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STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

File No. 07S0132 (KEB)

IN RE: ORDER NO. R2-2014-0041 ADOPTION OF INITIAL SITE CLEANUP REQUIREMENTS FOR GREGORY VILLAGE PARTNERS, L.P., ET AL, FOR THE PROPERTY LOCATED AT 1643 CONTRA COSTA BOULEVARD, PLEASANT HILL, CALIFORNIA

PETITION FOR REVIEW AND REQUEST FOR STAY OF ORDER; REQUEST FOR EVIDENTIARY HEARING

Pursuant to California Water Code Section 13320 and Title 23 of the California Code of Regulations Section 2050, et seq., Gregory Village Partners, L.P. ("Petitioner") respectfully petitions the State Water Resources Control Board ("State Board") to review and vacate or amend Order No. R2-2014-0041 ("Order") of the California Regional Water Quality Control Board - San Francisco Bay Region ("Regional Board") concerning the property owned by Petitioner located at 1643 Contra Costa Boulevard, Pleasant Hill, CA ("Site"). Petitioner requests that the Order be stayed pending review due to the substantial costs that would be incurred by Petitioner pending this review.

1. NAME AND ADDRESS OF PETITIONER:

Gregory Village Partners, L.P., 940 Emmett Avenue, Suite 200, Belmont, CA 94002. Any and all notices for Petitioner should also be forwarded to Petitioner's Counsel: Edward A. Firestone, Esq., 775 Guinda St., Palo Alto, CA, 94301; Tel. (650) 327-0277; email:

efirestone@aol.com.

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUIRED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioner requests review of the refusal of the Regional Board to a) amend the Order to name the Central Contra Costa Sanitary District ("District") as a discharger and b) consolidate the Order with Order No. R2-2014-0042 ("Chevron Order") for the Chevron property ("Chevron Site") and issue a single order for all dischargers associated with a commingled plume of volatile organic compounds ("VOCs") in the local geographic area. A copy of both orders are attached as Attachment "A" and incorporated in this petition by this reference.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

The Regional Board adopted this Order and the Chevron Order on November 12, 2014.

4. THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

The Regional Board failed to name dischargers in a manner consistent with the Porter-Cologne Water Quality Control Act and State Board rules and policies. The Regional Board has failed to name all responsible parties because it has excluded the District; the District owns and controls the sanitary sewers in the geographic area that is the subject of both orders. There is substantial evidence of the release of VOCs into soil and groundwater from the District's sanitary sewers. The Regional Board also failed to issue a single order for the geographic area even though the Regional Board has determined that the area is contaminated with a commingled plume of VOCs from adjacent locations. Rather, each location is subject to a separate order. By issuing two orders, the Regional Board is requiring the same or similar efforts to be conducted separately by two separate sets of parties in the same geographical areas involving the same neighborhoods, the same residents and the same environmental media, causing needless duplicative expenditures and unnecessary confusion.

5. THE MANNER IN WHICH PETITIONER IS AGGRIEVED:

Petitioner is aggrieved by the Regional Board's failure to include the District as a discharger, which effectively, unfairly shifts the burden for satisfying the requirement of the

Order exclusively to the Petitioner. There is substantial evidence that the District's sewers have discharged VOCs into the soil and groundwater. However, the Regional Board refuses to assign any responsibility or liability for investigation and remediation of these discharges to the District. Rather, the Regional Board has created a new construct for determining when a sanitary district should be named a discharger and misapplied that new construct. This new construct has no basis in law or regulation, is an abuse of the Regional Board's discretion and its creation and application are arbitrary and capricious acts.

Petitioner is also aggrieved by the Regional Board's error in creating two orders for adjoining properties with a commingled plume. Petitioner will be forced to expend resources needlessly and perform duplicative efforts. For example, both orders require the completion of sensitive receptor survey and conduit study for the same area. Both orders require a public participation plan, again for the same area. In addition, because of the specific fashion in which the Order is drafted compared with the general way the Chevron Order is drafted, an unfair investigation burden has been placed on Petitioner. In the Order, the Regional Board is requiring a workplan to investigate and sample deeper groundwater "both on- and off-site". However, the only evidence of VOCs in deeper groundwater is from the Chevron Site. Yet the Chevron Order contains only general language requiring a workplan to "define the vertical and lateral extent of CVOCs in soil, soil vapor, and groundwater." The result is that Petitioner will be required to do specific work on deeper groundwater that is down-gradient of the Chevron Site, and there is no similar specific requirement under the Chevron Order, when it appears, based on the evidence, that a likely source of VOCs in the deeper groundwater is the Chevron Site.

6. THE SPECIFIC ACTION REQUESTED BY PETITIONER:

Petitioner respectfully requests that the State Board determine that the Regional Board's failure to name the District as a discharger is inappropriate, improper, an abuse of discretion, arbitrary and capricious, and the State Board therefor amend the Order to include the District as a discharger. Petitioner also requests that the State Board consolidate the Order with the Chevron Order and issue a single order for all dischargers (including the District) associated with the commingled plume of VOCs in the local geographic area. Finally, Petitioner requests that the

Order be stayed pending review.

7. POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THIS PETITION:

Background

1. Pre – 2008 History.

Petitioner owns and operates a small shopping center – the Gregory Village Shopping Center – in Pleasant Hill, California ("GV Mall"). The GV Mall was reportedly built in 1950. Petitioner purchased the GV Mall in early 1998. Based on available records, a dry cleaner began operation at the GV Mall in late 1965 and ceased operating its dry cleaning plant in approximately 1991. Since 1991, the cleaner has operated as a "pick-up/drop-off" location. At the time of the purchase, the dry cleaning plant was no longer operating but Petitioner was aware that VOCs had been detected in soil and groundwater at the GV Mall. Petitioner's consultant at the time of purchase determined that this condition was confined to the shopping center property that could be readily investigated and remediated. Soon after the purchase, Petitioner entered the Regional Board's voluntary program to ensure proper regulatory oversight of Petitioner's work. Petitioner and Regional Board staff worked together to investigate and remediate the Site, both under the conception that the detections of VOCs in soil and groundwater at the Site were local and confined to the shopping center property.

2. Discovery of Additional Sources (2008 and Later).

In mid-2008, groundwater and soil vapor investigations discovered VOCs in these media in the residential neighborhood north of the shopping center. Petitioner, in cooperation with the Regional Board, began a broader investigation of soil, soil vapor, and groundwater in the residential area north and west of the GV Mall and conducted detailed investigations of soil vapor and sub-slab vapor beneath the shopping center itself. As a result of these investigations, sub-slab depressurization systems were installed in two houses in the neighborhood north of the shopping center and at the shopping center.

In addition, these detailed investigations discovered that there were additional sources of VOCs in the neighborhood. One such source was the Chevron Site. Another source was the District's sanitary sewers that had discharged VOCs to the soil and groundwater. The VOCs

discharged from the sanitary sewer originated from a) the disposal of dry cleaning compound (perchloroethene ("PCE") – a VOC) from the dry cleaner on the Site into the District's sanitary sewer, and b) the disposal of PCE and trichloroethene ("TCE") to the District's sewers from the dry cleaner and auto repair operation at the Chevron Site.

The mechanisms concerning how sewers leak PCE into the environment are well known and accepted in the industry and by regulators. In 1992, the Central Valley Regional Water Quality Control Board issued the "Izzo Report" which documents how PCE escapes from sewers and is discharged into the soil and groundwater. The Izzo Report appears as Exhibit B to Attachment F. As noted above, the District's records contain evidence that a number of the causative features for PCE releases from sewers (root penetrations, cracks, sags, etc.) are present in sanitary sewer system near the Site, the Chevron Site and the nearby neighborhood.

Petitioner's Power Point presentation to the Regional Board on November 12, 2014 is attached as Attachment "B" and is incorporated in this Petition by this reference. Slide 5 from that presentation shows where the District's sewer lines are located, the direction of flow inside the pipes, the location of the Site and the location of the Chevron property. Slide 10 shows higher concentrations of PCE in groundwater the neighborhood north of the GV Mall, higher concentrations of PCE on the GV Mall property, and lower concentrations between the GV Mall and the neighborhood. Slide 11 shows the same relationship for concentrations of PCE in soil vapor. The best, simplest and most straightforward explanation for these patterns is that there is a separate PCE source area in the neighborhood. In fact, there is strong evidence of a discharge of PCE associated with a leak at or near manhole M46. PCE from this leak was detected at high concentrations in soil vapor in the neighborhood near and north of this manhole.

In addition, near the Chevron Site, Slide 12 shows the location of groundwater well EA-3 – where the highest concentration of PCE in groundwater has been detected on or near the Chevron Site. This location is across the street and cross/upgradient of the Chevron Site. The District's sanitary sewer line is located in Linda Drive, with the Chevron Site on one side of the street and EA-3 on the other. In 1977, according to the District's maintenance records, this sewer line was "in very poor shape has lots of cracks". Also according to the District's records, it did

not repair/replace this sewer line for over 10 years. See Attachment "C" which is incorporated in this Petition by this reference.[1] There are a number of other instances of cracks, root penetrations, sags, etc., and failures to make repairs in the District's records regarding its sewer system near the Site, the Chevron Site and the nearby neighborhoods. These instances are discussed on pages 6 – 8 in Petitioner's July 3, 2012 letter to the Regional Board Staff ("Staff") referenced in the next paragraphs.

