
San Francisco Bay Regional Water Quality Control Board

Date: August 15, 2012
File No. 01S0519

Kato Road, L.L.C.
c/o LandBank Properties, L.L.C.
Attn: Malcolm D. Jarrell (malcom.jarrell@shawgrp.com)
4171 Essen Lane
Baton Rouge, LA 70809

SUBJECT: Transmittal of Tentative Order – Rescission of Site Cleanup Requirements Order No. 97-106 for Kato Road LLC (Scott Creek Business Park), 48870 Kato Road, Fremont, Alameda County

Dear Mr. Jarrell:

Attached is a Tentative Order (Rescission of Site Cleanup Requirements Order No. 97-106) for the subject site.

This matter will be considered by the Board during its regular meeting on October 10, 2012. The meeting will start at 9:00 a.m. and will be held in the first floor auditorium of the Elihu Harris Building, 1515 Clay Street, Oakland, California. Any written comments by you or interested persons must be submitted to Board offices by September 14, 2012. Comments submitted after this date will not be considered by the Board.

Pursuant to section 2050(c) of Title 23 of the California Code of Regulations, any party that challenges the Regional Board's action on this matter through a petition to the State Water Resources Control Board under Water Code section 13320 will be limited to raising only those substantive issues or objections that were raised before the Regional Board at the public hearing or in timely submitted written correspondence delivered to the Regional Board (see above).

If you have any questions, please contact Cherie McCaulou of my staff at (510) [e-mail cmccaulou@waterboards.ca.gov].

Sincerely,

Bruce H. Wolfe
Executive Officer

Attachment: Tentative Order
cc w/attach: Mailing List

JOHN MULLER, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

Mailing List

Alameda County Water District
Groundwater Resources Division/
Attn: Steven Inn (steven.inn@acwd.com)
43885 South Grimmer Boulevard
Fremont, CA 94537

Alameda County Environmental Health
Local Oversight Program
Attn: Donna Drogos (donna.drogos@acgov.org)
1131 Harbor Bay Parkway, 2nd Floor
Alameda, CA 94502

City of Fremont Fire Department
Hazardous Materials Division
Attn: Jay Swardenski
(jswardenski@fremont.gov)
39100 Liberty Street
Fremont, CA 94537

City of Fremont
Environmental Services Department
Attn: Kathy Cote (kcote@fremont.gov)
39550 Liberty Street
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Union Sanitary District
Attn: Al Bunyi (al_bunyi@unionsanitary.com)
5072 Benson Road
Union City, CA 94587

VTA
Attn: Dan Pornel (dan.pornel@vta.org)
1436 California Circle
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LandBank Properties L.L.C.
Shaw Environmental & Infrastructure Group
Attn: Timothy Roberts, RPA
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Attn: Malcolm Jarrell
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Centennial, CO 80112

Greenberg Traurig, LLP
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Pircher, Nicols & Meeks
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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

RESCISSION OF SITE CLEANUP REQUIREMENTS (ORDER NO. 97-106) FOR:

KATO ROAD, LLC

for the property located at:

48870 KATO ROAD, FREMONT, ALAMEDA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Regional Water Board), finds that:

1. **Regional Water Board Order and Resolution:** The Regional Water Board adopted Site Cleanup Requirements (Order No. 97-106) for the former CAP Concrete facility on August 20, 1997. That Order (1) named Kato Road, LLC, as the discharger; (2) found that no further soil cleanup is necessary; (3) set guidance for groundwater cleanup standards; (4) required groundwater monitoring; (5) required institutional constraints; and (6) required submittal of a final Remedial Action Plan that will include a risk assessment and risk management plan (as appropriate). In addition, that Order required Kato Road LLC to perform various tasks including re-establishing the monitoring network and submitting a proposal for final remediation and/or closure within two years. The Regional Water Board simultaneously adopted Resolution 97-107, which authorized the Executive Officer to sign an agreement for “Mutual Release and Covenant Not to Sue” (“Mutual Release”) with Southwest Kato LLC and Opus Southwest Corporation. The Mutual Release acknowledged that Kato Road’s successor owners would not be considered to be potentially responsible parties and would bear no liability for any pollution existing at the Burdened Property as of the date of the resolution, provided that such parties complied with the terms and conditions of the Mutual Release.
2. **Summary of Investigation and Remediation Activities:** Environmental investigations performed between 1990 and 1999 adequately defined the extent of total petroleum hydrocarbons as diesel (TPH-D) and volatile organic compounds (VOCs) at the Site. The TPH-D in soil and groundwater was related to leaking underground storage tanks. The VOCs in groundwater consist primarily of trichloroethene (TCE) and tetrachloroethene (PCE) and were likely related to general use of solvents for auto parts cleaning. Exposure pathways, receptors and potential risks, threats and other environmental concerns were fully assessed.

