California Regional Water Quality Control Board
San Francisco Bay Region

Linda S. Adams
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
http://www. waterboards.ca.gov/sanfranciscobay

Arnold Schwarzenegger
Governor

Date: October 6, 2008
File No. 43-3121 (NMK)

Mr. Cuong Chon Huynh
Pete's Stop
290 Keyes Street
San Jose, CA 95112

Mr. Dung Ha
Ms. Kieu Huynh
2130 Hillstone Drive
San Jose, CA 95138

SUBJECT: Tentative Order Setting Administrative Civil Liability, Pete's Stop, 290 Keyes Street, San Jose, Santa Clara County

Dear Sir/Madam:

Attached is a Tentative Order (TO) setting administrative civil liability and the public notice for the TO for the subject site. The TO would approve the attached Settlement Agreements and order you to pay the liabilities agreed to in the Settlement Agreements in accordance with their terms. As described in the attached public notice, the deadline for public comments on the TO is November 6, 2008.

If you have any questions, please contact Nathan King of my staff at (510) 622-3966, or by email at: nking@waterboards.ca.gov.

Sincerely,

for

Digitally signed by Stephen Hill
Date: 2008.10.07 09:05:14 -07'00'

Dyan C. Whyte
Assistant Executive Officer

Attachments:
Tentative Order
Settlement Agreements
Notice of Intent to Adopt Order Setting Administrative Civil Liability

cc w/attachments: Mailing List

Mailing List

Mr. George Cook
gcook@valleywater.org
Santa Clara Valley Water District

Ms. Nicole Pullman
nicole.pullman@deh.co.scl.ca.us
Santa Clara County, Department of Environmental Health

Mr. Napp Fukuda
Napp.fukuda@sanjoseca.gov
City of San Jose

Mr. Frank Hamedi-Fard
Enviro Soil Tech Consultants
131 Tully Road
San Jose, California 95111

Catherine Johnson
cjohnson@wendel.com
Wendel, Rosen, Black & Dean, LLP

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER
SETTING ADMINISTRATIVE CIVIL LIABILITY IN THE MATTERS OF:

PETE'S STOP, MR. CUONG CHON HUYNH, MR. DUNG HA, & MS. KIEU HUYNH (Administrative Civil Liability Complaint No. R2-2008-0052);

And

MR. CUONG CHON HUYNH (Administrative Civil Liability Complaint No. R2-2008-0068)

This Order is issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint Nos. R2-2008-0052 and R2-2008-0068, both dated August 11, 2008 (the Complaints). The parties to this proceeding are the California Regional Water Quality Control Board, San Francisco Bay Region's (Regional Water Board) Prosecution Team, and Pete's Stop, Mr. Cuong Chon Huynh, Mr. Dung Ha and Ms. Kieu Huynh (the "Dischargers")(collectively hereinafter the "Parties"). Mr. Peter Sialaris, named as a potentially liable party in Complaint No. R2-2008-0052, is hereby dismissed without prejudice from that Complaint.

The Regional Water Board has been presented with proposed settlements of the claims alleged in the Complaints (Attachments 1 and 2, respectively). The proposed settlements represent a mutually agreed-upon resolution of the Prosecution Team's claims through the payment of an administrative civil liability in the amount of $25,000 to the State Water Resources Control Board Waste Discharge Permit Fund Abatement Account under Complaint No. R2-2008-0052, and in the amount of $48,000 to the State Water Resources Control Board Cleanup and Abatement Account under Complaint No. R2-2008-0068.

The Parties and the Regional Water Board's Prosecution Team recommend that the Regional Water Board Executive Officer, pursuant to his delegated authority to issue administrative civil liability orders under Resolution No. R2-2008-0055, issue this Order to effectuate the proposed settlements. Having provided public notice of the proposed settlements and an opportunity for public comment, the Executive Officer finds that:

1. The Dischargers own and/or operate Pete's Stop, located at 290 Keyes Street, San Jose, Santa Clara County (the "Property"). Groundwater beneath the Property is contaminated by gasoline, including benzene and methyl-tert butyl ether (MtBE). The Property is subject to the requirements set forth in Cleanup and Abatement Order No. R2-2005-0023 (the "CAO"), and Waste Discharge Requirements Order No. 01-100 (NPDES No. CAG912002) (the "WDRs"), as specifically alleged in the Complaints.

