

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL ORDER NO. R5-2005-0104

ADMINISTRATIVE CIVIL LIABILITY ORDER
IN THE MATTER OF
MR. ABDUL GHAFOOR AND MR. RAJBIR SARKARIA
FORMER GAS FOR LESS
CONTRA COSTA COUNTY

This order for Administrative Civil Liability (hereafter Order) is issued to Mr. Abdul Ghafoor (owner) and Mr. Rajbir Sarkaria (operator) of the Former Gas for Less, (hereafter known as "Dischargers") based on a finding of failure to submit technical reports pursuant to California Water Code (CWC) Section 13267, and based on provisions of CWC Section 13267(b)(1) and Sections 13268(a) and (b), which authorize the imposition of an Administrative Civil Liability.

The California Regional Water Quality Control Board, Central Valley Region, (Regional Board) finds, with respect to the Dischargers' acts, or failure to act, the following:

1. The Dischargers owned and operated a gas station formerly known as Gas For Less (currently known as U.S. Gasoline) at 924 West 10th Street in Antioch, Contra Costa County. On 8 October 2004 Regional Board staff conducted a title search at the Contra Costa County Records Office on the property located at 924 10th Street in Antioch. Based on the most recent deed information, Abdul Ghafoor has owned this property since 31 July 1995. This property has historically been used as a gas station. Rajbir Sarkaria was the operator at the time the gasoline tanks were removed and the release discovered.
2. Three underground storage tanks were removed from the above property on 29 March 1999 revealing holes in the tank walls. Sidewall soil samples contained high levels of total petroleum gasoline hydrocarbons, benzene, toluene, ethylbenzene and xylenes. Tank pit groundwater samples contained up-to 272,000 micrograms/liter ($\mu\text{g/l}$) MtBE. A total of 17 soil borings were drilled (B-1 through B-17) on December 14 and 15, 2000, within and around the excavated area. Grab groundwater samples were collected from the borings. The groundwater samples contained up to: 430,000 $\mu\text{g/l}$ gasoline, 99,000 $\mu\text{g/l}$ benzene and 16,000 $\mu\text{g/l}$ MtBE.
3. In 2000, Regional Board staff worked with UST Clean Up Fund staff to ensure Mr. Ghafoor's reimbursement eligibility for up to \$1.5 million for site investigation and cleanup costs incurred.
4. The Dischargers' consultant, Environet, submitted a 26 February 2001 work plan to install permanent monitoring wells and additional soil borings to complete the site investigation. On 3 April 2001, the Regional Board staff concurred in part and requested (1) an addendum to the work plan be submitted by 20 April 2001 for the relocation of proposed monitoring wells, investigation of the deeper water bearing zone, and installation of 4-inch monitoring wells, (2) the installation of the on-site monitoring wells by 20 May 2001, and (3) the initiation of interim remediation by 20 June 2001 and the installation of off-site wells by 20 July 2001. No additional fieldwork has been conducted since the December 2000 borings were installed.

5. On 22 March 2002, Environet submitted the requested addendum that included a site status report and a revised monitoring well location work plan. Regional Board staff reviewed the addendum and in a 28 June 2002 letter approved the proposed work and requested the results be submitted in a report by 20 September 2002. The report was not submitted. On 3 January 2003, the Regional Board staff made a second request in writing for the technical report with a due date of 11 February 2003. To date the proposed work has not been completed and the requested report not submitted.

VIOLATIONS

6. The Regional Board's Executive Officer issued an Order on 12 September 2003, under California Water Code Section 13267, requiring the completion of the site investigation and the submittal of the results in a report due by 26 November 2003 and submittal of regular Quarterly Monitoring Reports (QMR). The first QMR was due by 30 January 2004. The Dischargers did not comply with either requirement. The Regional Board's UST Program manager issued a Notice of Violation and requested submittal of the past due reports by 29 April 2004. As of 1 July 2005, the Dischargers have neither demonstrated that an investigation has been initiated nor submitted the technical reports. These reports are necessary to determine the extent and migration of groundwater pollution beneath the site.
7. On 28 September 2004 Regional Board staff spoke with Mr. Ghafoor and requested he meet at the Regional Board office with staff to discuss the status of this site by 1 October 2004. Mr. Ghafoor was advised that failure to comply with the California Water Code Section 13267 Order could lead to possible civil liabilities. Mr. Ghafoor neither met with, nor contacted staff to reschedule the meeting.
8. In violation of the California Water Code 13267 Order, the Dischargers have failed to submit the following reports: (a) the site investigation report including the results of the installation of numerous soil borings and monitoring wells and recommendations for interim remediation and (b) Quarterly Monitoring Reports. The California Code of Regulations, Title 23, Division 3, Chapter 16, Underground Tank Regulations Section 2652 (d) reads, in part, as follows: "...the owner or operator shall submit reports to the local agency or Regional Water Quality Board, whichever agency is overseeing the cleanup, every three months or more frequently as specified by the agency...." These reports are necessary to ensure that the groundwater pollution is quantified and plume migration is monitored and remediated.
9. On 31 May 2005, the Executive Officer issued a \$50,000 Administrative Civil Liability (ACL) Complaint No. R5-2005-0514 to the Dischargers (Mr. Abdul Ghafoor and Mr. Rajbir Sarkaria) for the violations, including the failure to submit the site investigation report and the quarterly monitoring reports.

