

State Water Resources Control Board

AUG 12 2014

Mr. Paul Driscoll
Hyrail Partners V LLC
990 Highland Drive #300
Solana Beach, CA 92075-2438

Dear Mr. Driscoll:

PETITION OF FREMONT LUMBER COMPANY, FOR REVIEW OF DENIAL OF PETROLEUM UNDERGROUND STORAGE TANK CASE CLOSURE, 3560 WASHINGTON BOULEVARD, FREMONT, ALAMEDA COUNTY: DISMISSAL

Mr. Paul Driscoll of Hyrail Partners V LLC (Petitioner) seeks review by the State Water Resources Control Board (State Water Board) of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) decision to reject closure of Petitioner's underground storage tank (UST) case at 3560 Washington Boulevard, Fremont, Alameda County (Site).

The case has the following identification numbers:

- State Water Board Division of Water Quality Petition No. 0235
- State Water Board UST Cleanup Fund No. 9830
- GeoTracker No. T0600100615
- Regional Water Board No. 01-0666
- Alameda County Water District (ACWD) No. TT0054

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.)

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 San Francisco Bay Basin (Basin Plan) designates existing and potential beneficial uses of groundwater in the Santa Clara Valley - Niles Cone (2-9.01) groundwater sub-basin as municipal and domestic supply, agricultural supply, industrial service supply, and industrial process supply (Water Quality Control Plan for the San Francisco Bay Basin, amendments adopted up through July 2013, Chapter II).

BACKGROUND

- Petitioner's Site is within the property owned by the City of Fremont consisting primarily of open land to the north and storage buildings to the south.
- The Site is located in the Santa Clara Valley-Niles Cone groundwater sub-basin. Site water is supplied by the ACWD public water system.
- The nearest public supply well is located approximately 1,200 feet east of the Site. The nearest surface water body is an unnamed creek located approximately 2,400 feet south of the Site.
- The Site lies on active fault traces within the Hayward Fault Zone. The Site overlies alluvial deposits of fine-grained (silty/clayey) soil to an approximate depth of 71 feet below surface grade (bgs) with coarse-grained sandy intervals observed at approximately 15 to 30 feet bgs, and 35 to 55 feet bgs
- The groundwater depth is approximately 50 feet bgs. The groundwater flow direction is towards the southwest and southeast with a component of flow to the north.
- The release at the Site was discovered in 1988 during the removal of a 500-gallon UST. Site investigation and remediation activity was stopped during 2007 to accommodate construction of an overpass and relocation of the Union Pacific Railroad (UPRR) tracks above the former UST location.
- Remediation activities include the installation of absorbent socks in well MW-1 between March and May of 2006, and the extraction of approximately 200 gallons of petroleum-impacted groundwater from well MW-1 during 2007.
- The June 2007 groundwater samples taken near the former well MW-1 contained benzene at a concentration of 10,000 micrograms per liter ($\mu\text{g/L}$). No groundwater monitoring wells exist on-site.

On July 16, 2013, the Petitioner requested UST case closure from the ACWD. The ACWD denied case closure on September 12, 2013. On November 5, 2013, the Petitioner filed a UST case closure petition requesting a State Water Board review of the case.

On February 25, 2014, the San Francisco Regional Water Board (Regional Water Board) staff responded to the petition and provided the following reasons for concurring with the ACWD denial of UST case closure: (1) The conceptual site model is incomplete; (2) The secondary source has not been removed to the extent practicable; and (3) The groundwater media-specific criteria has not been satisfied.

DISCUSSION

The Petitioner contends: (1) Free product was removed to the maximum extent practical; (2) It is very difficult to obtain access agreements with the UPRR to conduct additional investigation and remediation work; (3) Historical benzene concentrations had been stable to declining before MW-1 was destroyed to accommodate construction activities; (4) Depth to groundwater is over 40 feet bgs, petroleum hydrocarbon concentrations in the top 30 feet of soil are non-detectable, and no buildings are located within the benzene-impacted area. Based upon these findings, the

Site does not appear to have a potential vapor intrusion issue; (5) The nearest supply well or surface water body is greater than 1,000 feet from the defined plume boundary, and shallow groundwater is not used within 0.25-mile of the Site; (6) The zoning and land use at the Site is unlikely to be changed to residential use in the foreseeable future, and it is unlikely that any building will be built in the immediate vicinity of the railroad.

State Board staff recognizes the corrective action activities conducted to characterize and remediate contaminants in soil and groundwater beneath the Site, the difficulty of obtaining access agreements, and the unlikely possibility that any building will be built near the railroad. However, the length of the contaminant plume that exceeds water quality objectives was greater than 250 feet prior to monitoring well destructions in 2006 and 2007 and is not currently delineated. Additionally, a water supply well exists within 1,200 feet east of former UST location and potentially less than 1,000 feet from the plume boundary.

After consideration of the Geotracker record, State Board staff has determined that the General and Groundwater-Specific Media criteria in the Policy have not been met. The secondary source area requires additional investigation and, if necessary, remediation. Plume stability must be demonstrated prior to case closure.

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,


Thomas Howard
Executive Director

cc: See next page