

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

RESOLUTION R8-2022-0063

REQUESTING ATTORNEY GENERAL OF CALIFORNIA
TO INITIATE JUDICIAL ENFORCEMENT
OF CLEANUP AND ABATEMENT ORDER

FINDINGS

WHEREAS, the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board), finds as follows:

Adoption of Cleanup and Abatement Order

1. On June 18, 2021, the Santa Ana Water Board adopted **Cleanup and Abatement Order R8-2021-0006**,¹ directing United El Segundo, Inc. (United), Rapid Gas, Inc. (Rapid Gas), CF United PropCo LLC (CF PropCo), Restructure Petroleum Marketing Services of California, Inc. (RPMS) and My Montecito Inc SH (My Montecito) (collectively, Responsible Parties) to, among other things, engage in corrective action to address unauthorized releases emanating from retail fueling operations at 6020 Arlington Avenue² (United Source Property) and 6160 Arlington Avenue³ (E-Z Serve Source Property). The CAO is attached hereto as **Attachment 1** (incorporated herein).
2. Under the CAO, the Responsible Parties were assigned responsibility for monitoring/investigation and cleanup and abatement as follows:
 - a. **United Source Property:** United, Rapid Gas and CF PropCo (collectively, United Parties) were assigned joint and several responsibility⁴ for the United Source Property (6020 Arlington Ave.);

¹ In addition to Water Code sections 13267 and 13304, The Cleanup and Abatement Order was also adopted pursuant to Health & Safety Code section 25296.10, and California Code of Regulations, title 23, sections 2720 through 2727, promulgated thereunder.

² [United Oil Co./Rapid Gas #37 Cleanup Site](https://geotracker.waterboards.ca.gov/profile_report?global_id=T0606500004), GeoTracker Global ID T0606500004 (https://geotracker.waterboards.ca.gov/profile_report?global_id=T0606500004)

³ [E-Z Serve Service Station Site](https://geotracker.waterboards.ca.gov/profile_report?global_id=T0606535975), GeoTracker Global ID T0606535975 (https://geotracker.waterboards.ca.gov/profile_report?global_id=T0606535975)

⁴ When two or more parties are jointly and severally responsible for compliance with a certain obligation, each party is independently liable for the full extent of that obligation.

- b. **E-Z Serve Source Property:** RPMS and My Montecito (collectively, E-Z Serve Parties) were assigned joint and several responsibility for the E-Z Serve Source Property (6160 Arlington Ave.), the title to which is currently held by My Montecito; and
 - c. **Commingled Plume Area:** All of the Responsible Parties were assigned joint and several responsibility for the plume of commingled constituents emanating from the United Source Property and E-Z Serve Source Property (Commingled Plume Area).
3. With respect to the **E-Z Serve Source Property** and **Commingled Plume Area**, the E-Z Serve Parties' relevant obligations under the CAO are summarized as follows below.
- a. **Required Actions 1(b) and 1(c):** Groundwater Monitoring and Reporting
 - i. Within 60 days of CAO adoption, submit for Executive Officer approval, **Groundwater Monitoring and Sampling Work Plan(s)** and corresponding implementation time schedule(s) for each area;
 - ii. Upon approval of these work plan(s), implement the approved groundwater monitoring program for each area, in accordance with the approved time schedule; and
 - iii. Submit quarterly monitoring reports, with the results of work plan activities (including all resulting data and relevant findings), in accordance with Required Action 6 (see Finding 4 below).
 - b. **Required Actions 2(b) and 2(c):** Interim Corrective Action
 - i. Within 60 days of CAO adoption, submit, for Executive Officer approval, **Interim Corrective Action Work Plan(s)** and corresponding implementation time schedule(s) for each area;
 - ii. Within 30 days of work plan approval, implement the approved interim corrective action activities for each area, in accordance with the approved time schedules, until the Executive Officer determines that such activities are no longer warranted; and
 - iii. Submit quarterly remediation progress reports in accordance with Required Action 6 (see Finding 4 below).

