APR 07 2014

Mr. Nick Puig
ExxonMobil Oil Corporation
981 West Arrow Highway #473
San Dimas, CA 91773

Dear Mr. Puig:

PETITION OF EXXONMOBIL OIL CORPORATION FOR REVIEW OF DENIAL OF PETROLEUM UNDERGROUND STORAGE TANK CASE CLOSURE, MOBIL STATION 18-AED, 3945 MISSION AVENUE, OCEANSIDE, SAN DIEGO COUNTY

Mr. Nick Puig of ExxonMobil Oil Corporation (Petitioner) seeks review by the State Water Resources Control Board (State Water Board) of the San Diego County Department of Environmental Health (San Diego County) decision to reject closure of Petitioner's underground storage tank (UST) case at 3945 Mission Avenue, Oceanside, San Diego County (Site).

The case has the following Identification numbers:

- State Water Board Division of Water Quality Petition No. 0228
- GeoTracker No. T0608147532
- San Diego County No. H20634-001

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 San Diego Region Basin Plan (Basin Plan) designates existing and potential beneficial uses of groundwater in the San Luis Rey – Lower San Luis groundwater basin as municipal and domestic supply (MUN), agriculture supply (AGR), and industrial service supply (IND). (Water Quality Control Plan for the San Diego Region Basin, August 28, 2012, Table 2-5).

BACKGROUND

- Petitioner's Site is currently an active petroleum fueling facility with nearby land used for residential and commercial purposes.
- The water supply for the Site is provided by the City of Oceanside.
- Two inactive private groundwater wells are located crossgradient on the mobile home property approximately 275 feet north and 460 feet northeast of the Site. Six active municipal water supply wells are located approximately 4,600 west-southwest of the Site. The nearest surface water body is located approximately 4,500 feet north of the Site.
- Site geology consists of sand, silt, and clay mixtures beneath the surface pavement to the total depth investigated of 25 feet below ground surface (bgs).
- The average depth to groundwater is 11 feet bgs. The groundwater flow direction is towards the northwest.

- The release at the Site was discovered during service station upgrade activities in June 2001. During the June 2001 event, fuel dispensers and associated piping were removed and replaced.
- In June 2006, product line replacement activities were conducted at the Site.
- In September 2010, a human health risk assessment was conducted at the Site. Based on Level II vapor risk evaluations using site-specific parameters for the soil gas probe measurements located adjacent to the building on-Site, the calculated potential risk for occupants of this commercial building is less than the threshold for lifetime cancer risk. The calculated chronic health hazard due to benzene, ethylbenzene, methyl tert-butyl ether (MTBE), and naphthalene vapor migration was less than 1, indicating an acceptable hazard quotient.
- Subsurface investigation at the Site includes collecting 124 soil samples and constructing 19 monitoring wells and 2 soil gas probes. Soil excavation and other remedial activities were not conducted.

On December 18, 2012, the Petitioner requested UST case closure from San Diego County, the regulatory agency overseeing corrective action at the Site. San Diego County, after consultation with staff of the Regional Water Board, denied case closure on March 17, 2013. On May 24, 2013, the Petitioner filed a case closure petition requesting a State Water Board review of the case.

On June 21, 2013, San Diego County responded to the petition and provided the following reasons for denying UST case closure: (1) The remaining groundwater contaminants, particularly MTBE, may pose a threat to two existing groundwater production wells located approximately 275 feet north and 460 feet northeast of the Site. The potential for the contaminant plume to impact the production wells in the future should be addressed by modeling or some other scientifically defensible methods and (2) Additional delineation would not be necessary if it can be shown that there is no potential for the contaminant plume to impact the existing wells on the mobile home property.

On October 8, 2013, the State Water Board notified the interested parties of the opportunity for public comment regarding the proposed case closure. City of Oceanside Water Utilities Department submitted their comments on December 12, 2013 and expressed the following reasons supporting denial of UST case closure: (1) The City of Oceanside has six active municipal water supply wells within a one mile radius of the Site. These wells are located at or adjacent to 215 Fireside Drive. These wells are currently used to provide 15% of the City's potable water supply, and increases in production are planned. The City is concerned about the fate of the MTBE plume that has been detected in well MW-19, located approximately 800 feet northwest and downgradient of the Site, and the potential for further migration and possible contamination of the municipal wells and (2) The City requests that the potential for the plume to impact the municipal supply wells be addressed.

DISCUSSION

The Petitioner contends that benzene and MTBE affected areas have been adequately defined and that adsorbed and dissolved phase petroleum hydrocarbons have been remediated to the extent feasible and to the low-threat criteria standard. The Petitioner also contends that the Site does not appear to pose a threat to human health, safety, and the environment. However, a dissolved MTBE plume is extending off-Site and has consistently exceeded the water quality objective in the most downgradient well. In addition, a significant decrease in dissolved MTBE

concentrations from wells MW-3 and MW-5 in 2006 is questionable because no remedial activities have been conducted at the Site. Based on this information, the extent of the MTBE plume cannot be defined. The available data is not sufficient to perform the analysis on the potential risk to the municipal water supply wells.

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: See next page

cc: [Via email only]

Mr. David Gibson, Executive Officer
San Diego Regional Water Quality Control Board
David.Gibson@waterboards.ca.gov

Mr. George Lockwood
State Water Resources Control Board
George.Lockwood@waterboards.ca.gov

Mr. Benjamin Heningburg
State Water Resources Control Board
Benjamin.Heningburg@waterboards.ca.gov

Ms. Therese Barakatt, Office of Chief Counsel
State Water Resources Control Board
Therese.Barakatt@waterboards.ca.gov

Mr. Steven Westhoff, Office of Chief Counsel
State Water Resources Control Board
Steven.Westhoff@waterboards.ca.gov

Ms. Catherine Hagan, Senior Staff Counsel
San Diego Regional Water Quality Control Board
Catherine.Hagan@waterboards.ca.gov

Mr. Jack Miller, Director
San Diego County Department of Environmental Health
Land and Water Quality Division
Jack.Miller@sdcounty.ca.gov

Mr. Scott Weldon
San Diego County Department of Environmental Health
Land and Water Quality Division
Scott.Weldon@sdcounty.ca.gov

Mr. Mark Hammond
City of Oceanside Water Utilities Department
mhammond@ci.oceanside.ca.us

Mr. Patrick Toelkes
Cardno ERI
Patrick.Toelkes@cardno.com