

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

PROSECUTION STAFF SUMMARY REPORT (Cleet Carlton)
MEETING DATE: June 8, 2011

ITEM: **5D**

SUBJECT: **Shell Oil Company and Signature at the Estuary, LLC**, for the properties at 2901 to 2999 Glascock Street, and including Bowsman Court, Channel Way, and Regatta Drive, Oakland, Alameda County –Amendment of Site Cleanup Requirements

CHRONOLOGY: June 2004 – Site Cleanup Requirements (SCR) adopted
December 2004 – SCR amended

DISCUSSION: The Tentative Order (Appendix A) amends the SCR to: 1) add Shell Oil Company as a named discharger, 2) amend groundwater cleanup standards to address the drinking water beneficial use, and 3) add soil gas cleanup standards. Since the SCR is an enforcement action, staff have separated functions for this matter as follows: *Prosecution Staff* includes Bruce Wolfe, Dyan Whyte, Stephen Hill, Mary Rose Cassa, Cleet Carlton, Yuri Won; *Advisory Staff* includes Tom Mumley and Dorothy Dickey.

This site is next to the Oakland Estuary in Oakland and is occupied by residential townhomes. From 1925 to 1980, Shell owned and operated a bulk fuel distribution terminal at the site. In June 2003, Signature at the Estuary, LLC, purchased the property and began development of a 100-unit residential townhouse complex. As part of its development work, Signature removed remaining infrastructure related to the fuel terminal, excavated and disposed of contaminated soil, and implemented groundwater cleanup.

Investigations conducted as early as 1982 have identified petroleum-related contamination in groundwater beneath the site, including floating product on the groundwater surface. The main chemicals identified include total petroleum hydrocarbons (as gasoline and diesel) and benzene. Concentrations of these chemicals remain high relative to background conditions. The extent of the pollution in soil gas and groundwater is defined, although the extent of pollution in soil, which may be feeding continued residual pollution in groundwater or soil gas, may not be fully defined.

In 2004, the Board adopted the final SCR, which named Signature at the Estuary, LLC, as the discharger because it owned the property at the time and planned to redevelop the property. While most cleanup tasks have been completed, two issues remain: potential for vapor intrusion into the townhomes and a small

petroleum sheen at one shoreline location. In 2010, Signature at the Estuary, LLC, informed Board staff it does not have the financial capacity to fulfill the remaining obligations under the SCR.

We circulated a tentative order for public comment in February 2011. We received comments on the tentative order from Shell and the homeowner's association (Appendix B). While Shell does not specifically object to being added as a named discharger, it urges the Board to name other dischargers as well. Specifically, Shell argues for naming Signature Homes, Inc., and Signature Properties, Inc., (LLC affiliates) as well as subsequent landowners to Shell. Shell also objects to the changes in beneficial uses and groundwater cleanup standards, and the addition of soil gas cleanup standards. The homeowner's association claims that Signature Properties, Inc., should be a named discharger because Signature Properties, Inc., took on responsibility to clean up the property, but failed to do so.

We have prepared a response to comments (Appendix C). To address the issue of whether Signature Homes, Inc., or Signature Properties, Inc., should be named as dischargers, Board staff sent a letter on April 8, 2011, to Signature Homes, providing it the comments we received and requesting its response as to why these two affiliates should not be named as dischargers. The response from Signature Homes argues that neither affiliate should be named (see Appendix B). Specifically, Signature Properties, Inc., is a management company that had no ownership role and ceased to do business as of August 1, 2010, and Signature Homes, Inc., was not involved at all with the Estuary redevelopment project. Staff confirmed these points, and staff review of available site records did not reveal substantial evidence that Signature Properties, Inc., caused or permitted a discharge through having a possessory interest in the property and the legal ability to control the discharge. Therefore, we do not recommend any changes to the tentative order in response to the comments received.

At this writing, we do not know if Shell or the homeowner's association will appear at the meeting to contest the tentative order. Prosecution Staff will have a presentation ready in the event that either party does contest the tentative order.

PROSECUTION STAFF

RECOMMENDATION: Adopt the Tentative Order

File No. 01S0576 (CFC)

APPENDICES: A – Tentative Order
B – Correspondence
C – Response to Comments
D – Location Map