In its July 2012, Petitioner wrote to the Staff about the substantial evidence that the District's sewers leaked PCE. Petitioner sent this letter because, in response to Petitioner's request, the Staff had refused to issue a Water Code §13267 letter to the District requesting a report concerning the investigation of discharges from the sewer line in the neighborhood. Petitioner also wrote this letter in response to oral comments from Staff that it had discussed the issue of VOC discharges from sanitary sewers with staff at the Central Valley Regional Water Quality Control Board ("Central Valley Board Staff"). It is Petitioner's understanding that the Central Valley Board Staff advised the Staff that, unless a sewer district's behavior is egregious or there is willful misconduct, a sewer district should not be deemed to be a discharger for releases of hazardous materials from its sewer system under the Porter-Cologne Water Quality Control Act. At that time, Petitioner advised the Staff that, if true, this unwritten policy was contrary to law and inconsistent with orders that the Regional Board and the Central Valley Regional Water Quality Control Board had issued in the past.

Subsequently, in August 2012, the District responded to Petitioner's July 3, 2012 letter to the Staff and in December 2012, Petitioner responded to the District's letter. Petitioner's July 3, 2012 letter, the District's August 2012 letter, and Petitioner's December 2012 letter appear as Attachment "D" and are incorporated in this Petition by this reference.

3. Staff Develops The "Four Criteria".

[1] This Attachment contains material from the District's files. The following will assist in understanding the material: The CSO Maintenance Report provided for this area consists solely of the 2004 to 2009 time period. A March 10, 1977 Daily Maintenance Report describes the condition of the sewer main in Linda Drive during the installation of a tee connection. The line at the tee connection located "153' up from M.H. at Linda Dr and Doris Dr" is described as "in very poor shape has lots of cracks." The CSO Maintenance Report states that the main [in this area of Linda Drive] was replaced on April 9, 2004. However, the District also prepared a Sewer Relocation plan dated of March 3, 1988 that has a Record Drawing date of September 12, 2008, more than 20 years later. It is not clear based on the available information whether sewer replacement work was done when planned in 1988 or not until much later in 2004, or if there was a need to replace the sewer in both 1988 and 2004.

A Cleanup Team Staff Report ("Staff Report") dated July 2, 2014 was appended to the Tentative Order for the Site. The Tentative Order and Staff Report are attached as Attachment "E" and are incorporated in this Petition by this reference. Section VI of the Staff Report put into writing what had been the Staff's unwritten policy regarding leaks from sanitary district sewer pipes. The Staff Report (page 12) contained the following four, newly created criteria for determining when a sanitary district should be named a discharger under the Porter-Cologne: a) there was a release from the sewer main that contributed to the plume; b) the sewer owner/operator knew of the leaks and failed to repair them; c) the sewers were in poor condition and/or were not maintained; and d) the sewer owner/operator was aware of/or permitted discharges into a leaking sewer. The Staff determined that "none of the above four criteria are met in this case..."

The promulgation of these criteria is an abuse of the Regional Board's and the Staff's discretion and their issuance and use here is an arbitrary and capricious act. However, even if the Staff's criteria are appropriate, they nevertheless are met in this case. See Petitioner's August 4, 2014 letter to the Staff commenting on the Tentative Order for the Site which is attached as Attachment "F" and is incorporated in this Petition by this reference. The points made in that letter and prior letters to the Staff are briefly summarized below.

4. Applying the "Four Criteria" to the Facts.

a) Criterion One.

First, there was a release from the District's sewers that has contributed to the plume. The evidence of releases from near manhole M46 and groundwater well EA-3 were discussed above and in Attachment F (see Exhibit C) and on pages 9-11 in Petitioner's July 2012 letter (part of Attachment D).

b) Criterion Two.

Second, the District's sewer lines in the vicinity of the Site and the Chevron Site began to leak soon after they were installed and the Sewer District was aware of that fact. That is how they were designed and built. See Declaration of Bonneau Dickson, PE (Attachment F, Exhibit D) and Slide 18 (Attachment C). In addition, the District's records document multiple instances

of cracks, sags, root penetrations, etc. (see pages 6 – 8 in Petitioner's July 2012 letter in Attachment D). As discussed in Attachment F, the District's standard maintenance practice was to "rod" the sewer (i.e. clear obstructions) rather than make repairs to stop further leakage (page 9). The fact that the sewer line in Linda Drive near monitoring well EA-3 wasn't repaired for over 10 years is clear example of knowledge of a leaking sewer and failure to repair. In addition, the District was aware that, because of the way its system was constructed, the system would fail. As noted on Slides 14 and 15 of the Petitioner's Power Point Presentation (Attachment C), a 2003 paper issued by a District engineer states that joint materials used to seal the sewers near the Site and the Chevron Site "have not performed well over time" and were failing. The paper discusses the problems of roots penetrating the District's pipe's walls and states that: "mechanical cleaning equipment can cause further structural damage [to the pipes] over time." The District has not taken effective steps to address these issues.

c) Criterion Three.

Third, the District was aware that its sewers were in poor condition and not being maintained. The prior paragraph discusses the maintenance failure near EA-3 and there are other examples of this fact from the District's records including in the neighborhood near the GV Mall on Doray Avenue, and on Shirley Avenue near Cynthia Avenue. These and other examples are discussed in Petitioner's July 2012 letter ((pages 6-8) part of Attachment D), Slide 17 of Attachment C, and Attachment F (Exhibit C). On August 4, 2014, the District made comments to the Staff regarding the Tentative Order. Those comments are attached as Attachment "G" and are incorporated in this Petition by this reference. In these comments, the District's General Manager states (page 2): "It is also well understood that where there are drycleaners, there are typically public sewers serving them and these sewers use traditional non-plastic sewers that invariably develop some cracking and other imperfections over time." Certainly this is evidence that the District was aware that its sewers were in poor condition.

d) Criterion Four.

Fourth and finally, in the 1970's – during the time that both the dry cleaner at the Site and the dry cleaner at the Chevron Site were operating dry cleaning plants – the District permitted

high concentrations of PCE to be discharged to its sewers. There has been substantial discussion and disagreement about whether this criterion (i.e., was the sewer owner aware of/or permitted discharges) was or was not met.

As will be discussed below, an understanding of the clear meaning of one of the District's ordinances is the key to concluding that the District was aware of and permitted high concentrations of PCE to be discharged to its sewers. The District has spent much time and substantial resources to rewrite history in an effort to come up with some type of argument that it did not allow PCE into its system, or if it did, it only allowed small amounts. It's arguments fail in the face of language from the District's own ordinances.

i) The District's Changing Positions Concerning PCE Discharges.

A helpful document was issued by the District on June 10, 1992 addressed "Dear Dry Cleaning Industry Representative" (Attachment "H" to this Petition and incorporated by this reference). This document announces a new limit for PCE discharges from dry cleaners to the District's sewers (0.5 parts per million or 500 µg/L). This letter is significant because it provides evidence that it was not until this late date that such a limit went into effect: "...the District is announcing a prohibition on the discharge of wastewater containing perchloroethylene to the sanitary sewer where the wastewater is in excess of the District limit of 0.5 ppm for chlorinated hydrocarbons. This prohibition is effective immediately." (page 2)

But, instead of acknowledging the fact that it permitted PCE to be discharged to its pipes, the District and its attorneys have continually altered their position and followed a course of denial and obfuscation. For example, the District initially told the Staff that its ordinances prohibited the "discharge of harmful substances into the sewer system (e.g. PCE)" in 1963 (Slide 8) and "PCE discharge to sewer main in concentrated form unequivocally illegal (Slide 17) (slide presentation by District to Staff dated March 28, 2011 attached as Attachment "I" and incorporated in this Petition by this reference).

Next, the District's August 2012 letter (Attachment D) (pages 4-5) argued that District's regulations restricted the discharge of any substance other than sewage into its sewers, referring to District Ordinance No. 23 issued in 1953; the District further asserted that a discharge of PCE

was illegal without a variance. Comments on the Tentative Order issued on September 10, 2014 by the District's Environmental Compliance Superintendent, Environmental Services Division Manager, and General Manager (attached as Attachment "J" and incorporated in this Petition by this reference) again stated and expanded this formulation of the District's position (page 2):

> "There is no evidence that the District was aware of any discharges or permitted any discharges into leaking sewers. Since 1953, the District's ordinances established narrative and numeric limits to control discharges of significant concentrations of PCE and other COVCs into its sanitary sewer system. The standard wastes generated by dry cleaning operations would significantly exceed the numeric discharge limits and violate the narrative limits as well."

