

State Water Resources Control Board

APR 07 2014

Mr. Robert Cava
550 San Felipe Street
Salinas, CA 93901

Dear Mr. Cava:

PETITION OF MR. ROBERT CAVA FOR REVIEW OF DENIAL OF PETROLEUM UNDERGROUND STORAGE TANK CASE CLOSURE, SABEK GAS STATION, 16270 MONTEREY ROAD, MORGAN HILL, SANTA CLARA COUNTY: DISMISSAL

Mr. Robert Cava (Petitioner) seeks review by the State Water Resources Control Board (State Water Board) of the Santa Clara County Department of Environmental Health (Santa Clara County) decision to reject closure of Petitioner's underground storage tank (UST) case at 16270 Monterey Road, Morgan Hill, Santa Clara County (Site).

The case has the following Identification numbers:

- State Water Board Division of Water Quality Petition No. 0225
- GeoTracker No. T0608578682
- Santa Clara County No. 09S3E28Q01f
- Central Coast Regional Water Quality Control Board No. 3399
- Underground Storage Tank Cleanup Fund Nos. 19915, 7291, 7329

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 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 Central Coast Basin Plan (Basin Plan) designates present and potential beneficial uses of groundwater as municipal and domestic supply (MUN), agricultural supply (AGR), industrial service supply (IND), and industrial process supply (PRO). (Water Quality Control Plan for the Central Coast Basin, June 2011, Chapter 2).

BACKGROUND

- The Site is currently occupied by an office building and paved parking area.
- The Site is bounded by residential properties in the southeast to northern directions and commercial properties in all other directions.
- The nearest supply well is located approximately 2,700 feet southeast of the Site. The nearest surface water body is located approximately 2,400 feet west of the Site.
- The geology of the Site was described as silt and clay to approximately 25 feet below ground surface (bgs), sand and gravel to approximately 35 feet bgs, silt and clay interbedded with discontinuous lenses of sand and gravel to 55 feet bgs, sand to approximately 85 feet bgs, and clay and silt to approximately 90 feet bgs.
- Groundwater conditions were determined as unconfined to semi-confined and the average hydraulic gradient was approximately 0.008 foot per foot. Groundwater elevations have fluctuated a minimum of 25 feet over time.

- The release at the Site was discovered during tank monitoring activities in 1987. USTs and approximately 440 cubic yards of contaminated soil were excavated and removed from the Site during 1991. Approximately 274 tons of contaminated soil were excavated and removed from the Site during 2003. From 2006 through 2011 ozone injection delivered an estimated 117 pounds of ozone into the subsurface.

On December 6, 2012, the Petitioner requested UST case closure from Santa Clara County Department of Environmental Health (Santa Clara County), the regulatory agency that oversees corrective action at the Site. Santa Clara County denied case closure on January 7, 2013. On March 21, 2013, the Petitioner filed a case closure petition requesting a State Water Board review of the case.

On April 23, 2013, Santa Clara County responded to the petition and provided the following reasons for denying UST case closure: (1) The Site is located in a groundwater recharge zone or sensitive groundwater area. Groundwater is known to fluctuate seasonally due to seasonal groundwater pumping. Groundwater is actively used to supply drinking water and for agricultural irrigation; (2) The majority of the ozone sparging was done in the shallow zone and efforts to remediate the intermediate zone have not been attempted; (3) The groundwater contamination plume orientation is not consistent with any of the groundwater flow directions and migration may have been based on preferential pathways when groundwater was deeper at the Site; and (4) Santa Clara County requires that verification monitoring be conducted on a quarterly basis for at least one hydrologic cycle following active remediation.

On October 18, 2013, the State Water Board notified the interested parties of the opportunity for public comment regarding the proposed case closure. Santa Clara County submitted comments on November 8, 2013 and provided the following reasons for denying UST case closure: (1) The Site is located in a groundwater recharge zone or sensitive groundwater area. Groundwater is known to fluctuate seasonally due to seasonal groundwater pumping. Groundwater is actively used to supply drinking water and for agricultural irrigation; (2) there is a secondary source still in place that is trapped beneath the upper surface of the groundwater; (3) The majority of the ozone sparging was done in the shallow zone and efforts to remediate the intermediate zone have not been attempted; and (4) Well MW21 was installed in 2011 and concentrations of contaminants have increased since 2011. This well is located on the restaurant property near the property line with a residential structure. Concentrations of contaminants remaining in this well are significant.

Santa Clara Valley Water District submitted comments on December 26, 2013 and provided the following reasons the fuel leak case does not meet the closure criteria: (1) The extent of contamination has not been defined to the northeast, east, and southeast; (2) It is likely that the free product is trapped beneath the water table and may be acting as a secondary source; and (3) While the on-Site primary and secondary sources of contamination have been addressed through excavation and o-zone injection, no effort at remediation of the secondary source that has migrated off-Site has been made (as indicated by the high concentrations in wells MW-20 and MW-21).

DISCUSSION

The Petitioner contends that based on current conditions, the Site appears to meet the guidelines presented within the Policy. In letters dated January 7 and 9, 2013, Santa Clara County denied Site closure for a variety of reasons. The Petitioner does not agree with the Santa Clara County closure denial. However, residual groundwater contamination in the

intermediate zone between 38 and 50 feet bgs, located within 50 feet from an off-Site residence, continues to pose a threat to human health, safety and the environment. Additional delineation and remediation of contaminated groundwater in the intermediate zone is necessary to ensure the protection of human health, safety, and the environment.

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. 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 email only]

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