- c. Required Actions 3(b) and 3(c): Site Assessment and Delineation of Contaminant Plume**
- i. Within 90 days of CAO adoption, submit, for Executive Officer approval, **Groundwater Assessment Work Plans** and corresponding implementation time schedules for each area;
 - ii. Upon approval of these work plans, complete all approved assessment and investigation activities for each area, in accordance with the approved time schedules; and
 - iii. Submit a **Groundwater Assessment Report** with the results of approved plan activities, including recommendations and conclusions for additional phases of characterization (as warranted), in accordance with the approved time schedules.
- d. Required Actions 4(b) and 4(c): Remedial Action Plans**
- i. Within 120 days of CAO adoption,⁵ submit for Executive Officer approval, **Remedial Action Plans** and corresponding implementation time schedules for each area;
 - ii. Following approval, implement the approved Remedial Action Plan for each area, in accordance with the approved time schedules;
 - iii. In the event the Executive Officer determines that the proposed corrective action measures are inadequate to achieve applicable remedial objectives, submit a **Revised Remedial Action Plan** capable of achieving such objectives, as well as a time schedule for implementation; and
 - iv. Submit quarterly remediation progress reports in accordance with Required Action 6 (see Finding 4 below).

⁵ This deadline was subsequently extended to September 28, 2022. See Finding 8.

- e. **Required Actions 5(b) and 5(c):** Soil Gas Investigations
 - i. Within 60 days of CAO adoption, submit, for Executive Officer approval, **Soil Gas Investigations Work Plans** and corresponding implementation time schedules for each area;
 - ii. Upon approval of these work plans, complete all approved assessment and investigation activities for each area, in accordance with the approved time schedules; and
 - iii. Submit quarterly reports in accordance with Required Action 6 (see Finding 4 below) and the approved time schedules.
- 4. Per **Required Action 6**, the Responsible Parties are required to submit quarterly reports regarding the results of all required monitoring and investigation activities, as well as progress reports for ongoing remedial activities. The time schedule for submittal of these quarterly reports is listed in **Table 1** below.

Table 1. Quarterly Reporting Schedule per Required Action 6.

Quarter	Reporting Deadline
1st Quarter (Jan. 1 to March 31)	April 30
2nd Quarter (April 1 to June 30)	July 30
3rd Quarter (July 1 to Sept. 30)	Oct. 30
4th Quarter (Oct. 1 to Dec. 31)	Jan. 30

- 5. As discussed above, the United Parties and E-Z Serve Parties are jointly and severally responsible for all Required Actions relating to the Commingled Plume Area. Accordingly, the United Parties are also responsible for compliance with Required Actions 1(c), 2(c), 3(c), 4(c), and 5(c), as well as Required Action 6 insofar as the reporting requirements pertain to the Commingled Plume Area.

Approval of My Montecito Work Plans

6. On August 9 and November 9, 2021, My Montecito submitted its required work plans per Required Actions 1(b), 1(c), 2(b), 2(c), 3(b), 3(c), 5(b) and 5(c), discussed above. Each work plan included proposed activities for both the E-Z Serve Source Property and Commingled Plume Area. The My Montecito submittals are summarized in **Table 2** below.

Table 2. My Montecito Work Plan Submittals.

Work Plan	Submittal Date	Associated Required Action
Revised Groundwater Monitoring Program Work Plan	Aug. 9, 2021 (timely)	Required Action 1(b) <i>(E-Z Serve Source Property)</i> Required Action 1(c) <i>(Commingled Plume Area)</i>
Revised Interim Corrective Action Work Plan	Aug. 9, 2021 (timely)	Required Action 2(b) <i>(E-Z Serve Source Property)</i> Required Action 2(c) <i>(Commingled Plume Area)</i>
Site Characterization Work Plan	Nov. 9, 2021 (54 Days Late)	Required Action 3(b) <i>(E-Z Serve Source Property)</i> Required Action 3(c) <i>(Commingled Plume Area)</i>
Revised Soil Vapor Investigation Work Plan	Aug. 9, 2021 (timely)	Required Action 5(b) <i>(E-Z Serve Source Property)</i> Required Action 5(c) <i>(Commingled Plume Area)</i>

