

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

Complaint No. R2-2008-0052

**Administrative Civil Liability
In the Matter of
PETE'S STOP, MR. CUONG CHON HUYN, MR. DUNG HA,
MS. KIEU HUYNH, AND MR. PETER SIALARIS
Pete's Stop
290 Keyes Street, San Jose
Santa Clara County**

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the "Water Board"), hereby gives notice that:

1. Pete's Stop, Mr. Cuong Chon Huynh, Mr. Dung Ha, Ms. Kieu Huynh, and Mr. Peter Sialaris (collectively, Dischargers) have violated provisions of law for which the Water Board may impose civil liability pursuant to California Water Code (CWC) Sections 13350(a) and (e) and 13323.
2. The Dischargers violated a Water Board order issued pursuant to CWC Section 13304 by submitting late quarterly groundwater and soil vapor extraction monitoring reports as required by Cleanup and Abatement Order No. R2-2005-0023 (CAO).
3. Unless waived, a hearing on this complaint will be held before the Water Board as put forth below on October 8, 2008, at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California. You or your representative will have an opportunity to be heard and contest the allegations in this complaint and the imposition of the civil liability. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date. The deadline to submit all comments or evidence concerning this complaint is September 10, 2008.
4. At the hearing, the Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

ALLEGATIONS

5. This complaint is based on the following facts:
 - a. Groundwater beneath 290 Keyes Street is contaminated by gasoline, including benzene and methyl-tert butyl ether (MtBE). Groundwater samples collected at 290 Keyes Street during February 2008 contained up to 15,000 micrograms per liter ($\mu\text{g/l}$) total petroleum hydrocarbons as gasoline, 3,100 $\mu\text{g/l}$ benzene and 13,000 $\mu\text{g/l}$ MtBE. Remediation of

contaminated soil and groundwater beneath the site is necessary to protect human health and the environment.

- b. On September 27, 2005, the Water Board issued Cleanup and Abatement Order No. R2-2005-0023 (CAO) pursuant to CWC Section 13304 to the Dischargers because they caused and permitted waste to be discharged into waters of the State.¹ As named responsible parties under the CAO, each of the Dischargers are required to comply or ensure compliance with the CAO. The CAO requires the Dischargers to investigate and cleanup the contamination at the site and to submit regular self-monitoring reports. The Dischargers have violated Task B6 and Provision C4 of the CAO. Task B6 of the CAO required the Dischargers to submit quarterly groundwater monitoring reports 30 days after the end of each quarter. Provision C4 of the CAO requires the Dischargers to comply with the Self Monitoring Program (SMP) attached to the CAO. The SMP requires the Dischargers to submit, among other things, quarterly monitoring reports with the results from the soil vapor extraction system.

The Dischargers have consistently violated the CAO by submitting eight late quarterly groundwater and soil vapor extraction monitoring reports since October 30, 2005. The Dischargers were in violation for at least 986 days as detailed in Attachment A, incorporated herein by this reference.

PROPOSED CIVIL LIABILITY

6. For violating the CAO, the Water Board may administratively impose civil liability pursuant to CWC Sections 13350(a) and (e) and 13323. Section 13350(a) authorizes civil liability against any person violating a cleanup and abatement order. Section 13350(e) allows the Water Board to impose civil liability on a daily basis or a gallon basis where there is a discharge, but not both. The Assistant Executive Officer can propose liability for the above violations on a daily basis, which cannot exceed \$5,000 for each day of violation. Section 13323 sets forth the process by which the Water Board may impose civil liability.
7. In determining the amount of civil liability to be assessed to the Dischargers, the Water Board must take into consideration the factors described in CWC Section 13327. These factors and considerations are as follows:

a. Nature, Circumstances, Extent and Gravity of the Violation:

Self-monitoring is necessary to document compliance with environmental regulatory requirements. The Discharger's failure to submit timely quarterly groundwater and soil vapor extraction monitoring reports prevents the Water Board from documenting compliance with the CAO, and prevents the Water Board from ensuring protection of human health and the environment.

¹ Mr. Cuong Chon Hyun was not specifically named in the CAO but is responsible for complying with it as the owner and operator of Pete's Stop.

290 Keyes Street is within the Santa Clara groundwater basin. Groundwater within this basin is a critical resource supplying drinking water to 14 cities and more than a million people.

b. Susceptibility of the Discharge to Cleanup:

Gasoline, benzene and MtBE are amenable to soil and groundwater remediation using techniques such as excavation, soil vapor and groundwater extraction, chemical oxidation or bioremediation. However, if the source of contamination is not remediated, groundwater below the site could be impacted by this contamination for decades.

c. Degree of Toxicity of the Discharge:

Benzene is a known human carcinogen. The California maximum contaminant level (MCL) for benzene in drinking water is 1 µg/l. Groundwater samples collected at 290 Keyes Street contained 3,100 µg/l benzene in February 2008. Additionally, the Secondary MCL for MtBE in drinking water is 5 µg/l. Groundwater samples collected at 290 Keyes Street contained 13,000 µg/l MtBE in February 2008.

d. Ability to Pay and Ability to Continue Business:

