State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
December 11, 2002

ITEM: 8

SUBJECT: Complaint No. 2000-256 for Administrative Civil Liability (ACL) against Chung Kwan and Hui Mei Hsu (Mr. & Mrs. Hsu) for failure to submit a corrective action plan for the Budget Trade & Gas facility, Escondido, San Diego County. (Sue Pease)

PURPOSE: The purpose of this item is to continue the public hearing held on December 13, 2000, April 11, 2001, October 10, 2001, and May 8, 2002, and to receive additional testimony on ACL Complaint No. 2000-256.

PUBLIC NOTICE: The public was notified of this hearing and tentative order in the agenda for the December 11, 2002 meeting of the Regional Board. The agenda was mailed to interested persons on November 26, 2002.

DISCUSSION: Complaint No. 2000-256 recommends the imposition of an ACL of $146,500 against Mr. and Mrs. Hsu for failure to submit a corrective action plan for remediation of groundwater pollution as required by California Water Code (CWC) section 13267 (Supporting Document 1). This is the second ACL for the same violation. The first ACL, Order No. 2000-23, covered a period of violation from September 1, 1999 to December 8, 1999 (Supporting Document 2). The December 8, 1999 hearing was rescheduled to February 9, 2000. The period of the violation for the second ACL complaint was from February 10, 2000 through November 29, 2000. Evidence on the ACL complaint was accepted into the record at the December 13, 2000 hearing. Subsequently, the corrective action plan was received on January 30, 2001.

At the conclusion of the December 2000 hearing, the Regional Board deferred acting on the ACL complaint against Mr. & Mrs. Hsu until the February 2001 meeting to allow Mr. & Mrs. Hsu time to put forth a good faith effort to comply with orders of the RWQCB. Since then, the RWQCB has considered adopting the tentative order for a second ACL penalty at hearings held in April 2001, October 2001, and May 2002. Each time, the Regional Board deferred acting on the ACL complaint to allow a longer period of time for Mr. Hsu to

demonstrate compliance. At the October 2001 meeting the RWQCB requested that the Hsu's ability to pay the first assessed ACL penalty of $35,680 be analyzed by the State Water Resources Control Board Office of Statewide Initiatives. At the May 2002 meeting, the Board requested counsel to give relief to Mr. Hsu for the first ACL, assessed at $35,680, based on the "Ability to Pay" analysis which concluded that the Hsu family cannot afford to pay either ACL. The Board also encouraged staff and Mr. Hsu to pursue a "Pay for Performance" cleanup agreement with the State Underground Storage Tank Cleanup Fund (USTCF).

Since the May 2002 Regional Board meeting, compliance with Cleanup and Abatement Order No. 2000-255 was accomplished with submittal of free product recovery reports and ground water monitoring reports. The USTCF has stated that the "Pay for Performance" program is inappropriate for this site, due to excavation being the chosen method of cleanup.

Addendum No. 4 to CAO No. 2000-255 was issued setting a deadline of January 2, 2003, for beginning excavation of contaminated soil at the site. The addendum was necessary because work at the site stalled for two months while Mr. Hsu and his consultant resolved payment issues. Consequently, from late August until mid-October, the consultant refused to resume work until the debt was paid. The January deadline was set to compel Mr. Hsu to resolve his financial situation, get the consultant back on the job, and commence active clean up.

To overcome communication difficulties for Mr. Hsu and to ensure that Mr. Hsu understands the regulatory actions required of him, staff met with Mr. Hsu and his consultant on October 15, 2002. A Mandarin Chinese translator attended the meeting to help Mr. Hsu understand what was discussed. A Mandarin Chinese translator will be present at the December 11, 2002 RWQCB meeting for the same purpose.

LEGAL CONCERNS: None

SUPPORTING DOCUMENTS:

Agenda packages for February 21, 2001, March 14, 2001, October 10, 2001, and May 8, 2002 are **not** enclosed due to the volume of materials. The following documents are applicable for Item 8. They are:

Supporting Document 1 – Tentative Order No. R9-2002-0122
Supporting Document 2 – ACL No. 2000-23
Supporting Document 3 – Addendum No. 4 to CAO No. 2000-255

Supporting Document 4 – Chronology of ACLs
Supporting Document 5 – Chronology of Events
Supporting Document 6 – Table of compliance dates
Supporting Document 7 – RWQCB letters, memos and e-mails since May 8, 2002 RWQCB Board meeting
Supporting Document 8 – Paperwork supporting payment issues

RECOMMENDATION: Staff recommends the RWQCB defer a decision on ACL complaint No. 2000-256. Mr. Hsu is currently in compliance with all directives and deadlines. The next compliance deadline is the beginning of remediation by excavation in January 2003.