

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2007-0726

FOR
THE MILDRED R. SMITH TRUST
THE EDDIE DUANE SMITH TRUST
AND
MIGUEL P. GONZALEZ
CONCERNING
MADERA TRANSPORTATION
305 NORTH 'E' STREET, MADERA
MADERA COUNTY

This Order is issued to the Mildred R. Smith Trust, the Eddie Duane Smith Trust, and Miguel P. Gonzalez (hereafter collectively referred to as Dischargers) based on provisions of California Water Code Section 13304, which authorizes the California Regional Water Quality Control Board, Central Valley Region (hereafter Regional Water Board or Regional Board) to issue a Cleanup and Abatement Order (Order), and Water Code Section 13267, which authorizes the Regional Water Board to require preparation and submittal of technical and monitoring reports.

The Executive Officer finds, with respect to the Dischargers' acts or failures to act, the following:

PROPERTY OWNERSHIP AND OPERATIONS

1. The Mildred R. Smith Trust (Declaration of Trust dated 1 June 1993) was owner of the property at 305 'E' Street, assessor's parcel number 007-075-008 (hereafter Site), when one 1,000-gallon gasoline underground storage tank (UST) was removed from the Site during April 1996. During the UST removal gasoline constituents were found in soil beneath the UST. As owner of the property when the release occurred, the Mildred R. Smith Trust is a responsible party subject to this Order.
2. Eddie D. Smith, as Successor Trustee of the Mildred R. Smith Trust, transferred Site ownership to the Eddie Duane Smith Trust (Eddie Duane Smith Trust dated 17 November 1994) on 4 June 1999. As owner of the Site subsequent to a release that has not been investigated or cleaned up, the Eddie Duane Smith Trust is a responsible party subject to this Order.
3. Ownership of the Site was transferred to Miguel P. Gonzalez on 27 December 1999. As current owner of the Site which had a release that has not been investigated and cleaned up, Mr. Miguel P. Gonzalez is a responsible party subject to this Order.

BACKGROUND

4. Total petroleum hydrocarbons as gasoline (TPHg), toluene, ethylbenzene, and xylenes were detected as high as 5,100 milligrams per kilogram (mg/kg), 40 mg/kg, 63 mg/kg, and

660 mg/kg, respectively, in soil samples collected at depths of 14 to 18 feet during the UST removals.

5. The Madera County Environmental Health Department (MCEHD) by letter dated 15 May 1996 notified Mildred Smith to assess the extent of the release. The requested work was not performed and on 24 March 1997 the MCEHD referred the Site to the Regional Water Board for regulatory oversight.
6. Regional Water Board staff by letter dated 7 June 1997 notified Mildred R. Smith to submit a workplan to assess the extent of the release. A workplan to drill a single boring was submitted during June 1997. Regional Board staff letter dated 20 November 1997 approved the workplan. The work proposed in the workplan was never performed
7. In other similarly situated cases, gasoline vapors have accumulated in underground utilities to concentrations above the lower explosive point, and have affected indoor air quality of nearby structures. Residences are within 50 feet of the release.
8. Depth to groundwater in the area is expected to be in excess of 100 feet. Groundwater is the sole municipal supply for the City of Madera. The gasoline released at the Site threatens to affect groundwater quality.

AUTHORITY – LEGAL REQUIREMENTS

9. Section 13304(a) of the California Water Code provides that:

Any person who has discharged or discharges waste into waters of the state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including but not limited to, overseeing cleanup and abatement efforts. A cleanup or abatement order issued by the State Board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the regional board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

10. Section 13304(f) of the California Water Code provides that:

Replacement water provided pursuant to subdivision (a) shall meet all applicable federal, state and local drinking water standards and shall have comparable quality to that pumped by the public water system or private well owner prior to the discharge of waste

11. Section 13267(b)(1) of the California Water Code provides that:

In conducting an investigation specified in subdivision (a), 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. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

12. Section 13304(c)(1) of the California Water Code provides that:

...the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions...

