

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

EXECUTIVE OFFICER SUMMARY REPORT  
MEETING DATE: September 11, 2013

**ITEM:** 7

**SUBJECT:** **Moonlite Associates, LLC, and United Artists Theatre Circuit, Inc., for the property located at 2640 El Camino Real, Santa Clara, Santa Clara County – Adoption of Site Cleanup Requirements**

**CHRONOLOGY:** The Board has not previously considered this item.

**DISCUSSION:** The Revised Tentative Order (Appendix A) would establish cleanup levels for a contaminated dry cleaner site in Santa Clara (Site) and would require the named dischargers to complete an investigation of the Site and, based on that investigation, propose and implement a cleanup plan for the Site. The key issue for the Board in this matter is whether to name a past landowner of the Site, United Artists Theatre Circuit, Inc. (UATC), as one of the named dischargers. The Revised Cleanup Staff Report (Appendix B) provides the Cleanup Team's rationale for naming UATC a discharger at the Site.

*Separate Functions:* To help ensure the fairness and impartiality of this enforcement proceeding, the functions of those Board staff members who are on the cleanup team (Cleanup Team) have been separated from those who will provide advice to the Board (Advisory Team). The Cleanup Team includes Nathan King, John Wolfenden, Stephen Hill, Dyan Whyte, and Yuri Won. The Advisory Team includes Tamarin Austin, Alyx Karpowicz, and me.

*Background:* The Site is located in the Moonlite Shopping Center on El Camino Real just west of San Tomas Expressway in Santa Clara. Multiple different dry cleaners operated at this location under the name of Moonlite Cleaners for 35 years (1962 to 1997). The dry cleaners used tetrachloroethene (PCE) in their operations. According to the Revised Staff Report, these operations resulted in PCE discharges to soil, soil gas, and groundwater beneath the Site, and PCE detections in indoor air at the former dry cleaner location and adjacent tenant spaces. UATC owned the shopping center from 1961 to 1975 and continued as the master lessor until 1978. UATC filed for bankruptcy in 2000 and emerged from Chapter 11 bankruptcy as a newly reorganized entity in 2001. Moonlite Associates, LLC (Moonlite), has owned the shopping center since 1977.

*Prior Cleanup Actions:* In February 2010, Moonlite installed a soil vapor extraction (SVE) system beneath the Site and has been operating it continuously since then. The SVE system is providing vapor intrusion mitigation for indoor air and removing PCE mass. In March 2013, Moonlite began a pilot study to determine if injecting a slurry of zero-valent iron and emulsified oil into soil and groundwater would clean up contaminated groundwater beneath the Site.

*Tentative Order Comments:* The Cleanup Team circulated a tentative order for public comment in June and received comments from three parties: the Advisory Team, Moonlite, and UATC (Appendix C). The Cleanup Team revised the tentative order and the Cleanup Team's staff report in response to these comments. The Response to Comments is contained in Appendix D. All of the Advisory Team's comments and some of Moonlite's comments were incorporated into the Revised Tentative Order. Moonlite has been conducting the investigation and cleanup to date and does not object to being named as a discharger.

*Naming Issue:* The key issue before the Board is whether or not to name UATC as a discharger in the Revised Tentative Order. UATC objects to being named as a discharger and provided the following rationale in its comments:

- There was not a PCE discharge during UATC's ownership and control;
- UATC did not have knowledge of the discharge and contamination;
- UATC's bankruptcy releases it from past environmental liability;
- Groundwater data and modeling show that the PCE discharge happened post-1978, when Moonlite owned the Site;
- Naming UATC as a discharger without technical evidence would represent a departure from past precedent; and
- If the Board names UATC as a discharger, the Board must also name the City of Santa Clara as a discharger because the City's sanitary sewer discharged PCE to groundwater.

The Cleanup Team concludes that there is substantial evidence to name UATC as a discharger as described in the Revised Cleanup Staff Report and the Response to Comments. Its rationale is summarized below:

- Several different dry cleaners operated at the Site and used PCE during UATC's ownership. A significant PCE discharge occurred at the Site as evidenced by substantial soil gas and groundwater PCE concentrations under the Site.
- The dry cleaning equipment used during UATC's ownership and control of the Site was not a closed system; and there were numerous ways in which PCE was released.
- Based on research and documentation in the Santa Clara Valley Water District's 2007 Dry Cleaner Study, the earlier a dry cleaner site operated, the more likely it is that larger quantities of PCE were released to soil and groundwater beneath the site due to older equipment and common PCE handling and disposal practices for that time period.
- UATC had knowledge of the activities that resulted in the discharge based on the dry cleaner's State Fire Marshal Permit, building permit, and certificate of occupancy. UATC should have known of the use of chemicals at the Site and their dangers, including the potential for unauthorized

discharges. UATC had leases with the various dry cleaners that operated at the Site, which gave UATC the legal ability to prevent the discharge.

- UATC did not discharge its cleanup obligation as a result of its bankruptcy because UATC's cleanup obligation was not a claim that could be discharged, and, even if it could be, the claim never arose for it to be discharged by the bankruptcy proceeding. Therefore, UATC remains liable for investigation and clean up, and the Board may name UATC as a discharger.
- The pattern of PCE contamination in groundwater beneath and down-gradient of the Site is consistent with a PCE release from the dry cleaning operation during UATC's period of ownership, given known hydro-geological conditions at the Site and given the behavior of PCE in the subsurface following a spill. Conversely, the contamination pattern does not suggest a PCE release from the City's sanitary sewer.
- Naming UATC will not represent a departure from past precedent because it is based on substantial evidence and is consistent with numerous State Board precedential orders.

UATC intends to contest this item at the Board meeting. I have allotted each party (the Cleanup Team, Moonlite, and UATC) up to 30 minutes to present evidence, cross-examine witnesses, and provide a closing statement at the hearing.

**RECOMMEN-  
DATION:**

I will have a recommendation following the hearing.

FILE No.

43S1090 (NMK)

Appendices:

A - Revised Tentative Order  
B - Revised Cleanup Staff Report  
C - Correspondence  
D - Response to Comments  
E - Site Location Map  
F - 1961 Building Permit, Fire Marshal Permit, Certificate of Occupancy  
G - Excerpts of 1975 Bulk Transfer Agreement  
H - Excerpts of 1975 Lease between UATC and Hanson Holding, Inc.  
I - Grant Deed