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9 CHEVRON ENVIRONMENTAL  
10 MANAGEMENT COMPANY and  
11 CHEVRON U.S.A. INC.

12 STATE WATER RESOURCES CONTROL BOARD  
13 STATE OF CALIFORNIA

14 In the Matter of

PETITION NO.

15 CHEVRON ENVIRONMENTAL  
16 MANAGEMENT COMPANY, and  
17 CHEVRON U.S.A. INC.,

**PETITION FOR REVIEW**

18 Petitioners

19 For Review of Requirement to Submit a  
20 Work Plan, File No. 07S0132 (KEB), issued  
21 by the California Regional Water Quality  
22 Control Board, San Francisco Bay Region

23 Pursuant to California Water Code section 13320 and Title 23 of the California  
24 Code Regulations §§ 2050 *et seq.*, Petitioners Chevron Environmental Management  
25 Company ("Chevron EMC") and Chevron U.S.A. Inc. ("Chevron") (collectively  
26 "Petitioners") hereby petition the State Water Resources Control Board ("State Board") for  
27 review of the Requirement to Submit a Work Plan issued by the California Regional Water  
28 Quality Control Board, San Francisco Region ("Regional Board") on July 20, 2011  
("Directive"). The Directive purports to require Chevron EMC, M.B. Enterprises, Inc., Phil  
and Jane Lehrman, and Ned and Marjorie P. Robinson to submit a work plan to assess the  
sources(s) and extent of volatile organic compounds on and around 1705 Contra Costa  
Boulevard ("the Site"). A Chevron-branded service station is currently located on the

1 Site and a dry cleaner was located on the Southern portion of the Site from 1971 to 1986.  
2 The Directive improperly names Chevron EMC as a “suspected discharger.” Petitioners  
3 request a hearing in this matter.

#### 4 I. PETITIONERS

5 The names and addresses of Petitioners are:

6 Chevron U.S.A. Inc.  
7 6001 Bollinger Canyon Road  
8 San Ramon, CA 94583

9 Chevron Environmental Management Company  
10 6101 Bollinger Canyon Road  
11 San Ramon, CA 94583

12 Petitioners should be contacted through their legal counsel:

13 ROGERS JOSEPH O'DONNELL  
14 ROBERT C. GOODMAN  
15 311 California Street, 10th Floor  
16 San Francisco, CA 94104  
17 Telephone: (415) 956-2828  
18 Facsimile: (415) 956-6457  
19 E-mail: [rgoodman@rjo.com](mailto:rgoodman@rjo.com)

20 It should be noted that Chevron EMC is a wholly separate entity from Chevron  
21 U.S.A. Inc., the entity that formerly owned the Site. Chevron EMC manages the  
22 environmental aspects of the Site for Chevron U.S.A. Inc. Thus the Directive’s finding that  
23 Chevron EMC is a “suspected discharger” has no evidentiary foundation. The Petition  
24 however, addresses the issues raised in the Directive as if the Directive had been directed to  
25 Chevron U.S.A. Inc., which as discussed below, also would have been improper.

#### 26 II. ACTION OF THE REGIONAL BOARD TO BE REVIEWED

27 Petitioners request that the State Board review the Directive, which improperly  
28 names Chevron EMC as a “suspected discharger” with respect to the Site and improperly  
establishes a requirement that Chevron EMC perform additional subsurface investigation to  
define the lateral and vertical extent of chlorinated hydrocarbons and petroleum hydrocarbons  
in soil, soil vapor, and groundwater, both on-site and off-site. A copy of the Directive is  
attached as Exhibit A. This Petition is a protective filing, and pursuant to 23 Cal. Code Regs.  
§ 2050.5(d), Petitioners request that this Petition be held in abeyance by the State Board until

1 further notice.

2 **III. DATE OF THE REGIONAL BOARD ACTION**

3 The Regional Board issued the Directive on July 20, 2011.

4 **IV. STATEMENT OF REASONS WHY THE REGIONAL BOARD'S**  
5 **ACTION WAS INAPPROPRIATE OR IMPROPER**

6 As set forth more fully below, the action of the Regional Board was not  
7 supported by the record, and was arbitrary, capricious, and in violation of law and policy.