Soil impacts were addressed prior to site redevelopment, with cleanup focused on the petroleum hydrocarbon impacts from leaking storage tanks and drums. Source removal remedial actions included excavation and destruction of underground storage tanks and

buried drums along with 500 cubic yards of diesel-impacted soil, which was properly disposed of off-site. Soil cleanup standards were 100 mg/kg for diesel, gasoline, and motor oil. VOCs were not detected in any of the 20 soil samples collected in June 1996 at three and seven feet below grade during tank removals or in two soil samples collected in 1998.

During tank removals, approximately 10,000 gallons of groundwater was pumped from tank excavations and approved for reuse on-site for dust control. Plume stability in shallow zone groundwater has been demonstrated through 20 years of monitoring. The deeper Newark Aquifer has not been impacted. Maximum VOC concentrations in shallow groundwater detected in July 2012 include 44 micrograms per liter (ppb) TCE (MW-7), 19 ppb PCE (MW-7) and 8.5 ppb cis 1-2, dichloroethene (MW-7). These concentrations are projected to decrease further and ultimately meet water quality objectives within a reasonable time. Plume definition has been demonstrated by recent groundwater sampling within the Kato Road Grade Separation Project. No VOCs were detected in the two groundwater samples collected July 5, 2012, from the two large excavations areas located cross gradient and downgradient of the Site.

3. **Environmental Human Health Risk Assessment:** A Health-Based Risk Assessment targeted at hypothetical indoor workers was completed after the development of the property (IT Corporation, *August 1999 Groundwater Monitoring Evaluation and Risk Assessment*, October 4, 1999). The conclusions of the assessment, utilizing the highest VOC concentrations from the April and June 1999 sampling events, indicated that the predicted indoor air concentrations of VOCs did not warrant any further action. The predicted carcinogenic risk (1.5×10^{-8}) and non-cancer hazard (0.0002) are at least two orders of magnitude below acceptable threshold levels established by the United States Environmental Protection Agency.

The Regional Water Board concurred with the conclusion of the risk assessment that the low concentrations of residual chemicals at the site would not pose a significant human health risk. In addition, other probable exposure pathways are eliminated by a *Covenant and Environmental Restriction on Property* that limits potential exposures to the residual chemicals in groundwater.

4. **Basis for Rescission:**

- a. The site has been fully characterized.
- b. Sources of contamination have been removed to the extent practicable. The remaining impacted groundwater is limited in extent and not migrating further downgradient or vertically to the deeper Newark Aquifer.
- c. The Kato Road Grade Separation Project, which is being conducted by the Valley Transportation Authority, as an expansion of the Bay Area Rapid Transit (BART) system, will at a minimum employ temporary construction dewatering in the immediate vicinity of the Site. This dewatering will capture and treat any residual VOCs in groundwater before they are discharged to the Union Sanitary District.

- d. Natural attenuation is expected to further reduce the TCE, PCE and cis 1,2-DCE concentrations in shallow groundwater to below drinking water standards before the groundwater is used as a source of drinking water.
 - e. No domestic or municipal water supply wells are located in the immediate vicinity of the site. Shallow groundwater is not used as a current source of drinking water but overlies an important aquifer that is used for drinking water. The silty and clayey nature of shallow soil precludes significant future use of the shallow groundwater as a source of drinking water. Based on analytical data from DW-3, the deeper Newark Aquifer has not been affected with VOCs, indicating the aquitard is competent to prevent vertical migration to deeper groundwater underlying the site.
 - f. A *Covenant and Environmental Restriction on Property* for the site has been signed by the property owners but still needs to be signed by the Executive Officer and recorded with Alameda County. The deed restriction prohibits the installation of water supply wells on the site and activities that will result in the spreading of pollutants. The deed restriction is sufficient to protect human health and the environment in the future.
 - g. All the tasks in the Order have been completed.
5. **Next Steps Prior to Case Closure:** To eliminate vertical conduits for potential future groundwater contamination, the discharger's monitoring wells need to be properly closed.
 6. **CEQA:** This action rescinds an order to enforce the laws and regulations administered by the Regional Water Board. All actions mandated by the Order have been completed and no further action will occur. As such, rescission of the Order is not a "project" as such term is defined in the California Environmental Quality Act (CEQA).
 7. **Notification:** The Regional Water Board has notified the discharger and all interested agencies and persons of its intent under California Water Code section 13304 to rescind site cleanup requirements for the discharge and has provided them with an opportunity to submit their written comments.
 8. **Public Hearing:** The Regional Water Board, at a public meeting, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED, pursuant to section 13304 of the California Water Code, that Order No. 97-106 is rescinded.

IT IS FURTHER ORDERED that the property owners shall record the executed deed restriction with the County of Alameda by November 9, 2012.

IT IS FURTHER ORDERED that the discharger shall properly close all monitoring and extraction wells consistent with applicable local agency requirements and shall document such

closure in a technical report to be submitted to the Regional Water Board within 30 days following the completion of closure activities.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on _____.

Bruce H. Wolfe
Executive Officer

FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO: IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER CODE SECTIONS 13268 OR 13350, OR REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY
