

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

IN THE MATTER OF)
THE CITY OF ALAMEDA)
DALE'S BAR)
2756 MAIN STREET)
CITY OF ALAMEDA)
ALAMEDA COUNTY)

AMENDED ORDER
COMPLAINT NO. 00-022
FOR
ADMINISTRATIVE
CIVIL
LIABILITY

YOU ARE HEREBY GIVEN NOTICE THAT:

The City of Alameda (hereinafter the Discharger) is alleged to have violated provisions of law, for which the San Francisco Bay Region (Regional Board) may impose civil liability under Section 13385 of the California Water Code.

Unless waived, a hearing on this matter will be held before the Regional Board on September 20, 2000, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. The City of Alameda's representatives will have an opportunity to be heard and to contest allegations in this complaint, and the imposition of civil liability by the Regional Board. An agenda showing the time set for the hearing will be mailed no less than ten days before the hearing date. You must submit any written evidence concerning this complaint to the Regional Board before September 1, 2000. Any written evidence submitted to the Board after September 1, 2000, may not be included in the record.

At the hearing the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

ALLEGATIONS

The Discharger is alleged to have violated Section 13376 of the California Water Code, by allowing the discharge of pollutants to Waters of the United States without the required Waste Discharge Requirements.

The following facts are the basis for the alleged violation in this matter:

1. On December 6, 1999, the Discharger initiated the removal of two gasoline underground storage tanks (USTs) from 2756 Main Street (hereinafter the Site), Alameda, Alameda County. Alameda County Health Care Agency, Division of Environmental Protection (ACHCA) is the lead regulatory agency responsible for the oversight of underground storage tank removals, investigations, cleanups and closure plans.

2. Following the UST removals, approximately 1,100 gallons of water and residual product from the waste oil tank pit were removed by vacuum truck and off-hauled. An additional 7,000 gallons of groundwater was pumped from the fuel tanks and excavations into a holding tank. Soil and groundwater analytical data were submitted by the Discharger to the ACHCA for review, to determine if the stockpiled soil and/or groundwater could be re-used at the site. Analytical results for water from the holding tank indicate the water contained up to 11,000 parts per billion (ppb) Total Petroleum Hydrocarbon (TPH) as gasoline, 1,600 ppb TPH as diesel, 2,900 ppb TPH as motor oil, and 310 ppb as benzene. On December 10, 1999, ACHCA staff approved the re-use of stockpiled soil but directed the Discharger not to re-use the groundwater on site.
3. On December 17, 1999, the ACHCA received a complaint regarding the discharge of ground water to an unlined ditch leading to a storm drain on the site. ACHCA staff investigated the site and noted petroleum sheen on the ground water surface within the UST excavation and a strong petroleum odor from one area of the site; however, no obvious discharge to the storm drain was observed. Daily inspection reports from December 17, 1999, and other information provided by the Discharger, state that water from the site was being used for "dust control."
4. On December 22, 1999, ACHCA staff revisited the site. Ponding was observed on several locations of the property. The holding tank was empty, and a strong hydrocarbon odor was noted coming from inside the tank. An estimated 17,000 gallons of polluted groundwater (7,000 from the holding tank and 10,000 from the tank excavation) was discharged to land and/or to the storm sewer system without approval or permits from the ACHCA or the Regional Board.
5. The Discharger, in a letter dated September 6, 2000, states its belief that all dewatering and dust control activities were completed on or before December 18, 1999 and that the alleged offsite discharge is solely attributable to tidal surcharge that has historically flooded this area. The Discharger further states this was done in accordance with the written advice of its Environmental Consultant.
6. Based upon complaint calls, an Office of Emergency Services spill report, and daily inspection reports from the Discharger, ACHCA staff determined that polluted groundwater, from both the holding tank and excavated UST pit, had been illegally discharged while under the oversight of the Discharger. In a letter dated February 28, 2000, the ACHCA requested the Regional Board's enforcement assistance regarding these discharges.
7. The Regional Board adopted Resolution 88-160 on October 19, 1988. The Resolution urges dischargers of extracted ground water from site cleanup operations to reclaim their effluent and when reclamation is not technically or economically feasible, to discharge to a publicly owned treatment works (POTW).