8 **A. Background**

9 The Site is in Pleasant Hill, California. Until 1986 it was actually two separate  
10 parcels, referred to as the "northern parcel" and the "southern parcel." A gasoline service  
11 station has been located on the northern parcel since approximately 1950 and, up until 1986, a  
12 dry cleaner operated on the southern parcel. Prior to 1986 both parcels were owned by  
13 independent third parties – with no connection to either Petitioner. Similarly, neither  
14 Petitioner had any involvement in the operation of the dry cleaner. In 1986 the dry cleaner  
15 ceased doing business and all dry cleaning equipment was removed from the southern parcel.  
16 Chevron subsequently bought both parcels. Over the next two years a new service station and  
17 car wash were built and occupied both of the parcels.

18 In May 1986 Chevron removed four underground storage tanks ("USTs") on  
19 the northern parcel – which included a small waste oil UST – and discovered that there had  
20 been a release of petroleum products. It then investigated this release, and conducted clean  
21 up activities, all of which are described in detail in the September 13, 2004, Closure Report  
22 that was submitted to the Regional Board.

23 The Regional Board issued a Case Closure letter for the Chevron-branded  
24 service station Site on January 14, 2005. In connection with its closure of the service station  
25 Site, the Regional Board recognized that "petroleum hydrocarbons and halogenated volatile  
26 organic compounds ("HVOCs") will persist on the Site and into the public right-of-way." As  
27 a condition of closure, the Regional Board required that a site management plan be  
28 implemented, which it found "provides a mechanism to detect, evaluate, and mitigate any  
adverse impact the petroleum hydrocarbons or HVOCs may pose." Chevron has been

1 and is in full compliance with this site management plan.

2 The Directive states that a dry cleaning operation known as P&K Cleaners was  
3 formerly located on an adjacent property known as the Gregory Village Mall. A plume of  
4 PCE associated with the P&K Cleaners exists in and around the mall property. It is stated  
5 that the owner of the mall, Gregory Village Partners, L.P., conducted a grab groundwater  
6 investigation in December 2009, downgradient from the Site and upgradient from P&K  
7 Cleaners. This investigation allegedly detected PCE, TCE, and petroleum constituents,  
8 including MtBE. The Directive concludes that the distribution of these contaminants is  
9 "consistent" with the conclusion that contaminants from the Site have moved downgradient  
10 and may be comingling with the release from the mall.

11 **B. The Regional Board's Action Was Inappropriate and**  
12 **Improper**

13 The Directive identifies Chevron EMC as a "suspected discharger" based on  
14 the assertion that it owned and/or operated the gasoline service station on the northern parcel  
15 from 1950 until March 2003, and its ownership of the southern parcel, where the former dry  
16 cleaner had been located, from December 1986 to March 2003. As is discussed above,  
17 Chevron EMC has never owned or operated the Site, or any portion of it, and there is thus no  
18 factual or legal basis for naming it as a "suspected discharger." Accordingly, the Directive  
19 should be rescinded as to Chevron EMC.

20 In addition, there would also be no legal or factual basis to name Chevron as a  
21 "suspected discharger." As a preliminary matter, there is no factual support for the  
22 Directive's conclusion that "available data" indicate that chlorinated hydrocarbons were  
23 likely used on the Site during Chevron's period of ownership. The Regional Board has  
24 granted case closure for the Chevron-branded service station Site, and the Directive identifies  
25 no new facts that would justify reopening the case. The Directive indicates that the closure  
26 related only to a fuel UST release, and not to chlorinated solvents allegedly related to the  
27 waste oil UST. That is not correct. The case closure for the Site specifically related to the  
28 former waste oil UST, as well as the petroleum USTs. Indeed, the waste oil UST is  
specifically referenced in the Site Closure summary, as is the fact that low

1 concentrations of HVOCs would “persist” both on site and off site. Beyond that, there is no  
2 evidence that chemicals of concern found in the subsurface at the Gregory Village Mall, or in  
3 the Gregory Gardens neighborhood, were released from the waste oil UST. Indeed, there is  
4 no evidence that HVOCs were released from the waste oil UST in sufficient quantities to  
5 have contributed in any way to conditions at the mall or in the Gregory Gardens  
6 neighborhood. Thus, not only is there no basis for reopening the closed service station site,  
7 but there is also no evidence that alleged releases from the waste oil UST would support  
8 naming Chevron as a “suspected discharger.”

