

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

STAFF REPORT FOR REGULAR MEETING OF October 23, 2009

Prepared on September 24, 2009

ITEM NUMBER: 6

SUBJECT: Consideration of Executive Officer Determination Regarding Compliance with Terms of June 1997 Settlement Agreement between the Central Coast Water Quality Control Board and Castle Vegtech et al.

KEY INFORMATION

Discharger: Castle Vegtech, Jamina Investments, and Castle Family individually
Location: 16495 and 16470 Vineyard Boulevard, Morgan Hill, CA
Discharge Type: Pesticide formulation, sales, and application
Discharge Volume: Unknown
Present Volume: Unknown; operations discontinued in 2001
Existing Order: Cleanup and Abatement Order No. R3-2009-0042
This Action: **Review Executive Officer's determination of parties' failure to comply with terms of 1997 Settlement Agreement**

SUMMARY

The Central Coast Regional Water Quality Control Board (Central Coast Water Board) has been regulating cleanup of the Castle Vegtech site since the September 1982 issuance of Cleanup and Abatement Order No. 82-61. Responsible parties for cleanup have included, but are not limited to, A.L. Castle, Inc., Castle Vegtech, Jamina Investments, and Castle Family members individually. After the Central Coast Water Board filed a lawsuit to collect on Administrative Civil Liability Order Nos. 92-78 and 92-83, the collection of \$85,000 plus interest was deferred pursuant to a Settlement Agreement dated June 1997, in which the Responsible Parties agreed to a condition that they complete cleanup and comply with any applicable orders related to the Property. In a July 3, 2009 letter, the Executive Officer determined that the cleanup was not proceeding in accordance with the applicable orders and that payment of the liabilities was due pursuant to the terms of the Settlement Agreement. The Responsible Parties have appealed that determination for consideration by the Central Coast Water Board.

DISCUSSION

Site History: From 1958 until 1985, A.L. Castle, Inc., (A.L. Castle) operated a pesticide formulation, sales, and application business at 16470 Vineyard Boulevard (formerly identified as 190 Mast Street) in Morgan Hill. In the course of business, A.L. Castle allowed pesticide-related wastes to leak or spill into or onto the ground, which polluted soils and groundwater beneath the site. During an August 1982 site inspection, Central Coast Water Board staff observed that wastewater, oils, and/or chemicals had been discharged from the facility to adjacent properties where they could percolate to groundwater or be washed into surface waters.

A.L. Castle was sold to ARCO Seed on August 9, 1985. According to the *Agreement for Purchase and Sale of Capital Stock of A.L. Castle* dated August 9, 1985, Thomas Castle and Jean Castle as Trustee under Castle Family Trust Agreement, and Jamina Investments, a general partnership consisting of James Castle, Michael Castle, and Nancy Castle Buchanan, were the stockholders of A.L. Castle at the time of sale. As of September 1, 1985, all of A.L. Castle's chemical operations were transferred over to Castle Vegtech, Inc., as described to the Central Coast Water Board in a letter from A.L. Castle dated September 18, 1985, and the provisions of the *Agreement for Purchase and Sale of Capital Stock of A.L. Castle*. Jamina Investments subsequently acquired the property after the sale of A.L. Castle to ARCO Seed. According to a Report of Waste Discharge filed October 21, 1985, Castle Vegtech was described as an agricultural chemical warehouse and application service and Jamina Investments is listed as the legal owner of the property. Castle Vegtech's operations on the site included pesticide and agricultural chemical storage, chemical loading areas, chemical application wash pad, and hot water seed treatment. According to several field inspections and information provided by Castle Vegtech, there was no drainage system installed at the site for surface water. Water falling on or running onto the site drained over the ground surface to open fields south and west of the facility improvements.

Compliance History: The Central Coast Water Board has issued eight Cleanup and Abatement orders, four Administrative Civil Liability orders, two Waste Discharge Requirements, and one Monitoring and Reporting Program for the property since cleanup oversight began in 1982. The most recent Cleanup and Abatement Order (CAO) No. R3-2009-0042 was issued on June 30, 2009.

Beginning with the site's first order, CAO No. 82-61, A.L. Castle and subsequent property owners have been deficient in compliance with requirements and cleanup. Central Coast Water Board issued Administrative Civil Liability Order (ACL) No. 92-78 and ACL No. 92-83 to Castle Vegtech and Jamina, respectively, in June 1992, for failure to comply with CAO No. 91-28 requirements for cleanup and reporting. After the Central Coast Water Board filed a lawsuit to collect on the penalties, the collection of \$85,000 plus interest was deferred pursuant to a Settlement Agreement dated June 1997 (Attachment 1) in which Castle Vegtech and Jamina agreed to a condition that they complete cleanup and comply with any applicable orders related to the Property.