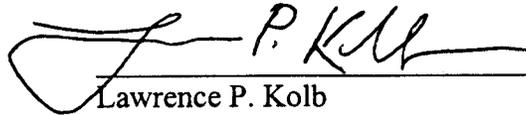
The Discharger neither treated the polluted groundwater nor had authorization to discharge this untreated water for "dust control."

8. If neither reclamation nor discharge to a POTW is found to be technically or economically feasible, dischargers may file an NPDES application with the Regional Board to receive authorization to discharge treated extracted ground water in accordance with the requirements of Order No. 96-078, "General Waste Discharge Requirements for Discharges of Extracted and Treated Groundwater Resulting from the Cleanup of Groundwater Polluted by Fuel Leaks and Other Related Wastes at Service Stations and Similar Sites". The Discharger neither applied for this permit nor treated the polluted ground water prior to discharging it to the storm drain system.
9. The cities of Alameda County (including the Discharger- the City of Alameda), unincorporated areas of Alameda County, and flood control and water conservation districts within Alameda County, joined together to form the Alameda Countywide Clean Water Program and applied for and received coverage under an NPDES Permit (Order 97-030 as modified by Order 99-049) to discharge storm water runoff from storm drains and watercourses within their respective jurisdictions. The Discharger violated Prohibition A.1 of its permit by discharging polluted ground water into its storm drain system.
10. The maximum civil liability which could be imposed by the Regional Board in this matter is as follows:
 - a. Pursuant to Section 13385(c.1), \$10,000 per day of violation; and
 - b. Pursuant to Section 13385(c.2), up to \$10 per gallon for the volume discharged over 1000 gallons.
11. Based on the days of violation the maximum administrative civil liability which could be imposed by the Regional Board in this matter, under Section 13385 of the Water Code, exceeds \$180,000. This amount is based on 2 days of discharge of 17,000 gallons of contaminated groundwater.
12. In determining the amount of administrative civil liability, the Regional Board considered the following factors described in the attached staff report:
" the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and any other matters that justice may require" [Water Code Section 13385(e)].
13. The Executive Officer of the Regional Board proposes that the administrative civil liability imposed in the amount of \$21,400 that includes \$4,400 in staff costs.
14. The Discharger has requested that \$17,000 of the amount be suspended pending accomplishment of a supplemental environmental project acceptable to the

Executive Officer. The Discharger must submit to this Board a proposal for such a project by November 20, 2000. If the proposed project is not acceptable, the Discharger has 30 days from receipt of notice of rejection of submittal, to either submit a new or revised proposal or submit payment for the full amount suspended. The accepted project(s) must be completed by October 20, 2001. Any money not used by that date must be submitted to this Board and made payable to the State Cleanup and Abatement Fund of directed toward an alternative project acceptable to the Executive Officer.

15. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et.seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

9/13/00
Date


Lawrence P. Kolb
Acting Executive Officer

WAIVER OF HEARING

You may waive the right to a hearing. If you wish to waive the hearing, an authorized person must check and sign the waiver below and return it to the Regional Water Quality Control Board, San Francisco Bay Region, at 1515 Clay Street, Suite 1400, Oakland CA 94612. Payment of the civil liability would be due within 60 days from the date of this Complaint. Any waiver will not be effective until 30 days from the date of this Complaint to allow other interested persons to comment on this action.

If you should have any questions, please contact Bruce Wolfe, Chief of the Watershed Management Division at (510) 622 2443 or Sheryl Freeman, the Regional Board's counsel, at (916) 657-2406.

WAIVER

By checking this box I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No.00-022 and to remit payment for the civil liability imposed to include a proposal for supplemental environmental projects as mitigation for the amount of liability suspended. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this complaint, and against the imposition of, or the amount of, civil liability proposed. I agree to remit payment for the civil liability imposed within 60 days from the date of this Complaint.

