

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER R5-2011-0713
FOR
TBS PETROLEUM, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY
CONCERNING
ANTLER'S SHELL/SUBWAY
20884 ANTLERS ROAD, LAKEHEAD, SHASTA COUNTY

This Order is issued to TBS Petroleum, LLC, a California Limited Liability Company, (hereafter referred to as "TBS" or "Discharger"), based on provisions of Water Code section 13304 and Health and Safety Code section 25296.10, which authorize the Central Valley Regional Water Quality Control Board ("Central Valley Water Board," or "Board") to issue a Cleanup and Abatement Order (the "Order"), and Water Code section 13267, which authorizes the Central Valley Water Board to require the preparation and submittal of technical and monitoring reports.

The Executive Officer finds, with respect to the Discharger's acts, or failure to act, the following:

PROPERTY OWNERSHIP

1. From about 1972 to present, several entities have owned the property at 20884 Antlers Road, Lakehead, Shasta County, (APN 083-340-034)(the "Site") and have stored and dispensed petroleum hydrocarbons from an underground storage tanks ("USTs") at the Site. The Site utilizes a transient non-community public supply well, which provides water to the gasoline station, mini mart, and Subway™ sandwich restaurant. The supply well is about 120 feet from the USTs and about 70 feet from the petroleum dispensers. A septic tank and leach lines are about 140 feet from the well. Refer to Attachment A, a part of this Order, for relevant site features.
2. According to Shasta County records, on 5 December 1972, Shell Oil Company completed construction of a two-bay service station at the Site. On 28 December 1983, Shell Oil Company granted Site ownership to Olan F. Bailey and Beverley A. Bailey. Shell Oil Company, Olan F. Bailey, and Beverly A. Bailey are not subject to this Order because current Central Valley Water Board records do not contain evidence of a waste discharge while they owned and operated the Site. Should information be submitted substantiating Shell Oil Company, Olan F. Bailey, and Beverly A. Bailey responsibility for waste discharge, the Central Valley Water Board may revise this Order to include these entities.
3. On 30 January 1990, Olan F. Bailey and Beverly A. Bailey granted Site ownership to Bob G. Davis (hereafter "Davis").
4. On 20 April 2005, Bob G. Davis granted Site ownership to TBS Petroleum, LLC. TBS currently owns and operates the public water supply well and UST system under a permit issued by the Shasta County Environmental Health Department ("SCEHD").

10. On 16 December 1997, SCEHD issued Davis a no further action required letter ("NFAR") to close the UST removal file. The NFAR states:

"Nothing in this determination shall construe or be construed as a satisfaction or release from liability from any conditions or claims arising as a result of past, current, or future operations at the site. Nothing in this determination is intended or shall be construed to limit the rights of any parties, with respect to claims arising out of or relating to, deposit or disposal at any other location of substances removed from the site. Nothing in this determination is intended or shall be construed to preclude the Shasta County Department of Resource Management, Environmental Health Division or any other agency from taking any other enforcement actions. This letter does not relieve the tank owner and property owner of any responsibilities mandated under the California Health and Safety Code, California Water Code, and Shasta County ordinances if existing, additional, or previously unidentified contamination at the site causes or threatens to cause pollution or nuisance, or is found to pose a threat to public health or water quality."

11. On 14 July 2003, SCEHD inspected the water system and required Davis to install a chlorination system to prevent positive bacteriological samples and to add volatile organic chemicals ("VOCs"), including MTBE, to the sampling schedule. Davis retained CR Water Treatment-Chuck Goff (Certified Water Distribution Operator #16818) to oversee the water system operation. The 8 January 2004 well sampling by CR Water Treatment found the water supply had chloroform at 50 µg/L, bromodichloromethane at 3.2 µg/L, and trihalomethanes at 54 µg/L. Other analyzed VOCs, including MTBE, were below laboratory reporting limits.

12. On 8 August 2007, a water sample from the supply well collected by CR Water Treatment detected 14.9 µg/L of MTBE. Subsequently, CR Water Treatment submitted written notice to whom it may concern stating:

"In early 2007, the Shell station had a water leak over the fuel tanks which flooded the area for several months before it was located and stopped. The subsequent routine MTBE test started showing it's presence in the well water after this (flooding) incident."

13. On 4 March 2008, SCEHD referred lead agency responsibility for the UST case to the Central Valley Water Board. On 25 June 2008, Central Valley Water Board staff jointly requested that TBS and Davis submit a Preliminary Site Assessment Work Plan to determine the extent of pollution and a survey of sensitive receptors affected or threatened by the release.

SITE INVESTIGATION

14. On 17 November 2008, Central Valley Water Board staff approved the *Letter Workplan; Boring Installation Antlers Shell-Subway* ("Work Plan"), which was submitted by LACO Associates. The Work Plan was submitted on behalf of TBS in response to a second staff request dated 25 July 2008 for the Dischargers to investigate petroleum pollution in the on-site domestic well. Davis did not submit a work plan.