13. The State Water Resources Control Board (hereafter State Water Board) has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*. This Policy sets forth policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. Resolution 92-49 and the Regional Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (hereafter Basin Plan) establish the cleanup levels to be achieved. Resolution 92-49 requires waste to be cleaned up to background, or if that is not feasible, to an alternative cleanup level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, California Code of Regulations (CCR), Section 2550.4. Any alternative cleanup level to background must (a) be consistent with the maximum benefit to the people of the state; (b) not unreasonably affect present and anticipated beneficial use of such water; and (c) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigation proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written workplans for each element and phase, and the written reports that describe the results of each phase, of the investigation and cleanup.

14. Chapter IV of the Basin Plan contains a section titled *Policy for Investigation and Cleanup of Contaminated Sites*, which describes the Regional Water Board's policy for managing contaminated sites. This policy is based on Water Code Sections 13000 and 13304; the Title 27, CCR, Division 2, Subdivision 1, regulations; and State Water Board Resolution Nos. 68-16 and 92-49. The policy includes site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the bases for establishment of soil and groundwater cleanup levels.

15. The State Water Board's *Water Quality Enforcement Policy* states, in part, that spills that result in adverse impact to beneficial uses of groundwater or violate water quality objectives are priority violations. The policy states that, if any violation continues, the enforcement response should be quickly escalated to increasingly more formal and serious actions until compliance is achieved.
16. The Basin Plan designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, sets forth prohibitions, and establishes implementation policies to implement WQOs. The designated beneficial uses of the groundwater beneath the Site are municipal and domestic supply, industrial supply, and agricultural supply.
17. Title 23, CCR, Division 3, Chapter 30, Articles 1 and 2, sections 3890 through 3895, require that analytical data be submitted electronically via the internet using electronically deliverable formats (EDF) designated by the State Water Board that are both non-proprietary and available as public domain. All EDF data must be submitted over the Internet to the State Water Board Geographic Environmental Information Management System database (Geotracker). In addition, section 3895(b) allows the Regional Water Board to specify submittal in alternative forms provided the benefit or need for it bears a reasonable relationship to the burden of producing it.
18. Section 13350 of the California Water Code states, in part, that any person who violates a cleanup and abatement order may be liable civilly in accordance with subdivision (d) or (e) thereof. Section 13268 of the California Water Code states, in part, that any person failing or refusing to furnish a technical or monitoring report, or falsifying any information provided therein, may be liable civilly in accordance with subdivision (b) thereof. The Regional Water Board may impose civil liability administratively in accordance with California Water Code Section 13323, et seq.

DISCHARGER LIABILITY

19. Sampling conducted by the Dischargers has identified constituents not present in naturally occurring background soil that have polluted or threaten to pollute the groundwater due to the discharge resulting from an unauthorized release of gasoline. All of these constituents are wastes as defined in California Water Code Section 13050(d). Investigation, cleanup, and/or abatement of these wastes must be addressed to the satisfaction of the Regional Water Board pursuant to Resolution 92-49.
20. The Basin Plan contains numerical WQOs that apply to surface water and groundwater, including, for example, drinking water maximum contaminant levels (MCLs) promulgated in Title 22, CCR, Division 4, Chapter 15 (hereafter Title 22) that the Basin Plan applies directly to waters designated as a municipal and domestic water supply. Waste constituents released by the discharge for which there is a numerical WQO are as follows:

Constituent	Limits*	WQO	Reference
Toluene	150	Chemical	Primary MCL, Title 22
Ethylbenzene	300	Chemical	Primary MCL, Title 22
Xylene	1750	Chemical	Primary MCL, Title 22

* In micrograms per liter (µg/L)

