

## State Water Resources Control Board

APR 07 2014

Mr. Jerry Wright  
GNI Waterman, Inc.  
Post Office Box 458  
Exeter, CA 93221

Dear Mr. Wright:

PETITION OF GNI WATERMAN, INC. FOR REVIEW OF DENIAL OF PETROLEUM UNDERGROUND STORAGE TANK CASE CLOSURE, WATERMAN INDUSTRIES, 25500 ROAD 204, EXETER, TULARE COUNTY: DISMISSAL

Mr. Jerry Wright of GNI WATERMAN, Inc. (Petitioner) seeks review by the State Water Resources Control Board (State Water Board) of the Tulare County Environmental Health Services Division (Tulare County) decision to reject closure of Petitioner's underground storage tank (UST) case at 25500 Road 204, Exeter, Tulare County (Site).

The case has the following Identification numbers:

- State Water Board Division of Water Quality Petition No. 0184
- Central Valley Regional Water Quality Control Board No. 5T54000429
- GeoTracker No. T0610700403
- Tulare County No. 751
- Underground Storage Tank Cleanup Fund No. 13111

After careful consideration, I conclude that the petition in this matter fails to raise substantial issues that are appropriate for review by the State Water Board. Accordingly, the State Water Board refuses to review your request for UST case closure. (See Cal. Code Regs., tit. 23, § 2814.7, subdivision (d)(4); see also, *Johnson v. State Water Resources Control Board* (2004) 123 Cal.App.4th 1107; *People v. Barry* (1987) 194 Cal.App.3d 158.)

### APPLICABLE LAW

Owners and operators of USTs and other responsible parties may petition the State Water Board for a review of their case if they believe the corrective action plan for their Site has been satisfactorily implemented, but closure has not been granted. (Health & Saf. Code, § 25296.40, subdivision (a)(1). See also Cal. Code Regs., tit 23, § 2814.6.)

Several statutory and regulatory provisions provide the State Water Board, Regional Water Quality Control Boards, and local agencies with broad authority to require responsible parties to clean up a release from a petroleum UST. (Health & Saf. Code, § 25296.10; Wat. Code, § 13304, subdivision (a).) The State Water Board has promulgated regulations specifying corrective action requirements that are applicable to petroleum UST cases. (Cal. Code Regs., tit. 23, §§ 2720-2728.)

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

The regulations define corrective action as “any activity necessary to investigate and analyze the effects of an unauthorized release; propose a cost-effective plan to adequately protect human health, safety, and the environment and to restore or protect current and potential beneficial uses of water; and implement and evaluate the effectiveness of the activity(ies).” (Cal. Code Regs., tit. 23, § 2720.)

Closure of a UST case is appropriate where the corrective action ensures the protection of human health, safety, and the environment and where the corrective action is consistent with: (1) chapter 6.7 (commencing with section 25280) of Division 20 of the Health and Safety Code and implementing regulations, (2) any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with section 13000) of the California Water Code, (3) all applicable state policies for water quality control, and (4) all applicable water quality control plans.

State Water Board Resolution No. 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code, section 13304 is a state policy for water quality control and applies to UST cases. State Water Board Resolution No. 92-49 directs that water affected by an unauthorized release attain either background water quality or the best water quality that is reasonable if background water quality cannot be restored. (State Water Board Resolution No. 92-49, section III.G.) Any alternative level of water quality less stringent than background must be consistent with the maximum benefit to the people of the state, not unreasonably affect current and anticipated beneficial use of affected water, and not result in water quality less than that prescribed in the water quality control plan for the basin within which the site is located. (*Ibid.*) Resolution No. 92-49 does not require, however, that the requisite level of water quality be met at the time of site closure. Resolution No. 92-49 specifies compliance with cleanup goals and objectives within a reasonable time frame (*Id.* at section III.A.). Therefore, even if the requisite level of water quality has not yet been attained, a site may be closed if the level will be attained within a reasonable period.

The Water Quality Control Plan for the Central Valley Region Basin Plan (Basin Plan) designates existing and potential beneficial uses of groundwater in the San Joaquin Valley – Kaweah groundwater basin as municipal and domestic supply (MUN), agricultural supply (AGR), industrial service supply (IND), and industrial process supply (PRO) (Water Quality Control Plan for the Central Valley Region Basin, October 2011, Chapter II).

## BACKGROUND

- Petitioner’s Site is currently used for commercial purposes.
- The Site is located in San Joaquin Valley of Tulare County. It is not located within the service area of a public water system.
- The nearest supply well is located approximately 75 feet northwest of the Site. The nearest surface water body is located more than 1,000 feet from the Site.
- Asphalt and concrete underlain by interbedded and intermixed sand, silt, and clay to a maximum explored depth of 70 feet bgs.
- The average depth to groundwater is approximately 38 to 63 feet bgs. The groundwater flow direction is towards the southwest.
- The release at the Site was discovered in 1998. USTs and approximately 500 cubic yards of contaminated soil were excavated and removed from the Site during 2000.
- Methyl tert-butyl ether (MTBE) was detected in soil and groundwater during site assessment between 1998 and 2003.