9           The conclusion that Chevron operated the gasoline service station portion of  
10 the property from 1950 until March 2003 is not supported by the evidence. The only  
11 available records, from as early as 1971, indicate that the service station was at all times  
12 operated by a third party dealer. Chevron only owned the northern portion of the Site from  
13 December 1986 to 2003. Prior to this purchase the steel waste-oil UST which is alleged to  
14 have leaked had been replaced with a double-walled fiberglass UST. This UST was removed  
15 in January 1988. Thus, Chevron did not own or operate the northern parcel when the alleged  
16 releases appear to have occurred.

17           It is not clear from the Directive why Chevron’s former ownership of the  
18 southern parcel from December 1986 to March 2003 is identified as a basis for finding that  
19 Chevron EMC is a “suspected discharger.” Neither Petitioner is legally responsible for any  
20 releases of PCE by the dry cleaner that operated until approximately 1986 on the southern  
21 parcel. As indicated above, the dry cleaner ceased operations in 1986, prior to the date that  
22 Chevron purchased the Property. Chevron subsequently sold the entire property in March  
23 2003.

24           A Regional Board’s authority to name responsible parties is not limitless. The  
25 Regional Board must have “a reasonable basis on which to name each responsible party.” *In*  
26 *the Matter of the Petition of Exxon Company, U.S.A.*, Order No. 85-066, 1985 Cal. ENV  
27 LEXIS 10, \*17 (1985) (“*Exxon*”). A reasonable basis is established when “credible and  
28 reasonable evidence [] indicates the named party has responsibility.” *Id.* The fact that the

1 Regional Board can not find any person responsible to effectuate a cleanup does not, in it of  
2 itself, justify holding a non-responsible party liable. *Id.* at 16. For example, in *Exxon*, the  
3 State Board found it inappropriate to name Exxon as a responsible party because there was  
4 simply no evidence to tie Exxon to the alleged pollution. *Id.* at 16. This is consistent with the  
5 language of Water Code Section 13304(a), which requires “active, affirmative or knowing  
6 conduct” with regard to the contamination. *Redevelopment Agency v. BNSF Ry.*, 2011 U.S.  
7 App. LEXIS 13135, at \*12 (9th Cir. June 28, 2011); *See also City of Modesto Redevelopment*  
8 *Agency v. Superior Court*, 119 Cal. App. 4th 28, 44 (2004) (Section 13304’s “causes and  
9 permits” language was not intended “to encompass those whose involvement with a spill was  
10 remote or passive.”).

11 The State Board’s analysis *In the Matter of the Petitions of Wenwest, Inc.*,  
12 Order No. 92-013 (1992) (“*Wenwest*”) is directly applicable to the Site. In *Wenwest*, the State  
13 Board declined to hold a former property owner (Wendy’s International) liable, where that  
14 party had no part in the activity that resulted in the discharge and whose ownership tenure did  
15 not cover the temporal time period during which that activity was taking place. *Id.* at 5-7.

16 The State Board stated:

17 No order issued by this Board has held responsible for a cleanup  
18 a former landowner who had no part in the activity which  
19 resulted in the discharge of the waste and whose ownership  
20 interest did not cover the time during which that activity was  
taking place. Considering those facts and the existence of other  
fully responsible parties, we see no reason to establish that  
precedent in this case.

21 *Id.* at 5.

22 Here, Chevron’s position is analogous, in that it is undisputed that Chevron  
23 never owned, operated, or had any involvement with the dry cleaner that is alleged to have  
24 released the solvents – it was a wholly unrelated business of a prior owner/operator.  
25 Chevron’s position is also analogous in that it is undisputed that Chevron’s ownership interest  
26 in the Property commenced after the dry cleaning business ceased operations. Moreover, the  
27 Regional Board has information on the identity and location of the persons who are  
28 responsible for any releases from the dry cleaner – the operator of the dry cleaning business

1 and the owner of the southern parcel at the time the dry cleaner conducted business –  
2 although it does not appear that the Regional Board has taken any action against these parties.