7. RPMS did not submit any work plans on its own behalf. My Montecito's work plans are therefore deemed to have been submitted on behalf of both E-Z Serve Parties.
8. With respect to Required Actions 4(b) and 4(c), My Montecito requested an extension for submittal of its Remedial Action Plans. This request was subsequently granted by the Executive Officer, and the deadline for compliance was extended to September 28, 2022.
9. In a letter dated May 11, 2022, the Santa Ana Water Board's Executive Officer approved all of My Montecito's submitted work plans with minor revisions. The

Executive Officer's approval letter to My Montecito is attached hereto as **Attachment 2** (incorporated herein).

10. In approving My Montecito's time schedules, the following deadlines were established:
 - a. Groundwater monitoring and reporting activities under Required Actions 1(b) and 1(c) were to be immediately conducted by the E-Z Serve Parties, in accordance with My Montecito's approved work plan, on a semiannual basis, with sampling activities occurring during the 2nd Quarter (April 1 to June 30) and 4th Quarter (Oct. 1 to Dec. 31) of each year.⁶ The 2nd Quarter of 2022 ended on June 30, 2022. Accordingly, groundwater sampling activities needed to have commenced by **June 30, 2022**.
 - b. Interim Corrective Action (e.g., free product removal) was to be initiated by the E-Z Serve Parties for the E-Z Serve Source Property and Commingled Plume Area, in accordance with My Montecito's approved work plan, no later than **June 10, 2022**.
 - c. Groundwater assessment/plume delineation activities for the E-Z Serve Source Property was to be completed by the E-Z Serve Parties in accordance with the approved My Montecito work plan, and a report of findings was to be submitted by the E-Z Serve Parties no later than **August 17, 2022**.
 - d. The E-Z Serve Parties were required to submit a Remedial Action Plan (RAP) for the E-Z Serve Source Property and Commingled Plume Area no later than **September 28, 2022**.⁷
 - e. An Addendum to My Montecito's Soil Gas Investigation Work Plan was to be submitted by the E-Z Serve Parties no later than **June 1, 2022**.
 - f. A Soil Gas Investigation Report summarizing the findings of the E-Z Serve Parties' soil gas investigations was to be submitted by **July 27, 2022**.

⁶ The Executive Officer did not authorize the E-Z Serve Parties to defer groundwater monitoring to the next specified monitoring period (4th Quarter 2022).

⁷ With respect to the Commingled Plume Area, this deadline is unaffected by the subsequent actions of other Responsible Parties.

- g. Per CAO Required Action 6, quarterly remediation and status reports were to be submitted by the E-Z Serve Parties beginning with the quarterly report for the 2nd Quarter of 2022, which was due on **July 30, 2022**.⁸
11. Notwithstanding her approval of My Montecito's Soil Gas Investigation Work Plan per Required Actions 5(b) and 5(c), on May 11, 2022, the Executive Officer directed the E-Z Serve Parties to submit a **Soil Gas Investigation Work Plan Addendum** no later than June 1, 2022.⁹
12. In a separate letter dated May 11, 2022, the Executive Officer approved the United Parties' work plans for the Commingled Plume Area, submitted per Required Actions 1(c), 2(c), 3(c) and 5(c). The Executive Officer's approval letter to the United Parties is attached hereto as **Attachment 3** (incorporated herein).
13. As for the Remedial Action Plan for the Commingled Plume Area per Required Action 4(c), the United Parties were similarly granted an extension to September 28, 2022.
14. As of the date of this Resolution, the E-Z Serve Parties and United Parties are subject to the same operative deadlines under Required Actions 1(c), 2(c), 3(c), 4(c) and 5(c) for the Commingled Plume Area.

