

HIDDEN BUILDING

BUSINESS AND THE ENVIRONMENT

Toxics liability uproots gas station

Without Big Oil's muscle, station sees lease leak away

BY DONNA ALBRECHT

Earlier this year, 65-year-old Eric Accomazzo planned to sell his lease

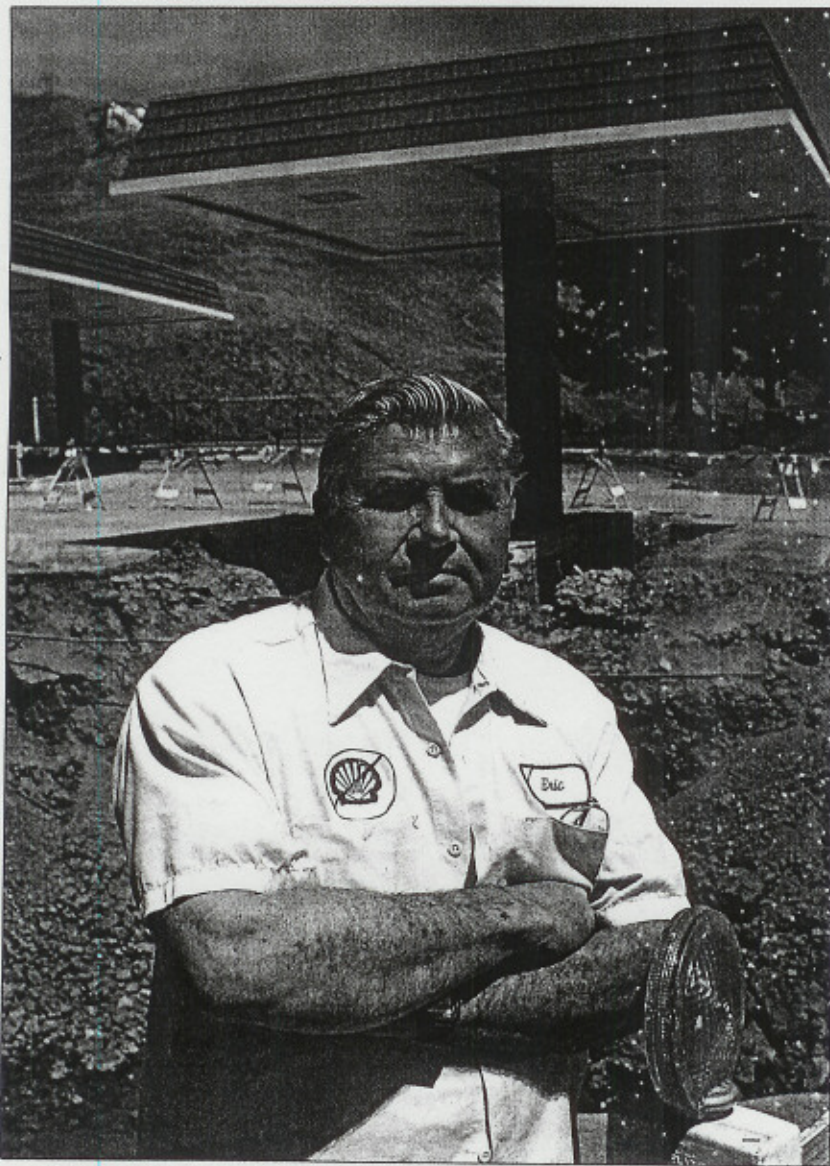
agreement to operate a Shell station in Moraga to his son-in-law and retire within a year.

That was not to happen. On April 12, Accomazzo, while drinking coffee at the nearby Nations Hamburger restaurant, got a call from Ted Muhs, who along with other members of his family, owns the land leased for the Shell station on Rheem Boulevard. Muhs told Accomazzo that his lease would not be renewed. The question of accepting liability for potential environmental damage had proven impossible to resolve.

Within hours, the signs and pumps were pulled. The gas was pumped out of underground tanks. Accomazzo was out of business.

Saving the environment is widely supported, but the

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Small business bears burden of waste hazards

Continued from front page

economic side effects are just beginning to be known. Environmental liability could threaten the future of many businesses.

Dry cleaners, print shops, electroplaters and metal-cleaning firms and office buildings can present environmental risks, said Tom Trapp, a partner at the San Francisco law firm Landels Ripley & Diamond, which counsels clients on environmental issues.

