

1/19/10 Bd Mtg.
UST Case Closure (#2545)
Deadline: 12/31/09 by 12 noon

From: Brian Kelleher <bkellehr@ix.netcom.com>
To: <commentletters@waterboards.ca.gov>, Michael Lauffer <MLauffer@waterboard...>
Date: Tuesday, December 08, 2009 5:47 PM
Subject: Claim 2545; 336 West College Avenue, Santa Rosa, CA (and the others)
Attachments: bkellehr.vcf

I am directing my comments to the Board's legal department for URGENT consideration

"The Business and Professions Code requires licensed professionals to sign reports and workplans. A licensed professional must be in responsible charge of all corrective action activities, and must direct the design and implementation of any corrective action."

"The Fund manager disagrees that the case can't be closed based on available information. The contaminant source has been removed to the extent practical and the nutrient levels have returned to pre-remediation concentrations. These facts have been documented in the two additional post remediation sampling events that occurred in June 2009 and September 2009. In the September 2009 Monitoring Event Report, EC&A confirmed that petroleum hydrocarbon concentration rebound has not occurred and that nutrient levels have generally returned to pre-remediation concentrations. In addition, EC&A calculated the total mass removed for TPH-g and benzene was 1.3 pounds and 1.0 pound respectively."

Given the nature of this document and its contents, I believe Ron Duff, PE, is obligated to sign and stamp the document as the engineer in overall charge of the project.

Some of the conclusions presented as facts in this report appear to be rather carelessly drawn and could potentially subject the author to censure by the State Board that issued his PE certification and to lawsuits if the conclusions end up damaging the property owner. Mr Duff should be held to the same standards that PEs are held in the private sector and should be on the hook for any careless mistakes

I think it is appropriate to consider the site for closure. However, I do not think Mr Duff as a PE is allowed to prepare a technical report with engineering and geotechnical evaluations and conclusions for Board consideration unless he stamps it and thereby certifies that he has reviewed it and endorsed all the conclusions under his professional license.

I would personally describe the report conclusions, though they could be valid, as "seat of the pants."

It seems appropriate for the Board engineers to review the work product of RGs and PEs, not to act as RGs and PEs or issue independent reports as RGs and PEs.

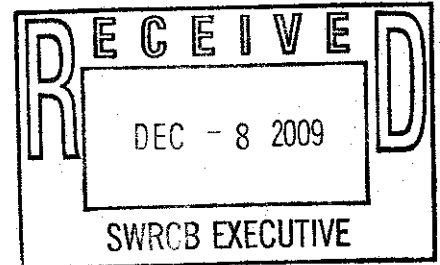
In other words, you need a PE or RG in the private sector that is in responsible charge of the project to issue the case closure petition with the necessary supporting documentation and have the FUND manager reference the conclusions and agree with them and pass on the recommendation to the Board. That is the way the statutes are set up.

I have the same comments on the rest of the Draft UST Case Closure Summaries that were published on 12/7/09.

Some of the others are much more blatant in terms of Mr Duff formulating his own conclusions versus concurring with those of the registered professional in charge of the project. I can provide examples upon request. There is some really bad stuff.

I suggest the legal department take a very close look at these documents

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