2. Complaint No. R2-2008-0052 proposes an administrative civil liability of $25,000 for alleged violations of the CAO. Complaint No. R2-2008-0068 proposes a mandatory minimum penalty of $48,000 for violations of the WDRs.

3. In accepting the proposed settlements, the Executive Officer has considered, where applicable, each of the factors prescribed in Water Code Section 13385. The Executive Officer's consideration of these factors is based upon information and comments provided by the Parties and the public. In addition to these factors, the administrative civil liability recovers the costs incurred by the staff of the Regional Water Board in evaluating and preparing the Complaints and related documents.

4. The proposed settlements support the assessment of administrative civil liability in the amount of $25,000, and mandatory minimum penalties in the amount of $48,000 and are in the public interest. This Order and assessments of administrative civil liability and mandatory minimum penalties provide for the full and final resolution of each of the alleged violations set forth in the Complaints.

5. This Order is an action to enforce the laws and regulations administered by the Regional Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

IT IS HEREBY ORDERED that:

1. The Settlement Agreements are approved;

2. The Dischargers shall pay the sums agreed to under the Settlement Agreements in accordance with their terms;

3. Fulfillment of the Dischargers' obligations under the Settlement Agreements constitutes full and final satisfaction of any and all liability for each claim in the Complaints in accordance with the terms of the Settlement Agreements.

Date: _____

_____

Bruce H. Wolfe

Executive Officer

California Regional Water Quality Control Board
San Francisco Bay Region

Linda S. Adams
Secretary for
Environmental Protection

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NOTICE OF INTENT TO ADOPT
ORDER SETTING
ADMINISTRATIVE CIVIL LIABILITY IN THE MATTERS OF:

PETE'S STOP, MR. CUONG CHON HUYNH, MR. DUNG HA, & MS. KIEU HUYNH (Administrative Civil Liability Complaint No. R2-2008-0052);

And

MR. CUONG CHON HUYNH (Administrative Civil Liability Complaint No. R2-2008-0068)

The San Francisco Bay Regional Water Quality Control Board (Water Board) Executive Officer has been presented with proposed settlements of the claims alleged in Administrative Civil Liability Complaint Nos. R2-2008-0052 and R2-2008-0068, both dated August 11, 2008 (the Complaints). The proposed settlements represent a mutually agreed-upon resolution of the Water Board's Prosecution Team claims through the payment of an administrative civil liability in the amount of $25,000 to the State Water Resources Control Board Waste Discharge Permit Fund Abatement Account under Complaint No. R2-2008-0052, and in the amount of $48,000 to the State Water Resources Control Board Cleanup and Abatement Account under Complaint No. R2-2008-0068. A Tentative Order has been prepared which will effectuate the proposed settlements. The Executive Officer intends to adopt the Tentative Order setting Administrative Civil Liability if no significant comments are received by the deadline stated below. If significant comments are received, a hearing for the Water Board to consider this matter may be publicly noticed.

Written Comment Deadline and Availability of Documents

The deadline for comment is **5 p.m. on November 6, 2008**. Comments should be sent to the attention of Bruce Wolfe and Dyan Whyte. Persons wishing to file written comments on or objections to the Tentative Order must do so no later than this deadline.

The Complaints, Settlement Agreements, Tentative Order, and related documents are on file, and may be inspected or copied at the Water Board's offices during weekdays between 8:00 a.m. and 5:00 p.m. The Complaints, Settlement Agreements, and Tentative Order are also available on the Regional Water Board's website at www.waterboards.ca.gov/sanfranciscobay.

Questions concerning this matter may be addressed to prosecutorial staff Lourdes Gonzales at 510-622-2365 or lgonzales@waterboards.ca.gov. Please also refer to the website given above for future developments and updates.