
State Water Resources Control Board

MAY 23 2014

Mr. Patrick Toelkes
Cardno ERI
25371 Commercentre Drive, Suite 250
Lake Forest, CA 92630
(Via e-mail: patrick.toelkes@carno.com)

Dear Mr. Toelkes:

PETITION OF EXXONMOBIL OIL CORPORATION FOR REVIEW OF DENIAL OF PETROLEUM UNDERGROUND STORAGE TANK CASE CLOSURE, EXXON MOBIL #18-D6Q, 9700 CENTRAL AVENUE, MONTCLAIR, SAN BERNARDINO COUNTY: DISMISSAL

Mr. Patrick Toelkes on behalf of ExxonMobil Oil Corporation (Petitioner) seeks review by the State Water Resources Control Board (State Water Board) of the Santa Ana Regional Water Quality Control Board (Regional Water Board) decision to reject closure of Petitioner's underground storage tank (UST) case at 9700 Central Avenue, Montclair, San Bernardino County (Site).

The case has the following Identification numbers:

- State Water Board Division of Water Quality Petition No. 0232
- GeoTracker No. T0607115668
- San Bernardino County Fire Department No. 2003016

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 Santa Ana Region Basin Plan (Basin Plan) designates existing and potential beneficial uses of groundwater in the Upper Santa Ana Valley - Chino (8-2.01) groundwater basin as municipal and domestic supply (MUN), agricultural supply (AGR), industrial service supply (IND), and industrial process supply (PROC). (Water Quality Control Plan for the Basin Plan, February 2008, Chapter III.)

BACKGROUND

- Petitioner's Site is currently operated as an active service station.
- The Site is located at the intersection of Central Avenue and San Bernardino Street.
- The nearest supply well is located approximately 2,000 feet west of the Site. The nearest surface water body is located more than 1,000 feet from the Site.
- Soil beneath the site consists primarily of sand with cobbles and boulders.
- The estimated regional depth to groundwater is approximately 180 feet below ground surface (bgs). Groundwater flow direction is towards the south.
- The release at the Site was discovered during site assessment in 2002.
- Methyl tert-butyl ether (MTBE) was detected in soil during site assessment between 2002 and 2005.
- Tetrachloroethylene (PCE) was detected in soil vapor during soil vapor extraction (SVE) activities between 2009 and 2010.

On January 24, 2012, an addendum to a closure request for the Site was submitted by the Petitioner to the Regional Water Board. The Regional Water Board denied UST case closure during a meeting held on March 28, 2013. On July 17, 2013, the Petitioner submitted a closure petition to the State Water Board.

On January 24, 2014, the Regional Water Board responded to the closure petition and provided the following reasons for denying UST case closure: (1) no new data has been collected for this site since January 2011, which was prior to the transfer of the case to Regional Water Board staff; (2) Confirmation borings were placed immediately adjacent to vapor wells. Residual contamination in soil between SVE wells is unknown; (3) there were only a limited number of wells to cover a large vertically and laterally extensive soil plume; (4) the flow rates and operational data prior to the system shut-down in 2007 versus the data after restarting the system were not consistent; (5) only 1,296 pounds of hydrocarbons were removed from such a heavily contaminated site when the treatment system was shut-off due to the addition of chlorinated hydrocarbons and no mass removal occurred when the system was restarted two years later; and (6) the contamination at the site went deep; the impact of groundwater could not be ascertained for lack of any groundwater data.

DISCUSSION

The Petitioner contends: (1) That the site is unlikely to be a source of vapor phase PCE; (2) No records were found documenting a release of PCE or use of PCE containing materials; (3) Soil samples collected from confirmation borings did not yield PCE concentrations above laboratory reporting limits; and (4) the site does not pose a threat to human health, safety or the environment.

Although remedial corrective activities have been conducted, it appears soil confirmation borings were advanced primarily in locations to investigate possible sources of PCE. Soil analytical data from these borings do not provide data needed to determine the effectiveness of

the remediation system at locations between the SVE wells. Additional borings should be advanced as requested by the Regional Water Board to investigate current soil and groundwater conditions beneath the Site.

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. Site conditions are not consistent with the requirements or criteria for case closure under either Resolution 92-49 or the Policy. 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 e-mail only]

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