



California Regional Water Quality Control Board Central Valley Region

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29 April 2008

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Ken Willis
PO Box 1128
Chester, CA 96020-1128

James Christensen
339 Shelterwood Court
Danville, CA 94506-4785

ORDER TO SUBMIT TECHNICAL REPORTS IN ACCORDANCE WITH SECTION 13267 OF THE CALIFORNIA WATER CODE, 110 PORTER ROAD, DIXON, SOLANO COUNTY, LUSTIS #480066

An unauthorized discharge of petroleum hydrocarbon constituents from an underground storage tank (UST) system formerly located at 110 Porter Road in Dixon (site) has resulted in an undefined impact to soil, soil vapor, and groundwater. It is the Regional Board's understanding that James Christensen owned and operated the site from January 1987 to December 1988. County records show that Ken Willis acquired the subject property in December 1988. Further, on 23 December 1989, Ken Willis executed an "Indemnification and Hold Harmless Agreement" with Mr. Christensen as part of the property acquisition. The site's USTs were excavated and removed in November 1993. Ken Willis was the property owner at time of UST removal and, per our records, is still the property owner of record.

During UST integrity testing in December 1987 a leak in the product piping was identified. Repairs were made, however, one of the USTs continued to fail to hold product. The Regional Board does not have any evidence that the UST that failed to hold product was repaired or taken out of service until the entire fueling system was removed in November 1993. Subsequent soil and groundwater investigations, including the installation and monitoring of three groundwater monitoring wells, have confirmed the presence of petroleum hydrocarbons beneath the subject site. The most current groundwater sampling results (March 2007) of the three onsite groundwater monitoring wells are presented in the table below.

Well Number	TPHg	Benzene	Toluene	Ethylbenzene	Xylenes
MW-1	10,200	140	ND	260	140
MW-2	10,900	100	ND	270	90
MW-3	4,870	ND	ND	60	30

TPHg = Total Petroleum Hydrocarbons as gasoline; ND = non-detectable concentrations;
All concentrations in ug/L (parts per billion)

Although some investigative activities have been conducted, complete delineation of the existing plume has not been completed. Since April 2003, the Solano County Department of Environmental Management (SCDRM) has requested the submittal of a work plan to complete the contamination delineation. No approved work plan has been submitted. In a 22 August 2005 letter, SCDRM named both Ken Willis and James Christensen as Responsible Parties. In February 2006 the case was formally referred to the Regional Board due to the recalcitrance of the Responsible Party(s) to submit the required technical document (work plan). Since 2006, Regional Board staff has attempted to work cooperatively with Ken Willis and Advanced Geologic Exploration, Inc. (AGE) staff (Mr. Willis' contracted consultant) to complete the investigative work and continue groundwater monitoring. On

21 June 2007, at a meeting held at the SCDRM office, Regional Board and SCDRM staff met with AGE to discuss the site, a work plan that had previously been requested by Regional Board staff, and to reach agreement on the next step. It was agreed that the work plan Regional Board staff had originally requested would be submitted no later than 7 December 2007. Subsequent to the passing of this deadline, a 12 December 2007 e-mail from AGE informed Regional Board staff that Ken Willis had failed to meet his financial obligations to AGE, and the requested work plan had not been prepared by AGE. As of the date of this letter, Regional Board staff has not received the work plan.

California Code of Regulations, Title 23, section 2720, states, in part:

“Responsible Party means one or more of the following:

...

(3) Any owner of a property where an unauthorized release of a hazardous substance from an underground storage tank has occurred [Ken Willis], and

(4) Any person who had or has control over a underground storage tank at the time of or following an unauthorized release of hazardous substance [James Christensen].”

Under California law, as operators and/or owners of the UST system that discharged wastes and as owners of the property at which the discharge occurred you are both Responsible Parties. The Regional Board acknowledges the existence of the indemnification agreement. However, this agreement affects only your liability towards each other, and does not affect your liability to the state for the investigatory work needed to define the nature and extent of the contamination.

As a result of the failure to comply with staff requests, the nature and extent of the unauthorized discharge that occurred to soil, soil vapor, and groundwater beneath the site as well as the unauthorized discharge's threat to waters of the state and human health and safety, remain undefined. Impacts well above those standards determined to be protective of water quality and the designated beneficial uses have been found, but the complete impact to the soil and groundwater has yet to be determined, and this is unacceptable.

Pursuant to California Water Code section 13267, you are required by this Order to submit a Work Plan by **30 June 2008** that proposes a sufficient number of sampling (soil and groundwater) locations to completely delineate the identified plumes. The Work Plan is to include proposed investigation locations beneath the existing pump island canopy and outward from the existing three monitoring wells and a time schedule for conducting the work. The requested Work Plan is a technical report. California Water Code 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.”

As described in this letter, you are subject to this Order pursuant to California Water Code section 13267 because you are either a present or past owner and/or operator of the fueling system that suffered an unauthorized release and therefore you are a “person who has discharged” waste within the meaning of this section. The Work Plan is necessary for the reasons described in this letter and as

documented in the files of the Water Board to assure protection of waters of the state and protect public health and the environment. Failure to submit the required Work Plan by **30 June 2008** may result in enforcement action, which may include the administrative imposition of significant financial penalties pursuant to California Water Code section 13268. California Water Code 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.”

Furthermore, compliance with the Regional Board requirements is mandatory in order to be eligible for reimbursement of corrective action costs from the State’s Underground Storage Tank Cleanup Fund (California Code of Regulations, Title 23, section 2812.2). All work should be performed according to the Tri-Regional Recommendations for Preliminary Investigation and Evaluation of Underground Storage Tank Sites, and any permits required by State, County, and Local agencies. All reports must be submitted to the Solano County Department of Environmental Management and this Regional Board.

Electronic copies of all reports and analytical results are to be submitted over the internet to the State Water Board Geographic Environmental Information Management System database (GeoTracker) at <http://geotracker.swrcb.ca.gov>. Electronic copies are due to GeoTracker concurrent with the corresponding hard copy. Electronic submittals shall comply with GeoTracker standards and procedures as specified on the State Board’s web site.

If you have any questions, please contact James Munch at (916) 464-4816 or via e-mail at jmunch@waterboards.ca.gov.

Original signed by

PAMELA C. CREEDON
Executive Officer

cc:

Mark Owens, State Water Resources Control Board, UST Cleanup Fund, Sacramento
Misty Kaltreider, Solano County Dept. of Resource Management, Fairfield
Charles Watson, Advanced Geologic Exploration, Inc., Chester
Jacy Franceschi, 4911 McCune Road, Winters, 95694