3 In sum, the Directive is plainly defective in its naming of Chevron EMC as a  
4 “suspected discharger;” that entity has never owned or operated the property at issue.  
5 Beyond that, there would also be no basis for naming Chevron as a “suspected discharger.”  
6 Chevron’s tenure of ownership commenced after the dry cleaner ceased operations.  
7 Furthermore, Chevron had no involvement with the dry cleaning business in any respect.  
8 Thus, Chevron’s conduct (or lack thereof) could not have constituted “active, affirmative or  
9 knowing conduct” with regard to the dry cleaner’s PCE discharge. Accordingly, because  
10 Chevron did not “cause or permit” any discharge or threaten to discharge the dry cleaning  
11 solvent PCE, there was no legal basis for the Directive’s finding that Chevron is a “suspected  
12 discharger” of releases from the former dry cleaning business.

#### 13 **V. THE MANNER IN WHICH PETITIONERS HAVE BEEN** 14 **AGGRIEVED**

15 Petitioners have been aggrieved by the Regional Board’s actions because they  
16 will be subjected to provisions of an arbitrary and capricious finding unsupported by evidence  
17 in the record. As a result of being named as suspected dischargers in connection with the  
18 Site, Petitioners will be forced to shoulder significant costs of compliance, to bear a heavy  
19 burden of regulatory oversight and to suffer other serious economic consequences to their  
20 business operations. Further, by naming Chevron EMC as “suspected discharger,” the  
21 entities which actually caused the contamination of concern, the former dry cleaning  
22 operators, will have no incentive to clean up the contamination, and instead will likely wait  
23 and let innocent, former owners of the property, bear the cost of clean up.

#### 24 **VI. STATE BOARD ACTION REQUESTED BY PETITIONERS**

25 As discussed above, Petitioners request that this Petition be held in abeyance.  
26 If it becomes necessary for Petitioners to pursue this appeal, it will request that the State  
27 Board determine that the Regional Board’s finding that Chevron EMC is a “suspected  
28 discharger” and requirement that Chevron EMC prepare a workplan was arbitrary and  
capricious or otherwise inappropriate and improper, and will request that the State

1 Board amend the finding to delete the Chevron EMC as a suspected discharger.

2 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT**  
3 **OF LEGAL ISSUES RAISED IN THE PETITION**

4 For purposes of this protective filing, the Statement of Points and Authorities is  
5 subsumed in section IV of the Petition. If Petitioners elect to pursue this appeal, they reserve  
6 the right to file a Supplemental Statement of Points and Authorities, including references to  
7 the complete administrative record, which is not yet available. Petitioners also reserve their  
8 right to supplement their request for a hearing to consider testimony, other evidence and  
9 argument.

10 **VIII. STATEMENT REGARDING SERVICE OF THE PETITION ON**  
11 **THE REGIONAL BOARD**

12 A copy of this Petition is being sent to the Regional Board, to the attention of  
13 Bruce H. Wolf, Executive Officer. Copies are also being sent to the interested parties  
14 identified on the attached proof of service. By copy of this Petition, Petitioners are also  
15 notifying the Regional Board and identified parties of the Petitioners' request that the State  
16 Board hold the Petition in abeyance.

17 **IX. STATEMENT REGARDING ISSUES PRESENTED TO THE**  
18 **REGIONAL BOARD**

19 The substantive issues and objections raised in this Petition were raised before  
20 the Regional Board.

21 For all of the foregoing reasons, if Petitioners pursue their appeal, they  
22 respectfully request that the State Board review the findings that Chevron EMC is a  
23 "suspected discharger" and grant the relief as set forth above.

24 Dated: August 16, 2011

ROGERS JOSEPH O'DONNELL

25 By: \_\_\_\_\_

26 ROBERT C. GOODMAN  
27 Attorneys for Petitioners  
28 Chevron Environmental Management  
Company and Chevron U.S.A. Inc.



