

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2006-0722

FOR
ROBERT L. FRENCH
AND
STOCKTON MARKETING, INC.
CIRCLE A GAS STATION
1215 EAST 22ND STREET
MARYSVILLE, CALIFORNIA 95901

This Order is issued to Robert L. French and Stockton Marketing Inc. hereafter referred to as Dischargers, based on provisions of California Water Code section 13304, which authorizes the California Regional Water Quality Control Board, Central Valley Region (hereafter Regional Water Board) to issue a Cleanup and Abatement Order (Order), and Water Code section 13267, which authorizes the Water Board to require preparation and submittal of technical and monitoring reports.

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

PROPERTY OWNERSHIP AND OPERATIONS

1. According to Yuba County records, Robert L. French was the property owner and Stockton Marketing Inc. was the operator of the fueling system located at 1215 East 22nd Street in Marysville, California at the time the release of petroleum hydrocarbons was discovered on 2 July 1997.
2. Stockton Marketing Inc., a Delaware Corporation doing business in California, is registered with the Secretary of State and lists Mr. Robert L. French as Process Agent. Mr. French is named as a Discharger due to his ownership of the property during the time petroleum hydrocarbons were discharged/released and as current owner of the property. Stockton Marketing Inc. is named as a Discharger because it owned and operated the UST system during the time petroleum hydrocarbons were discharged.
3. The business was sold to Singh Kaile in 2001 and remains an operating vehicle fueling station called Circle A. There is no evidence at this time that a release from the current fueling system has occurred during Mr. Kaile's ownership of the business. Therefore, Mr. Kaile is not named as a discharger. Mr. French continues to own the property.

BACKGROUND

4. On 2 July 1997, three 8,000 gallon USTs containing three grades of unleaded gasoline were excavated and removed from a common basin in the southeast portion of the site. An approximately ½ -inch diameter hole was visible along a seam near the bottom of one of the tanks.

5. The UST basin was over-excavated to remove field identified impacted soil. Seven soil samples were collected from the limits of the UST excavation at depths ranging from 13 to 22 feet below ground surface.
6. Analytical results of these soil samples demonstrated that the soils were impacted by petroleum releases from the tank(s). MtBE was detected in all the samples and ranged from 110 ug/kg at a depth of 17 feet to 9,800 ug/kg at a depth of 22 feet. TPH-g and BTEX compounds were detected in two samples collected at 22 feet at concentrations high enough to suggest groundwater may be impacted. No groundwater monitoring wells were installed.
7. On 9 July 1997, the Yuba County Office of Emergency Services sent a letter to Stockton Marketing requesting a workplan for the first phase of the site investigation for the property at 1215 East 22nd Street in Marysville. The workplan was not submitted.
8. On December 30, 2003, the Yuba County Office of Emergency Services issued a letter to Robert French requesting a workplan for the subsurface investigation for the property at 1215 East 22nd Street in Marysville. The workplan was to include soil borings and the installation of groundwater monitoring wells. An Unauthorized Release (Leak)/Contamination Site Report was submitted by Yuba County at that time. The workplan was not submitted.
9. During a Phase II investigation conducted in January 2004 for a property transfer, three groundwater samples were obtained from each of three soil borings. Two soil samples at depths of 13.5 and 15 feet were obtained from two of the soil borings. No petroleum compounds were detected in the soil borings, but MtBE was detected at 2,100 ug/l in one of the three groundwater samples, thus confirming that both soil and groundwater have been impacted by petroleum hydrocarbons from the former UST system. No groundwater monitoring wells were installed.
10. On 24 May 2004, Regional Board staff reviewed the file on this site and issued a letter to Robert French that reiterated the previous Yuba County letter and also directed Mr. French to complete a sensitive receptor survey within 2,000 feet of the site boundary. This work was to have been completed by 30 July 2004. To date, the work has not been submitted.
11. On 12 October 2005, the Regional Water Board issued a second letter to the Dischargers that required the submittal of a workplan by 16 December 2005. The workplan was to include a proposal to advance a sufficient number of soil borings to complete the horizontal and vertical delineation of the identified hydrocarbon release. The workplan was also to include a proposal for the installation of at least three groundwater monitoring wells to determine concentrations of petroleum hydrocarbons in the groundwater and to determine groundwater flow directions.
12. On 1 February 2006, the Regional Board staff issued a third request letter to the Dischargers stating that the required workplan was not received and that the dischargers

have failed to comply with staff directives. The letter directed the Dischargers to submit the workplan by 10 March 2006. To date the requested workplan has not been received by the Water Board.

