
San Francisco Bay Regional Water Quality Control Board

Date: November 15, 2016

SUBJECT: Comfort letter for source and non-source properties

To whom it may concern:

This letter describes situations in which the Water Board generally will not require a party to take part in the investigation or cleanup of subsurface contamination. We have grouped these specific situations into two categories – source properties and non-source properties. A source property is one where there is substantial evidence of an unauthorized release of pollutants; a non-source property is one that has been impacted by off-property releases, but for which there is no substantial evidence of an on-property release of pollutants.

1. Source Properties

Specific situations: This comfort letter applies to situations where one or more responsible parties are actively engaged in the investigation and cleanup of pollution originating on the source property, either as a result of Water Board regulatory requirements or on their own initiative, and have the capacity and willingness to continue these activities. These are typically past operators, past property owners, or current property owners. The following additional parties may seek to avoid investigation and cleanup obligations: prospective purchasers, prospective lessees, and prospective lenders.

Regulatory status: In general, the Water Board does not establish regulatory requirements for the additional parties (prospective purchasers, prospective lessees, and prospective lenders) where the responsible parties have the financial resources necessary to conduct the remediation and are satisfactorily engaged in active remediation, and where the additional parties provide reasonable access for necessary remedial activities and avoid actions that would contribute to or exacerbate the source-property pollution.

2. Non-Source Properties

Specific situations: This comfort letter applies to situations where a non-source property has been impacted by pollutants originating on another property, typically via migrating groundwater contamination. The source property may be unknown, known but not subject to regulatory requirements, or known and subject to regulatory requirements. The following parties at the non-source property may seek to avoid investigation and cleanup obligations: current property owners, prospective purchasers, current and future lessees, and prospective lenders.

Regulatory status: In general, the Water Board does not impose regulatory requirements on current and future property owners, current and future lessees, and prospective lenders at non-source properties. However, the Water Board may hold a non-source property owner responsible for investigation or cleanup tasks on his/her property if (1) he or she refuses to provide reasonable access to responsible parties seeking to address their off-property pollution (e.g., an upgradient discharger attempting to investigate or cleanup off-property groundwater pollution) or (2) there are no known or viable dischargers for the offsite sources and groundwater pollution beneath the subject property poses an imminent threat to human health.

This letter will take the place of a property-specific comfort letter in many situations. The Water Board's primary goal in its site cleanup programs is to protect human health and to restore and protect water quality. Our staff resources are limited, and time spent preparing comfort letters should not diminish our progress toward that goal. Accordingly, it is not possible for us to provide property-specific comfort letters in all situations where they are requested. We are usually willing to provide property-specific comfort letters in the following situations:

- At *source properties* where such letters will facilitate property transfer and where we can recover associated staff costs
- At *non-source properties* where the source property is known, where such letters will facilitate property transfer, and where we can recover associated staff costs.

We are generally unwilling to provide property-specific letters in other circumstances.

If you have any questions, please contact Stephen Hill, Toxics Division Chief, at (510) 622-2361 or stephen.hill@waterboards.ca.gov . You may also conduct a GeoTracker search and contact the Water Board case manager for the cleanup case at or near the property for which you are seeking a comfort letter.

Sincerely,

Bruce H. Wolfe
Executive Officer