# EXHIBIT A



Linda S. Adams  
Acting Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612  
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Edmund G. Brown, Jr.  
Governor

July 20, 2011  
File No. 07S0132 (KEB)

Chevron Environmental Management Company (Chevron)  
Attn.: David R. Patten; [drpatten@chevron.com](mailto:drpatten@chevron.com)  
6111 Bollinger Canyon Road, BR Y-3644  
San Ramon, CA 94583

M.B. Enterprises, Inc.  
Attn.: Bhadheep S. Dhaliwal and Massoud Ebrahimi  
4430 Deerfield Way  
Danville, CA 94506

Phil and Jane Lehrman  
P.O. Box 4  
Genoa, Nevada 89411

Ned and Marjorie P. Robinson  
1195 Glen Road  
Lafayette, CA 94549

**SUBJECT: Requirement to Submit a Work Plan –Existing Chevron Service Station #9-2050 and Former Dry Cleaner, 1705 Contra Costa Boulevard, APN 150-103-016, Pleasant Hill, Contra Costa County**

Dear Mr. Patten, Mr. Dhaliwal, Mr. Ebrahimi, Mr. and Mrs. Lehrman, and Mr. and Mrs. Robinson:

This letter requires you to submit a work plan to assess the source(s) and extent of the volatile organic compounds, mainly chlorinated hydrocarbons associated with dry cleaner operations and waste oil tanks, and petroleum hydrocarbons present in soil, soil vapor, and groundwater beneath the subject site.

### Site Description

The site is a rectangular-shaped commercial parcel improved with a gasoline service station. The site is located in the Gregory Gardens area of Pleasant Hill, California, and is bounded by Contra Costa Boulevard to the east, Doris Drive to the north, Linda Drive to the east, and a parking lot and commercial building to the south. The Gregory Village Mall is located to the north of Doris Drive. Current improvements include a small station/convenience store, three fuel underground

storage tanks (USTs), four dispenser islands, underground product piping, and a car wash. The current property resulted from the merger of two commercial parcels in late 1986/1987; the northern parcel and a southern parcel (with a former address of 1709 Contra Costa Boulevard). An automotive fueling station has existed on the northern parcel for over 60 years. The northern parcel was leased by Standard Oil from 1950 until its acquisition by Chevron U.S.A Inc. in 1977. Chevron operated at the site from 1977 until March 2003, when the property was sold to M.B. Enterprises, Inc.

### **Environmental Site History**

In 1971, the "first generation" service station was removed and replaced with an auto repair facility. In May 1986, four steel USTs – three fuel and one waste oil – were removed and replaced with double-walled fiberglass USTs. During the tank replacement activities, petroleum hydrocarbons were discovered in soil and groundwater. In December 1986, Chevron purchased the southern parcel where a dry cleaner had operated since the mid 1950s.

Groundwater sampling of monitoring wells installed in 1986 detected very high concentrations of petroleum hydrocarbons. In September 1986, the laboratory noted the TPH results for well MW-C, *May contain compounds from sources other than gasoline*. In December 1987/January 1988, groundwater samples analyzed from on-site well MW-C detected PCE (tetrachloroethene a common dry cleaning solvent) at 1,800 µg/L and TCE (trichloroethene, a solvent sometimes used at gasoline service stations to clean or degrease parts) at 570 µg/L.

In late 1987 and early 1988, Chevron rebuilt the service station and constructed a car wash on the former dry cleaner site. On January 6, 1988, the waste oil UST was removed, and the soil directly beneath the tank was found to contain 200 µg/kg of PCE and 35 µg/kg of TCE. In August 1988, three additional monitoring wells were installed to further assess the extent of chlorinated hydrocarbons in groundwater. PCE was detected in soil up to 328 µg/kg. In groundwater samples collected in September 1988 and January 1989, PCE and TCE were detected up to 5,000 µg/L (EA-3) and 2,900 µg/L (EA-2), respectively.

In October 1987, an investigation was completed by Chevron to assess petroleum hydrocarbons in soil vapor. Up to 1,500 ppm benzene and 2,200 ppm TPH were detected in shallow soil vapor. In May 1988, another soil vapor investigation was conducted at the site to assess chlorinated hydrocarbons and other volatile organic compounds beneath the site. Very high concentrations of PCE and TCE (up to 470 ppm and 20 ppm, respectively) were detected in vapor samples. The highest concentrations of chlorinated hydrocarbons were detected in vapor probe V10, which was advanced directly within the former waste oil tank area.

A February 3, 1989, *Report of Investigation, Chevron SS 9-6817*, contained this conclusion:

The chlorinated hydrocarbons detected at the Pleasant Hill site are tetrachloroethylene (PCE), trichloroethylene (TCE), cis-1,2-dichloroethylene (DCE), trans-1,2-dichloroethylene (also DCE), vinyl chloride (VC), chloromethane, methylene chloride, chloroform, and 1,2-dichloroethane. There are two suspected sources of these compounds at the site: the former dry cleaner and the former waste oil tank. PCE is the major dry cleaning solvent used in the United States (Reich 1979). TCE is only rarely used in dry cleaning but is frequently used in metal degreasing (Schneberger 1979; Kimbrough et al. 1985).