Compliance Status re: E-Z Serve Source Property

15. As noted above, the E-Z Serve Parties are exclusively responsible (jointly and severally among themselves) for CAO compliance with the CAO with regard to the E-Z Serve Source Property—specifically Required Actions 1(b), 2(b), 3(b), 4(b), 5(b), as well as the associated requirements per Required Action 6.
16. Although the E-Z Serve Parties initially submitted work plans in accordance with Required Actions 1(b), 1(c), 2(b), 2(c), 3(b), 3(c), 5(b) and 5(c), they have not submitted any of the following:
 - a. Groundwater Assessment Report, due August 17, 2022 [Required Action 3(b)];
 - b. Remedial Action Plan, due September 28, 2022 [Required Action 4(b)];

⁸ The next quarterly report, for the 3rd Quarter of 2022, will be due on October 30, 2022.

⁹ To the extent a Soil Gas Investigation Work Plan Addendum was not required under the CAO, the Executive Officer's May 11, 2022 letter constitutes a separate technical reporting directive establishing this requirement. (Wat. Code, § 13267, subd. (b)(1).)

- c. Addendum to the approved Soil Gas Investigation Work Plan, due June 1, 2022 [Required Action 5(b)];
 - d. Soil Gas Investigation Report, due June 1, 2022 [Required Action 5(b)]; and
 - e. Quarterly monitoring and remedial progress report for the 2nd Quarter of 2022, due on June 30, 2022 [Required Action 6, et al.].¹⁰
17. Santa Ana Water Board staff have also been informed that the E-Z Serve Parties have not commenced implementation of any of the activities proposed in their approved work plans for the E-Z Serve Source Property.¹¹
18. The E-Z Serve Parties' compliance statuses with respect to the E-Z Serve Source Property are summarized in **Table 3** below.

Table 3. Summary of Compliance Statuses for E-Z Serve Source Property

CAO Provision	Required Actions	Deadline	Status
Required Action 1(b) <i>Groundwater Monitoring and Reporting</i>	Submit Work Plan	Aug. 17, 2021	Timely Submitted on Aug. 9, 2021 Approved with Revisions on May 11, 2022
--	Start Implementing Work Plan in Field	June 30, 2022	VIOLATION No Actions Taken
--	Start Submitting Quarterly Reports (2nd Quarter 2022)	July 30, 2022	VIOLATION Report Not Submitted

¹⁰ The next report for the 3rd Quarter of 2022 will be due on October 30, 2022.

¹¹ Notably, the E-Z Serve Parties were required to have completed all of their activities per Required Actions 3(b) and 5(b) by August 17, 2022, and July 27, 2022, respectively.

CAO Provision	Required Actions	Deadline	Status	
Required Action 2(b) <i>Interim Corrective Action</i>	Submit Work Plan	Aug. 17, 2021	Timely Submittal Aug. 9, 2021 Approved with Revisions on May 11, 2022	
	--	Start Implementing Work Plan in Field	June 10, 2022	VIOLATION No Actions Taken
	--	Start Submitting Quarterly Reports (2nd Qtr. 2022)	July 30, 2022	VIOLATION Report Not Submitted
Required Action 3(b) Site Assessment & Contaminant Plume Delineation	Submit Work Plan	Sept. 16, 2021	VIOLATION 54 Days Late Report Submitted Nov. 9, 2021	
	--	Submit Groundwater Assessment Report	Aug. 17, 2022	VIOLATION Report Not Submitted
Required Action 4(b) <i>Remedial Action Plan</i>	Submit Remedial Action Plan	Sept. 28, 2022	VIOLATION Report Not Submitted	
Required Action 5(b) <i>Soil Gas Investigation</i>	Submit Addendum to Investigation Work Plan	June 1, 2022	VIOLATION Report Not Submitted	
	--	Submit Soil Gas Investigation Report	July 27, 2022	VIOLATION Report Not Submitted
Required Action 6 <i>Quarterly Remediation and Status Reports</i>	Start Submitting Quarterly Reports (2nd Qtr. 2022, etc.)	July 30, 2022	VIOLATION Report Not Submitted	