The Water Board requested financial information from the Dischargers to determine their ability to pay the proposed liability set forth in this complaint and its effect on their businesses. Mr. Cuong Chon Huynh, Mr. Dung Ha and Ms. Kieu Huynh submitted financial information. These Dischargers appear to have enough revenues and assets to pay the proposed liability without preventing them from continuing business. Mr. Peter Sialaris did not respond to the request for financial information, therefore Water Board staff have no evidence on his ability to pay the proposed liability.

e. Voluntary Cleanup Efforts Undertaken:

The Water Board is not aware of any voluntary soil or groundwater cleanup efforts by the Dischargers. As required by the CAO and Santa Clara Valley Water District (Water District) directives, the following cleanup actions have been taken: two 10,000-gallon gasoline underground storage tanks (USTs), two 10,000-gallon and one 2,000 gallon diesel USTs, and associated piping and dispensers were replaced at the site in 1997; a groundwater extraction system was installed at the site in 2002; and a soil vapor extraction system was installed in 2006.

f. Prior History of Violations:

Oversight of the case was transferred from the Water District to the Water Board on March 11, 2005, due to late and not submitted remediation related reports. The Water Board issued the CAO on September 27, 2005, in response to late submitted reports, significant concentrations of contaminated groundwater beneath the site, and the potential

for off-site migration of contaminated groundwater. A summary of late remedial investigation reports prior to 2005 is included within the CAO.

g. Degree of Culpability:

The Dischargers have repeatedly violated requirements by submitting late quarterly groundwater and soil vapor extraction monitoring reports to the Water Board. Water Board staff have met numerous times with Ms. Kieu Huynh, Mr. Dung Ha, and Mr. Cuong Chon Huynh to urge these Dischargers to come into compliance with requirements. The Dischargers have been in violation for 986 days. The Dischargers are highly culpable based on their significant noncompliance with Water District and Water Board requirements.

h. Economic Savings:

The Dischargers have not realized an economic benefit by submitting late quarterly groundwater and soil vapor extraction monitoring reports because the Dischargers are enrolled in the State Underground Storage Tank (UST) Reimbursement Fund. To date, the UST Reimbursement Fund has reimbursed \$938,021 of remediation and monitoring costs associated with cleanup of the contamination at 290 Keyes Street.

j. Other Matters as Justice May Require:

The Water Board incurred \$5,400 in staff costs to prepare this complaint and supporting information. This amount is computed based on an hourly rate of \$135 per hour for 40 hours.

The Water Board concurrently issued Mandatory Minimum Penalty Complaint No. R2-2008- 0068 to Discharger Mr. Cuong Chon Huynh who owns and operates Pete's Stop. The Complaint No. R2-2008-0068 proposes mandatory minimum penalties in the amount of \$48,000 for violations of Nation Pollutant Discharge Elimination System Permit No. CAG912002 (Fuels General Permit).

8. The maximum civil liability that could be imposed for this matter is \$4,930,000. Based on the above factors, the Assistant Executive Officer proposes that civil liability should be imposed on the Dischargers in the amount of twenty five thousand dollars (\$25,000) for the violations cited above, which is due as provided below. The \$25,000 includes \$5,400 for the reimbursement of staff costs incurred by Water Board staff in preparing the complaint.
9. This action is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.
10. You can waive your right to a hearing by signing and submitting the attached waiver by September 10, 2008, to the Water Board. If waived, this matter will be included on the agenda of a Water Board meeting, but there will be no hearing on the matter, unless 1) Water

Board staff receives significant public comment during the comment period, or 2) the Water Board determines that it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of those circumstances, you will have the right to testify at the hearing notwithstanding the waiver. By waiving, you agree to pay the liability within 30 days after the Water Board meeting provided that the Water Board does not hold a hearing.

Dyan C. Whyte
Assistant Executive Officer

August 11, 2008
Date

Attachments: Summary of Late Groundwater and Soil Vapor Extraction Monitoring Reports
Waiver

**SUMMARY OF LATE GROUNDWATER AND SOIL VAPOR EXTRACTION
MONITORING REPORTS AS OF JULY 31, 2008**

Summary of Late Groundwater Monitoring Reports

| Due Date | Submittal Date | Violation Days |
|--------------|----------------|----------------|
| 10/30/2005 | 1/5/2006 | 67 |
| 4/30/2006 | 7/25/2006 | 86 |
| 10/30/2006 | 12/11/2006 | 42 |
| 1/30/2007 | 2/19/2007 | 20 |
| 4/30/2007 | 5/22/2007 | 22 |
| 7/30/2007 | 9/18/2007 | 50 |
| 1/30/2008 | 2/7/2008 | 8 |
| Total | | 295 |

Summary of Late Soil Vapor Extraction Monitoring Reports

| Due Date | Submittal Date | Violation Days |
|--------------|----------------|----------------|
| 10/30/2006 | 2/7/2007 | 100 |
| 1/30/2007 | 2/7/2007 | 8 |
| 4/30/2007 | 2/7/2008 | 283 |
| 7/30/2007 | 2/7/2008 | 192 |
| 10/30/2007 | 2/7/2008 | 100 |
| 1/30/2008 | 2/7/2008 | 8 |
| Total | | 691 |

Total Violation Days 986

Potential penalty per violation per day \$5,000

Potential penalty amount \$4,930,000

WAIVER

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. **Your waiver is due no later than September 10, 2008.**

- Waiver of the right to a hearing and agreement to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in this Complaint and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the CAO imposing the liability.

Name (print)

Signature

Date

Title/Organization