

State Water Resources Control Board

JUN 19 2015

The Makena Great American Seventh Company, LLC
Attn: Mr. Matthew Huss
8350 West Sahara Avenue, Suite 210
Las Vegas, NV 89117
[Via email only] Matt@greatac.com

Dear Mr. Huss:

PETITION OF GILBERT REESE TRUST, FOR REVIEW OF DENIAL OF PETROLEUM UNDERGROUND STORAGE TANK CASE CLOSURE, 5600 7TH STREET, LONG BEACH, LOS ANGELES COUNTY: DISMISSAL

Mr. Matthew Huss of The Makena Great American Seventh Company, LLC (Petitioner) seeks review by the State Water Resources Control Board (State Water Board) of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) decision to reject closure of Petitioner's underground storage tank (UST) case at 5600 7th Street, Long Beach, Los Angeles County (Site).

The case has the following identification numbers:

- State Water Board, Division of Water Quality, Petition No. DWQP-0238
- State Water Board, UST Cleanup Fund, Claim No. 18154
- GeoTracker No. T0603762297
- Los Angeles Water Board, Case No. 908040261

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 Los Angeles Basin (Basin Plan) designates existing and potential beneficial uses of groundwater in the Coastal Plain of Los Angeles – West Coast (4-11.03) groundwater basin as municipal and domestic supply, industrial service supply, industrial process supply, and agricultural supply (Basin Plan, February 1995, Chapter II).

BACKGROUND

- Petitioner's Site is a single-story retail building and parking lot.
- The Site is located in the Coastal Plain of Los Angeles, West Coast groundwater basin. The public water supply is provided by the Long Beach Water Department and the Metropolitan Water District of Southern California.
- The nearest public supply well is located approximately 1.5 miles northwest of the Site. The nearest surface water body is approximately 0.6 miles southwest of the Site.
- The near-surface geology consists of silty sands with clayey silt intervals to approximately 120 feet below ground surface (bgs).
- The groundwater depth is approximately 83 feet bgs. The groundwater flow direction is variable but generally towards the south.
- The release at the Site was discovered in 2004 during the removal of three 4,000-gallon and three 12,000-gallon USTs. Approximately 244 tons of impacted soil were excavated and removed from Site in 2004. Site investigation has been on-going since 2004.
- In January 2007, a soil vapor extraction (SVE) pilot test was conducted. It was reported that approximately 288 pounds of hydrocarbons were removed during testing.
- No remedial activity has been conducted at the Site since November 2008.
- The groundwater at MW-4 contained 0.24 feet of free product during November 2014.

On April 8, 2014, the Petitioner requested UST case closure from the Los Angeles Water Board. The Los Angeles Water Board denied case closure on May 23, 2014. On December 16, 2014, the Petitioner filed a UST case closure petition requesting a State Water Board review of the case.

On April 13, 2015, the Los Angeles Water Board responded to the petition and provided the following reasons for denial of UST case closure: (1) Secondary source has not been removed to the extent practicable. No active remediation has been conducted at the Site since November 2008, and free product was detected in one well during the most recent groundwater monitoring event. (2) Free product has not been removed to the maximum extent practicable. The use of SVE and other remediation methods might mitigate the presence of free product in MW-4.

DISCUSSION

The Petitioner contends: (1) Free product is limited to an isolated pocket near MW-4. (2) Free product was removed to the maximum extent practical from MW-4 by means of aggressive groundwater pumping during groundwater monitoring events.

After consideration of the data available in the record, I have determined that the General Criteria in the Policy have not been met. Free product at MW-4 has not been removed to the maximum extent practicable. Remediation and groundwater monitoring at MW-4 must continue.

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.

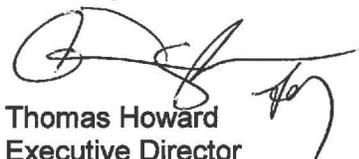
The requirements for case closure have not been met at this time and, therefore, closure of the UST case is not appropriate. Current Site conditions support a potential threat to human health, safety, and the environment. At this point in time, insufficient data are available to determine that corrective 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: [Via email only]

Mr. George Lockwood, State Water Board
(George.Lockwood@waterboards.ca.gov)

Ms. Isomia Lamar, State Water Board
(Isomia.Lamar@waterboards.ca.gov)

Ms. Tamarin Austin, State Water Board
(Tamarin.Austin@waterboards.ca.gov)

Ms. Therese Barakatt, State Water Board
(Therese.Barakatt@waterboards.ca.gov)

Ms. Frances McChesney, State Water Board
(Frances.Mcchesney@waterboards.ca.gov)

Mr. David Coupe, State Water Board
(David.Coupe@waterboards.ca.gov)

Ms. Jennifer Fordyce, State Water Board
(Jennifer.Fordyce@waterboards.ca.gov)

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Ms. Lisa Babcock, State Water Board
(Lisa.Babcock@waterboards.ca.gov)

Mr. Samuel Unger, Executive Officer, Los Angeles Water Board
(Samuel.Unger@waterboards.ca.gov)

Ms. Paula Rasmussen, Los Angeles Water Board
(Paula.Rasmussen@waterboards.ca.gov)

Mr. Yue Rong, Los Angeles Water Board
(Yeu.Rong@waterboards.ca.gov)

Mr. Weixing Tong, Los Angeles Water Board
(Weixing.Tong@waterboards.ca.gov)

Ms. Carmen Piro, City of Long Beach
(Carmen.Piro@longbeach.gov)

Mr. Robert Flickinger, Gilbert Reese Trust
(Bob@wingsmith.com)

Mr. Michael Uziel, Enviropro, Inc.
(Mike.Uziel@enviropro.com)

Mr. Frank Goldman, Consultant
(Fjgoldmanchg@yahoo.com)