13. To date the Dischargers have failed to comply with staff requests to define the extent and severity of the petroleum hydrocarbon release.

AUTHORITY – LEGAL REQUIREMENTS

14. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into waters of the state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the regional board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”

15. Section 13304(f) of the California Water Code provides that:

“Replacement water provided pursuant to subdivision (a) shall meet all applicable federal, state and local drinking water standards, and shall have comparable quality to that pumped by the public water system or private well owner prior to the discharge of waste”

16. Section 13267(b)(1) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”

17. Section 13304(c)(1) of the California Water Code provides that:

"If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any government agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. . ."

18. The State Water Resources Control Board (hereafter State Board) has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*. This Policy sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Board Resolution 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, California Code of Regulations (CCR) Section 2550.4. 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 Board.

19. Chapter IV of the Basin Plan contains the *Policy for Investigation and Cleanup of Contaminated Sites*, which describes the Water Board's strategy for managing contaminated sites. This strategy is based on Water Code Sections 13000 and 13304, the Title 27, Division 2, Subdivision 1 regulations, and State Water Board Resolution Nos. 68-16 and 92-49. The strategy 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.

20. The State 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.)

21. The 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 beneficial uses of the groundwater beneath the site are domestic, municipal, industrial, and agricultural supply.

22. The wastes detected at the site are not naturally occurring. Pollution of groundwater with one or more of these wastes impairs or threatens to impair the beneficial uses of the groundwater.
23. WQOs listed in the Basin Plan include numeric WQOs, e.g., state drinking water maximum contaminant levels (MCLs), and narrative WQOs, including the narrative toxicity objective and the narrative tastes and odors objective for surface and groundwater. Chapter IV of the Basin Plan contains the *Policy for Application of Water Quality Objectives*, which provides that “[w]here compliance with narrative objectives is required (i.e., where the objectives are applicable to protect specified beneficial uses), the Water Board will, on a case-by-case basis, adopt numerical limitations in orders which will implement the narrative objectives.” The numerical limits for the constituents of concern listed in the following table implement the Basin Plan WQOs.

Constituent	Limits	WQO	Reference
Total Petroleum Hydrocarbons as Gasoline	5 µg/l	Tastes and Odors	McKee & Wolf, <i>Water Quality Criteria</i> , SWRCB, p. 230
Benzene	0.15 µg/l	Toxicity	California Public Health Goal (OEHHA)
Toluene	42 µg/l	Taste and Odor	Federal Register, Vol. 54, No. 97
Ethylbenzene	29 µg/l	Taste and Odor	Federal Register, Vol. 54, No. 97
Xylene	17 µg/l	Taste and Odor	Federal Register, Vol. 54, No. 97
MTBE	5 µg/l	Taste and Odor	Federal Register, Vol. 54, No. 97

µg/L= micrograms per liter

24. The constituents listed in Findings 6 and 9 are wastes as defined in California Water Code Section 13050(d). The groundwater exceeds the WQOs for the constituent listed in Finding No. 9. The exceeding of applicable WQOs in the Basin Plan constitutes pollution as defined in California Water Code Section 13050(l)(1).

DISCHARGER LIABILITY

25. As described in Findings 1 through 6 and 9, the Dischargers are subject to an order pursuant to Water Code section 13304 because the Dischargers have caused or permitted waste to be discharged or deposited where it has discharged to waters of the state and has created, and continues to threaten to create, a condition of pollution or nuisance. The condition of pollution is a priority violation and issuance or adoption of a cleanup or abatement order pursuant to Water Code Section 13304 is appropriate and consistent with policies of the Water Board
26. This Order requires investigation and cleanup of the site in compliance with the Water Code, the applicable Basin Plan, Resolution 92-49, and other applicable plans, policies, and regulations.
27. As described in Findings 1 through 6 and 9, the Dischargers are subject to an order pursuant to Water Code section 13267 to submit technical reports 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 Dischargers named in this Order. The technical reports required by this Order are necessary to assure compliance with Section 13304 of the California Water Code, including to adequately investigate and cleanup the site to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.
28. If the Dischargers fail to comply with this Order, the Executive Officer may request the Attorney General to petition the superior court for the issuance of an injunction.
29. If the Dischargers violate this Order, the Dischargers may be liable civilly in a monetary amount provided by the Water Code.
30. 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 (Public Resources Code, Section 21000, et seq.), pursuant to Title 14 CCR Section 15321(a)(2). The implementation of this Order is also an action to assure the restoration of the environment and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), in accordance with Title 14 CCR, Sections 15308 and 15330.
31. Any person affected by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Title 23 CCR Sections 2050-2068. The regulations may be provided upon request and are available at www.swrcb.ca.gov. The State Board must receive the petition within 30 days of the date of this Order.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13000, Section 13304 and Section 13267, Robert L. French and Stockton Marketing Inc. shall:

