

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TECHNICAL REPORTING ORDER R5-2009-0843
CALIFORNIA WATER CODE SECTION 13267
FOR
RICHARD FLOWERS & UNION PACIFIC RAILROAD,
14010 MUSSO ROAD, AUBURN, PLACER COUNTY

This Order is issued to Richard Flowers and Union Pacific Railroad (hereafter Dischargers) pursuant to California Water Code (CWC) section 13267, which authorizes the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (hereafter Central Valley Water Board) to compel the submission of technical reports.

The Executive Officer finds:

INTRODUCTION

1. Richard Flowers owned and operated underground storage tanks (USTs) at 14010 Musso Road in Auburn, Placer County (hereafter Site) at the time an unauthorized release from the Site's UST system was discovered.
2. Union Pacific Railroad owned the property at the time an unauthorized release from the Site's UST system was discovered, and is the current property owner.
3. Between November and December 1989, a 10,000-gallon diesel fuel UST and a 4,000-gallon diesel fuel UST were excavated and removed from the Site. A total of five discrete soil samples were collected from the base of the open cavity, and analytical results showed that an unauthorized release had occurred at the Site.
4. To evaluate and monitor both the nature and extent of the petroleum release, and its potential effect on human health and waters of the state, multiple soil, soil vapor, and groundwater samples were collected between November 1989 and November 2008. Collection of these samples required the drilling and installation of vapor sampling points and groundwater monitoring wells.
5. Initial soil and groundwater samples contained elevated concentrations of petroleum constituents, but concentrations have decreased with time and only minor concentrations remain. Given Site conditions and the minor concentrations that remain, the residual petroleum constituents are expected to attenuate without migrating beyond the limits of the Site and/or the public right-of-way. Therefore, the residual petroleum constituents are unlikely to pose a threat to human health or further affect waters of the state as they continue to degrade beneath the Site.
6. Proper abandonment of all Site monitoring wells, remedial wells, and other subsurface conduits that are no longer needed is necessary to prevent them from acting as preferential pathways. These pathways could exacerbate the deleterious effects of an otherwise minor surface spill.

7. In a 17 November 2008 letter, Central Valley Water Board staff requested a report documenting the proper abandonment of all groundwater monitoring and remedial wells and confirming that no soil and/or groundwater waste generated as a result of the investigation, cleanup, and monitoring at the Site remains onsite. The requested report was never submitted.

LEGAL PROVISIONS

8. CWC section 13267 states, in part:

(b)(1) In conducting an investigation . . . , 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 . . . 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.

The reports required herein are necessary for the reasons described in this Order, to assure protection of waters of the state, and to protect public health and the environment.

9. CWC section 13268 states, in part:

(a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267 . . . or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) 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.

(c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly fails or refuses to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or who knowingly falsifies any information provided in those technical or monitoring program reports, is guilty of a misdemeanor, may be civilly liable in accordance with subdivision (d) . . .

(d)(1) 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 (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

Failure to submit the required reports to the Central Valley Water Board according to the schedule detailed herein may result in enforcement action being taken against the Dischargers, which may include the imposition of administrative civil liability pursuant to CWC section 13268. Since petroleum constituents are considered hazardous waste under Health and Safety Code section 25117, the Central Valley Water Board may impose administrative civil liability of up to \$5,000 per day if the Dischargers fail to submit the required work plan by the date set forth below.

10. The California Code of Regulations, title 23, section 2720, defines a responsible party as:

... any person who owns or operates an underground storage tank used for the storage of a hazardous substance... any person who owned or operated the underground storage tank immediately before the discontinuation of its use... any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred, and any person who had or has control over a underground storage tank at the time of or following an unauthorized release of a hazardous substance.

A responsible party has a legal obligation to investigate and remediate contamination. As described in Findings Nos. 1 and 2, the Dischargers are subject to this Order because they own the property and/or operated the UST system where an unauthorized release of a hazardous substance from a UST has occurred. Therefore, the Dischargers are a "person who has discharged ... waste" within the meaning of CWC section 13267.

11. Compliance with Central Valley Water Board directives is mandatory in order to be eligible for reimbursement of corrective action costs from the State's Underground Storage Tank Cleanup Fund according to California Code of Regulations, title 23, section 2812.2. All work shall be performed according to *Appendix A – Report, Tri-Regional Board Staff Recommendations for Preliminary Investigation and Evaluation of Underground Storage Tank Sites* which is attached and hereby made part of this Order and permits required by State, County, and Local agencies. All reports must be submitted to the Central Valley Water Board.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to CWC section 13267, the Dischargers shall submit a work plan by **30 September 2009** to abandon all groundwater monitoring and remedial wells and other subsurface conduits associated with the Site. The work plan shall include a time schedule for completing the proposed work. If residual waste remains onsite as a result of the investigation, cleanup, and monitoring of the Site (drill tailings, monitoring well purge water, etc), the work plan shall also include a proposal for the proper disposal of these wastes.

The Placer County Environmental Health Department maintains jurisdictional authority regarding well abandonment; therefore, the Dischargers shall obtain all applicable permits and clearances required to destroy the Site's wells.

As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, all reports shall be prepared by a registered professional or their subordinate and signed by the registered professional.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), the petition must be received by the State Water Board by 5:00 p.m. on the next business day.

Copies of the law and regulations applicable to filing petitions may be found on the Internet at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality
or they will be provided upon request.

This Order is effective upon the date of signature.

Ordered by:

Original signed by

PAMELA C. CREEDON
Executive Officer

8/13/2009

(Date)