

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TECHNICAL REPORTING ORDER R5-2010-0826
CALIFORNIA WATER CODE SECTION 13267

FOR
BENETO, INC.
USA GASOLINE STATION NO. 806
2434 WEST CAPITOL AVENUE, WEST SACRAMENTO
YOLO COUNTY

You are legally obligated to respond to this Order. Please read this Order carefully

This Order is issued to Beneto, Inc. (hereafter referred to as Discharger) pursuant to California Water Code section 13267, which authorizes the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (hereafter Central Valley Water Board or Board) to issue an Order requiring the submittal of technical reports, regarding property previously known as USA Gasoline Station No. 806 (Site). The Site is now known as West Capitol Mart/H&R Fuel Stop. From 1993 to the present the Discharger has performed environmental work at the Site, and has a letter of Commitment from the State Water Resources Control Board Underground Storage Tank Cleanup Fund (Fund).

The Executive Officer of the Central Valley Water Board finds:

PROPERTY OWNERSHIP AND OPERATIONS

1. Our case file indicates that the USA Gasoline Station No. 806 (Site) was owned and operated by the Discharger since the mid 1970s.

BACKGROUND

2. In 1992 an unauthorized release was found during the replacement of three underground storage tanks (USTs) and associated pipelines and dispensers. A soil sample collected beneath the dispensers contained 2,900, 12, 43, 50, and 350 milligrams per kilogram (mg/kg) of total petroleum hydrocarbons as gasoline (TPHg), benzene, toluene, ethylbenzene, and total xylenes (BTEX), respectively. A groundwater sample collected from the UST cavity contained 55,000 ug/L of TPHg, and 5,300, 7,800, 1,000, and 7,200 ug/L of BTEX, respectively. In 1993 the first four groundwater monitoring wells were installed to approximately 30 feet below ground surface (bgs) to investigate the release detected in 1992. Groundwater data from the wells indicated TPHg and BTEX up to 770, 58, 63, 17, and 26 micrograms per liter (ug/L), respectively. Additional monitoring wells are installed, and MtBE, tertiary butyl alcohol (TBA), and tertiary amyl methyl ether (TAME) are detected in groundwater at up to 180,000, 120,000, and 1,700 ug/L, respectively.
3. In a 23 October 1998 letter from Yolo County Environmental Health Services (YCEHS) to the Discharger, YCEHS stated that groundwater data from monitoring well MW-2 showed a TPHg increase from 58 ug/L to 2,789 ug/L and benzene increase from 7.0 ug/L to 1,050 ug/L during this time period. Additionally, groundwater data from MW-3 also showed MtBE increased from 121 ug/L in October 1997 to 1,500 ug/L in January 1998. YCEHS

requested that Beneto, Inc. perform an immediate investigation to determine the cause of the higher concentrations of gasoline hydrocarbons in groundwater.

4. In early 1999 regulatory lead was turned over to the Central Valley Water Board, and by letter dated 1 February 1999, Central Valley Water Board staff requested the Discharger submit a Final Remediation Plan (FRP) by 9 April 1999. The Discharger did not submit the FRP, and Central Valley Water Board staff followed with further requests for an FRP in letters to the Discharger on 21 April 1999, 3 February 2000, and 11 September 2000. A remediation plan was not submitted until 27 October 2008.
5. Investigation of the vertical extent of gasoline hydrocarbons in groundwater showed attenuation of petroleum hydrocarbons in groundwater between 45 and 65 feet bgs. On 21 March 2003 Central Valley Water Board staff issued a letter to the Discharger requesting they conduct the appropriate test to evaluate proposed groundwater remedial alternatives. A HiPOx pilot test was performed 23 September 2003, but a report of the results of this test was not submitted until 22 August 2006. Results of the test indicated that 6,600 ug/L of TPHg was reduced to <50 ug/L, 8,900 ug/L of MtBE was reduced to <0.5 ug/L, and 3,500 ug/L of TBA was reduced to <5 ug/L. Though the pilot test showed promising results, the Discharger did not implement this remedial alternative.
6. In a 17 December 2005 letter to Central Valley Water Board staff, the Discharger requested closure of the site stating "...that the contamination levels are ND at almost all of them [monitoring wells]". Central Valley Water Board staff stated in their 25 July 2006 letter to the Discharger that shallow groundwater data shows TPHg, benzene, MtBE, and TBA remain as high as 17,000, 1,700, 3,300, and 91,000 ug/L, respectively. Groundwater data showed a plume of gasoline hydrocarbons to a depth of approximately 45 feet bgs that extends offsite to the west, east, and south of the site.
7. Quarterly groundwater monitoring continued, but the Discharger changed consultants from California Geophysical Group, Inc. to Lee & Pierce in late 2006, then to Apex Envirotech (Apex) in early 2008, resulting in additional delays. In the second quarter 2007 quarterly monitoring report Lee & Pierce recommended a Corrective Action Plan (CAP) be prepared. Apex submitted a CAP dated 27 October 2008, and recommended performing a pilot test for dual phase extraction. In a 3 December 2008 letter to the Discharger Central Valley Water Board staff indicated the CAP was acceptable, and requested that the Discharger submit their dual phase extraction evaluation by 9 February 2009. Further, Central Valley Water Board staff recommended that the Discharger use the groundwater pumping test results from earlier pilot tests at this site and test results from nearby sites to reduce the costs associated with a new pilot test for dual phase extraction. The Discharger did not submit a report evaluating groundwater remediation using dual phase extraction.
8. In the 2007 and 2008 5-Year reviews, Fund staff indicated that remediation should be implemented and in their January 2010 5-Year review stated "*The Fund recommends that the Regional Board require, through enforcement action if necessary, that the Responsible Party begin active remediation without delay to achieve Water Quality Objectives in a timely manner*". Central Valley Water Board senior staff's 17 February 2010 letter to the Discharger, requested the Discharger submit an FRP by 16 April 2010 with a time schedule for implementation of the selected remedial alternative. To date no FRP for a remedial alternative has been submitted.

