

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2006 – 0010

In the Matter of the Petition of

CURTIS D. QUINONES AND VAPOR CLEANERS INC.

For Review of Cleanup and Abatement Order No. R3-2006-0021
for Vapor Cleaners Inc., Curtis D. Quinones, and City of Monterey
Issued by the
California Regional Water Quality Control Board,
Central Coast Region

SWRCB/OCC FILE A-1740

BY THE BOARD:

On February 9, 2006, the Executive Officer of the Central Coast Regional Water Quality Control Board (Central Coast Water Board), issued Cleanup and Abatement Order No. R3-2006-0021 (CAO), requiring Vapor Cleaners, Inc., Curtis D. Quinones, and the City of Monterey to undertake cleanup actions to address chlorinated solvent contamination at the site of a former dry cleaning business located in Monterey. Curtis D. Quinones and Vapor Cleaners, Inc. (Petitioners) filed a timely petition, seeking review of the CAO.¹ Petitioners claim that the CAO is unwarranted and that its findings are not supported by substantial evidence in the administrative record. In this Order, the State Water Resources Control Board (State Water Board or Board) orders reconsideration of Basin Plan designations of groundwater, and extends certain compliance dates in the CAO and associated monitoring requirements.²

I. BACKGROUND

Petitioners formerly owned and operated a dry cleaning business at 951 Del Monte Avenue in Monterey (Site), approximately 200 feet from Monterey Bay. Tetrachloroethylene (PCE) was discovered in soil and groundwater in 1987. Following issuance of Central Coast Water Board Cleanup and Abatement Order No. 87-99, Petitioners installed and operated a soil vapor extraction system to address chlorinated solvents emanating from the

¹ Petitioners also requested a stay of the CAO. The State Water Board's Executive Director denied the stay request by letter dated March 27, 2006.

² This Order is based upon the record before the Central Coast Water Board.

Site. In 2001, underground storage tanks (USTs) were discovered and removed from the Site during demolition of the building and removal of pavement. The USTs were found to have leaked Stoddard solvent, and a Corrective Action Plan (CAP) was developed and undertaken for excavation and disposal of soil containing the solvent. Following implementation of the CAP, quarterly groundwater monitoring continued; later the frequency was reduced to semi-annual monitoring.³ Petitioners' consultant has reported seasonally shifting values for PCE and its breakdown products, which include vinyl chloride. Petitioners ask that the Site be closed and no further action required.

II. CONTENTIONS AND FINDINGS⁴

Contention: Petitioners contend that beneficial use of the groundwater beneath the Site is not appropriately designated as "municipal and domestic supply" because it does not meet criteria for a potential source of drinking water.

Finding: The Central Coast Regional Water Quality Control Plan (Basin Plan) designates the present and potential beneficial uses of groundwater beneath the Site, among them municipal and domestic water supply (which includes drinking water supply). Whether the groundwater meets the criteria for drinking water is irrelevant; the existing beneficial use designation cannot be challenged in a petition contesting a cleanup order.⁵ As will be discussed below, the Central Coast Water Board must reconsider whether groundwater beneath the Site qualifies for an exception under State Water Board Resolution 88-63, the Sources of Drinking Water Policy. A Basin Plan amendment is the appropriate method for removal of the municipal and domestic water supply beneficial use.

Petitioners assert that the CAO is unwarranted because, among other arguments put forth, beneficial uses of groundwater beneath the Site are "limited" and thus not

³ Monitoring and Reporting Program No. R3-2003-0101 (revised Jan. 25, 2005).

⁴ To the extent that this Order does not address all of the issues raised by Petitioners, the State Water Board finds that the issues that are not addressed are insubstantial and not appropriate for State Water Board review. See *People v. Barry* (1987) 194 Cal.App.3d 158, 175-177 [239 Cal.Rptr. 349].

⁵ Compare Wat. Code, §§ 13050, subd. (j) & 13240 (requiring water quality control plans that designate beneficial uses) with Wat. Code, § 13320, subd. (a) (authorizing State Water Board petition review of cleanup and abatement orders and other enumerated sections in the Porter-Cologne Act, but not the designation of uses).

unreasonably impaired.⁶ This argument assumes that the current likelihood of attaining a beneficial use should be considered in determining the applicable water quality objectives or in deciding whether to implement the established water quality objectives in a CAO. The argument is not supported by law.

The Porter-Cologne Water Quality Control Act⁷ and the Basin Plan require protection of potential as well as actual beneficial uses.⁸ Resolution 88-63 provides that “[a]ll surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic water supply and should be so designated by the Regional Boards”, with listed exceptions. Resolution 88-63 is, by reference, a part of the Basin Plan.⁹

Resolution 88-63 contains an exception for “ground waters where . . . [t]he total dissolved solids (TDS) exceed 3,000 mg/L (5,000 uS/cm electrical conductivity) and it is not reasonably expected by Regional Boards to supply a public water system” The conjunctive “and” means that two requirements must be met to trigger the exception. First, total dissolved solids (i.e., salinity) must exceed 3,000 mg/L. Second, the regional water board must reasonably expect the water will not be used as a source of drinking water.

The Basin Plan currently designates the groundwater below the Site as having the beneficial use of municipal and domestic supply, as well as agricultural water supply and industrial use.¹⁰ Petitioners argue that groundwater beneath the Site does not meet State Water Board Resolution No. 88-63 criteria for a potential source of drinking water, presumably because of excessive salinity.