10. ACL Complaint No. R5-2005-0514 was not paid or settled.
11. As of the date of this Order, the Dischargers have failed to submit the site investigation report or the quarterly monitoring reports.

REGULATORY CONSIDERATIONS

12. By the acts and omissions cited above, the Dischargers have violated the Executive Officer's California Water Code Section 13267 Order. CWC Section 13267 (b)(1) reads, in part, as follows: "...the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters within its region, shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires...."
13. CWC Section 13268 (a) states: "Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."
14. CWC Section 13268(b)(1) states: "Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."
15. CWC Section 13268(b)(1) authorizes Administrative Civil Liability not exceeding one thousand dollars (\$1,000) for each day of failure to submit technical reports as required by subdivision (b) of Section 13267. As of 4 August 2005, the Dischargers have failed to submit the following:
 - a. The site investigation technical report describing the installation of numerous soil borings and monitoring wells and proposing recommendations for interim remediation (due on 26 November 2003);
 - b. Quarterly Monitoring Reports (due on 30 January, 30 April, 30 July and 30 October 2004 and 30 January and 30 April 2005).
16. Based on the 12 September 2003 CWC 13267 Order, as of 4 August 2005:

The technical report describing the site investigation results is 617 days late; the first quarterly monitoring report, due 30 January 2004, is 552 days late. The second quarterly monitoring report, due 30 April 2004, is 461 days late. The third quarterly monitoring report, due 30 July 2004, is 370 days late. The fourth quarterly monitoring report, due 30 October 2004, is 278 days

late. The fifth quarterly monitoring report, due 30 January 2005, is 186 days late. The sixth quarterly monitoring report, due 30 April 2005, is 96 days late. The total days of violation are 2560.

17. The maximum liability for the nonsubmittal of these technical reports is two million five hundred and sixty thousand dollars (\$2,560,000), based upon a total number of 2,560 days late: 617 days late for the technical report and 1,943 days of violation for the quarterly reports. No minimum liability is required to be imposed under Section 13268(b)(1).
18. CWC Section 13327 states: "In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."
19. The Regional Board has determined the following with respect to the factors in CWC Section 13327 and the 13267 violation:

The nature of the violation is the failure to submit seven technical reports (a site investigation report and six quarterly monitoring reports) in violation of a 13267 order. The Dischargers failed to implement their work plan, submit the site investigation results report and submit the subsequent quarterly monitoring reports

The circumstances are such that the Dischargers were aware of the due dates for submission of the seven reports, however, they failed to complete the site investigation and submit the reports.

The extent of the violation is that the Dischargers were required, pursuant to CWC Section 13267, to submit those seven technical reports described above. These reports have not been submitted to date.

The gravity of the violation is that the Dischargers failure to complete the site investigation and submit the reports has prevented Regional Board staff from assessing the threat that the hydrocarbon release and the waste in soils pose to the waters of the State of California.

With respect to the violator, it has not been demonstrated that there is an inability to pay or to continue in business. The Dischargers were notified of the opportunity to provide such information when the ACL Complaint was issued and have not submitted any information to date.

With respect to voluntary cleanup efforts, this ACL Order addresses failure to submit technical reports, and, therefore, the Dischargers have voluntarily chosen not to do the work.

With respect to degree of culpability, the Dischargers had, exclusive control of the gasoline station operations. The Dischargers were aware of the 13267 Order requirements for submitting the site investigation report and subsequent quarterly monitoring reports and chose not to comply. The Dischargers are fully culpable for the violations.

By failing to submit these technical reports the Dischargers realized an economic benefit by avoiding the expenditure of funds necessary to fully assess the impacts on water quality from this unauthorized discharge of waste. The Cleanup Fund would then reimburse all legitimate costs. The Dischargers must still submit the technical reports and are delaying the site investigation, so the economic benefit is the interest it has saved on any loans. This is estimated to be no more than \$5,000.

Staff expended approximately 120 hours or \$9,600 in staff costs, in generation of the ACL Complaint and preparation of the agenda material for the Regional Board presentation.

20. A \$50,000 Administrative Civil Liability is appropriate based upon the determinations in Findings 15 through 18 and a review of the factors in Finding 19 and the Staff Report, which is incorporated herein by reference.
21. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.
22. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with Section 2050 through 2068, Title 23, California Code of regulations. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions are available at http://www.waterboards.ca.gov/wqpetition_instr.html and will also be provided upon request.

IT IS HEREBY ORDERED that the Regional Water Quality Control Board, Central Valley Region, imposes upon Mr. Abdul Ghafoor and Mr. Rajbir Sarkaria administrative civil liability in the amount of \$50,000 in accordance with California Water Code Section 13268 and Section 13323. Payment shall be made within 30 days of the date of this Order, and shall be in the form of a certified check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*. The check shall have written upon it the number of this Order.

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- 6 -

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 5 August 2005.

THOMAS R. PINKOS, Executive Officer