

State Water Resources Control Board

AUG 10 2015

Winton G. Kemmis Trust
ATTN: Ms. Lucinda A. Kemmis, Trustee
241 Via Sarasan
Encinitas, CA 92024

Dear Ms. Kemmis:

PETITION FOR REVIEW OF FORMER MERCURY RENTALS UNDERGROUND STORAGE TANK CASE, FORMER MERCURY RENTALS, 4664 LINCOLN AVENUE, CYPRESS, ORANGE COUNTY: DISMISSAL

Ms. Lucinda A. Kemmis, Trustee of the Winton G. Kemmis Trust (Petitioner) seeks review by the State Water Resources Control Board (State Water Board) of the Orange County Health Care Agency (Orange County) and the State Water Board, Underground Storage Tank Cleanup Fund (USTCF) decision to reject closure of Petitioner's underground storage tank (UST) case at 4664 Lincoln Avenue, Cypress, Orange County (Site).

The case has the following identification numbers:

- State Water Board Division of Water Quality, Petition No. DWQP-0239
- State Water Board UST Cleanup Fund, Claim No. 12069
- State Water Board, GeoTracker No. T0605901859
- Santa Ana Regional Water Quality Control Board (Santa Ana Water Board), Case No. 083002678T
- Orange County, Case No. 95UT024

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, subd. (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, subd. (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.)

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.

State Water Board Resolution 2012-0016, Water Quality Control Policy for Low-Threat Underground Storage Tank Case Closure (Policy) is a state policy for water quality control and applies to petroleum UST cases that are low-threat. In State Water Board Resolution No. 2012-0016, the State Water Board adopted the Policy. The Policy became effective on August 17, 2012. The Policy establishes consistent statewide case closure criteria for certain low-threat petroleum UST sites. In the absence of unique attributes or site-specific conditions that demonstrably increase the risk associated with residual petroleum constituents, cases that meet the general and media-specific criteria in the Policy pose a low-threat to human health, safety, and the environment and are appropriate for closure under Health and Safety Code section 25296.10. The Policy provides that if a regulatory agency determines that a case meets the general and media-specific criteria of the Policy, then the regulatory agency shall notify responsible parties and other specified interested persons that the case is eligible for case closure. Unless the regulatory agency revises its determination based on comments received on

the proposed case closure, the Policy provides that the agency shall issue a uniform closure letter as specified in Health and Safety Code section 25296.10.

The Water Quality Control Plan for the Santa Ana Regional Water Board Basin Plan designates existing and potential beneficial uses of groundwater in the Orange Groundwater Management Zone as municipal and domestic supply, agriculture supply, industrial service supply, and industrial process supply. (Water Quality Control Plan for the Santa Ana River Basin, January 24, 1995, updated July 2014, Table 3-1.)

BACKGROUND

- The Site contains a rental self-storage facility and a retail plaza in a mixed use area with commercial and residential properties.
- The Site is in the Lower Santa Ana River Basin. The Golden State Water Company is the public water system serving the area of the Site.
- The closest active supply well is Well 08, City of La Palma and is about 3700 feet east of the Site.
- Sediments in the upper 21 feet of the subsurface consist of clayey silt, sandy silt and fine silty sand.
- Depth-to-water measurements have historically ranged from about 5 feet to 12 feet below ground surface (bgs). The groundwater flow direction has primarily been to the northeast.
- A service station, known as Top Oil, operated in the northwestern portion of the Site in the early 1960's and was demolished in 1964. The former Top Oil parcel and two other parcels, purchased by Winton G. Kemmis, were combined to create the Mercury Rentals facility. This rental facility was used to store trucks and construction equipment and operated until 1984. Five USTs (two diesel, two gasoline, and one motor oil) were used at the rental facility, and one waste-oil tank was reportedly emptied every other month for disposal off site. In January 1985, the USTs were removed and approximately 16 cubic yards of contaminated soil were taken for disposal off site. In 1985, construction of the existing storage facility and retail plaza building was also completed.
- The release was discovered and reported in March 1995 and the Orange County notified the Petitioner of its responsibility for cleanup.
- Free product removal began in December 1994, and has continued through March 2015. A french drain system was installed in April 1999 and through October 2002 it removed 639 gallons of free product. Skimmers, hand bailers and a vacuum truck have also been used to remove 959 gallons of free product. Absorbent socks have been used for monitoring wells with a petroleum sheen.
- A 5-day mobile dual phase extraction (DPE) pilot test was performed in May 2007. Short-term mobile DPE was determined to be technically effective having removed 37 gallons of free product. A mobile DPE system was used from July 2008 through November 2011 to remove about 152 gallons of free product.
- In February 2011, a large diameter auger was used to excavate about 80 cubic yards of contaminated soil in the area of the former USTs. The contaminated soil was taken for disposal off site.
- Three soil gas surveys were performed in March 2012, August 2012 and January 2015. Benzene and/or ethylbenzene have been found in several samples at concentrations that exceed the screening levels for protection of human health. These samples were collected in the northern area of the former USTs and near the former Top Oil facility. No remediation has been conducted to address vapor intrusion.

On December 14, 2013, the Petitioner requested UST case closure. Orange County, the regulatory agency that oversees corrective action at the Site denied case closure on January 17, 2014. On February 27, 2014, the Petitioner filed a case closure petition requesting a State Water Board review of the case.

On April 15, 2015, Orange County responded to the petition and provided the following reasons for denying UST case closure: (1) the free product recovered at the Site is primarily diesel and is not from off site; (2) soil data indicate a gasoline release occurred at the former Top Oil site; (3) the case does not meet the Groundwater-Specific Criteria of the Policy; (4) concentrations of petroleum compounds in groundwater have fluctuated over the past five years; (5) closure of the Site using a land use restriction would burden the landowner; (6) vapor intrusion to indoor air is applicable for this facility; (7) petroleum volatile organic compounds in soil gas samples exceed the threshold levels identified in the Policy; and (8) free product has not been removed to the extent practicable. The Santa Ana Water Board did not respond to the petition.

DISCUSSION

The Petitioner believes ample data have been collected to demonstrate the Former Mercury Rentals Site warrants closure under the Policy. The Petitioner contends that the plume is stable and will biodegrade. The Petitioner also believes that the plume has not migrated because it is controlled by the low hydraulic conductivity of the soil, the upward vertical gradient and the low magnitude of ground water flow. The Petitioner contends that ongoing removal of the remaining free product would not be cost effective and additional excavation of the secondary soil source is not technically feasible because the structural integrity of the buildings will be at risk. The Petitioner also contends that vapor intrusion (VI) from gasoline releases at the former Top Oil facility is not significant. The Petitioner believes VI or direct contact with the petroleum release should not be possible because the Site is covered with asphalt and concrete.

About 1800 gallons of free product have been removed from the subsurface. Free product thickness in the monitoring wells has decreased from a maximum thickness of about 2.8 feet in 1998 to 0.3 feet in 2014. Monitoring data suggests that free product may still be recoverable. Due to the shallow groundwater, the presence of contamination in soil gas poses an unacceptable risk of exposure. The concentrations of benzene and ethylbenzene in soil gas are above the thresholds in the Policy that are protective of human health.

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.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Thomas Howard', with a stylized flourish extending to the right.

Thomas Howard
Executive Director

cc: See next page

cc: [Via email only]

Mr. Kurt V. Berchtold, Interim Executive Officer
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