15. On 4 March 2009 a *Report of Findings, Initial Subsurface Investigation* was submitted by LACO Associates. The report contained the results of a limited subsurface investigation at the Site, as well as a sensitive receptor survey. Eight direct-push borings were

Groundwater Analytical Data (µg/l)
From LACO, Report of Findings, Initial Subsurface Investigation

Sample ID	Depth (Ft)	TPHg	Benzene	Toluene	Ethyl-benzene	Total Xylenes	MTBE	TBA	TAME
B1 1/19/09	28	10,000	1,700	35	1,100	1,200	14,000	2,100	69
	37-41	1,600	160	ND	21	30	2,900	400	7.9
B2 1/20/09	26	ND	14	ND	ND	ND	4,300	1,600	24
	36-40	ND	ND	ND	ND	ND	49,000	8,200	290
B3 1/20/09	26	120	16	ND	ND	ND	240	270	1.3
	30-34	ND	27	ND	ND	ND	26,000	5,000	140
B4 1/21/09	25	ND	4.3	ND	2.5	3.0	6.3	ND	ND
	29-33	ND	ND	ND	ND	ND	8.9	6.7	ND
B5 * 1/21/09	25	4,800	60	22	140	290	200	69	2.8
	35-38	13,000	680	270	660	2,300	1,200	160	12
B6 1/22/09	25	37,000	240	5,400	1,400	9,300	800	160	ND
	36-40	11,000	260	32	560	950	460	140	6.1
B7 1/22/09	25	330	1.7	1.2	ND	7.3	40	32	ND
	36-40	320	ND	ND	6.7	ND	7.6	42	ND
B8 1/23/09	25	200	33	ND	ND	ND	740	720	3.8
	30-34	ND	ND	ND	ND	ND	14,000	2,800	79

ND = Not detected in sample above laboratory reporting limit

All other oxygenates not detected in any samples with the exception of Ethanol at 9.9 ug/l in Sample B7 at 25 feet.

***The following volatile organic compounds were detected in water samples collected from Soil Boring B5:**

25 Feet: Isopropyl benzene (4.4 ug/l), n-Propylbenzene (12 ug/l), 1,3,5-Trimethylbenzene (120 ug/l), n-Butylbenzene (0.98 ug/l), and Napthalene (31 ug/l). All others non-detect.

35-38 Feet: Isopropyl benzene (32 ug/l), n-Propylbenzene (87 ug/l), 1,3,5-Trimethylbenzene (160 ug/l), 1,2,4-Trimethylbenzene (840 ug/l), sec-Butylbenzene (5.5 ug/l), p-Isopropyltoluene (3.1 ug/l), n-Butylbenzene (7.2 ug/l), and Napthalene (140 ug/l). All others non-detect.

16. In conjunction with the site sensitive receptor survey, LACO sampled 7 domestic wells located within 1,000 feet of the site. Six of the seven well samples were non-detect for MTBE, however the sample from APN 830-340-08 contained 0.13 ug/L MTBE. This well was non-operational at the time of sampling.

17. TBS has collected at least 12 water samples confirming the presence of MTBE in the on-site public water supply well since August 2007. The minimum, average, and maximum concentrations MTBE concentrations are 8.32 µg/L, 20.45 µg/L, and 44 µg/L, respectively.

18. On 27 April 2010, Central Valley Water Board issued an *Order to Submit Information Pursuant to California Water Code Section 13267* (the "13267 Order"), jointly to TBS and Davis. The 13267 Order required the submittal of two work plans. The first was a work plan to further mitigate post-treatment pollution from the on-site domestic well. TBS responded to this request. The second workplan was for further site investigation of pollutant flow paths through colluvium and fractured bedrock sufficient to evaluate the on-site domestic well as a pollution conduit, correlate with identified pollution in on and off-site receptor wells, and define pollution extent. Neither party has submitted the second required workplan.

23. The State Water Resources Control Board ("State Water Board") has adopted Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* ("Resolution 92-49"). Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. ("Resolution 68-16") Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigation proceed in a progressive sequence. To the extent practical, it directs the Central Valley Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.
24. The Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (hereafter "Basin Plan") designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The designated beneficial uses of the groundwater beneath the Site are domestic, municipal, industrial, and agricultural supply.
25. Chapter IV of the Basin Plan contains the *Policy for Investigation and Cleanup of Contaminated Sites*, which sets forth the Central Valley Water Board's policy for managing contaminated sites. The policy strategy generally outlines a process that includes site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the bases for establishment of soil and groundwater cleanup levels.
26. The State Water Board adopted the *Water Quality Enforcement Policy*, which states in part:
- At a minimum, cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the RWQCB allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the CAO should require the discharger(s) to abate the effects of the discharge. Abatement activities may include the provision of alternate water supplies.
- (Enforcement Policy, p. 19.)
27. The wastes detected at the Site are not naturally occurring, and some are known human carcinogens. These wastes impair or threaten to impair the beneficial uses of the groundwater.