On exactly the same date as the District's letter to the Staff (September 10, 2014), the District's attorney weighed in with a different position on whether the District permitted PCE to be discharged to its sewers (attached as Attachment "K" and incorporated in this Petition by this reference). No longer did the District assert that there were absolute prohibitions or restrictions. Rather, the attorney admits that the District's ordinances permitted the discharge of PCE to the District's sewers. The attorney argues, however, that, although the District allowed PCE discharge to the sewers, it didn't allow very much. The District's attorney states (page 8, footnote 4):

> "Indeed, in 1974 the District only permitted solvent concentrations in amounts less than 0.002 mg/L [2 µg/L] for 50% of time and not exceeding 0.004 mg/L [4 µg/L] for 10%of time in Ordinance No. 99, and in 1981, only permitted amounts less than 0.50 mg/L in Ordinance No. 147. As the Regional Board Staff correctly explained, these limits "were far lower than what would be expected in PCE-impacted wastewater, which would be on the order of 150,000 µg/L."

At the Regional Board hearing on the Order on November 12, 2014, the District's attorney asserted that the District's engineers had examined the District ordinances and determined that the Highest District limit for the discharge of PCE was 50 µg/L of PCE during the period "of dry cleaners operation" (Slide 18) (attached as Attachment "L" and incorporated in this Petition by this reference). The attorney provided no foundation for this determination. In fact, the District's June 10, 1992 letter (Attachment H) permitted 500 µg/L (0.5 ppm) of PCE to be discharged to its sewers.

It is very hard to believe that the District doesn't know or understand its own ordinances. Rather, the District has done everything possible to muddy the water in an attempt to confuse the Staff. Unfortunately, the District has been successful in obscuring the facts concerning the

District's ordinances and, as described below, the Staff has reached the wrong conclusion regarding the concentration of PCE that the District allowed to be discharged to its pipes.

ii) Ordinance 99.

It all comes down to reading and understanding Ordinance 99 (passed and adopted by the District on July 11, 1974). Although the District's attorney and the Staff now agree on what they think Ordinance 99 provided, they are both wrong, and, as described above, on the District's part this "interpretation" is clearly a rewrite of history to avoid liability. The key portion of Ordinance 99, Section 8-403 Prohibited Substances B. (page 3/4) states as follows [a copy of the entire ordinance is an exhibit to Petitioner's July 3, 2012 letter to the Staff (this copy is in the Regional Board files and, due to its size, is not included in Attachment D to this Petition)]:

> "No person shall discharge, or cause, allow or permit to be discharged directly or indirectly into the sanitary sewer system or any part thereof: ...(12) Any industrial waste containing any of the following toxic substance exceeding the concentrations set forth opposite the toxic substances involved, to wit:

[Page 4 of Ordinance 99 follows]

Toxic Substance	Unit of measurement	Concentration not to be exceeded more than: 50% of time	10% of time
Arsenic	mg/l	0.01	0.02
Cadmium	mg/l	0.02	0.03
Total Chromium	mg/l	0.005	0.01
Copper	mg/l	0.2	0.3
Lead	mg/l	0.1	0.2
Mercury	mg/l	0.001	0.002
Nickel	mg/l	0.1	0.2
Silver	mg/l	0.02	0.04
Zinc	mg/l	0.3	0.5
Cyanide	mg/l	0.1	0.2
Phenolic Compounds	mg/l	0.5	1.0
Total Chlorine Residual	mg/l	0.1	0.2
Ammonia (expressed as nitrogen)	mg/l	40.	60.
Total Identifiable Chlorinated Hydrocarbons (12)	mg/l	0.002	0.004

The General Manager-Chief Engineer may set higher limits, for specific constituents of a waste after satisfactory demonstration by the discharger that best practicable control techniques cannot achieve the specified limit.

Regardless of the concentration limitations imposed by this section [403 (b), (1) through (12)], no person shall discharge, or cause, allow or permit to be discharged into the sewer system or any part thereof any waste in greater quantities or containing greater quantities of substances subject to concentration limitations than shall be allowed under a waste water discharge permit of the District.

C. No person shall discharge, deposit or throw, or cause, allow or permit to be discharged, deposited or thrown directly or indirectly into the sanitary sewer system of the District, or any part thereof;

(1) Any garbage, or any fruit, vegetable, animal or other solid material from any food-processing plant or other industrial plant or retail grocery store;

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The correct reading of Ordinance 99 is that 50% of time, more than 2 µg/L of PCE [an "Identifiable Chlorinated Hydrocarbon"] was allowed to be discharged to the sanitary sewers and that 10% of time, more than 4 µg/L of PCE was allowed to be discharged. Although the Ordinance is unclear as to what "50% of time" and "10% of time" mean, it is clear that a dry cleaner, for some period of time during its operations, was allowed to discharge to the District's sewers any concentration of PCE, including PCE at a concentration of 150,000 µg/L – which, according to the Staff is "PCE-impacted wastewater". [This concentration is the concentration of PCE in separator water commonly discharged from dry cleaning equipment in the 1970s.][2]

Ordinance 99 is consistent with an understanding that "slug" discharges of certain chemicals to sanitary sewers – that is, high concentration discharges of certain chemicals for short periods of time –were acceptable because such discharges could be diluted by the volume of other wastewater and would thus not adversely affect the chemistry or biology at sewage treatment plants. [Such dilution would occur as the chemicals traveled through the sanitary system; the higher chemical concentrations would persist near and downstream of the initial discharge location.] In contrast, high concentrations of these same chemicals consistently discharged could have adverse impacts on sewage treatment plants and that is why temporal limits were created.

Understanding Ordinance 99 is seminal to this matter because it underlies an important logic flaw in the position promoted by the District and calls into question all of the Staff's conclusions concerning the origin of PCE detected in groundwater near the Site and the Chevron Site.

The District's logic is as follows: a) high concentrations of PCE have been detected in groundwater near the sewers near manhole M46 and monitoring well EA-3; b) the District permitted only much lower concentrations of PCE to be discharged to its sewers than what has been detected in those locations ("any **legal/permitte**d dry cleaning PCE discharges could not

[2] The District did not specifically prohibit PCE discharges to its sewer collection system until 2007 (Cleanup Team Response to Comments, Attachment M, page D-7).

have caused this contamination" (emphasis in original, Slide 18, Attachment K)); c) ergo, the sewers cannot be the source of the detected PCE; d) thus, the District should not be named a discharger. The Staff bought the District's logic and misread and misinterpreted Ordinance 99. Consequently, the Staff reached an erroneous conclusion and failed to name the District as a discharger.

"The Cleanup Team Response to Comments" (Appendix D to Regional Board Meeting November 12, 2014, Item 7, which is Attachment "M" to this Petition and incorporated by this reference) exemplifies the Staff's confusion regarding the District's ordinances. Pages D-6/7 of Attachment M state: "We do not agree that prior to 1981, CCCSD allowed the discharge of PCE based solely on temporal permitting limit [sic] (emphasis added) rather than enabling discharge at specific concentration threshold [sic] for a specific time. CCCSD Ordinance No. 147 (adopted on August 27, 1981) states, "No person shall discharge wastewater containing in excess of "0.50 mg/l total identifiable chlorinated hydrocarbons.""

Ordinance 99 was in effect from July 1974 until Ordinance 147 was adopted in August 1981. Clearly, Ordinance 99, which contained solely temporal limits, was in effect from 1974 – 1981. Petitioner does not understand the Staff's statements.

In conclusion, the high concentrations of PCE in water were permitted to be released to the District's pipes. Thus, the District's pipes could in fact leak high concentrations of PCE and it is leaks from the District's pipes that are the most likely origin of, and most straightforward explanation for, the high PCE concentrations in groundwater detected near M46 and EA-3. Petitioner notes that any discussion concerning what concentration of PCE the District allowed to be discharged into its sewer system is a "red herring." To the extent the District knowingly allowed any PCE into its system, the fourth criterion (the sewer owner/operator was aware of/or permitted discharges into a leaking sewer) would be satisfied. Thus the correct question is: "what is the District's contribution as a discharger?" not "was the District a discharger?"

Although the promulgation of the four criteria is an abuse of the Regional Board's and the Staff's discretion and their issuance and use here is an arbitrary and capricious act not permitted under California law, an even-handed application of the four criteria to the facts and an

understanding of the District's ordinances results in the conclusion that the District should be named to the Order.

Discussion of Facts and Law

1. The District is a Discharger and Should be Named to the Order as a Matter of Law.

a) Statutory Language and State Water Board Policy Require Naming the District a Discharger.

The District is a discharger under Porter-Cologne: section 13304 of the Water Code defines a discharger as "(a) Any person who has discharged or discharges waste into the waters of this state ... who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance..." Further, Section 13030 of the Water Code states that a: "Person includes any city, county, district, the state..." (emphasis added).