Between August 1991 and July 1996, groundwater pump and treat was conducted at the site. Approximately 1,900,000 gallons of petroleum hydrocarbon and chlorinated hydrocarbon impacted groundwater were extracted and treated, resulting in the removal of approximately 12 pounds of TPH and over 41 pounds of chlorinated hydrocarbons.

On May 12, 2003, wells EA-1, EA-2, and EA-3 were sampled for the last time, and PCE and TCE were detected in all three wells. The highest concentrations of PCE and TCE were 3,100 µg/L and 3,600 µg/L, both from EA-2, and degradation compounds, including cis-1,2-DCE and vinyl chloride, were also detected. The analysis of groundwater samples collected on May 14, 2004, from on-site wells MW-C and MW-D and off-site wells EA-3 and EA-5 also detected PCE, TCE, and degradation compounds.

The Regional Water Board closed the fuel UST case on January 14, 2005. An October 31, 2005, letter about monitoring well destruction stated, *As part of approved case closure, one sentinel well, EA-5, will remain active and sampled annually for petroleum hydrocarbons and halogenated volatile organic compounds.* EA-5 has been monitored on an annual basis for the past six years.

Because the past chlorinated hydrocarbon releases on the property may have commingled with another chlorinated hydrocarbon plume present downgradient of the site (associated with another former dry cleaning operation, P&K Cleaners, in the adjacent Gregory Village Mall), the Regional Water Board issued a letter on February 17, 2009, requiring Chevron, under 13267 of the Water Code, to submit a technical report on the history of the dry cleaner that once operated on the site. On June 18, 2009, a *Technical Report on Site History* was submitted by Chevron. In that report, Chevron provided information on the past owners of the dry cleaner.

On December 22, 2009, the owner of Gregory Village Mall conducted a grab groundwater investigation within the southeastern part of their property, downgradient of the site and upgradient of the Gregory Village release. Groundwater samples were collected from five borings advanced by a Cone Penetration Test (CPT) drill rig utilizing a HydroPunch® sampler. The groundwater samples were collected from 19 to 21 feet below the ground surface in a coarser-grained deposit. Laboratory analysis of the samples revealed the presence of various chlorinated hydrocarbons including PCE, TCE, and cis-1,2-DCE, and also petroleum constituents, including TPH-gasoline and the fuel oxygenate MtBE. The concentrations of PCE ranged from 99.4 µg/L to 3,380 µg/L, while the TCE concentrations were less variable, ranging between 102 µg/L and 176 µg/L. The distribution and types of contaminants, chlorinated hydrocarbons as well as petroleum hydrocarbons, is consistent with the conclusion that the contaminants from the subject property have moved downgradient and may be commingling with the release at the Gregory Village site.

### **Suspected Dischargers**

Chevron is considered a suspected discharger because it owned and/or operated the gas station portion of the property from 1950 until March 2003, and owned the dry cleaner parcel (1709 Contra Costa Boulevard) from December 1986 to March 2003. Available data indicates that chlorinated hydrocarbons were likely used on the property during Chevron's period of ownership.

The Lehrmans and Robinsons are considered suspected dischargers because they jointly owned and/or operated the dry cleaner parcel from 1971 to December 1986 when PCE was likely used.

M.B. Enterprises, Inc. is considered a suspected discharger because it is the current property owner of 1705 Contra Costa Boulevard, which includes both the gas station and former dry cleaner.

**Requirement to Submit a Work Plan**

Because the lateral and vertical extent of chlorinated hydrocarbon and petroleum hydrocarbon contamination associated with the site was not fully characterized, additional subsurface investigation is necessary to delineate the sources of the chlorinated hydrocarbon and petroleum hydrocarbon contamination present on the site and to define the lateral and vertical extent of this contamination in the soil, soil gas, and groundwater, on-site and off-site. It is possible that the chlorinated hydrocarbons originating at the site have migrated downgradient and are commingling with another chlorinated hydrocarbon plume that has impacted a residential neighborhood. Although the LUST case regarding the petroleum hydrocarbon contamination at the site has been closed, it is important to track the downgradient extent of the petroleum hydrocarbon contamination, so we can better understand the hydrogeologic regime of the site and downgradient properties.