21. The concentrations detected in soil (Finding 4) of the waste constituents listed in Finding 20, above, are of sufficient magnitude that they may have already migrated to groundwater, or likely will migrate to groundwater in the future, in concentrations that threaten to exceed the numerical WQOs for the constituents and affect water supply wells. As the Dischargers have discharged or deposited waste where it may cause the exceedence of numerical WQOs and cause or threaten to cause an adverse effect on water supply wells, they threaten to create a condition of pollution, as defined in California Water Code Section 13050(I)(1).
22. The Basin Plan contains narrative WQOs that apply to both surface and groundwater for tastes and odors, toxicity, and chemical constituents. The taste and odor WQO requires, in part, that, groundwater and surface water not contain substances in concentrations that cause nuisance, adversely affect beneficial uses, or impart undesirable tastes and odors to municipal and domestic water supplies. The toxicity WQO requires, in part, that groundwater be maintained free of toxic substances in concentrations that produce detrimental physiological responses in humans. Chapter IV of the Basin Plan contains the *Policy for Application of Water Quality Objectives*, (WQO Policy) which provides that “[w]here compliance with narrative objectives is required (i.e., where the objectives are applicable to protect specified beneficial uses), the Regional Water Board will, on a case-by-case basis, adopt numerical limitations in orders which will implement the narrative objectives.” Compliance with narrative WQO requires consideration of site-specific information, relevant numerical criteria, and guidelines developed or published by other agencies and organizations. Such numerical criteria and guidelines relevant to the waste constituents described in Finding 4 include the following:

Constituent	Limits*	WQO	Reference
TPH as Gasoline	5	Taste and Odor	(1) McKee & Wolf, <i>Water Quality Criteria</i> , SWRCB, p. 230 (2) USEPA Drinking Water Health Advisory
Toluene	42	Taste and Odor	Federal Register, Vol. 54, No. 97
Ethylbenzene	29	Taste and Odor	Federal Register, Vol. 54, No. 97
Xylene	17	Taste and Odor	Federal Register, Vol. 54, No. 97

* in micrograms per liter (µg/L)

23. Consistent with the WQO Policy, the limits for the waste constituents listed in Finding 22, above, are relevant and appropriate to use to evaluate compliance with the narrative

WQOs for taste and odor, and for toxicity. The concentrations of waste constituents in soil (Finding 4) are of sufficient magnitude that they may have already migrated to groundwater, or likely will migrate to groundwater in the future, and cause it to significantly exceed the groundwater limits set forth in Finding 22. Therefore, the Dischargers have created a situation that threatens to cause a violation of the narrative taste and odor and toxicity WQOs and threatens to create a condition of pollution.

24. The release threatens indoor air quality of nearby structures and threatens to cause accumulation of gasoline vapors to explosive levels in underground utilities and structures in the neighborhood. Thus, the Dischargers threaten to create a condition of nuisance, as defined in California Water Code Section 13050(m).
25. This Order requires the Dischargers to cleanup the waste consistent with State Water Board Resolution 92-49 and the Basin Plan. This Order requires the Dischargers to submit a feasibility study report that evaluates the feasibility of cleanup to background or to other levels consistent with Resolution 92-49 if the Dischargers demonstrate that cleanup to background is not reasonable. The Regional Water Board will consider information with respect to compliance with numeric and narrative WQOs for the waste constituents, the impacts to the beneficial uses of waters of the State, and all material and relevant information submitted by the Dischargers under this Order to establish numerical cleanup levels for waste constituents consistent with State Water Board Resolution 92-49 and will revise this Order to include appropriate cleanup levels.
26. As described in Findings 1, 2 and 3, Dischargers are subject to an order pursuant to Water Code Section 13304 because the Dischargers have caused or permitted waste to be discharged or deposited where it could be discharged to waters of the State and have created or threaten to create a condition of pollution and nuisance. The issuance of a cleanup or abatement order pursuant to Water Code Section 13304 is appropriate and consistent with policies of the Regional Water Board.
27. This Order requires investigation and cleanup of the Site in compliance with the Water Code, the applicable Basin Plan, Resolution 92-49, and other applicable plans, policies, and regulations.
28. As described in Findings 1, 2 and 3, Dischargers are subject to an order pursuant to Water Code Section 13267 to submit technical reports because existing data and information about the Site indicate that waste has been discharged, is discharging, or is suspected of discharging at the property, which is or was owned and/or operated by the Dischargers named in this Order. Directives in this Order that require workplans, results of surveys and studies, and variously named reports refer to such written technical reports. Directives that require results from sampling of soil or groundwater, or results of regular sampling of any element or phase of investigation and cleanup, refer to such monitoring reports. The technical and monitoring reports required by this Order are necessary to assure compliance with Section 13304 of the California Water Code, including to adequately investigate and cleanup the Site to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.

29. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), pursuant to Title 14 CCR Section 15321(a)(2). The implementation of this Order is also an action to assure the restoration of the environment and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), in accordance with Title 14 CCR, Sections 15308 and 15330.
30. Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Title 23 CCR Sections 2050-2068. The regulations may be provided upon request and are available at www.swrcb.ca.gov. The State Water Board must receive the petition within 30 days of the date of this Order.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13304 and Section 13267, the Mildred R. Smith Trust, the Eddie Duane Smith Trust, and Miguel P. Gonzalez, shall jointly and severally:

1. Investigate the discharges of waste, clean up the waste, and abate the effects of the waste forthwith at 305 'E' Street, Madera, in conformance with State Water Board Resolution No. 92-49 *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* and with the Regional Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*. "Forthwith" means as soon as is reasonably possible. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below. All work and reports shall follow the *Appendix A - Reports, Tri-Regional Recommendations for Preliminary Investigation and Evaluation of Underground Storage Tank Sites* (Appendix A - Reports) which is attached (Attachment 1) and made a part of this Order, and under permits required by State, County, and/or Local agencies.

WATER SUPPLY WELL SURVEY

2. By **26 November 2007**, submit the results of a water supply well survey within one-quarter mile of the site and a sampling plan and time schedule subject to Executive Officer approval to sample any water supply well(s) threatened to be polluted by waste originating from the site. The sampling plan shall include specific actions and a commitment by the Discharger to implement the sampling plan, including obtaining any necessary agreements.
3. Within **15 days** of staff concurrence of the water supply well sampling plan and time schedule, implement the sampling plan. Submit the sampling results in accordance with the time schedule as approved or directed by the Executive Officer, which shall become part of this Order.
4. Within **30 days** of written notification that an alternate water supply is necessary for affected persons, submit a workplan and time schedule subject to Executive Officer

approval to provide an in-kind replacement for the specified water supply. The Discharger shall implement the workplan in accordance with the time schedule as approved or directed by the Executive Officer, which shall become part of this Order.

SITE ASSESSMENT

5. **By 26 November 2007**, submit a *Site Assessment Workplan* with the intent to collect a sufficient number of soil and groundwater samples to define the lateral and vertical extent of waste constituents in soil and groundwater and to better define their origin. The workplan submitted in June 1997 partially fulfills this requirement, but the scope of work in the June 1997 workplan is insufficient to fully complete this task. All workplans and reports submitted as part of the investigation and cleanup of this site shall contain the information required in Attachment 1, which is made part of this Order. The *Site Assessment Workplan* shall contain a schedule for completing the work.
6. **By 26 March 2008**, submit a *Site Assessment Report* (SAR) acceptable to the Executive Officer that summarizes the findings of the soil and groundwater investigation conducted in accordance with the approved workplan. The SAR shall contain the information in Attachment 1 and include recommendations and a workplan acceptable to the Executive Officer for additional investigation, if further investigation is needed to define the affects of the release. The workplan for additional investigation shall contain information in Attachment 1, including a sufficient number of sampling points and wells to determine the vertical and lateral extent of pollutants. If no additional investigation is needed, subject to Executive Officer approval, this shall be the *Final Site Assessment Report* (FSAR).
7. Within **30 days** of staff concurrence with the workplan for additional site assessment, implement the workplan. Submit a FSAR that contains the information required in Attachment 1, in accordance with the time schedule, as approved or directed by the Executive Officer, which shall become part of this Order.