Beneficial uses are designated in the Basin Plan through a quasi-legislative process¹¹ rather than on a case-by-case basis, as in permits or cleanup orders. This Board has previously recognized that a Basin Plan amendment is the appropriate vehicle to designate and de-designate uses and that Resolution 88-63 is a tool to use in determining designations; it is

⁶ In describing the beneficial uses as “limited,” Petitioners quote a finding in Cleanup and Abatement Order No. 87-99 (“Beneficial uses of groundwater beneath the site are fairly limited due to high salinity.” Order No. 87-99, Finding 1.f.) That finding does not obviate the laws and procedural requirements governing designation of beneficial uses, as set forth herein.

⁷ Wat. Code, § 13000 et seq.

⁸ Wat. Code, § 13241, subd. (a). Basin Plan, Chapter 2, at p. II-1.

⁹ Basin Plan, Chapter 2, at p. II-1.

¹⁰ *Ibid.* See also, State Water Board Division of Water Quality, Technical Report, Petition of Mr. D. Quinones (Aug. 16, 2006) [hereafter, “DWQ Technical Report”] at p. 2.

¹¹ Wat. Code, §§ 13050, subd. (j), 13240, 13241, subd. (a).

not self-implementing.¹² Therefore, even if Petitioners are correct as to the applicability of an exception to Resolution 88-63, de-designation through a Basin Plan amendment is the appropriate remedy. Unless and until the beneficial use of the groundwater is de-designated through that process, the Central Coast Water Board must protect the designated uses. We will, nonetheless, discuss Petitioners' contention regarding the propriety of this designation.

Although the Petitioners refer to high salinity in arguing for applicability of an exception to the Resolution 88-63, the record shows that the TDS of groundwater sampled from Site monitor wells varies spatially, seasonally, and historically.¹³ This is due in part to tidal mixing with the adjacent Monterey Bay and the difference in density of salt water and fresh water. Groundwater in the upper half of the aquifer (approximately 4 to 12 feet below ground surface, or bgs) likely has low enough salinity levels to qualify as a source of drinking water under Resolution 88-63, while the groundwater below 12 feet bgs likely has salinity levels in excess of the 3,000 mg/L, supporting the first criterion of exception.¹⁴

Although Petitioners do not address it, Resolution 88-63 provides an additional exception where "[t]he water source does not provide sufficient water to supply a single well capable of producing an average, sustained yield of 200 gallons per day." A domestic supply well constructed at the Site would likely be capable of producing more than 500 gallons per day. However, the water produced would likely have a TDS concentration of 5,000 to 10,000 parts per million (ppm) after a short period of pumping.¹⁵

The Central Coast Water Board appropriately applied the beneficial uses designated for groundwater beneath the Site. It appears that the groundwater may not qualify for a salinity exception under Resolution 88-63. However, the administrative record indicates that groundwater at the Site may not be capable of meeting a sustained yield below the 3,000 ppm salinity threshold. Accordingly, Central Coast Water Board must reconsider, consistent with Resolution 88-63 and other applicable laws and resolutions, the designation of groundwater beneath the Site as municipal and domestic supply. The Central Coast Water Board shall make a formal determination whether or not a Basin Plan amendment is

¹² Order No. WQO 2002-0015, *In the Matter of Review on Own Motion of Waste Discharge Requirements Order No. 5-01-044 for Vacaville's Easterly Wastewater Treatment Plant*, at p. 13.

¹³ DWQ Technical Report at pp. 2-3.

¹⁴ *Id.*, at p. 3. Based on the design and screening of the existing monitor wells, it is difficult to reach precise conclusions about TDS levels throughout the aquifer. Such information could be developed through additional monitoring.

¹⁵ *Ibid.*

appropriate. The Central Coast Water Board members shall also consider alternatives to remediation action and continued monitoring, including deed restrictions or other institutional controls.

The monitoring requirements and CAO deadlines should be changed in order to allow time for the Central Coast Water Board to consider whether to amend the Basin Plan and to consider alternatives such as institutional controls. The requirements in the CAO for a site characterization work plan and a technical report verifying completion of site characterization work to follow within 90 days, as well as the requirement for submission of a list of property owners within 500 feet of the site, shall be extended. Compliance dates for the initial site characterization work plan and list of property owners shall be submitted within 90 days following the later of any final action of the Central Coast Water Board on the Basin Plan designation and the decision on institutional controls. Monitoring requirements contained in MRP No. R3-2003-0101 shall also be suspended during this period.

III. CONCLUSION

The existing Basin Plan designates groundwater underlying the Petitioners' former dry cleaning facility as having a municipal and domestic supply beneficial use. This designation cannot be collaterally challenged in a petition contesting a cleanup and abatement order. De-designation of beneficial uses requires a Basin Plan amendment. Additional information contained in the record may support application of an exception to Resolution 88-63. Pending review of beneficial use designations and consideration of institutional controls, remediation and monitoring requirements should be suspended.

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IV. ORDER

IT IS HEREBY ORDERED THAT:

1. The Central Coast Water Board shall consider amending its Basin Plan to de-designate groundwater beneath the Site for municipal and domestic supply.
2. The Central Coast Water Board members shall consider alternatives to remediation action and continued monitoring, including deed restrictions or other institutional controls.
3. Compliance dates for a work plan for site characterization and submission of a list of property owners within 500 feet of the site are extended until 90 days following any final decision of the Central Coast Water Board on amending the Basin Plan designation or 90 days following consideration of alternatives such as institutional controls, whichever is later.
4. MRP No. R3-2003-0101 shall be suspended during the period described in Paragraph No. 3 above.

CERTIFICATION

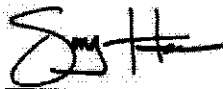
The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 13, 2006.

AYE: Tam M. Doduc
Arthur G. Baggett, Jr.
Charles R. Hoppin
Gary Wolff, P.E., Ph.D.

NO: None

ABSENT: None

ABSTAIN: None



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Clerk to the Board