

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

EXECUTIVE OFFICER'S SUMMARY REPORT
MEETING DATE: JUNE 13, 2012

- ITEM: **8**
- SUBJECT: **Hyung Keun Sun and Yeo Nam Sun, Art Cleaners at 400 East Santa Clara Street, San Jose, Santa Clara County –**
Hearing to Consider Resolution Authorizing Referral to Attorney General for Non-Compliance with Water Board Orders
- CHRONOLOGY: January 2010 – Administrative Civil Liability Order adopted
August 2011 – Cleanup and Abatement Order issued by Board Staff
- DISCUSSION: The Tentative Resolution (Appendix A) would refer enforcement of non-compliance with the Board's Administrative Civil Liability Order No. R2-2010-0003 (ACL Order) and Cleanup and Abatement Order No. R2-2011-0034 (CAO) to the Attorney General. The Board is not being asked to decide the merits of the case or determine any facts, but only to consider whether a referral is appropriate. This matter may come before the Board in the future for enforcement (for example, if the Attorney General declines the referral) or permitting, so the Board should not deliberate or make a decision on potential administrative enforcement.

Background

Hyung Keun Sun and Yeo Nam Sun own the property ("Site") located at 400 East Santa Clara Street, San Jose. The Site was historically an automotive service station and is presently a dry cleaning facility named Art Cleaners, operated by a separate party. In 2002, a soil and groundwater investigation found pollutants (petroleum and chlorinated hydrocarbons) beneath the Site consistent with operations conducted at the Site. The Santa Clara County Valley Water District transferred oversight of the Site to the Board in June 2005. Since then, Board staff has issued multiple requirements to the Suns for additional investigation.

ACL Order Non-compliance

In January 2010, the Board adopted the ACL Order imposing a liability of \$25,646 for failure to submit required site investigation reports (Appendix B). Payment of the liability was due February 12, 2010, and is now past due.

CAO Non-compliance

The 2011 CAO (Appendix C) repeated requirements to submit investigation reports and included additional requirements to clean up pollutants detected at the Site. The first technical report was due October 1, 2011, and is now past due. The Board's Assistant Executive Officer, as lead of the Board's prosecution team for this matter, issued a Notice of Violation for failure to submit that report on October 31, 2011 (Appendix D). Two other CAO-required reports are now also past due.

Attorney General Referral

The Tentative Resolution would allow referring the failures to comply with the ACL Order and CAO requirements to the Attorney General to pursue judicially-imposed penalties and take other appropriate actions in consultation with the Board.

Comments Received

In his comments on the Tentative Resolution (Appendix E), the Sun's attorney requested that the Board delay the hearing citing the Sun's attempts to seek insurance reimbursement for investigation and cleanup work. The Board's prosecution team responded to these comments (Appendix F) by opposing a delay of the hearing, stating that the Sun have provided no valid reason for the delay, nor have they made diligent efforts to respond to Board-imposed requirements, and because delaying the hearing would further delay resolving this water quality problem. As head of the Board's advisory team, I have agreed with the prosecution team to not delay the hearing.

RECOMMEND-
ATION:

I will have a recommendation at the close of the hearing.

CIWQS Place ID:
GeoTracker ID:

738457
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APPENDICIES:

- A. Tentative Resolution
- B. Administrative Civil Liability Order No. R2-2010-0003
- C. Cleanup and Abatement Order No. R2-2011-0034
- D. Notice of Violation of Order No. R2-2011-0034
- E. Comments Received
- F. Response to Comments