9-13-00
Date


Discharger
MATTHEW T. NACLERIO
PUBLIC WORKS DIRECTOR
CITY OF ALAMEDA

REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF REPORT

TO: Lawrence P. Kolb
Acting Executive Officer

DATE: March 25, 2000

FROM: Richard Hiatt, AWRCE
Field Team
Farhad Azmizadeh, AWRCE
Toxics Cleanup Division

FILE NO.: 2198.17

SUBJECT: ACL COMPLAINT NO. 00-022
Staff Report, Recommendation for the Imposition of Administrative Civil
Liability for the Discharge of Untreated Groundwater, City Of Alameda,
2756 Main Street, Alameda County

SUMMARY

The City of Alameda (hereinafter the Discharger) owns the property at 2756 Main Street, in the City of Alameda. During the course of underground storage tank (UST) removals at this site, 17,000 gallons of untreated contaminated water was intentionally discharged to land and/or the storm sewer system. The Discharger violated several provisions of law including: allowing the discharge of pollutants to waters of the United States without Waste Discharge Requirements, failing to obtain authorization from this Board for reclamation requirements to land, and failing to meet the requirements in its own municipal storm water permit for the control of non-storm water discharges within its jurisdiction. This Complaint cites all of these violations as findings, however, the ACL is strictly for the violation of Section 13376 of the Water Code for allowing the discharge of pollutants to waters of the State without waste discharge requirements.

The Alameda County Health Care Services Agency (ACHCA), Environmental Protection Local Oversight Program staff are the lead agency in the oversight of UST removals and investigations in Alameda County. In a letter dated February 28, 2000, the ACHCA has requested our enforcement help in this matter (Attachment 1).

This memo discusses the matter, and recommends imposition of an administrative civil liability in the amount of \$21,400, of which \$4,400 is for recovery of staff costs.

BACKGROUND

The subject site is located on Main Street, adjacent to the Alameda Naval Air Station. The site was formerly a gas station and was most recently occupied by Dale's Bar. On

December 6, 1999, two gasoline USTs and one waste oil UST sump were removed from the subject site. Approximately 1,100 gallons of water and residual product from the waste oil tank pit were removed by vacuum truck and off-hauled. Another approximately 7,000 gallons of groundwater was pumped from the fuel tanks and excavation into a holding tank. Soil and groundwater analytical data were submitted by the Discharger to the ACHCA for review, to determine if the stockpiled soil and/or groundwater could be re-used at the site. Analytical results for water from the holding tank indicate the water contained up to 11,000 parts per billion (ppb) Total Petroleum Hydrocarbon (TPH) as gasoline, 1,600 ppb TPH as diesel, 2,900 ppb TPH as motor oil, and 310 ppb as benzene. ACHCA staff approved the re-use of stockpiled soil but directed the Discharger not to re-use the groundwater on site.

On December 17, 1999, the ACHCA received a complaint regarding the discharge of ground water to un-lined ditch leading to a storm drain on the site. ACHCA staff investigated the site and noted petroleum sheen on the ground water surface within the UST excavation and a strong petroleum odor from one area of the site; however, no obvious discharge to the storm drain was observed. Inspection reports from December 17, 1999, provided by the Discharger, state that water from the site was being used for "dust control" (Attachment 2).

On December 22, 1999, ACHCA staff revisited the site. Ponding was observed on several locations of the property. Water discharge to the storm drain on Singleton Avenue was observed. The holding tank was empty, and a strong hydrocarbon odor was noted from inside the tank.

Based upon complaint calls, an Office of Emergency Services spill report, and daily inspection reports from the Discharger, ACHCA staff determined that polluted groundwater, from both the holding tank and excavated UST pit, had been illegally discharged while under the oversight of the Discharger. An estimated 17,000 gallons of contaminated groundwater (10,000 from the tank excavation and 7,000 from the holding tank) was discharged to land and/or the storm sewer system without approval or permits from the ACHCA or the RWQCB.

In a letter dated February 28, 2000, the ACHCA requested our enforcement assistance in this matter.

REGULATORY FRAMEWORK

The Discharger neither treated the polluted ground water nor had authorization to discharge this untreated wastewater as "dust control" reclamation. The Discharger failed to apply for an NPDES permit from this Regional Board and violated Water Code Section 13260 by discharging waste to waters of the State without Waste Discharge Requirements. The Discharger violated Prohibition A.1 of its municipal storm water permit, issued to the Alameda Countywide Clean Water Program, by discharging polluted ground water into its storm drain system.

LEGAL BASIS FOR ACTION

This enforcement action, Complaint No. 00-022, is for violation of Water Code Section 13260 for the discharge of waste to waters of the State without Waste Discharge Requirements.

Section 13385(e) of the Water Code requires a discussion of the following factors that have bearing on the amount of liability:

1. NATURE AND CIRCUMSTANCES OF THE VIOLATION

UST removals, handling practices and treatment and disposal options with the wastes generated from these activities, have been commonplace for over fifteen years within this region.

