

State Water Resources Control Board

MAR 05 2014

Ultramar Inc.
Attention: Mr. Roger Levin
5590 B Havana Street
Denver, CO 80239

Dear Mr. Levin,

PETITION OF ULTRAMAR INC. FOR REVIEW OF DENIAL OF PETROLEUM
UNDERGROUND STORAGE TANK CASE CLOSURE, FORMER BEACON STATION NO. 439,
2112 LINCOLN AVENUE, SAN JOSE, SANTA CLARA COUNTY

Mr. Roger Levin of Ultramar Inc. (Petitioner) seeks review by the State Water Resources Control Board (State Water Board) of the Santa Clara County Department of Environmental Health (Santa Clara County) and the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) decision to reject closure of Petitioner's underground storage tank (UST) case at 2112 Lincoln Avenue, San Jose, Santa Clara County (Site).

The case has the following Identification numbers:

- State Water Board Division of Water Quality Petition No. 0226
- State Water Board UST Cleanup Fund No. 7596
- GeoTracker No. T0608500225
- San Francisco Bay Regional Water Board No. 02-020
- Santa Clara County No. 07S1E29L01f

After careful consideration, I conclude that the petition in this matter fails to raise substantial issues that are appropriate for review by the State Water Board. Accordingly, the State Water Board refuses to review your request for UST case closure. (See Cal. Code Regs., tit. 23, § 2814.7, subdivision (d)(4); see also, *Johnson v. State Water Resources Control Board* (2004) 123 Cal.App.4th 1107; *People v. Barry* (1987) 194 Cal.App.3d 158.)

APPLICABLE LAW

Owners and operators of USTs and other responsible parties may petition the State Water Board for a review of their case if they believe the corrective action plan for their Site has been satisfactorily implemented, but closure has not been granted. (Health & Saf. Code, § 25296.40, subdivision (a)(1). See also Cal. Code Regs., tit 23, § 2814.6.)

Several statutory and regulatory provisions provide the State Water Board, Regional Water Quality Control Boards, and local agencies with broad authority to require responsible parties to clean up a release from a petroleum UST. (Health & Saf. Code, § 25296.10; Wat. Code, § 13304, subdivision (a).) The State Water Board has promulgated regulations specifying corrective action requirements that are applicable to petroleum UST cases. (Cal. Code Regs., tit. 23, §§ 2720-2728.)

The regulations define corrective action as “any activity necessary to investigate and analyze the effects of an unauthorized release; propose a cost-effective plan to adequately protect human health, safety, and the environment and to restore or protect current and potential beneficial uses of water; and implement and evaluate the effectiveness of the activity(ies).” (Cal. Code Regs., tit. 23, § 2720.)

Closure of a UST case is appropriate where the corrective action ensures the protection of human health, safety, and the environment and where the corrective action is consistent with: (1) chapter 6.7 (commencing with section 25280) of Division 20 of the Health and Safety Code and implementing regulations, (2) any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with section 13000) of the California Water Code, (3) all applicable state policies for water quality control, and (4) all applicable water quality control plans.

State Water Board Resolution 2012-0016, *Water Quality Control Policy for Low-Threat Underground Storage Tank Case Closure* (Policy) is a state policy for water quality control and applies to petroleum UST cases that are low-threat. In State Water Board Resolution No. 2012-0016, the State Water Board adopted the Policy. The Policy became effective on August 17, 2012. The Policy establishes consistent statewide case closure criteria for certain low-threat petroleum UST sites. In the absence of unique attributes or Site-specific conditions that demonstrably increase the risk associated with residual petroleum constituents, cases that meet the general and media-specific criteria in the Policy pose a low-threat to human health, safety, and the environment and are appropriate for closure under Health and Safety Code section 25296.10. The Policy provides that if a regulatory agency determines that a case meets the general and media-specific criteria of the Policy, then the regulatory agency shall notify responsible parties and other specified interested persons that the case is eligible for case closure. Unless the regulatory agency revises its determination based on comments received on the proposed case closure, the Policy provides that the agency shall issue a uniform closure letter as specified in Health and Safety Code section 25296.10.

The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) designates existing and potential beneficial uses of groundwater in the Santa Clara Valley groundwater basin as municipal and domestic supply (MUN), agriculture supply (AGR), industrial service supply (IND), and industrial process supply (PROC). (Water Quality Control Plan for the San Francisco Bay Basin, amended June 29, 2013, Table 2-2).

BACKGROUND

- Petitioner’s Site is currently a day care center with nearby land used for residential and commercial purposes.
- The Site is located in the Santa Clara Valley Basin. The water supply for the Site is provided by the San Jose Water Company.

- The nearest supply well is an inactive domestic well located approximately 750 feet north of the Site. The nearest surface water body is located more than 1,000 feet from the Site.
- Site overlies fine-grained soils, consisting predominantly of silty clay to sandy silt at depths ranging from the ground surface to approximately 25 feet below ground surface (bgs). Coarser-grained sediments consisting primarily of silty to sandy gravel are encountered below the average depth of 25 feet bgs.
- The average depth to groundwater is 46 feet bgs. The groundwater flow direction is towards the north.
- The release at this Site was discovered when one of the former USTs was removed from the Site in August 1991. All remaining Site facilities, including the UST systems, were demolished and removed in 1992. The Site property was vacant and undeveloped after demolition of the former gas station in 1992 until 2000 when a day care center was constructed and opened at the Site.
- Remediation activities performed at the Site include soil excavation during the UST removal in 1991, soil excavation during the station demolition in 1992, soil vapor extraction from 2000 to 2005, and operation of an in-situ submerged oxygen curtain mass transfer unit between November 2005 and October 2006.
- Perchloroethylene (PCE) was detected in one shallow soil sample during the 1991 waste oil tank removal. PCE impacted soil was removed after the waste oil tank area was over-excavated in the same event. Subsequently, a soil sample was collected in the same waste oil tank pit during station demolition in 1992 and the result was non-detect for PCE. Groundwater samples from on-Site wells were analyzed for PCE during the December 2012 sampling event and the results were non-detect.

On December 7, 2011, the Petitioner requested UST case closure from Santa Clara County, the regulatory agency that oversees corrective action at the Site. Santa Clara County, after consultation with staff of the Regional Water Board, denied case closure on February 12, 2013. On April 12, 2013, the Petitioner filed a case closure petition requesting a State Water Board review of the case.

On May 7, 2013, Santa Clara County responded to the petition and provided the following reasons for denying UST case closure: (1) The Site was redeveloped as a child day care center. Day care centers are a highly sensitive use given the duration children may be on-site each day, (2) PCE was reported in shallow soil sample following removal of a waste oil tank, and (3) The former location of the waste oil tank and positive PCE soil detection were located directly beneath the floor of a child day care building.

On October 17, 2013, the State Water Board notified the interested parties of the opportunity for public comment regarding the proposed case closure. The Regional Water Board submitted comments on December 13, 2013 and provided the following reasons supporting denial of UST case closure: (1) The release of PCE has not been adequately defined, (2) The effectiveness of the remedial actions to cleanup any remaining PCE contamination in soil gas has not been confirmed, (3) Due to the sensitive site use as a child day care center, additional work should be performed to determine if PCE poses a health risk due to vapor intrusion, and (4) A soil vapor investigation is needed to determine if PCE is present in soil vapor beneath the day care building at levels that pose a vapor intrusion threat.

DISCUSSION

The Petitioner contends that requests for additional PCE soil or soil gas sampling are unwarranted since low, localized PCE, and used-oil impacted soil and soil vapors were removed by the 1991 and 1992 over-excavation activities and during operation of the SVE system. The Petitioner also contends that the Site remained undeveloped for a significant period of time and conservative modeling assuming no soil removal shows that there would be no risk. Additionally, the building design accounts for possible vapor intrusion utilizing a vented sub-floor in the construction.

We recognize that the soil over-excavation activities were conducted and soil and groundwater samples indicated that PCE was not detected. However, due to the limited number of soil samples analyzed for PCE, the source area of PCE that appears to be outside the effective radius of influence of the SVE system, and the insufficient soil vapor data from the source area, we cannot definitely conclude whether a potential health risk exists due to vapor intrusion. To ensure that the child day care center is fully protected from the risk of vapor intrusion, additional corrective actions should be performed.

When directing closure of a UST case, the State Water Board must find that the corrective action performed ensures the protection of human health, safety, and the environment and that it is consistent with chapter 6.7 of Division 20 of the Health and Safety Code and implementing regulations, any waste discharge requirements, other orders issued pursuant to the Porter-Cologne Water Quality Control Act, and all applicable state policies for water quality control.

The requirements for case closure have not been met at this time and, therefore, closure of the UST case is not appropriate. Current Site conditions support a potential threat to human health, safety, and the environment. At this point in time, insufficient data are available to determine that corrective action ensures the protection of human health, safety, and the environment. Case closure is inappropriate at this time.

CONCLUSION

Because the petition fails to raise substantial issues that are appropriate for review by the State Water Board, I decline to have the State Water Board review the Petitioner's request for UST case closure.

If you have any questions about this matter, please contact Kevin Graves, UST Program Manager at (916) 341-5782 or by e-mail at: kevin.graves@waterboards.ca.gov.

Sincerely,


Thomas Howard
Executive Director

cc: See next page

cc: Ms. Theresa Guardino
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[Via email only]

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