costa Boulevard (Tentative Order).

Comment 1. As you know, CUSA disputed the Regional Water Quality Control Board's (RWQCB) naming it a "discharger" under Order No. R2-2014-042, Adoption of Initial Site Cleanup Requirements ("Order") issued on November 12, 2014. In response to the Tentative Order, CUSA incorporates by reference the comments it submitted in response to the Order, including, without limitation the following: The letter from Todd Littleworth to Bruce Wolf dated August 4, 2014; the letter from Brandon S. Wilken of Conestoga-Rovers & Associates to Bruce Wolf dated August 4, 2014 (with attachments); the letter from Todd Littleworth to Dyan C. Whyte dated November 1, 2014; and CUSA's Petition for Review of the Order, submitted to the State Water Resources Control Board on December 12, 2014. All of these documents were previously provided to the RWQCB; please contact me if you would like another copy.

Comment 2. We believe that the schedules for preparing the work plans described in Tasks 4.1, 4.3 and 4.5 are not attainable. We request increasing the time for work plan preparation from 30 to 45 days for Task 4.3 and from 45 to 60 days for Tasks 4.1 and 4.5.

Thank you for your consideration of these comments, and please contact me if you have any questions.

**Shelby Lathrop** ●●  
Project Manager  
[SLathrop@chevron.com](mailto:SLathrop@chevron.com)

**Chevron Environmental Management Company**  
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Kirin McKenna

January 15, 2016

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Oakland, California 94612  
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Re: Notice of Public Comment  
December, 2015  
Environmental Investigations at  
1705 Contra Costa Boulevard  
Pleasant Hill, California

Dear Kevin:

As you know, I represent MB Enterprises, Inc., named as a “discharger” in CRWQCB order No: R2-2014-0042 dated November 12, 2014. The tentative order, which is the subject of the above referenced Notice of Public Comment, requires MB Enterprises, Inc. and Chevron U.S.A. Inc., as dischargers, to submit work plans to further define the extent of pollution in groundwater and soil vapor.

MB Enterprises, Inc. submitted a comprehensive letter to Executive Officer Bruce Wolfe on July 1, 2015 objecting to its characterization as a discharger and responsible party at the site. A copy of the letter is attached hereto and incorporated herein by reference.

By this letter MB Enterprises, Inc. again requests that they be removed from the November 12, 2014 order and any subsequent orders naming them as a discharger and responsible party.

Finally, MB Enterprises, Inc. requests that any investigatory and remediation work undertaken at the site be done so with a minimum of impact to its business operations on the property.

Thank you for your consideration in this matter.

Very truly yours,  
  
RUSTY RINEHART

Cc: MB Enterprises, Inc. w/o enclosures