The authority to direct and manage these activities has been delegated to cities and counties to provide oversight as part of the State's Local Oversight Program. In this instance the ACHCA, as the lead regulatory agency for this removal, gave clear direction on the re-use of soils and groundwater generated from the UST removals at this site. The soils could be re-used and the groundwater could not. The Discharger's decision to disregard the ACHCA's authority and direct the un-authorized discharge to land resulted in the subsequent mishandling of "dust control" operations ultimately resulting in the discharge of waste to waters of the State. The Discharger's decision to illegally discharge waste resulted in violations of the Discharger's storm water permit and other provisions of law as described above.

2. EXTENT AND GRAVITY OF THE VIOLATION

No down stream effects were noted from this discharge, however, citizen's complaints were reported over several days to this office, the county, and the Office of Emergency Services.

The Discharger was well aware that this activity was not sanctioned by the ACHCA yet permitted this discharge anyway.

3. DEGREE OF CULPABILITY OF THE VIOLATOR

The Discharger was fully aware of the California Water Code, its obligation to comply with the ACHCA staff's directions, and its Municipal Storm Water Permit.

4. PRIOR HISTROY OF VIOLATION

The Discharger has no known prior violations for this type of discharge.

5. ECONOMIC SAVINGS RESULTING FROM THE VIOLATION

The Discharger has realized cost savings by not off-hauling the polluted water to an acceptable disposal facility, or discharging to a Publicly Owned Treatment Works (POTW), or failure to pay for treatment of the water and obtain a permit to discharge the treated water to waters of the state, or failure to treat the water and re-use the water in an approved manner on site. The estimated cost savings from each of these four options, as seen below, range from \$2,000 to \$34,000.

- Off hauling: \$1 to \$2 per gallon, @17,000 gallons: \$17,000-\$34,000
- POTW : permit fees, analysis, monitoring: \$3,000 to \$4,000
- Treatment, permit, analysis, and disposal to storm drain: \$2,500
- Treatment, analysis, and disposal on-site: \$2,000 to \$4,000

6. ABILITY TO PAY

The Discharger should be able to pay a modest liability with little or no impact on their ability to conduct business.

7. OTHER MATTERS AS JUSTICE MAY REQUIRE

Staff time to prepare a complaint and supporting information is estimated at 44 hours. Based on an average cost to the State of \$100 per hour, the total cost is \$4,400.

CONCLUSIONS

Section 13385(c) of the Water Code allows the Regional Board to administer civil liability in an amount not to exceed \$10,000 per day of violation and up to \$10 per gallon for the volume discharged over 1000 gallons. Calculations are as follows:

Two Days of Discharge (December 17th and 18th, 1999) =	\$20,000
\$10 per gallon over 1,000 gallons = 16,000 X 10 =	<u>\$160,000</u>
Total	\$180,000

If this matter is referred to the Attorney General, the maximum liability is \$25,000 per violation day. This penalty should be imposed administratively rather than referred to the Attorney General because:

1. This penalty is sufficient to encourage future compliance with water laws and provides for limited compensation for unknown damage to waters of the state;
2. Additional expenditure for staff time to seek greater penalties, such as referral to the Attorney General, is unwarranted at this time; and
3. The means to impose reasonable penalties are provided within the administrative liability provisions of the Water Code.

RECOMMENDATION

Staff recommends that the Board impose civil liability of \$21,400 (including \$4,400 for staff costs). Considerations include:

1. The amount considers the economic benefit gained through non-compliance, saved by the Discharger, in failing to handle its waste in a manner consistent with other sites.
2. The amount is low enough such that the Discharger would be able to pay, yet high enough to decrease the likelihood of other such occurrences.
3. The Discharger has no known prior violations for this type of discharge.

Concur: H Kazemi Hossain Kazemi, Section Leader,
Field Team

Concur: Teng-Chung Wu Teng-Chung Wu, Division Chief,
NPDES Permit Division

Reviewed for Legal
Form and Sufficiency: Sheryl Freeman for Sheryl Freeman, Esq.
Legal Counsel

Attachment 1: Letter from ACHCA requesting enforcement

Attachment 2: City of Alameda Inspection Report for December 17, 1999