31. The constituents listed in Finding No. 30 are present in groundwater due to the wastes from discharge, are injurious to health or impart objectionable taste and odor when present in drinking water.
32. The Board circulated this document for comment on 23 September and 14 November 2011. Both TBS and Davis responded to each draft by the applicable deadline. The Board has considered all comments received and made revisions based on those comments.

DISCHARGER LIABILITY

33. The California Code of Regulations, title 23, section 2720, defines a responsible party as:

... any person who owns or operates an underground storage tank used for the storage of a hazardous substance... any person who owned or operated the underground storage tank immediately before the discontinuation of its use... any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred, and any person who had or has control over a underground storage tank at the time of or following an unauthorized release of a hazardous substance.

A responsible party has a legal obligation to investigate and remediate contamination. As described in Findings Nos. 4 and 5, TBS is the current owner of the property, and is subject to the directives contained herein. As described in Finding No. 6, the Board is exercising its discretion, in light of the court decisions, not to name Davis to this Order. A condition of pollution or nuisance is present at the Site. The condition of pollution is a priority violation and issuance or adoption of a cleanup and abatement order pursuant to Water Code section 13304 and Health and Safety Code section 25296.10 is appropriate and consistent with policies of the Central Valley Water Board.

34. This Order requires investigation and cleanup of the Site in compliance with the Water Code, the applicable Basin Plan, State Water Board Resolution No. 92-49, and other applicable Central Valley Water Board's plans, policies, and regulations.
35. As described in Findings Nos. 21 and 22, the TBS may be ordered to submit technical and monitoring reports pursuant to Water Code section 13267 because existing data and information about the Site indicate that waste has been discharged, is discharging, or is suspected of discharging, at the property, which is or was owned and/or operated by the Discharger named in this Order. The technical reports required by this Order are necessary to assure compliance with Water Code section 13304 and Health and Safety Code section 25296.10, to adequately investigate and clean up the Site to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.
36. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act ("CEQA")(Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2). The issuance of this Order is also an

subsurface environment. The first monthly Remedial Status Report is due 45 days after system startup, and shall at minimum include background dissolved metals, pH, oxidation-reduction potential (ORP), total dissolved solids (TDS), electron acceptors, iron, manganese, metabolic acids, relevant hydraulic parameters, organic pollutants and their predicted breakdown products in the target volume, predicted behavior both in the target volume and identified surrounding sentry wells, and contingencies for controlling mobilized pollution beyond the target volume. Subsequently, each Remedial Status Report shall also include amendment injections, and the results of all appropriate shallow soil vapor and groundwater sampling. Remedial Status Reports are to be submitted during operation of the remedial system and for a minimum of four quarters following system shutdown.

6. TBS shall submit **Quarterly Monitoring Reports**. All Monitoring Reports shall be submitted by the 30th day of the month following the end of the calendar quarter in which the samples are collected (i.e., by 30 July and 30 January). Monitoring reports shall include the results of all soil, soil vapor and groundwater samples analyzed to date. Remedial Status Reports and Monitoring Reports should be combined and completed as a single report when both monitoring and remedial system sampling occur during the same quarter.
7. TBS shall continue to provide appropriate, **uninterrupted** replacement water that meets all applicable federal, state, and local drinking water standards to affected parties, in compliance with Water Code section 13304(f and g). Appropriate uninterrupted replacement water may include, but is not limited to, continued maintenance of existing GAC units, and extension of piped potable water services.

GENERAL REQUIREMENTS

1. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, have appropriate reports prepared by, or under the supervision of, a registered professional engineer or geologist and signed by the registered professional. All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or an authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Discharger shall also state if it agrees with any recommendations/proposals and whether it approved implementation of said proposals.
2. Upon startup of any remediation system(s), TBS shall operate the remediation system(s) continuously, except for periodic and required maintenance or unpreventable equipment failure. TBS shall notify the Board within 24 hours of any unscheduled shutdown of the remediation system(s) that lasts longer than 48 hours. This notification shall include the cause of the shutdown and the corrective action taken (or proposed to be taken) to restart the system. Any interruptions in the operation of the remediation system(s), other than for maintenance, emergencies, or equipment failure, without prior approval from Central Valley Water Board staff or

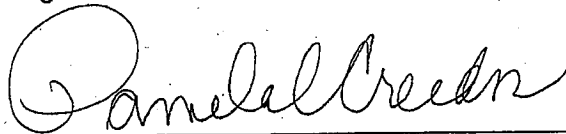
request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as the situation is recognized and no later than the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer. Extension requests not approved in writing by the Executive Officer with reference to this Order are denied.

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of an Administrative Civil Liability of up to \$10,000 per violation per day pursuant to the Water Code sections 13268, 13350 and/or 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality
or will be provided upon request.

This Order is effective upon the date of signature.



PAMELA C. CREEDON, Executive Officer

12-6-2011

DATE