In addition to being expressly provided for by statute, sanitary districts can be named as dischargers for PCE releases from their pipes according to a letter to Walt Pettit, Executive Director of the State Water Resources Control Board dated April 27, 1992, from William R. Attwater, Chief Counsel. The letter states that the owner/operator of a POTW: "who controls the collection system and has responsibility for discharges therefrom, and the dry cleaner who places the waste into the collection system, may be held responsible" (page 4, Exhibit A to Attachment F). The Staff agrees with Petitioner's conclusion "that it is *possible* to name a sewer owner or operator as a discharger..." (emphasis in original) (page D-4, The Cleanup Team Response to Comments, Attachment M).

Section 13304 is a strict liability statute. Strict liability means that an entity has legal responsibility for damages or injuries even if the entity was neither at fault nor negligent. The statute contains no exceptions or defenses. Simply put, if an entity's actions fit into the definition, it is a discharger.[3]

[3] The Staff Report points out that CERCLA is also a strict liability statute, and that the cases under CERCLA, while "not binding precedent ... do provide useful guidance" (footnote 7 on page 12). Petitioner agrees. However, the Staff report also

Through the creation and erroneous application of the four criteria discussed above, the Staff has gone out of its way to avoid naming the District as a discharger. This contravenes the express statutory language as well as State Water Resources Control Board Policy 92-49 that states: "26. It is not the intent of the State or Regional Water Boards to allow dischargers, whose actions have caused, permitted, or threaten to cause or permit conditions of pollution, to avoid responsibilities for cleanup." This Policy also states: "1.The Regional Water Board shall apply the following procedures in determining whether a person shall be required to investigate a discharge…[A.4] Industry-wide operational practices that historically have led to discharges, such as leakage of pollutants from wastewater collection and conveyance systems…" In short, the Staff failed to apply either the statute or State Water Board policies to the District and its facilities and instead fashioned a new analytical tool, outside the bounds of accepted and understood procedures.

b) California Law Prohibits the Regional Board From Using the "Four Criteria".

Government Code section 11342.600 defines a regulation as: "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule,

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states that: "courts have refrained from identifying sewer owner/operators as "responsible parties" (the CERCLA rough equivalent of the Water Code's "discharger") merely because they owned or operated a sewer system". This is not a true statement. The Staff Report quotes language from or refers to the *Fireman's Fund, Lincoln Properties* and *Adobe Lumber* cases. In referring to these cases, the Staff Report is misleading and incomplete. For example, the Staff Report is misleading because the quote from *Fireman's Fund* is in fact "dicta" and not a holding (i.e. not binding law). The Staff quoted that case as follows: "["it is doubtful whether Lodi may be considered a PRP merely as a result of operating its municipal sewer system"]". However, the entire quote from the Court of Appeals in *Fireman's Fund* is: "While we decline to decide whether Lodi is a PRP on the record before us, we note that it is doubtful whether Lodi may be considered a PRP merely as a result of operating its municipal sewer system" (emphasis added). After discussing the various cases on the issue, some of which hold that an owner of a sewer lines is liable for discharges of hazardous waste and some of which hold the opposite, the Court of Appeals remanded (i.e. sent back) to the District Court the question of whether Lodi is a PRP. [On remand, the District Court determined that Lodi is a PRP (a holding based on Lodi's admission in open court that it was a PRP)]. Note also that *Lincoln Properties* does not hold what the Staff asserts. In that case, the court held that as an owner of the sewer system: "…as a matter of law, the County may be liable for releases from its facilities – *viz*, its portion of the sewer …" (emphasis added) (823 F. Supp. at 1539). The court then found that the County had an affirmative defense under CERCLA [a portion of that defense was later rejected in *Adobe Lumber]*. The Staff Report is misleading because it references *Adobe Lumber* (659 F. Supp.2d 1188 (E.D. Ca. 2009)) to support its statement that: "courts have refrained from identifying sewer owner/operators as "responsible parties" (the CERCLA rough equivalent of the Water Code's "discharger") merely because they owned or operated a sewer system." But that premise is never discussed or considered by the court in the case. Rather, the court found that the City of Woodland was a PRP, that its sewers were "facilities" under CERCLA, and that it was a responsible party under CERCLA. The court refused to dismiss the City from the case and allowed the case to go to trial. It did allow the City to try to carry the burden at trial to establish the innocent party defense under CERCLA §9607(b)(3). Finally, the Staff Report is incomplete because it fails to mention *Westfarm Assocs. v. Wash. Suburban Sanitary Comm'n,* 66 F.3d 669, (4th Cir.1995) in which the Court of Appeals held that a municipal operator of a sewer system is liable under CERCLA for the acts of a third party that discharges hazardous waste into the system.

regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." The criteria created by the Staff are a regulation under the Government Code. Their development by the Staff is not exempt under the provisions of Government Code sections 11351 – 11361.

And because the criteria are a regulation, the provisions of the California Administrative Code should have been followed in their promulgation. Government Code Section 11340.5 prohibits any state agency from issuing, utilizing, enforcing or attempting to enforce: "any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter." The Staff failed to meet this due process requirement.

Because the applicable provisions of the Government Code were not followed in creating the four criteria, and, based on the fact that the Staff used the criteria in this matter (as described above), the use and application of the four criteria to this matter should be voided and the District should be named as a discharger.

c) <u>The Apparent Origin of the "Four Criteria" and Based on that Origin, Even if the Issuance of the Criteria Pass Legal Muster, They were Improperly Used.</u>

In the Cleanup Team Response to Comments (Attachment M), the Staff did not disagree as to the applicable law, but determined that, based on its evaluation of the facts – using its four criteria – the District "does not meet the definition of discharger under 13304 of the Water Code." (pages D-3/4)

The Staff examined the cases referred to in Footnote 3 of this Petition and commented in particular on *Lincoln Properties*:

> GVP [Petitioner] notes that the sewer owner/operator in the Lincoln Properties case successfully proved a third party defense where there was evidence that the county exercised due care and reasonable precautions with respect to operations of a the sewer system. (Lincoln Properties, Ltd. v. Higgins (E.D. Cal. 1992) 823 F.Supp. 1528, 1543-44). These facts are most closely aligned with the evidence in the record concerning CCCSD and further support our recommendation to not name CCCSD.

The Staff has missed a key point in understanding the CERCLA defenses. The defenses are just that – defenses to liability to be used by a defendant. The Staff has turned the concept of "defenses" upside-down, converting them into screening criteria used by a regulatory agency to determine liability. As background, Section 107 (b) establishes CERCLA's third party defenses:

> There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—
>
> **(1)** an act of God;
>
> **(2)** an act of war;
>
> **(3)** an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or
>
> **(4)** any combination of the foregoing paragraphs.

Again, this provision concerns defenses to liability. The statute states: "There shall be no liability under subsection (a) of this section for a person otherwise liable…" (emphasis added). The provision is to be used by defendants to try to prevent liability, not as a filter used by a prosecuting agency to protect one class of dischargers. In addition, the burden of proof is on the defendant under CERCLA: the "otherwise liable" person must establish "by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions…"

The Staff has converted an affirmative defense to be used only by an already responsible party under CERCLA into something wholly different: a methodology used by a regulator as a

pretext to discount and avoid evidence. The Staff is forcing other responsible parties to prove the Staff wrong when, in fact, the District should be proving it qualifies for the defense.

d) The Staff and Regional Board, by Using the "Four Criteria", has Singled out Sanitary Districts for Special Treatment and Evaluation Without any Justification.

This approach is contrary to how the Staff generally treats all other parties, which is to name parties that are within the statutory definition of discharger and then let the parties allocate their responsibilities. The four criteria were created by the Staff only for use in situations involving sanitary systems and leaks from their pipes. No other alleged discharger can benefit from the existence of these criteria. There is no justification for this special treatment of sanitary districts, especially in this case, where an even-handed application of the criteria (and a correct understanding of the District's ordinances) would result in the District being named a discharger.

e) The Staff is Disingenuous in Asserting that it Used its Standard Criteria to Evaluate the District as a Discharger; Rather, it used the "Four Criteria" for its Evaluation.

In Cleanup Team Response to Comments (Attachment M) (pages D-7/8) (October 28, 2014), the Staff asserts for the first time that it used the standard three criteria to evaluate the District as a discharger: "(1) owned the property where the discharge occurred; 2) had knowledge of the discharge or activities that caused the discharge; and, 3) had legal ability to prevent the discharge." The Staff then concludes: "[b]ased upon an ordinary application of these standard criteria, Staff determined it was inappropriate to identify CCCSD as a discharger."

The Staff argues that it is merely following existing criteria in naming dischargers and the four criteria "essentially interpret the standard three discharger criteria as they would apply to a sewer owner/operator as opposed to a landowner/business directly responsible for a discharge" (page D-7).