Compliance Status re: Commingled Plume Area

19. As noted above, all of the Responsible Parties are *jointly and severally responsible* for compliance with the CAO with regard to the Commingled Plume Area—specifically Required Actions 1(c), 2(c), 3(c), 4(c) and 5(c).
20. Due to their joint and several responsibility, the E-Z Serve Parties' compliance status for CAO Required Actions 1(c), 2(c), 3(c), 4(c) and 5(c) remains contingent on the United Parties' compliance with these same provisions; these provisions are not considered "violated" as long as the United Parties continue to comply. However, the E-Z Serve Parties are already in violation of Required Action 6 based on their failure to submit reports regarding activities on the E-Z Serve Source Property.
21. As of the date of this Resolution, judicial enforcement against the E-Z Serve Parties is not warranted at this time with respect to the Commingled Plume Area. The Santa Ana Water Board and Attorney General reserve the right to revisit this determination.

Remedies for Noncompliance

22. The CAO was adopted pursuant to Water Code sections 13304 and 13267; Health & Safety Code section 25296.10; and California Code of Regulations, title 23, section 2720 et seq.
23. Water Code section 13304, subdivision (a) provides in pertinent part as follows:

A person ... 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.
24. The monitoring and reporting obligations under the CAO are also based on Water Code section 13267, subdivision (b)(1), which provides in relevant part as follows:

[T]he 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.

25. In the event a Responsible Party fails to comply with a CAO, the Board may refer the matter to the Office of the Attorney General, which shall in turn petition the Superior Court for an injunction requiring compliance. (Wat. Code, § 13304, subd. (a).) The injunction issued by the Superior Court may be prohibitory or mandatory, preliminary or permanent, as the circumstances may warrant. (*Id.*)
26. In addition to an injunction, subdivision (a) of Water Code section 13350 provides that civil liability may be imposed on any person who violates a CAO. When imposed judicially, such liability may be up to \$15,000 per violation, per day. (Wat. Code, § 13350, subd. (d)(2).)
27. Where noncompliance is nonsubmittal of a technical report or monitoring program report, Water Code section 13268, subdivision (a)(1) provides that the noncompliant person shall also be subject to civil liability. When imposed judicially, and where a noncompliant party has discharged “hazardous waste”¹² and then knowingly failed or refused to comply, such liability may be up to \$25,000 per violation, per day. (Wat. Code, § 13268, subd. (d)(2).)
28. Subdivision (g) of section 13350 provides that the Board may, after a hearing with due notice to the affected person, request that that Attorney General petition the Superior Court to impose civil liability.
29. The CAO also constitutes a “corrective action requirement” for the purposes of Health & Safety Code section 25296.10.
30. Upon a responsible party’s failure to comply with a corrective action requirement (i.e., CAO), the Attorney General may apply to the Superior Court for an injunctive order directing compliance. (Health & Saf. Code, § 25299.01.)
31. Health & Safety Code section 25299, subdivision (d)(1) further provides that “[a] person who violates a corrective action requirement ... is liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each underground storage tank for each day of violation.” These penalties may be imposed in a civil action (Health & Saf. Code, § 25299, subd. (d)(2)) brought by the Attorney General in the name of the people of the State of California (*id.*, § 25299.02).

Need for Judicial Enforcement

32. Given the magnitude and widespread distribution of soil and groundwater contamination associated with the unauthorized releases of hazardous substances and discharges of waste from the E-Z Serve Source Property and presence of elevated dissolved-phase and/or free-phase gasoline observed

¹² As defined per Health and Safety Code section 25117.

beneath the E-Z Serve Source Property and Commingled Plume Area, there is a potential threat to human health posed by volatilization of contaminant vapors into overlying buildings and structures. It is therefore urgent that the E-Z Serve Parties be compelled to comply with their CAO obligations as soon as possible.