9. As a result of the Discharger's failure to comply with the Board's directives, the proposed active cleanup of groundwater impacted by gasoline hydrocarbons beneath the site has not been implemented, and therefore, the threat to waters of the State and human health and safety, remain unanswered.
10. The Site now known as West Capitol Mart/H&R Fuel Stop is currently owned by Nasir and Shagufta Choudry. There is no evidence that the Choudrys have contributed to, or caused the release from the former USTs. Since acquiring ownership of the property in 2007, when requested by representatives of the Discharger and/or Central Valley Water Board staff, the Choudrys have provided Site access for the investigation and monitoring. The Choudrys are not named as a Discharger in this Order as current owners of the property because the Choudrys did not cause or exacerbate the UST release, and have not denied access to the property for the investigation to date. If denial of access for the investigation, and if necessary, remediation occurs, or evidence surfaces concerning their association with the unauthorized release from the USTs or subsequent fueling operations at the Site, then the Choudrys may be named Dischargers in a revised Order.

LEGAL PROVISIONS

11. 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.

As described in Findings 1 through 10, the Discharger is subject to an order pursuant to CWC section 13267 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 was owned by the Discharger. The technical reports required by this Order are necessary to adequately investigate and cleanup the site to protect the beneficial uses of water of the state, to protect against nuisance, and to protect human health and the environment.

12. 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), and is subject to criminal penalties pursuant to subdivision (e).

(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 according to the schedule detailed herein may result in enforcement action(s) being taken against you, which may include the imposition of administrative civil liability pursuant to CWC section 13268. Administrative civil liability of up to \$1,000 per violation per day may be imposed for non-compliance with the directives contained herein.

13. 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. Beneto, Inc. is subject to this Order because they owned and operated the fueling system that released petroleum hydrocarbons to the groundwater, and were the property owners when the release was discovered. Therefore, Beneto, Inc. qualifies as a "person who has discharged ... waste" within the meaning of CWC section 13267.

14. 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 should be performed according to the *Tri-Regional Recommendations for Preliminary Investigation and Evaluation of Underground Storage Tank Sites*, and permits required by State, County, and Local agencies. All reports must be submitted to the Central Valley Water Board. Failure to comply with Central Valley Water Board directives will result in a Cleanup and Abatement Order issued under CWC section 13304.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to CWC section 13267, the Discharger and Owner shall submit the following technical reports:

1. **Groundwater Monitoring Reports** starting **30 January 2011** and continuing quarterly sampling and reporting of all site monitoring wells, until otherwise directed by Central

Valley Water Board staff. With paper copies to this office and electronic copies to the State Water Resources Control Board's (State Water Board) GeoTracker database and YCEHS.

2. **Interim Remediation Plan by 7 January 2011** for groundwater remediation using dual phase extraction, and a schedule of implementation of this interim remedial alternative.

This Order is effective upon the date of signature.

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 (or mandatory furlough day), 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 will be provided upon request.

Ordered by:

PAMELA C. CREEDON
Executive Officer

(Date)



California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair



Linda S. Adams
Secretary for
Environmental
Protection

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Arnold
Schwarzenegger
Governor

27 October 2010

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Ms. Velma Masterson
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4080 Seaport Boulevard
West Sacramento, California 95691

TECHNICAL REPORTING ORDER R5-2010-0826, CALIFORNIA WATER CODE SECTION 13267, BENETO, INC. (FORMER DARPETRO USA GAS STATION NO 806), 2434 WEST CAPITOL AVENUE, WEST SACRAMENTO, YOLO COUNTY (LUSTIS NO. 570203)

Enclosed is a copy of Technical Reporting Order No. R5-2010-0826 issued 21 October 2010 to Beneto, Inc. for the Former Darpetro USA Gas Station No. 806 at 2434 West Capitol Avenue, West Sacramento, Yolo County (Site), in accordance with California Water Code section 13267. This Order directs Beneto, Inc. to submit a groundwater monitoring report and interim remediation plan.

If you have any questions please contact David Stavarek at (916) 464-4673, or by e-mail at dstavarek@waterboards.ca.gov.

BRIAN NEWMAN, P.E.
Underground Storage Tank Program Manager

cc.: Mr. Mark Owens, SWRCB, UST Cleanup Fund, Sacramento
Mr. Bahram Kavousi, Yolo County Environmental Health Services, Woodland
Nasir and Shagufta Choudry, property owners, Sacramento
Mr. Robert Ricci, West Sacramento Housing Development Corp., West Sacramento
Mr. Sami Ahmad, Property Owner of 2410 West Capitol Avenue, West Sacramento
Mr. Dan Lafontaine, Apex Envirotech, Inc., Turlock

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California Environmental Protection Agency