Petitioner disagrees with the Staff assertions. The criteria do not interpret the three standard criteria – they are wholly new and quite different. In addition, the Staff has made a false distinction between the District as a sewer owner/operator and "a landowner/business directly responsible for a discharge". In this matter, given the facts, the District is directly responsible for a discharge: a) the District's pipes began to leak and fail soon after installation; b) the District

knew it had failure/leak issues and didn't make repairs; c) there is evidence of discharges of PCE from the District's pipes in a number of locations; and d) the District's regulations allowed unlimited concentrations of PCE to be placed in its pipes, certainly from 1974 – 1981.

Further, if the Staff didn't rely on the four criteria, why did the Staff state in its prior comments that the four criteria were used to determine whether the District was a discharger (Staff Report – Attachment E)? "In order to determine whether CCCSD should be named as a discharger, Staff considered evidence submitted by CCCSD and GVP and compared it to the four criteria above… None of the above four criteria are met in this case, as explained in more detail below" (pages 12/13) (emphasis added).

The Staff's newly stated position in the Cleanup Team Response to Comments (Attachment M) that the standard three criteria were used in this case is an effort to cover its tracks. It is an *ex post facto* admission that the Staff should never have used the four criteria to evaluate the facts and that the creation and use of the four criteria was an error. The reality, however, is that the Staff created and applied the criteria and filtered all facts and submissions from the parties through that construct. Now the Staff wishes that it had never walked that path. The Staff argues in its Cleanup Team Response to Comments (Attachment M) that it never needed to use the four criteria and that they were unnecessary to its evaluation and issuance of the Order. But that is not true, and that is not what happened.

2. There are Strong Policy Reasons for Naming the District a Discharger.

The Staff Report (Attachment E) noted that there are "numerous policy considerations" (page 12) for not naming the District a discharger but it did not enumerate them. Petitioner's August 4, 2014 letter to the Staff (page 10, Attachment F) identified a number of policy arguments for naming the District that are presented below. The Cleanup Team Response to Comments (Attachment M) responded to only two of Petitioner's arguments (page D-9) regarding naming a sanitary district to an order: it would be an incentive for districts to provide good sewer maintenance and where a sewer district's pipes have leaked PCE, and it could provide a financial resources to the cleanup. Petitioner's other policy arguments were ignored.

It may be that the Staff's policy consideration for not holding the District liable, even if its

pipes leaked PCE, is that costs of investigation and cleanup should not be shifted to the taxpayers and ratepayers. The District raised this argument in its August 2012 letter (page 2, Attachment G) but the courts have rejected the argument. [4]

Another policy argument that could be made is that the District should not be liable as a discharger because it is a mere conveyor of materials doing a public service and that it should not, from a public policy perspective, be held responsible for leaks from its system of material that others placed in its system that subsequently leaked out. But the District is not a "mere conveyor." As discussed in detail above in the section concerning the District's practices, the District built its pipes in a manner that allowed for leakage, knowingly accepted PCE into its pipes, and maintained the systems based on minimizing blockages rather than addressing leaks; consequently, the District should be liable for these PCE releases.

Lastly, as noted in Petitioner's August 4, 2014 letter to the Staff (pages 10/11, Attachment F), sanitary districts are commonly named in orders often because the district failed to prevent or control the discharge of sewage or chemicals.[5] There is clearly no public policy position that would prevent a sanitary being named to an order.

3. Similar Operations have been Named as Dischargers in Similar Circumstances.

A close analogy for holding the District liable involves municipal landfills, as stated in *Adobe Lumber*: "*see, e.g., Transportation Leasing Company. v. The State of California (CalTrans),* 861 F. Supp. 931, 939 (C.D.Cal.1993) (holding municipalities liable for contamination from a landfill even though their conduct constituted a "non-contributory exercise of sovereign power")..." Also, the Court of Appeals in *B.F. Goodrich v Murtha, 958 F. 2d 1192,*

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[4] This argument was made in a CERCLA context by another sanitary district that was contesting liability for releases of PCE that had been discharged to that district's sanitary sewer. In that case, the U.S. Court of Appeals rejected the argument. See *Westfarm Assocs. v. Wash. Suburban Sanitary Comm'n,* 66 F.3d 669, (4th Cir.1995): "[w]hile the public policy arguments raised by WSSC may be meritorious, we can only presume that those arguments were weighed and rejected by Congress when it enacted CERCLA without including a broad exemption for state and local governments or their POTWs." Similarly, the Water Code contains no "sanitary district" exemption preventing a district from being named a discharger. As noted earlier, "districts" are a "person" subject to Water Code Section 13304. Section 13030 of the Water Code states that a: "Person includes any city, county, district, the state..."(emphasis added).

[5] See, for example, Sanitary District #1 of Marin, R2-2012-055; City of Oakland, R2-2009-0078; and City of Calistoga, R2-2010-0107 (which involved the discharge of chlorodibromomethane and dichlorobromomethane).

1199 (2nd Cir.1992) held that there was no exemption under CERCLA "for municipalities arranging for the disposal of municipal solid waste that contains hazardous substances simply because the municipality undertakes such action in furtherance of its sovereign status." The Regional Board has named as dischargers those landfills that have leaked chlorinated solvents. No fault or negligence was required in these instances. See, for example, Order No. R2-2007-0049 issued to the City of San Jose as owner and operator of the Story Road Landfill. In an attempt to respond to this analogous circumstance, Staff drafted Footnote two on page D-6 of The Cleanup Team Response to Comments (Attachment M):

> "Citing a number of cases, GVP [Petitioner] also makes the argument that CCCSD [District] could be analogized with owners of landfills who are held liable for cleanup of contamination. While staff has found some limited utility and "useful guidance" in CERCLA cases involving sewer owners/operators and PCE contamination, facts closely aligned with this TO [Tentative Order], we are not inclined to expand the analysis to landfills which are expressly designed to store solid waste as opposed to convey liquid waste."

Petitioner believes that, in this circumstance, landfills and sewer systems are identical. Facilities that store solid waste that subsequently leaked PCE and facilities that convey liquid waste that subsequently leaked PCE are comparable. The Staff is making a distinction without a difference.

4. A Single Order (that Includes the District) Should be Issued for the Site and the Chevron Site.

There should be a single order because the plumes are commingled. As the Staff Report States (page 11, Attachment E): "There is evidence that the CVOC plume from Site 2 [Chevron] migrated in groundwater to the north and northwest and beneath the Gregory Village Shopping Center, and commingled with the CVOC plume associated with Site 1 [GVP], which has migrated beneath a residential subdivision north of Site 1."

Plumes that commingle from multiple sites are more effectively handled in a single site order because, as a practical matter, the plumes cannot be adequately addressed separately. In the past, the Regional Board has handled similar situations with a single order[6] and Petitioner

[6] Order R2-1989-0038 was issued with respect to two sites in Cupertino, CA. Two separate release areas at two separate locations were the subjects of this single order. The Siemens Site had releases of CVOCs from underground waste solvent tanks and an acid dilution basin. The Intersil Site nearby had releases of CVOCs from underground waste handling systems. In a situation very similar to the situation here, the Intersil/Siemens Order states that "[t]he groundwater pollution

believes that this is the appropriate manner in which to handle both the Site and the Chevron Site.

As currently structured, the two orders will lead to inefficiencies in addressing the requirements, disagreements between parties (and enforcement challenges), and far greater Staff time to manage than a single order would. The inefficiencies go beyond whether or not it makes sense to have two sensitive receptor surveys and public participation plans. Most significantly, both parties are required to investigate the vertical and lateral extent of their plume (but with differing degrees of specificity). Two orders would be duplicative, with the parties on the Site Order and parties on the Chevron Site Order independently performing overlapping investigations of commingled plumes, which makes no sense.

The investigation tasks also illustrate the difficulty of attempting to coordinate two different orders, which should be much easier at this stage compared to when issues arise in the field causing delays for one party or another.[7] While both the Order and the order for the Chevron Site requires a definition of the vertical and lateral extent of the respective site plumes, the Order expressly references the deep zone and the neighborhood but the Chevron Order does not. The likelihood, if the orders remain separate, is that Chevron will do an investigation that does not include those items and there will be needless delays for both sites, as well as Petitioner having to perform additional work to prove what the Staff has already concluded – the plume is commingled down gradient of both sites and in the neighborhood north of the Site. There is no justification to place this extra burden on Petitioner.

In addition, with two orders and two public participation plans but a commingled plume, residents of the neighborhoods adjoining the sites will be confused as to who is responsible for

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plumes from Siemens and Intersil have commingled in the A-zone and have migrated to the B-zone and C-zone. The off-site groundwater pollution plume extends approximately 2500 feet down gradient from the sites" (paragraph 6). See also R2-1991-0139/0140 (Nat'l Semiconductor, AMD, UT, HP); R2-1991-0119 (Micro Storage, Intel); R2-1992-0037 (multiple parties/addresses in East Palo Alto); R2-1994-0184 (Teledyne, Spectra-Physics); R2-2001-0066 (multiple parties/addresses in Napa); R2-1993-0111 (Hexcel, nearby disposal location); R2-2011-0065 (Kaneka Texas/Foamex, E*Poly Star, Metro Poly, Unipoly [surface discharges])

[7] Petitioner wishes to emphasize that it has cooperated and worked under close Staff oversight to mitigate the detections of PCE in soil vapor in the neighborhood north of the Site. In light of this fact, Petitioner questions why only parties associated with the Site are being expressly required (by the Order) to work on off-site matters and the deep aquifer, when parties named to the Chevron Order, who have contributed to a commingled plume, are not.

what work and won't know who to look to for assistance and answers to questions concerning nearby work. As a result, residents will probably look to the Staff for a response, thus putting an additional burden on Staff resources.

