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August 26, 2014

Ms. Vivian Gomez-Latino (USTClosuresComments@waterboards.ca.gov)
State Water Resources Control Board (SWRCB)
1001 I Street
P.O.Box 2231
Sacramento, CA 95812

SITE: 2266 Senter Road, San Jose CA LUST Site: LOP Case No. 14-081

RE: Pending Site Closure: Transmittal of RRM's July 30, 2014 letter/report asking the county to reconsider its decision dated July 2, 2014 not to close the site and response to the LOP's letter to the SWRCB dated August 13, 2014 arguing that the case is not ready for closure and needs a deed restriction if it is to be closed

Dear SWRCB Site Closure Section:

The purpose of this letter is twofold: (1) At the recommendation of the Santa Clara County Department of Environmental Health (DEH) Local Oversight Program (LOP) Case Worker, for this re-opened fuel-leak case/site, we are forwarding an RRM letter with attachments dated July 30, 2014, originally addressed to and transmitted to the DEH. This RRM letter responds to the DEH letter of July 2, 2014, denying RRM's repeated recommendations to close the site under the SWRCB low-threat closure policy (LTCP); and (2) to comment on certain false or misleading allegations that were raised by the LOP Case Worker in his August 13, 2014, letter to the State Water Resources Control Board (SWRCB). The LOP letter opposes the SWRCB decision to close the site and then goes on to recommend an unnecessary deed restriction as a condition of closure in the event the State does not agree to keep it open.

As an authorized representative of Caldo, I have reviewed the enclosed RRM letter and its attachments and I declare under penalty of perjury that the information and/or recommendations contained in the document is/are true and correct to the best of my knowledge.

Substance of the RRM July 31, 2014 letter

In its letter RRM alleges that the County is misinterpreting the LTCP and explains why they have reached that conclusion. My cover letter forwards a request by Caldo's president Vic LoBue respectfully asking the DEH case worker to call appropriate people within the SWRCB and receive guidance on the correct interpretation of their LTCP policy as it applies to the site conditions. Caldo consultants are 100 percent convinced the County's interpretation is not only incorrect, but in pointed conflict with the stated purpose and intent of the LTCP.

Response to false and damaging allegations made in the County's letter arguing that the case should not be closed without further groundwater monitoring or deed restrictions.

General comments

The lead professional in charge of the site has informed me that in his recent telephone communications with the LOP case worker, it was made abundantly clear that the case worker disagrees with the LTCP criteria and that he is acting defiantly to the SWRCB in opposing the site closure. Last year, I received the exact same message from the case worker's prior supervisor.

The site was actively remediated from 1988 to 2002 and was closed as a low-threat groundwater case in 2005. The active remediation included over-excavation during removal and replacement of first-generation USTs in 1988; free-product removal (9 gallons) from monitoring well MW-5 in 1992-93; and soil vapor extraction/bioventing from 1999 to 2003. The site was re-opened in February 2008 because an area of near surface soil contamination was discovered during site re-development in September 2006; not due to concerns with groundwater quality. In conducting investigations of the impacted area in 2010, free product in the middle distillate range was found in the area immediately underlying and adjacent to the shallow soil contamination. The investigations revealed that the diesel and kerosene contamination has been there since at least 1988.

Specific comments

Regarding DEH issue number 1: On page 1, the case worker states in so many words that he believes the site does not qualify for closure because even after additional remediation using dual-phase extraction (DPE), there is still light-non-aqueous-phase liquid (LNAPL). He accurately points out that the LNAPL is currently represented by light sheen on the water table surface at about 20 feet from ground surface in four of the existing remediation wells (RMW1R, RMW-2, RMW-3 and RMW-6).

Consistent with what was just stated above in the general comments, I am pointing out here that the position that the LOP case worker has taken is in wanton defiance of the spirit and intent and letter of the LTCP. As expressly pointed out in the RRM 2012 Corrective Action Plan Updates, it would require the partial removal of the building and an excavation to 30 feet below ground surface across an extended area to ensure there would be no sheen of diesel or kerosene on the surface of the water table over the next decade or two—toward what end?

Regarding DEH issue number 2 as to plume stability: On page 2, the case worker makes the following statements all of which are either grossly inaccurate or misleading, once again demonstrating that he is acting in overt defiance of the SWRCB LTCP:

(1) "there is not five years of data demonstrating plume stability."

According to the lead professional in charge of this site, there are almost two decades of data demonstrating substantial weathering of the middle distillate contamination to the point of achieving drinking water standards for BTEX and a 50 percent plus decrease in the size of the 1 ppm contour for TPH in the C10 to C28 middle distillate range.

(2) "to address increasing levels of contamination and plume stability a DPE system began operation in August 2012."

Ditto the response to comment (1). The RRM CAP Updates issued to the LOP in 2012 specifically state that there were no concerns with plume stability or dissolved contaminant levels in groundwater. Moreover, in its CAP updates RRM specifically recommended the County re-

close the site under the LTCP without a requirement for any follow-up groundwater monitoring as soon as the LTCP requirements were met for LNAPL removal and shallow source area cleanup.

(3) "LNAPL was never reported in any of the site wells monitored between 1992 and 2004."

The RRM CAP Updates issued in 2012 expressly state that 9 gallons of free product were hand-bailed from monitoring well MW-5 in 1992-93. According to the lead professional in charge, the LNAPL removed in 2012 was present as of 1988 and is the DPE-extractable portion of what was left following the earlier SVE-bioventing and hand bailing.

(4) "Should the SWRCB pursue case closure, the DEH requests that the property owners accept a land-use restriction as a condition of case closure."

As a remedial measure, deed restrictions are used for residual-risk management and are only needed when there is a residual-risk to manage. Caldo incurred considerable expense to have RRM conduct additional source area cleanup and conduct extensive testing that confirms that there is no risk of any kind associated with the decaying residual contamination.

Closing remarks

There is not the least question among Caldo consultants, that if the case worker were on board with the SWRCB LTCP, this site would have been re-closed last summer without any requirement for follow-up groundwater monitoring. The case worker in his August 13, 2014 letter seems to be demonstrating his defiance of the LTCP rather than raising any legitimate concerns with the protection of groundwater resources or human health.

The defiance of the LOP to the SWRCB LTCP is very damaging to Caldo and other stakeholders and is undermining a good faith settlement of a Federal Court action that anticipated the full cooperation of the LOP.

Thank you for your timely interaction in this matter and your ongoing courtesy and cooperation.

Sincerely,



Brian T. Kelleher
Project Coordinator

cc with enclosure: William Nagle, Special Master/Mediator; Victor Lobue, Caldo Oil/Lobue Family Trust; Arran Barger, Green Valley Corporation; Gregg Garrison, Esq; Garrison Law Corporation; Herman Kalfen Esq; Kalfen Law Corporation; John Till, Esq; Paladin Law Group LLP; others.

Cc cover letter only: Matt Paulus and Matt Kaempf, RRM.