On November 10, 2010, Tulare County LOP, the regulatory agency that oversees corrective action at the Site, requested UST case closure concurrence from the Central Valley Regional Water Quality Control Board (Regional Board). A five year review summary was prepared by the State Water Board on January 6, 2011. On May 31, 2011, Tulare County LOP informed the Petitioner that the Regional Board denied the case closure request. On June 10, 2011, the Petitioner filed a case closure petition requesting a State Water Board review of the case.

On August 15, 2011, Tulare County LOP responded to the petition and provided the following reasons for denying UST case closure: Gasoline constituents have historically been detected in the on-Site domestic well and that the on-Site domestic well may again be impacted if the water table rises and concentrations could exceed maximum contaminant levels (MCLs). Deep source mass removal by Soil Vapor Extraction and Air Sparging is recommended.

On October 17, 2013, the State Water Board notified the interested parties of the opportunity for public comment regarding the proposed case closure. There were no submitted comments as of December 20, 2013.

### **DISCUSSION**

The Petitioner contends that gasoline hydrocarbons have not been detected in the groundwater samples collected from the on-Site domestic well, with the exception of trace concentrations of benzene, total xylenes, and MTBE detected sporadically during the sampling events performed from the first quarter of 1999 through the third quarter of 2008. Total petroleum hydrocarbons as gasoline, benzene, toluene, ethylbenzene, total xylenes, and MTBE were not detected in groundwater samples collected during the third quarter of 2008 from three temporary well points and the on-Site domestic well. However, residual soil contamination beneath the UST cluster, located approximately 75 feet from the on-Site domestic well, continues to pose a threat to human health, safety and the environment. If the groundwater elevation should rise in the future, it is likely to contact contaminated soil and leach contamination into the groundwater. Additional soil remediation is necessary to prevent this.

When directing closure of a UST case, the State Water Board must find that the corrective action performed ensures the protection of human health, safety, and the environment and that it is consistent with chapter 6.7 of Division 20 of the Health and Safety Code and implementing regulations, any waste discharge requirements, other orders issued pursuant to the Porter-Cologne Water Quality Control Act, and all applicable state policies for water quality control.

The requirements for case closure have not been met at this time and, therefore, closure of the UST case is not appropriate. Current Site conditions support a potential threat to human health, safety, and the environment. At this point in time, insufficient data are available to determine that corrective action ensures the protection of human health, safety, and the environment. Case closure is inappropriate at this time.

### **CONCLUSION**

Because the petition fails to raise substantial issues that are appropriate for review by the State Water Board, I decline to have the State Water Board review the Petitioner's request for UST case closure.

If you have any questions about this matter, please contact Kevin Graves, UST Program Manager at (916) 341-5782 or by e-mail at: [kevin.graves@waterboards.ca.gov](mailto:kevin.graves@waterboards.ca.gov).

Sincerely,



Thomas Howard  
Executive Director

cc: Mr. Mark Magargee  
VEIR Corp.  
3410 Fruitvale Avenue, Suite A  
Bakersfield, CA 93308

[Via email only]

Ms. Pamela Creedon, Executive Officer  
Central Valley Regional Water Quality Control Board  
([Pamela.Creedon@waterboards.ca.gov](mailto:Pamela.Creedon@waterboards.ca.gov) )

Mr. Benjamin Heningburg  
State Water Resources Control Board  
([Benjamin.Heningburg@waterboards.ca.gov](mailto:Benjamin.Heningburg@waterboards.ca.gov))

Mr. Steve Westhoff  
State Water Resources Control Board  
([Steven.Westhoff@waterboards.ca.gov](mailto:Steven.Westhoff@waterboards.ca.gov))

Mr. David Rice  
State Water Resources Control Board  
([David.Rice@waterboards.ca.gov](mailto:David.Rice@waterboards.ca.gov))

Mr. Daniel Carlson  
Central Valley Regional Water Quality Control Board  
([Daniel.Carlson@waterboards.ca.gov](mailto:Daniel.Carlson@waterboards.ca.gov) )

Mr. John Whiting  
Central Valley Regional Water Quality Control Board  
([John.Whiting@waterboards.ca.gov](mailto:John.Whiting@waterboards.ca.gov) )

Mr. Joel Martens  
Tulare County LOP  
([jmartens@tularehhsa.org](mailto:jmartens@tularehhsa.org))

Ms. Leticia Tapia  
Tulare County LOP  
([ltapia@tularehhsa.org](mailto:ltapia@tularehhsa.org))