In short, a single order is imperative to avoid confusion, higher costs for all parties, the unnecessary expenditure of valuable Staff resources in responding to the community and mediating disputes between the parties that would occur with separate orders. Ultimately, the issuance of two orders has the potential to delay and jeopardize an effective cleanup process.

Conclusion

Based on the facts, an application of the law to the facts, and an appropriate understanding of policies pertinent to this circumstance, the District should be named a discharger on the Order. In addition, for the reasons enumerated above, this Order should be consolidated with the Chevron Order and a single order should be issued for all dischargers (including the District) associated with the commingled plume of VOCs in the local geographic area.

In addition, the Order should be stayed pending review due to the substantial costs that would be incurred by Petitioner to implement the Order pending this review.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND PARTIES:

This Petition has been sent to the California Regional Water Quality Control Board – San Francisco Bay Region, the District, the named parties on the Order and the named parties on the Chevron Order.

9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD, OR AN EXPLANATION OF WHY THE PETITIONER WAS NOT REQUIRED ORWAS UNABLE TO RAISE THESE SUBSTANTIVE ISSUES OR OBJECTIONS BEFORE THE REGIONAL BOARD:

Petitioner states that the substantive issues and objections raised in the Petition were raised before the Regional Board.

10. REQUEST TO PRESENT SUPPLEMENTAL EVIDENCE; INCLUSION OF MATERIAL IN ADMINSTRATIVE RECORD:

Petitioner reserves the right to request that State Board consider evidence not previously considered by the Regional Board. If necessary, Petitioner will submit an amended petition

containing a statement that evidence is available that was not presented to the Regional Board and detailing the nature of the evidence and of the facts to be proved. If the evidence was not presented to the Regional Board, Petitioner will provide a detailed explanation of the reasons why the evidence could not previously have been submitted.

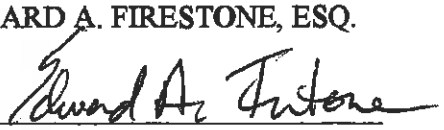
Petitioner wishes to incorporate by this reference, as part of the administrative record, all of Petitioner's correspondence to the Staff/Regional Board and Petitioner's presentation to the Regional Board on November 12, 2014. Due to the length of the exhibits associated with many of Petitioner's pieces of correspondence, some exhibits are not attached in their entirety to this Petition, but the correspondence and associated exhibits are in the Regional Board's files and most are on GeoTracker.

11. REQUEST FOR HEARING BEFORE THE STATE BOARD:

Petitioner requests a hearing before the State Board to consider testimony, other evidence, and argument.

Dated: December 12, 2014

EDWARD A. FIRESTONE, ESQ.

By: 
EDWARD A. FIRESTONE

Attorney for Petitioner
GREGORY VILLAGE PARTNERS, L.P.

Attachment A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. R2-2014-0041

ADOPTION OF INITIAL SITE CLEANUP REQUIREMENTS for:

GREGORY VILLAGE PARTNERS, L.P.,
VILLAGE BUILDERS, L.P.,
JOSEPH J. LEE,
ALAN CHOI, and
KAUEN CHOI

for the property located at:

1643 CONTRA COSTA BOULEVARD
PLEASANT HILL, CONTRA COSTA COUNTY

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

1. **Site Location and Description**: The 3.6-acre Gregory Village Shopping Center, a commercial retail plaza with an address of 1601-1699 Contra Costa Boulevard (Assessor's Parcel No. 150-052-009-1), is located on the west side of Contra Costa Boulevard in Pleasant Hill. A dry cleaner, with an address of 1643 Contra Costa Boulevard (the "Site"), once operated out of a small suite within the shopping center. Several commercial parcels are located directly north and south of the plaza, and residential properties also exist to the west and north.

2. **Site History**: The Gregory Village Shopping Center, reportedly constructed in 1950, contains approximately twenty retail and commercial tenants in a one-story building, and is currently owned by Gregory Village Partners, L.P. (herein "GVP"). Historical records indicate a dry cleaner operated within the Site from at least 1965 until the present. Gregory Cleaners and P&K Cleaners occupied the Site, from 1965-1984 and 1984-2002, respectively.

   In 1997, chlorinated volatile organic compounds ("CVOCs"), primarily the common dry cleaning solvent tetrachloroethylene (also known as "PCE" or "Perc"), were detected in shallow soil and groundwater beneath and near the dry cleaner during a due diligence investigation. PCE, a potential human carcinogen, was also detected in shallow soil vapor. Trichloroethylene ("TCE"), cis-1,2-dichloroethene ("cis-1,2-DCE"), trans-1,2-DCE, and vinyl chloride, toxic compounds formed from the degradation of PCE, were detected in soil, soil vapor, and groundwater. A CVOC groundwater plume formed from the past PCE releases, and the plume currently extends beneath a residential subdivision to the north of

the shopping center. CVOCs were detected beneath the concrete slab-on-grade floors of the former dry cleaner and several homes, and also within the indoor air of several houses.

Dry Cleaning Business Operations: According to information provided by GVP, the first dry cleaner to occupy the Site was "Gregory Cleaners", which reportedly started operations on or about December 2, 1965. Gregory Cleaners reportedly operated until August 1, 1984, when its name was changed to "P&K Cleaners." The dry cleaner was renamed "Nob Hill Cleaners" on or about May 6, 2002, and retained this name to approximately May 20, 2004, when it was renamed "Park Avenue Cleaners" (a name it currently holds).

According to GVP, Joseph William O'Malley and Floyd G. Taylor (February 9, 1979 to approximately 1983), Alan Choi and Kauen Choi (December 1, 1983 to August 1, 1984), and Joseph J. Lee and Grace M. Lee (August 1, 1984 to April 1, 1988), reportedly operated a dry cleaner at the Site when PCE was likely used and discharged. According to GVP, on-Site dry cleaning operations occurred between 1964 and March 1991, after which the dry cleaner became a "drop-off" and clothes were cleaned at an off-Site facility. Grace M. Lee is now deceased. Regional Water Board staff was unable to locate former operators Joseph William O'Malley and Floyd G. Taylor.

Regional Water Board staff was not provided with any information about operators of the dry cleaner prior to 1979, however, given the lack of records indicating a change in type of equipment, and the propensity of dry cleaners to use PCE prior to 1979, it is reasonable to conclude that PCE was used and discharged at the Site before 1979.

Regional Water Board staff discovered a reference to an April 10, 1987, Uniform Hazardous Waste Manifest (for the disposal of hazardous wastes), provided by the Department of Toxic Substances Control, for "P&K Gregory Cleaners" with the Site's address. This is consistent with the timeframe when dry cleaners using PCE used hazardous waste haulers to dispose of PCE-contaminated wastewater and other waste.

Dry cleaning equipment was present at Site 1 from March 1991 until 1999, and releases of PCE could have occurred during this time frame. Furthermore, high concentrations of PCE were detected in soil vapor directly beneath the former dry cleaner, strong evidence that PCE was used and released at the property.

Land Ownership during Dry Cleaner Operations: The Gregory Village Shopping Center property was owned by several different individuals and entities since approximately 1949 to the present. The chain-of-title to the property, since December 1965 (when dry cleaning activities reportedly commenced) is as follows:

<u>December 1965 through February 25, 1998</u>

- Ken Lowry/Kenlow Corporation
    - According to the California Secretary of State's web-site, the business license for the Kenlow Corporation, who reportedly owned the shopping center starting on August 1, 1960, was suspended in 2000. No agent for service of process is listed for the company.

<u>February 25, 1998 through Present</u>

- Gregory Village Partners, L.P. (60% tenancy-in-common interest)

- Village Builders, L.P. (40% tenancy-in-common interest)
- On March 29, 2004, the Village Builders' interest was sold to Gregory Village Partners, L.P., currently holding 100% fee interest in the property

The Site currently houses Park Avenue Cleaners. Since PCE was not used at the Site for many years (reportedly since at least 1991), there is no reason to suspect the current business is responsible for the pollution.

3. **Named Dischargers:**

GVP is named as a discharger because it is the current owner of the property on which there is an ongoing discharge of pollutants, it has knowledge of the discharge or the activities that caused the discharge, and it has the legal ability to control the discharge.