33. Santa Ana Water Board staff have been informed that neither of the E-Z Serve Parties intend to perform any of their remaining obligations under the CAO, including those related to the E-Z Serve Source Property.
34. Although the Santa Ana Water Board is able to impose civil penalties on E-Z Serve Parties administratively (i.e., without assistance of the Attorney General), the E-Z Serve Parties' recalcitrance and attempts to evade the Santa Ana Water Board's regulatory authority necessitates the Attorney General's assistance in enjoining further noncompliance with the CAO and other relevant directives, as well as access to more far-reaching civil discovery and judicial remedies.
35. The Santa Ana Water Board thus believes that the filing of a civil action in Superior Court will substantially expediate E-Z Serve Parties' compliance with the CAO and other relevant directives.
36. The requested relief is urgently needed to ensure the protection of public health, welfare and the environment from an imminent and substantial threat presented by the E-Z Serve Source Property and Commingled Plume Area.

Procedural Matters

37. Pursuant to Resolution R8-2019-0056, the Executive Officer has been delegated all Santa Ana Water Board's powers and authorities, except those prohibited from delegation per Water Code section 13223, subdivision (a).
38. On September 16, 2022, Santa Ana Water Board staff issued a Notice of Violation (NOV) to the E-Z Serve Parties' representatives. The NOV is attached hereto as **Attachment 4** (incorporated herein). The NOV was transmitted via email, sent via certified mail, and subsequently personally served on the E-Z Serve Parties' registered agents for service of process.
39. In accordance with Water Code section 13350, subdivision (g), the E-Z Serve Parties have been duly notified of the Santa Ana Water Board's consideration of this Resolution. The E-Z Serve Parties have also been provided with an opportunity to submit written comments and to address the Board.
40. Adoption of this Resolution does not constitute evidence of, or a final determination as to, the E-Z Serve Parties' compliance with the CAO, or the extent of their liability for any violations.

41. This Resolution has no applicability to the United Parties and shall not be interpreted to have any effect on their separate obligations for the United Source Property, or their joint and several obligations for the Commingled Plume Area.

REFERRAL TO ATTORNEY GENERAL

NOW, THEREFORE, BE IT RESOLVED THAT:

1. In accordance with Water Code section 13304, the Attorney General is hereby requested to file a petition in the Superior Court of California, seeking the issuance of a preliminary and/or permanent injunction directing the E-Z Serve Parties to comply with the CAO forthwith. The Attorney General may pursue contempt sanctions in the event of noncompliance with an injunctive order.
2. In accordance with Water Code section 13350, the Attorney General is requested to file a petition in the Superior Court of California, seeking the imposition of all potential civil liability against the E-Z Serve Parties under Water Code sections 13268 and 13350, Health & Safety Code section 25299, and/or any other applicable statutes, for all existing and subsequent violations of the CAO and other technical reporting directives described herein.
3. In pursuing the remedies described above, the Attorney General is further requested to seek injunctive relief and the imposition of civil penalties against any and all of the E-Z Serve Parties' respective alter egos, officers, managers, agents, owners and corporate affiliates (including parent corporations and subsidiaries), to the fullest extent available under the law.
4. Nothing herein is intended to limit the authority of the Attorney General from taking all lawful enforcement actions it deems appropriate.
5. Consistent with the Santa Ana Water Board's delegation of statutory authority to the Executive Officer per Resolution R8-2019-0056, the Executive Officer may participate in settlement discussions with the E-Z Serve Parties and all associated persons. The Santa Ana Water Board retains its authority to approve any proposed settlement of the violations alleged herein, by and through its Executive Officer.

ATTACHMENTS TO RESOLUTION

- Attachment 1:** Cleanup and Abatement Order R8-2021-0006
- Attachment 2:** Executive Officer My Montecito Work Plan Approval Letter and Technical Reporting Directive dated May 11, 2022
- Attachment 3:** Executive Officer United Parties Work Plan Approval Letter and Technical Reporting Directive dated May 11, 2022
- Attachment 4:** Notice of Violation to E-Z Serve Parties dated September 16, 2022

CERTIFICATION

I, JAYNE JOY, Executive Officer, certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on October 21, 2022.

Jayne Joy  Digitally signed by Jayne Joy
Date: 2022.10.31 14:29:25 -07'00'

JAYNE JOY
Executive Officer