Buildings with underground fuel tanks for emergency generators or service vehicles can carry risks similar to Accomazzo's, Trapp said. Buying, selling or leasing these properties may expose business owners to some of the same risks Accomazzo faced.

Shell district manager Tom Stepp said the first warning came about 2½ years ago when he told Accomazzo that it might be hard to renew the lease.

When negotiations began, the owner asked for \$3,500 a month rent, up from the \$1,000 rate the station had paid for years. Shell was unwilling to pay the increase, in part because the station had gone from pumping about 80,000 gallons each month a few years ago to about 45,000 gallons by January 1991.

Accomazzo said that Shell still made money on his station, although not as much as at its bigger ones.

Stepp of Shell said the reason for the difference between the rent the oil company pays and the rent it charges is the responsibilities it takes on. In what he calls "invested units," Shell is also responsible for maintaining the station and its equipment and for covering the environmental risks.

In this case, the station already had tank leaks that required continuing clean-up.

Shell's costs for environmental risks have skyrocketed. In 1984, Shell spent about \$4 million in the environmental sector nationwide, Stepp said. By 1990, that figure had

soared to \$100 million.

Working it out — or trying to

When problems began to look daunting early this spring, Accomazzo put big signs on his station asking patrons to write Shell to help save his station. He estimates 900 people responded, giving him hope that public pressure would rescue him.

Then, Accomazzo says, the landowner came down on the rent to \$2,500 each month.

Shell told Accomazzo that if he could get the master lease at that price, it would continue to supply gasoline to him for five years, Stepp said. Under a master lease Accomazzo would become responsible for the station and anything that happened there, he added.

Through all this, Muhs representing the landowners, continued to negotiate with Shell, trying to find a way the oil company would retain the master lease and allow Accomazzo to continue the business. A major stumbling block that arose was that Accomazzo could not shoulder the potential liability if there was a leak, and an unremediated gasoline leak could result in major liability for the owners, Muhs said.

When Muhs called Accomazzo April 12 to say the lease would not be renewed, it had become apparent that there was no way out; the three parties had different needs.

Accomazzo needed the business he had spent 30 years building. Muhs needed to protect his investment as a property owner. And Shell needed protection from potentially enormous liability for a station that was only nominally profitable.

Could this happen to you?

Many buildings have fuel tanks for stand-by generators or to service vehicles buried in basement garages, says Trapp.

The U.S. Environmental Protection Agency (EPA) estimates that 30 percent of those tanks either have leaked or are leaking now. Clean-up costs can soar beyond the means of many small businesses.

At Shell, Stepp estimates that an underground tank cost about \$80,000 eight years ago. To put in a modern double-wall tank today costs \$250,000 — not counting ex-

penses for removing gasoline that may have leaked from the old tank into surrounding soils. Remediation can be expensive, with bills frequently totaling more than \$250,000.

Attorney Trapp suggests that businesses thinking of buying or leasing a property with fuel tanks on it should first consult with environmental lawyers and technical consultants. Such experts can help determine if the tanks meet current regulations for registration, help obtain permits, and most importantly, help businesses understand and comply with monitoring requirements. Lenders are acutely aware of potential liability problems and may make referrals to local experts.

So what happens to Accomazzo now?

If Accomazzo had owned the land, he would probably still be in business, Stepp said. Shell had offered to sell him the gas pumps, signs and other assets for \$10 and to continue supplying him with gasoline for five years. But the liability would have been transferred to Accomazzo.

If Shell had owned the property, the oil giant probably would have negotiated with Accomazzo and given him first right of refusal on the new lease.

As for Accomazzo, he wishes Shell had offered him a new station elsewhere, so he would have something to sell to finance his retirement.

"If I was good enough for 30 years, you'd think I was good enough for five more," he says sadly.

Accomazzo hasn't given up. Across the street from his old business, Union Oil operates a station. So, Accomazzo is in the final stages of negotiations to take over and operate the station, he said. It is a lot like his old one and Accomazzo said that he hopes to open the station under his management within a few weeks.

Accomazzo figures he can immediately draw enough of his old customers to help that station pump 50,000 gallons more a month than it does now. He plans to have his son-in-law come in as his partner and seems to be looking forward to the challenge of the new station.

Donna Albrecht is a Concord-based free-lance writer.