Joseph J. Lee, Alan Choi, and Kauen Choi are named as dischargers because of substantial evidence that they discharged pollutants to soil and groundwater at the Site: it is common knowledge that releases occurred during routine operations involving chlorinated solvents in dry cleaning; these same pollutants are present in soil and groundwater directly beneath and in the immediate vicinity of the dry cleaner; and these same pollutants are present in groundwater at and downgradient of the dry cleaner in concentrations that generally diminish with distance. Each of these dischargers knew of the discharge or activities that caused the discharge, and each had the legal ability to control the discharge during their respective period of operating the dry cleaner.

Village Builders, L.P. is named as a discharger because it is a former owner of the property during whose ownership there was an ongoing discharge of pollutants, it had knowledge of the discharge or the activities that caused the discharge, and it had legal ability to control the discharge.

If additional information is submitted indicating other parties caused or permitted any waste to be discharged on the Site where it entered or could have entered waters of the State, the Regional Water Board will consider adding those parties to this Order.

4. **Regulatory Status:** The Site is currently not subject to a Regional Water Board order.

5. **Site Hydrogeology:** The Site is located within the Ygnacio Valley Groundwater Basin, a structural depression between the Berkeley Hills to the west and the Diablo Range to the east. The basin sediments consist of thick Quaternary-age alluvial and floodplain deposits, generally comprised of unconsolidated to partially-consolidated, discontinuous layers of silt, clay, sand, and gravel. The local topography is gently tilted to the north and northwest.

Groundwater levels in the first-encountered/shallow water-bearing zone below and downgradient of the Site have fluctuated between approximately seven and 14 feet below the ground surface. The groundwater flow direction in the shallow zone has varied from northwest to northeast, with a regional flow direction to the north, at an average gradient of approximately 0.005 feet per foot.

6. **Hydrology:** The closest major surface water bodies to the Site are Grayson Creek, located approximately 2,000 feet to the west, and Walnut Creek, located roughly 2,000 feet to the east. No municipal drinking water supply wells are known to exist within a two-mile radius of the site. Shallow "backyard" irrigation wells are common on residential parcels in Pleasant Hill, but a door-to-door domestic well survey has not been completed in the residential subdivision downgradient of the Site.

7. **Remedial Investigation:** Numerous soil, soil vapor, and groundwater samples collected and analyzed during approximately 17 years of environmental investigation and cleanup activities at the Site have detected a variety of chemicals, several of which are very toxic to human health. CVOCs were detected in soil, soil vapor, and shallow groundwater within the boundaries of the shopping center and also in soil vapor and groundwater upgradient and downgradient of the Site, at concentrations above health-based standards. For example, the data indicates CVOCs are present in groundwater at levels exceeding the maximum contaminant levels (MCLs).[1]

   In 1997, several environmental assessments identified the Site as a source of PCE contamination and confirmed that two previous tenants used PCE in their dry cleaning operations. The studies confirmed the presence of CVOCs, mainly PCE, in soil and groundwater in the vicinity of the Site. PCE was detected in soil up to 1.1 mg/kg, and groundwater samples contained PCE up to 27,000 micrograms per liter (µg/L) near a sewer lateral at the rear of the Site.

   Following site investigations in 2003 and 2008 that detected PCE in soil vapor at the rear of the suite and below the Site's slab-on-grade floor, in June 2009 soil vapor samples were collected from multi-depth soil vapor probes ("MSVPs"). These MSVPs were installed in several streets within a residential neighborhood downgradient of the Site. PCE, TCE, and cis-1,2-DCE were detected at maximum concentrations of 52,100 µg/m³ at six feet, 15,700 µg/m³ at nine feet, and 16,300 µg/m³ at nine feet, respectively. The highest on-Site soil vapor concentrations were detected in MSVP-7, a probe advanced directly to the rear (west) of the dry cleaner; at this location, PCE and TCE were discovered at 54,800 µg/m³ and 6,240 µg/m³ at a depth of nine feet.

   In May 2010, five sub-slab soil vapor probes (SSVPs) were installed beneath the Site, while four probes were constructed beneath the two adjacent commercial units. Beneath the Site, PCE soil vapor concentrations ranged from 5,720 µg/m³ to 1,490,000 µg/m³, with the highest concentration directly beneath the former dry cleaner machine. Below the 1637 Contra Costa Boulevard unit (a suite directly north of the Site), PCE concentrations were 61,200 µg/m³ and 59,600 µg/m³, while PCE concentrations beneath the 1649 Contra Costa Boulevard unit (a suite directly south of the Site) were 2,100 µg/m³ and 3,080 µg/m³.

   In June 2010, PCE was detected in a sub-slab soil vapor sample collected directly beneath the garage floor of a residential property (95 Cynthia Drive) located downgradient of the Site at a concentration of 12,800 µg/m³. PCE was detected in an exterior probe (5.5 feet

[1] The drinking water standard for PCE and TCE, known as the maximum contaminant level, or MCL, is 5 µg/L. The Regional Water Board's 2013 Environmental Screening Levels (ESLs) for potential vapor intrusion concerns at commercial facilities are 2,100 µg/m³ (PCE) and 3,000 µg/m³ (TCE), respectively.

deep) at a concentration of 220 µg/m³. A follow-up sub-slab sample collected on August 17, 2010, detected PCE in soil vapor beneath the garage at 18,600 µg/m³. Two indoor air samples were also collected on August 16 and 17, 2010, and PCE was detected at concentrations of 6.46 µg/m³ and 1.04 µg/m³. In November 2010, samples collected from two sub-slab soil vapor probes installed at 99 Cynthia Drive detected PCE at concentrations of 1,540 µg/m³ and 6,530 µg/m³.

The maximum detected concentrations of contaminants of potential concern are listed by medium in the table below:

	Maximum Concentration Detected		
Analyte	Groundwater (µg/L)	Soil (mg/kg)	Soil Gas (µg/m³)
PCE	27,000	5.3	1,490,000
TCE	130	0.03	<12,900
cis-1,2-DCE	<40	<0.04	<9,520
vinyl chloride	<50	<0.05	<6,130

The CVOC concentrations in groundwater are substantially above the drinking water standards (e.g., the Maximum Contaminant Level, or MCL, for PCE is 5 µg/L). The concentrations of PCE detected in soil vapor directly beneath the dry cleaner and adjacent units (subslab) are well above the Regional Water Board's 2013 *Environmental Screening Levels* (ESLs)[2] for potential vapor intrusion concerns at commercial facilities, which is 2,100 µg/m³. The concentrations of PCE detected in sub-slab soil vapor beneath several homes exceed the Regional Board's 2013 ESLs for potential vapor intrusion concerns at residential sites (210 µg/m³).

Based on the characterization studies completed to date, additional delineation of CVOCs in soil, soil vapor and groundwater is necessary.

8. **Interim Remedial Measures:** In October 1999, approximately 30 gallons of PCE were removed from the dry cleaning machine and transported off-Site to a disposal facility. In November 1999, approximately 30 cubic yards of soil were excavated from beneath the concrete floor slab and transported to the Altamont Landfill in March 2000.

In 2011, sub-slab depressurization (SSD) systems were installed as mitigation measures beneath the concrete floor of the Site (dry cleaner only) and two residential properties; 95 Cynthia Drive and 99 Cynthia Drive. The SSD systems were installed to prevent soil vapors from entering the structures; the systems are not remediating CVOC-contaminated soil and groundwater beneath the structures.

Additional interim remedial measures likely will be necessary to reduce the threat to water quality, public health, and the environment posed by the past chemical releases, and to provide a technical rationale behind the selection and design of final remedial measures.

[2] See Regional Water Board webpage: http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/esl.shtml

9. **Nearby Sites:** The property at 1705 Contra Costa Boulevard, directly south of the shopping center, is currently a Chevron-branded gas station. Between 1972 and 1986, a former steel waste oil Underground Storage Tank (UST) leaked petroleum hydrocarbons and CVOCs into soil and groundwater at this property. A former dry cleaner used to operate in the southern part of the property; the dry cleaner used and leaked PCE into the subsurface. The property has a long and well-documented history of chemical use and unauthorized releases, including significant CVOC releases to soil and groundwater. Petroleum and CVOC releases at this property have commingled with the CVOC plume originating from the Site. This property is the subject of another proposed order directed to Chevron U.S.A., Inc. and others.

   A former Unocal gas station located at 1690 Contra Costa Boulevard is cross-gradient and east of the southern part of the main parking lot. This site, now a McDonald's restaurant, had confirmed releases of petroleum hydrocarbons and fuel oxygenates to soil and groundwater. A waste oil UST was removed from the site in 2000. The case (Regional Water Board Case No. 07-0450) was closed on September 27, 2010. It is possible that MTBE and other fuel-related constituents have migrated in groundwater from this property and onto the Site, but there is insufficient evidence to reach this conclusion at this time.

   A former gas station (now a Taco Bell restaurant, 1700 Contra Costa Boulevard) is located cross-gradient and approximately 150 feet southeast of the main parking lot. This property had historic releases of petroleum hydrocarbons. A waste oil UST was removed from the site in the past (date unknown). The case (Regional Water Board Case No. 07-0873) was closed on May 20, 2008. It is possible that fuel-related chemicals have migrated in groundwater from this property and beneath the Site, but there is insufficient evidence to reach this conclusion at this time.