Castle Vegtech and Jamina were named as responsible parties in subsequent CAO No. 92-104. The Central Coast Water Board adopted CAO No. 92-104 on July 10, 1992, which established cleanup levels for soil and groundwater at the site. The Central Coast Water Board adopted CAO No. 93-111 on October 8, 1993; CAO No. 93-111 established compliance schedules for the delineation and remediation of wastes in groundwater and soil. As a result of the Dischargers' failure to meet the compliance schedules, the Board adopted ACL No. 94-71 against Castle Vegtech and Jamina on July 8, 1994. ACL No. 94-71 suspended \$338,000 contingent upon the Dischargers' proceeding in an expeditious manner to clean up soil and groundwater at the site.

CAO No. 96-063 issued December 20, 1996, required excavation and disposal of contaminated soil, and required groundwater extraction and treatment until cleanup levels established in CAO No. 92-104 were met. The Castle family members have not complied with the requirements of CAO No. 96-063. The groundwater extraction system has not been functional since April 2001, and soil remediation ceased in August 2002. The Central Coast Water Board issued Monitoring and Reporting Program (MRP) No. 98-22 on January 14, 1998; the MRP requires semiannual and annual groundwater monitoring for various wells, and submittal of quarterly monitoring reports. During Jamina's property ownership, only four of the required 12 quarterly groundwater monitoring reports under MRP No. 98-22 were submitted.

Alan Hui acquired the property in January 2001, and later transferred the title to Michael Mangano. Public records indicate Mr. Hui and Mr. Mangano were interested in developing the property and

aware of the need for cleanup actions at the time of purchase. Cleanup and reporting during this period of ownership also did not meet requirements. During this period of ownership, only one of the required 13 quarterly groundwater monitoring reports was submitted.

Michael Tansy acquired the property in May 2004 through a foreclosure sale. Public records and a phone conversation with Mr. Tansy and Central Coast Water Board staff in May 2004 indicated Mr. Tansy was aware of the site contamination and the need for cleanup actions. In letters dated June 8, 2004, and September 15, 2004, Central Coast Water Board staff provided Mr. Tansy written notification of his responsibility for cleanup actions at the site. Since Mr. Tansy's property ownership began, only two of the required 20 quarterly groundwater monitoring reports have been submitted.

On July 3, 2009, the Executive Officer issued a letter informing the Castle family members, Castle Vegtech, and Jamina Investments that cleanup at the site was not being performed in accordance with the terms of the Settlement Agreement (Attachment 2). Additionally, the parties were in violation of the terms for the suspension of ACL No. 94-71. The letter informed the parties that \$338,000 and \$255,766 were due and payable for ACL No. 94-71 and the Settlement Agreement, respectively. The ACL 94-71 liability of \$338,000 is not subject to the same appeal process as the Settlement Agreement liability, and therefore is not detailed further in this staff report.

In a letter dated July 22, 2009, legal counsel for Jamina Investments and its partners, and Castle Vegtech requested Central Coast Water Board review of the determination contained in the Executive Officer's July 3, 2009 letter. Counsel's argument is that the property was sold to Mr. Hui with the understanding that he would assume responsibility of completing remediation of the property. Water Board staff has repeatedly informed the Castle Family that sale of the property did not relieve them of responsibility for compliance with Water Board orders.

CAO No. R3-2009-0042 (Attachment 3) was issued June 30, 2009, naming Castle Vegtech, Castle Family Trust, Jamina Investments, Castle Family members individually, Mr. Alan Hui, Mr. Michael Mangano, and Mr. Michael Tansy as responsible parties. The parties have already missed the first deadline on August 31, 2009 for submittal of workplans for soil and groundwater remediation and a report of groundwater well conditions and locations. On August 31, 2009, Mr. Tansy's consultant requested a two-week extension for the deadline. No communication was received from the Castle Family members or other CAO-named Responsible Parties regarding the missed deadlines. Water Board staff denied the request for extension and, as of the date of this staff report, the workplans have not been received.

The Settlement Agreement liability is \$85,000 plus interest. Interest accrued at 10% per year from May 8, 2007 to the date of the Executive Officer's July 3, 2009 notice. Liability is joint and several, the limitations of which are detailed in the Settlement Agreement. The total liability assessed is therefore \$255,766 total.

PUBLIC COMMENTS:

Water Board staff posted the notice of determination dated July 3, 2009, and other related documentation, to the State's publicly available Geotracker database. Staff has not received any public inquiries or communication in response to that posting.

CONCLUSION:

Castle Vegtech, Jamina Investments, and Castle family members have not complied with the conditions of the June 1997 settlement agreement. Specifically, these parties have not proceeded

in accordance with requirements and time schedules in cleanup orders issued to them by the Water Board for this site. As such, the settlement requires payment to the Water Board of \$255,766.

RECOMMENDATION

Uphold the Executive Officer's determination regarding Settlement Agreement enforcement which requires Castle Vegtech, Jamina Investments, and Castle family members to pay liabilities due in the amount of \$255,766.

ATTACHMENTS

1. Settlement Agreement dated June 1997
2. Central Coast Water Board Letter dated July 3, 2009
3. CAO No. R3-2009-0042

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