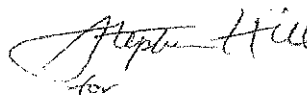
**Therefore, you are required to submit a work plan by August 24, 2011, for an investigation to define the lateral and vertical extent of chlorinated hydrocarbons and petroleum hydrocarbons in soil, soil vapor, and groundwater, both on-site and off-site.**

This requirement for a report is made pursuant to Water Code Section 13267, which allows the Regional Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. The attachment provides additional information about Section 13267 requirements. Any extension to the above deadline must be confirmed in writing by Regional Water Board staff.

Please submit all documents in electronic format to the State Water Resources Control Board's Geotracker database. Guidance for electronic information submittal is available at [http://www.waterboards.ca.gov/cwphome/ust/cleanup/electronic\\_reporting/index.html](http://www.waterboards.ca.gov/cwphome/ust/cleanup/electronic_reporting/index.html). All reports submitted should have the Regional Board file number 07S0132 on the first page of the report. Copies of all reports and other correspondence should be sent to the Contra Costa County Health Services Department (CCCHSD) in Martinez.

If you have any questions, please contact Kevin Brown of my staff at (510) 622-2358 or via e-mail at [kebrown@waterboards.ca.gov](mailto:kebrown@waterboards.ca.gov).

Sincerely,



Digitally signed by Stephen Hill  
Date: 2011.07.20 07:53:59  
-07'00'

Bruce H. Wolfe  
Executive Officer

Enclosure: Fact Sheet – Requirements For Submitting Technical Reports Under Section 13267  
of the California Water Code

cc:

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Linda S. Adams  
Acting Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## San Francisco Bay Region



Edmund G. Brown, Jr.  
Governor

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### Fact Sheet – Requirements for Submitting Technical Reports Under Section 13267 of the California Water Code

#### What does it mean when the Regional Water Board requires a technical report?

Section 13267<sup>1</sup> of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

#### This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

The requirement for a technical report is a tool the Regional Water Board uses to investigate water quality issues or problems. The information provided can be used by the Regional Water Board to clarify whether a given party has responsibility.

#### Are there limits to what the Regional Water Board can ask for?

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The Regional Water Board is required to explain the reasons for its request.

#### What if I can provide the information, but not by the date specified?

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

#### Are there penalties if I don't comply?

Depending on the situation, the Regional Water Board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

#### Do I have to use a consultant or attorney to comply?

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

#### What if I disagree with the 13267 requirements and the Regional Water Board staff will not change the requirement and/or date to comply?

You may ask that the Regional Water Board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the Regional Water Board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

#### If I have more questions, whom do I ask?

Requirements for technical reports include the name, telephone number, and email address of the Regional Water Board staff contact.

Revised January 2008

<sup>1</sup> All code sections referenced herein can be found by going to [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

1 **PROOF OF SERVICE**

2 I, Clara Chun, declare that I am over 18 years of age and not a party to the within  
3 action. I am employed in San Francisco County at 311 California Street, 10th Floor, San  
4 Francisco, CA 94104. On August 16, 2011, I served the following documents described as:

4 **PETITION FOR REVIEW**

5 By placing a true copy thereof enclosed in first class mail and/or or electronic mail addressed  
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27 X **BY FIRST CLASS MAIL:** I am readily familiar with my firm's practice for  
28 collection and processing of correspondence for mailing with the United States  
Postal Service, to-wit, that correspondence will be deposited with the United States  
Postal Service this same day in the ordinary course of business. I sealed said  
envelope and placed it for collection and mailing on same day, following ordinary  
business practices.

X **BY ELECTRONIC SERVICE:** I caused a true and correct copy of the  
document(s) to be transmitted by electronic mail compliant with section 1010.6 of  
the California Code of Civil Procedure to the persons) as shown.

29 I declare under penalty of perjury under the laws of the State of California that the  
30 foregoing is true and correct and that this declaration was executed this date at San  
31 Francisco, California.

32 Dated: August 16, 2011

*Clara Chun*  
\_\_\_\_\_  
Clara Chun