Chevron

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VIA U.S. MAIL AND E-MAIL

Kevin Brown
Engineering Geologist
San Francisco Bay Regional Water Quality Control Board
1515 Clay St., Suite 1400
Oakland, CA 94612

Re: Tentative Order – Adoption of Initial Site Cleanup Requirements for Property Located at 1705 Contra Costa Boulevard, Pleasant Hill
R2-2014-00XX (File No. 07S0204 (KEB)(Site 2)

Tentative Order – Adoption of Initial Site Cleanup Requirements for Property Located at 1643 Contra Costa Boulevard, Pleasant Hill
R2-2014-00XX (File No. 07S0132 (KEB)(Site 1)

Dear Mr. Brown:

I write to provide Chevron U.S.A. Inc.'s ("Chevron") response to comments submitted by other parties concerning the referenced Draft Tentative Orders. Please include these comments in the administrative record for this matter.

Comments of Gregory Village Partners, L.P.

An attorney, Edward L. Firestone, submitted comments on behalf of Gregory Village Partners, L.P. ("Gregory Village") in a letter dated August 4, 2014 ("Gregory Village Comments"). The Gregory Village Comments make four main points. First, that a single order should be issued for the two sites at issue. Second, that the Central Contra Costa Sanitary District should be have been named as a "discharger" on both orders. Third, that Chevron should be named as a "discharger" for Site 2 as a result of construction activities undertaken in 1987 and 1988. And fourth, that the tasks in the draft order for Site 2 should be modified.

Chevron agrees that the sewer district should be named as a discharger on both orders. However, Chevron disagrees with the other points made, as discussed below.

Issuance of a separate order for each of the two sites is appropriate. The Regional Water Quality Control Board has proposed issuing one order for the dry cleaner source located at the Gregory Village shopping mall and a second order for the dry cleaner source formerly located at 1709 Contra Costa Boulevard (currently a Chevron-branded gasoline service station). Gregory Village argues that there

should be a single order for the two distinct sites because a single order would be more efficient and because releases from the two sites have "commingled." Neither point has merit, and Chevron advocates issuance of two orders, each tailored to the specific sources at the two sites.

Issuance of a single order would not result in efficiencies and in fact would likely lead to additional disputes and disagreements among the parties. Each of the draft orders involves a specific site with a chlorinated solvent release. The responsibilities of the named dischargers on the two orders are clear – to assess the release at each of the two sites. A single order would create significant administrative inefficiencies by requiring the large number of dischargers to negotiate which dischargers perform which work, likely requiring significant staff time to address disputes. Beyond that, a single order would likely create significant inequities. For example, with a single order would the former landlords for the dry cleaner at Site 2 be compelled to investigate releases from the Gregory Village dry cleaner should Gregory Village fail to comply with the order? Would Gregory Village be compelled to investigate releases associated with the Site 2 dry cleaner if the alleged Site 2 dischargers failed to comply with the order? With two orders the responsibilities of the two sets of dischargers are clear. And staff retains flexibility as the investigations progress to modify the orders as appropriate based on data developed in the investigations.

Gregory Village's claim that there is a "commingled" plume consisting of releases from the two sites is incorrect, as explained in comments submitted by Conestoga-Rovers & Associates dated August 4, 2014. ("CRA Comment Letter," at 3.13 and 3.14.) As the CRA Comment Letter explains, while there is likely dry cleaning solvent contamination beneath the Gregory Village shopping center from the 1709 Contra Costa Boulevard dry cleaner, this contamination likely migrated either through releases from the sanitary sewer or through the sanitary sewer backfill. The Gregory Village Comments recognize this fact, noting the poor condition of the sewer line that served the dry cleaning business at 1709 Contra Costa Boulevard. (Gregory Village Comments, Exhibit G, p. 12.)

Chevron is not a "discharger" under the Water Code as a result of the construction activities in 1987 and 1988. The Gregory Village Comments also claim that Chevron should be named a "discharger" because Chevron's contractor allegedly moved contaminated soil on the service station site during re-construction of the service station and construction of a car wash in 1987 and 1988. (Gregory Village Comments, Exhibit G, pp. 6-7.) The Gregory Village Comments provide no evidence that construction at the site resulted in the movement of contaminated soil, nor do the comments provide any evidence that the construction activities caused or contributed to the movement of impacted groundwater offsite. The cases that are cited in the comments involve liability under the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), and are inapt.

The Gregory Village Comments assume that there was a "disposal under CERCLA" because construction activities took place at the site. Naming a party as a discharger pursuant to Water Code Section 13304 must be based on evidence in the record, not speculation and assumptions. (*In the Matter of the Petition of Exxon Company, U.S.A. Inc.*, 1985 WL 20026 *6, Order No. WQ 85-7 (Cal.St.Wat.Res.Bd. August 22, 1985.) In *Kaiser Aluminum v. Catellus Development* 976 F.2d 1338 (9th Cir. 1992), relied on in the comments, it was alleged that a party had exacerbated the existing contamination by excavating contaminated soil and depositing it on uncontaminated portions of a 346 acre property. The court found that a party could potentially be held liable pursuant to CERCLA as an operator or transporter if the

evidence supported these allegations. The court did not consider liability under Water Code Section 13304. Moreover, there is no evidence here that construction activities at the site in any way exacerbated the contamination, resulted in a discharge into the water of the state, or created a condition of pollution or nuisance.

There is no need to further define the tasks in the draft order for Site 2. The Gregory Village Comments ask that the tentative order for Site 2 be modified in several respects. Gregory Village requests that the tasks set forth in both orders be "identical." Chevron disagrees. The minor differences between the tasks in the two orders reflects the differences in the site and the historical work that has taken place and, other than the dates on which tasks are due, Chevron sees no need to modify the specific tasks in the draft orders.

Paladin Law Group LLP Comments

A law firm, the Paladin Law Group, also submitted comments on the draft orders. The comments make two main points. First, that a single order should be issued. And second, that Chevron should be named a "discharger" because of construction and remedial activities[1] at the 1705 Contra Costa Boulevard property in 1987 and 1988. Neither point has merit, as is discussed in greater detail above.

Thank you for your attention to these comments. Please feel free to contact me if you have any questions or would like to discuss these issues further.

Sincerely yours,

Todd Littleworth

cc: Stephen Hill, RWQCB
Laurent Meillier, RWQCB
Tamarin Austin, Esq., RWQCB
Brian Waite
Robert C. Goodman, Esq.

[1] The comments also vaguely assert that contamination was spread during groundwater pumping. This appears to refer to the pump and treat system operated at the site from August 1991 to July 1996. This system removed contaminants from the groundwater and slowed their migration. There is no evidence that this caused a "discharge," within the meaning of the Water Code.