
State Water Resources Control Board

MAY 23 2014

Mr. Walter Sprague
Pacific Convenience & Fuels, LLC
7180 Koll Center Parkway, Suite 100
Pleasanton, CA 94566

Dear Mr. Sprague:

PETITION OF PACIFIC CONVENIENCE & FUELS, LLC., FOR REVIEW OF DENIAL OF PETROLEUM UNDERGROUND STORAGE TANK CASE CLOSURE, CIRCLE K NO. 2705760, 34867 ARDENWOOD BOULEVARD, FREMONT, ALAMEDA COUNTY: DISMISSAL

Mr. Walter Sprague of Pacific Convenience & Fuels, LLC (Petitioner) seeks review by the State Water Resources Control Board (State Water Board) of 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 34867 Ardenwood Boulevard, Fremont, Alameda County (Site).

The case has the following Identification numbers:

- State Water Board Division of Water Quality Petition No. 0223
- Regional Water Board No. 01-3615
- GeoTracker No. T0600141337
- Alameda County Water District (ACWD) No. TT0793

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 No. 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code, section 13304 is a state policy for water quality control and applies to UST cases. State Water Board Resolution No. 92-49 directs that water affected by an unauthorized release attain either background water quality or the best water quality that is reasonable if background water quality cannot be restored. (State Water Board Resolution No. 92-49, section III.G.) Any alternative level of water quality less stringent than background must be consistent with the maximum benefit to the people of the state, not unreasonably affect current and anticipated beneficial use of affected water, and not result in water quality less than that prescribed in the water quality control plan for the basin within which the site is located. (*Ibid.*) Resolution No. 92-49 does not require, however, that the requisite level of water quality be met at the time of site closure. Resolution No. 92-49 specifies compliance with cleanup goals and objectives within a reasonable time frame (*Id.* at section III.A.). Therefore, even if the requisite level of water quality has not yet been attained, a site may be closed if the level will be attained within a reasonable period.

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 – Niles Cone (2-9.01) groundwater basin as municipal and domestic supply (MUN), agricultural supply (AGR), industrial service supply (IND), and industrial process supply (PROC) (Basin Plan, July 2013, Chapter II).

BACKGROUND

- Petitioner's Site is currently used for commercial purposes.
- The Site is located in Alameda County. It is located within the service area of a public water system.
- The nearest supply well is located approximately 7,500 feet east-southeast of the Site. The nearest surface water body is approximately 4,000 feet from the Site.
- The near-surface geology at the Site is asphalt underlain by silt and clay to approximately 15 feet below ground surface (bgs) and clayey sand to a maximum explored depth of 23 feet bgs.
- The depth to groundwater is approximately 6 feet bgs. The groundwater flow direction is towards the west.
- The release at the Site was discovered in 2007 during a failed integrity test of a dispenser island and secondary piping. Repairs were made and subsequent testing performed since the release passed inspections. No remediation activities have been performed at the Site.
- Methyl tert-butyl ether (MTBE) was first reported in soil and groundwater in 2007.

On November 29, 2012, the Petitioner requested UST case closure from the ACWD. The ACWD denied case closure on January 24, 2013. On February 22, 2013, the Petitioner submitted a UST case closure petition to the State Water Board.

On May 23, 2013, the Regional Water Board responded to the petition and provided the following reasons for concurring with denial of UST case closure: (1) The MTBE plume must be stable or decreasing in areal extent and that it is necessary to define the contaminant plume to water quality objectives (WQOs); (2) Efforts to identify water supply wells in the Site's vicinity were insufficient; (3) The magnitude of groundwater contamination near and directly downgradient of the secondary source area is unknown; (4) During 2007, a concentration of MTBE greater than 40,000 micrograms per liter ($\mu\text{g/L}$), was reported in grab groundwater sample ATC-2, located near the USTs; and (5) No well has been installed to monitor the maximum contaminant concentrations in the secondary source area.

On October 18, 2013, the State Water Board notified the interested parties of the opportunity for public comment regarding the proposed case closure. Three comment letters were received during the comment period.

The Regional Water Board submitted comments on December 23, 2013 and provided the following reasons for supporting denial of UST case closure: (1) The Site does not meet General Criteria e: (A Conceptual Site Model that assesses the nature, extent; and mobility of the release has been developed) in the Policy; (2) MTBE is not fully defined downgradient to the west and northwest, upgradient to the east or vertically; (3) The Site does not meet General Criteria f: (Secondary source has been removed to the extent practicable) in the Policy; (4) During 1998, there was a release of 600 gallons of gasoline; and (5) No documentation of the release or corrective action related to the cleanup of the 1998 release can be found in the case record.

The ACWD submitted comments on December 30, 2013 and provided the following reasons for denying UST case closure: (1) The Newark Aquifer has never been sampled beneath the Site; (2) Lateral and vertical delineation of the plume is not adequately defined; and (3) No cleanup was ever conducted at the Site.

Antea Group submitted comments on January 3, 2014 and provided the following reasons supporting UST case closure: (1) Other than previously documented sump test failure in 1995 and a product line failure and potential release in 1996, no records indicate that a system failure or potential release occurred between the tank installation in 1995 and 2003; and (2) Lateral and vertical delineation of the MTBE plume is not adequately defined to WQOs, however MTBE concentrations in groundwater are less than 1,000 µg/L; and (3) a Site specific assessment indicates that Site conditions do not merit additional groundwater investigation or remediation.

DISCUSSION

The Petitioner contends: (1) The unauthorized release of MTBE has been stopped; (2) The secondary source has been removed to the extent practicable; (3) The extent of petroleum contamination has been adequately defined; and (4) The remaining contamination does not pose a threat to human health or the environment.

After consideration of the recent comment letters from the Regional Water Board, ACWD, and Antea Group, I have determined that the extent of MTBE contamination in groundwater has not been adequately defined downgradient to the west and northwest, or vertically. Potential secondary source areas require additional investigation and, if necessary, remediation. Plume stability must be demonstrated prior to case closure.

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: [Via e-mail only]

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