1. Investigate the discharges of waste, clean up the waste, and abate the effects of the waste, forthwith, resulting from activities at the Circle A Gas Station at 1215 East 22nd Street in Marysville, California, in conformance with State Board Resolution No. 92-49 *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* and with the Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (in particular the Policies and Plans listed within the Control Action Considerations portion of Chapter IV). "Forthwith" means as soon as is reasonably possible. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below.
2. All work and reports shall follow the *Appendix A - Reports, Tri-Regional Recommendations for Preliminary Investigation and Evaluation of Underground Storage Tank Sites* (Appendix A - Reports) which is attached and made a part of this Order, and under permits required by State, County, and/or Local agencies.
3. By **15 December 2006**, the Discharger is required to submit, to the best of his or her abilities, a report documenting the site's history since its development as a fuel station, including a chronology of the site's ownership and operator history, as well as all investigative and remedial activity to have occurred at the site. The Discharger is also required to submit a complete list of all record owners of fee title. Section 25296.20(a) of Chapter 6.7 of the California Health and Safety Code requires that all current record owners of fee title to the site be notified of any corrective action or site closure proposals prior to the county or Regional Board considering the proposal.

SITE ASSESSMENT

4. By **15 January 2007**, submit a *Site Investigation Workplan (Workplan)* to collect a sufficient number of soil, soil vapor and groundwater samples to determine the lateral and vertical extent of waste constituents and the complete site characterization. The work plan shall contain the information in Appendix A, which is made part of this Order.
5. Within **30 days** of staff concurrence with the *Workplan*, but no later than **28 February 2007**, implement the work plan.
6. Submit results of the site investigation in a *Preliminary Investigation and Evaluation Report (PIER)* no later than **30 April 2007**. The *PIER* shall include recommendations and, if needed, a second Workplan for additional investigation. If additional investigation is necessary, the Workplan shall include a time schedule for completing the work and submitting the results.

7. Within **30 days** of staff concurrence with the Workplan for additional site assessment, and in accordance with the approved time schedule, implement the Workplan.
8. Upon defining the extent of wastes, but no later than **15 August 2007**, submit a *Problem Assessment Report (PAR)* which includes information from the implementation of the Workplan and sufficient detail on the nature and extent of the release to provide a basis for future decisions regarding subsequent cleanup and abatement actions.

Feasibility Study

9. By **30 September 2007**, submit a Feasibility Study that provides a summary of remedial alternatives evaluated to address applicable cleanup levels for the affected or threatened human health and/or waters of the State. The Feasibility Study shall propose at least two remedial technologies that have a substantial likelihood to achieve cleanup of all impacted soils and groundwater and shall include a schedule for achieving cleanup. The remedial technologies must be evaluated with respect to their ability to be implemented, cost, and effectiveness. The Feasibility Study shall include the rationale for selecting the preferred remedial alternative. The Discharger shall attempt to clean up each constituent to background concentrations, or to the lowest level that is technically and economically achievable and which complies with all applicable WQOs of the Basin Plan and promulgated water quality criteria.

Remediation

10. Within **90 days** of Water Board staff concurrence with the proposed remedial action described in the Feasibility Study but no later than **31 January 2008**, submit a Final Remedial Plan (FRP). The FRP must include a detailed description of the remedial actions to address cleanup of the entire groundwater plume and source area soils. The FRP shall also include a schedule to implement all remedial actions in compliance with this order.
11. Within 60 days of Water Board staff's approval of the FRP but no later than **15 May 2008**, begin implementation of the approved remedial actions.
12. Submit for remediation system(s), **monthly** status reports for the first three months of operation of any new systems. At a minimum, the monthly status reports shall include:
 - site maps indicating the capture zone and waste plumes,
 - average extraction rates of all treatment systems,
 - influent and effluent concentrations of TPHg, benzene, toluene, ethylbenzene, xylene, MtBE and other fuel oxygenates, 1,2 DCA, EDB, Organic Lead, etc,
 - mass of hydrocarbons treated during the reporting period and cumulative to date,

- estimated mass of wastes remaining and predicted time frame for meeting cleanup objectives,
- running and down time for the remediation system(s),
- summary of consultant visits to the site, and
- evaluation of the overall remediation program and recommendations to correct deficiencies or increase efficiency.

