

State Water Resources Control Board

APR 07 2014

Mr. Marvin Katz
Shell Oil Products US
20945 South Wilmington Avenue
Carson, CA 90810

Dear Mr. Katz:

PETITION OF SHELL OIL PRODUCTS FOR REVIEW OF DENIAL OF PETROLEUM UNDERGROUND STORAGE TANK CASE CLOSURE, SHELL OIL, STANTON, 12950 BEACH BOULEVARD, STANTON, ORANGE COUNTY

Mr. Marvin Katz of Shell Oil Products (Petitioner) seeks review by the State Water Resources Control Board (State Water Board) of the Orange County Health Care Agency (Orange County LOP) decision to reject closure of Petitioner's underground storage tank (UST) case at 12950 Beach Boulevard, Stanton, Orange County (Site).

The case has the following Identification numbers:

- State Water Board Division of Water Quality Petition No. 0159
- State Water Board UST Cleanup Fund No. 4618
- GeoTracker No. T0605900387
- Santa Ana Regional Water Board No. 083000485T
- Orange County Health Care Agency No. 89UT155

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 for 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 Santa Ana River Basin (Basin Plan) designates existing and potential beneficial uses of groundwater within the Lower Santa Ana River - East Coastal Plain as municipal and domestic supply (MUN); agriculture supply (AGR); Groundwater (GWR); Contact Recreation (REC1); Non contact Recreation (REC2); Warm Freshwater Habitat (WARM); Wildlife Habitat (WILD); Rare, Threatened or Endangered Species (RARE.) (Basin Plan, amended February 2008, Table 3-1.)

BACKGROUND

- Petitioner's Site is currently a vacant lot with nearby land used for commercial purposes.
- The Site is located in the Coastal Plain of Orange County. The water supply for the Site is provided by the Golden State Water Company.
- The nearest supply well is a public supply well located approximately 1,530 feet northeast of the Site. The nearest surface water body is located more than 1,000 feet from the Site.
- Site is underlain by silt to the depth of approximately 7 feet bgs, sand with silt from approximately 7 to 10 feet bgs, and sandy silts to a maximum drilled depth of 20 feet bgs.
- The average depth to groundwater is 10 feet bgs. The groundwater flow direction is towards southwest.
- The release at the Site was discovered in 1989. Manual removal of free product was performed from November 1989 through February 1993. USTs and approximately 1,300

cubic yards of contaminated soil were excavated and removed from the Site during November 2005.

- Soil and groundwater remediation activities include soil vapor extraction, groundwater extraction, soil excavation, and oxygen injection.
- Tert-butyl alcohol (TBA) was detected off-Site under Garden Grove Boulevard while the Site petition review was in progress.

On June 12, 2009, the Petitioner requested UST case closure from Orange County LOP, the regulatory agency that oversees corrective action at the Site. Orange County LOP denied case closure on July 10, 2009. A five year review summary was prepared by the State Water Board on March 25, 2010. On November 3, 2010, the Petitioner filed a case closure petition requesting a State Water Board review of the case.

On May 16, 2011, Orange County LOP responded to the petition and provided the following reasons for denying UST case closure: (1) Field notes for the monitoring report shows some of the monitoring/extraction/ sparge wells located on Garden Grove Boulevard have loose well boxes that require inspection; and (2) The Orange County LOP by letters dated November 13, 2009 and March 16, 2010 had directed Shell to conduct additional investigation and provide supporting documentation to move the case forward to closure, but no data has been submitted to date.

On October 17, 2013, the State Water Board notified the interested parties of the opportunity for public comment regarding the proposed case closure. Orange County LOP submitted comments on December 20, 2013 and provided the following reasons for denying UST case closure: (1) The subject notification states that the closure request in June 2009 was effectively denied by Orange County LOP based on a requirement for four consecutive quarters of verification monitoring prior to evaluating the Site for closure; (2) the Orange County LOP had issued a response to Shell Oil in November 2009 denying the closure request and requiring additional data to support a closure evaluation; (3) The site was petitioned by Shell Oil in January 2011 after a meeting with Shell Oil and their consultant (Wayne Perry, Inc.) and the Orange County LOP to discuss future course of action and additional off-site assessment. During that time the groundwater contaminant plume was not stable or decreasing in extent as elevated TBA was detected off-site under Garden Grove Boulevard while the site petition review was in progress; and (4) Drinking water is provided to the surrounding community by the Golden State Water Company, and this site is in the pressure zone of the Orange County Groundwater Basin.

The Orange County LOP submitted comments on December 20, 2013, and provided the following reasons for denying UST case closure: (1) A plan for additional off-Site assessment of the petroleum hydrocarbon plume has not been submitted; and (2) The the nature, extent and mobility of the release, upgradient to small water system wells and large water system production wells, have not been established.

The Law Offices of Mark B. Gilmartin submitted comments on December 26, 2013, and provided the following reasons for denying UST case closure: (1) Eligibility for case closure should be further considered with regard to whether the reported concentrations of gasoline constituents in groundwater beneath the southern portion of the Property are representative due to uncertainties as to well intervals and whether the off-site oxygenates have been fully defined and/or pose a threat to drinking water; and (2) Soil vapor samples should be collected to confirm the absence of any vapor intrusion risk.

G&M Oil submitted comments on December 26, 2013 and provided the following reasons for denying UST case closure: (1) The contaminant plume remaining between Garden Grove Boulevard, the portion of the G&M Oil site, and Beach Boulevard is the result of the release at the Shell station.

The Orange County Water District submitted comments on January 8, 2014 and provided the following reasons for denying UST case closure: (1) Groundwater contamination has not been delineated laterally or vertically; and (2) Groundwater contamination from the Shell Site has commingled with groundwater contamination from G&M #140.

DISCUSSION

After careful consideration of this case, we recognize that this Site does not meet General Criteria e- A conceptual Site model that assesses the nature, extent, and mobility of the release has been developed. A conceptual Site model that demonstrates the delineation of the tert-butyl alcohol plume to the south and west of the Site has not been developed. To ensure that the Site is fully protective to the environment and public health, additional corrective actions should be performed.

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.

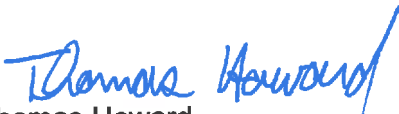
The requirements for case closure have not been met at this time and, therefore, closure of the UST case is not appropriate. Current Site conditions support a potential threat to human health, safety, and the environment. At this point in time, insufficient data are available to determine that corrective 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: see next page

cc: David M. Henry
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[Via email only]

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