PUBLIC PARTICIPATION

8. As notified in writing by the Executive Officer after staff review of the SAR or FSAR, so as to facilitate the Regional Water Board's duty to notify landowners of property where constituents from a UST release are present and to provide opportunity for public comment on the site cleanup process, conduct an Off-Site Property Owner Survey (Survey). Conduct the Survey by obtaining the property owner names and mailing addresses, the mailing addresses of all business and residences on the properties, and assessors' parcel numbers for all properties overlying soil and groundwater where constituents from the UST release are present and all properties adjacent to parcels where constituents from the release are present. Submit the data in a table or spreadsheet. Include assessor's parcel maps for the properties and a map depicting the extent of impacted groundwater by the date specified in writing by the Executive Officer.

FEASIBILITY STUDY

9. If notified in writing by the Executive Officer that this task is necessary, submit a Feasibility Study (FS) by the date specified in writing by the Executive Officer that provides a summary of remedial alternatives evaluated to address applicable cleanup levels for the affected or threatened human health and/or waters of the State. The Feasibility Study shall propose at least two remedial technologies that have a substantial likelihood to achieve cleanup of all impacted soils and groundwater and shall include a schedule for achieving cleanup. The remedial technologies must be evaluated with respect to their ability to be implemented, cost, and effectiveness. The Feasibility Study shall include the rationale for selecting the preferred remedial alternative. The Dischargers shall attempt to clean up each constituent to background concentrations, or to the lowest level that is technically and economically achievable and which complies with all applicable WQOs of the Basin Plan.

GROUNDWATER MONITORING

10. Conduct monitoring of groundwater in accordance with approved workplans and with any Monitoring and Reporting Program (MRP) for the site issued by the Executive Officer, as well as any amendments to the MRP by the Executive Officer, all of which shall become part of this Order.

GENERAL REQUIREMENTS

11. As required by the California Business and Professions Code Sections 6735, 7835, and 7835.1, have appropriate reports prepared by, or under the supervision of, a registered professional engineer or geologist and signed by the registered professional. All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or an authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Dischargers shall also state if they agree with any recommendations/proposals and whether they approved implementation of said proposals.
12. Notify staff at least three working days prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection.
13. Obtain all local and state permits and access agreements necessary to fulfill the requirements of this Order prior to beginning the work.
14. Continue any required remediation or monitoring activities until such time as the Executive Officer determines that sufficient cleanup has been accomplished to fully comply with this Order and this Order has been either amended or rescinded in writing.
15. If a monitoring and reporting program is issued by the Executive Officer, maintain a sufficient number of monitoring wells to completely define and encompass the waste plume(s). If groundwater monitoring indicates the waste in groundwater has migrated beyond laterally or vertically defined limits during the quarter, then the quarterly monitoring

reports must include a workplan and schedule, with work to begin within thirty days of staff approval, to install additional monitoring wells to define the new plume limits.

16. Submit electronic copies of all reports and analytical results over the Internet to the State Water Board Geographic Environmental Information Management System database (GeoTracker) at <http://geotracker.swrcb.ca.gov>. Electronic submittals shall comply with GeoTracker standards and procedures as specified on the State Board's web site.

If the Dischargers for reasons beyond their control are unable to perform any activity or submit any document in compliance with the schedule set forth herein, or as subsequently approved by the Executive Officer to become part of this Order, the Dischargers may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as the situation is recognized and no later than the compliance date. Such an extension is at the discretion of the Executive Officer and, unless authorized in writing within ten working days of the extension request, or within five working days after the compliance date, whichever comes first, shall be considered denied and if the submittal for which the extension is requested is not submitted by the compliance date, shall be considered a violation of this Order.

All work and directives referenced in this Order are required regardless of whether or not the UST Cleanup Fund approves the work for reimbursement.

If, in the opinion of the Executive Officer, the Dischargers fail to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability.

This Order is effective upon the date of signature.

Original Signed By

PAMELA C. CREEDON, Executive Officer

10-19-2007

(Date)

Attachment: *Appendix A*