GROUNDWATER MONITORING

13. Monitor and sample **quarterly** all monitoring wells and threatened offsite water supply wells for TPHg, benzene, toluene, ethyl benzene, total xylenes, fuel oxygenates including MtBE, 1,2-DCA, and EDB until otherwise directed in writing by the Executive Officer or his representative(s). Method Detection Limits (MDLs) shall be derived by the laboratory for each analytical procedure, according to State of California laboratory accreditation procedures. The MDLs shall reflect the detection capabilities of the specific analytical procedure and equipment used by the lab, rather than simply being quoted from USEPA analytical method manuals. In relatively interference-free water, laboratory-derived MDLs are expected to closely agree with published USEPA MDLs.
14. Submit **Quarterly Status Reports** by the 1st day of the second month after the calendar quarter in which the samples were collected. The first quarter report is due **1 May**, the second quarter report is due **1 August**, the third quarter report is due **1 November**, and the fourth quarter report is due **1 February**. Quarterly reports are to include the information specified in Appendix A.

Risk Assessment

15. By **15 May 2007**, submit a risk assessment to demonstrate whether the contamination poses unacceptable risks to human health or the environment. The site-specific risk assessment must use the Office of Environmental Health Hazard Assessment (OEHHA) toxicity data (California cancer slopes). If the risk assessment suggests that the contamination poses a threat to human health, the report shall include a workplan to abate the risk or exposure. The risk assessment is to also include a sensitive receptor survey within 2,000 feet of the site boundary. The proposed abatement work shall begin within 60 days of approval by Water Board staff, or by **15 September 2007**, whichever is sooner.

Public Participation

16. By **31 July 2007**, submit a *Public Participation Plan*. The *Public Participation Plan* shall solicit the public's concerns and disseminate information to the public regarding the

investigation and proposed cleanup activities at the sites. The *Public Participation Plan* shall be updated as necessary to reflect any significant changes in the degree of public interest as the site investigation and cleanup process moves toward completion.

GENERAL REQUIREMENTS

17. 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 they agree with any recommendations/proposals and whether they approved implementation of said proposals.
18. Upon startup of any remediation system(s), operate the remediation system(s) continuously, except for periodic and required maintenance or unpreventable equipment failure. The Discharger shall notify the Water 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 Water Board staff or without notifying the Water Board within the specified time is a violation of this Order. Within 7 working days of a shutdown, the Dischargers shall submit a Technical Report containing at a minimum, but not limited to the following information:
 - times and dates equipment were not working,
 - cause of shutdown,
 - if not already restarted, a time schedule for restarting the equipment, and,
 - a Cleanup Assurance Plan to ensure that similar shutdowns do not reoccur. Proposed Cleanup Assurance Plans are to be completed within 30 days of the system shutdown.
19. Notify Water Board staff at least three working days prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection.
20. Obtain all local and state permits and access agreements necessary to fulfill the requirements of this Order prior to beginning the work.
21. Continue any remediation or monitoring activities until such time as the Executive Officer determines that sufficient cleanup has been accomplished to fully comply with this Order and this Order has been either amended or rescinded in writing.

22. Optimize remedial systems as needed to improve system efficiency, operating time, and/or waste removal rates, and report on the effectiveness of the optimization in the quarterly reports.
23. Maintain a sufficient number of monitoring wells to completely define and encompass the waste plume(s). If groundwater monitoring indicates the waste in groundwater has migrated beyond laterally or vertically defined limits during the quarter, then the quarterly monitoring reports must include a work plan and schedule, with work to begin within thirty days of Water Board staff approval, to define the new plume limits.
24. Electronic copies of all reports and analytical results are to be submitted over the Internet to the State Water Board Geographic Environmental Information Management System database (GeoTracker) at <http://geotracker.swrcb.ca.gov>. Electronic submittals shall comply with GeoTracker standards and procedures as specified on the State Board's web site.
25. If the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may 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.
26. All work and directives referenced in this Order are required regardless of whether or not the UST Cleanup Fund approves the work for reimbursement.
27. 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.

This Order is effective upon the date of signature.

PAMELA CREEDON, Executive Officer

20 November 2006

(Date)