   Minor concentrations of CVOCs were detected in the groundwater beneath a former gas station at 1521-1529 Contra Costa Boulevard, located directly north of the main parking lot and upgradient of CVOC detections in soil vapor and groundwater in the residential neighborhood north of the Gregory Village Shopping Center. The property, which was an automotive service and fueling station until 1977, has an unknown chemical release history. The case (Regional Water Board Case No. 07-0893) is currently open. It is possible that fuel-related chemicals have migrated in groundwater from this property and beneath the Site, but there is insufficient evidence to reach this conclusion at this time. Additional data will be necessary to confirm that CVOCs were not released during the historic service station operations.

   Two other dry cleaners, located at 1946 Contra Costa Boulevard (07S0088; Former Dutch Girl Cleaners and currently the "Hosanna Cleaners") and 2001 Contra Costa Boulevard, are upgradient of the Site. The 07S0088 case is inactive and approximately 2,000 feet south-southeast of the Site. It is highly unlikely, primarily because of the lateral distance between this property and the Site, that any PCE released on this property has migrated in groundwater and commingled with the CVOC plume associated with the Site. The 2001 Contra Costa Boulevard property, currently named PH Bargain Cleaners, is located approximately 1,300 feet to the south, and is not listed as a case in the Water Board records.

Three former and current paint shops - 1725 Contra Costa Boulevard, 1720 Linda Drive, and 1942 Linda Drive - are located upgradient of the Chevron property. The 1725 Contra Costa Boulevard property, the former "Deen Pierce Paint Company (Case No. 07-0344 and closed on July 20, 1994), had a former UST which reportedly contained mineral spirits; the UST was removed on or about July 16, 1986. Regional Water Board staff does not have any information about the other two paint shops. There is insufficient evidence to determine whether constituents from these properties have commingled with contamination at the Site.

Former and current automotive maintenance facilities at 1855-1859 Contra Costa Boulevard are located approximately 1,100 feet upgradient of the Site. CVOCs and petroleum hydrocarbons were released at this site. The case (Regional Water Board Case No. 07-0022) is open. No evidence was presented to the Regional Water Board to indicate a groundwater plume from this property has migrated all the way to 1705 Contra Costa Boulevard (the "Chevron" property).

10. **Basin Plan**: The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater, and also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board, U.S. EPA, and the Office of Administrative Law where required.

    The potential beneficial uses of groundwater underlying and adjacent to the Site include:

    a. Municipal and domestic water supply
    b. Industrial process water supply
    c. Industrial service water supply
    d. Agricultural water supply

    At present, there is no known use of the shallow groundwater zone underlying the Site for the above purposes. The vertical extent of groundwater contamination is unknown, and a future vertical delineation study is warranted. Because the Regional Water Board has insufficient information regarding the actual use of groundwater in the vicinity of the Site, Task 1 includes a requirement to survey for sensitive receptors. Similarly, the extent to which the shallow groundwater zone is connected to lower zones is not well-defined, necessitating the requirement in Task 1 to study potential vertical conduits and preferential pathways.

11. **State Water Board Policies**: State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background shall be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial

uses of such water, and not result in exceedance of applicable water quality objectives. This order and its requirements are consistent with Resolution No. 68-16.

State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304," applies to this discharge. This order and its requirements are consistent with the provisions of Resolution No. 92-49, as amended.

12. **Other Board Policy**: Regional Water Board Resolution No. 89-39, "Sources of Drinking Water," defines potential sources of drinking water to include all groundwater in the region, with limited exceptions for areas of high TDS, low yield, or naturally-high contaminant levels. The groundwater at this Site is a potential source of drinking water.

13. **Preliminary Cleanup Goals**: The Dischargers will need to make assumptions about future cleanup standards for soil, soil vapor, and groundwater in order to determine the necessary extent of remedial investigation, interim remedial actions, and the draft remedial action plan. Pending the establishment of site-specific cleanup standards, the following preliminary cleanup goals shall be used:

    a. Groundwater: Applicable water quality objectives (e.g., the lower of primary/toxicity and secondary/taste and odor MCLs) or, in the absence of a chemical-specific objective, equivalent drinking water levels based on toxicity and taste and odor concerns.

    b. Soil and Soil Vapor: Applicable screening levels as compiled in the Regional Water Board's Environmental Screening Levels (ESLs) document or its equivalent. Soil and soil vapor screening levels are intended to address a full range of exposure pathways, including direct exposure, indoor air impacts, nuisance, and leaching to groundwater. For purposes of this subsection, the Discharger shall assume that groundwater is a potential source of drinking water.

14. **Basis for 13267 and 13304 Order**: Water Code section 13267 authorizes the Regional Water Board to require a person who has discharged, discharges or is suspected of having discharged or discharging, to furnish technical or monitoring program reports. The burden of the reports required by this Order bears a reasonable relationship to the need for the report and the benefits to be obtained (to characterize the extent of contamination, the associated risks to human health and the environment, and document success of remediation efforts). Water Code section 13304 authorizes the Regional Water Board to issue orders requiring a discharger to cleanup and abate waste where the discharger has caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the State and creates or threatens to create a condition of pollution or nuisance. As discussed above, each of the dischargers has caused or permitted waste to be discharged or deposited, causing contamination of soil and groundwater. Contamination of groundwater creates and threatens to create conditions of pollution and nuisance.

15. **Cost Recovery**: Pursuant to Water Code section 13304, the Dischargers are hereby notified that the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this order.

16. **California Environmental Quality Act (CEQA)**: This action is an order to enforce the laws and regulations administered by the Regional Water Board. As such, this action is categorically exempt from the provisions of CEQA pursuant to Title 14 of the California Code of Regulations, section 15321.

17. **Safe Drinking Water Act:** It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This order promotes that policy by requiring discharges to meet the lower of primary and secondary maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.

18. **Notification:** The Regional Water Board has notified the Dischargers and all interested agencies and persons of its intent under Water Code section 13304 to prescribe Site Cleanup Requirements for the discharge, and has provided them with an opportunity to submit their written comments.

19. **Public Hearing**: The Regional Water Board, at a public meeting, heard and considered all comments pertaining to the proposed site cleanup requirement for the Site.

IT IS HEREBY ORDERED, pursuant to sections 13267 and 13304 of the Water Code, that the Dischargers (or their agents, successors, or assigns) shall investigate, cleanup, and abate the effects described in the above findings as follows:

A. PROHIBITIONS

1. The discharge of wastes or hazardous substances in a manner which will degrade water quality or adversely affect beneficial uses of waters of the State is prohibited.

2. Further significant migration of wastes or hazardous substances through subsurface transport to waters of the State is prohibited.
3. Activities associated with the subsurface investigation and cleanup which will cause significant adverse migration of wastes or hazardous substances are prohibited.

B. TASKS

1. COMPLETION OF SENSITIVE RECEPTOR SURVEY AND CONDUIT STUDY

COMPLIANCE DATE: January 7, 2015

Submit a technical report acceptable to the Executive Officer documenting the completion of an up-to-date sensitive receptor survey and a conduit study. To evaluate

the potential impact of the contamination on human health and the environment, the locations of sensitive receptors, including all water supply and irrigation wells, shall be identified. A door-to-door well survey shall be completed in the residential subdivisions to the north and west of the shopping plaza. A conduit study is needed to evaluate the role of subsurface utilities in the migration or accumulation of CVOCs in the subsurface.

2. PUBLIC PARTICIPATION PLAN

COMPLIANCE DATE: January 7, 2015

Submit a technical report acceptable to the Executive Officer to ensure adequate public participation will be undertaken at key steps in the remedial action process.

3. REMEDIAL INVESTIGATION/DATA GAP WORK PLAN

COMPLIANCE DATE: February 12, 2015

Submit a work plan acceptable to the Executive Officer to further evaluate source areas and to define the vertical and lateral extent of CVOCs in soil, soil vapor, and groundwater including, but not limited to: new vapor sampling at certain residential parcels and units within the shopping center; resampling of existing soil vapor probes; and, deeper groundwater investigation and sampling, both on- and off-Site.
The work plan shall specify investigation methods and a proposed time schedule.

4. COMPLETION OF REMEDIAL INVESTIGATION

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 3 Work Plan.

Submit a technical report acceptable to the Executive Officer documenting completion of necessary tasks identified in the Task 2 work plan. The technical report shall define the vertical and lateral extent of pollution down to concentrations at or below typical cleanup standards for soil, soil vapor, and groundwater.

5. COMPLETION OF HUMAN HEALTH RISK ASSESSMENT

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 4.

Submit a technical report acceptable to the Executive Officer documenting the completion of an appropriate human health risk assessment.

6. DRAFT REMEDIAL ACTION PLAN INCLUDING DRAFT CLEANUP STANDARDS

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 5.

Submit a technical report acceptable to the Executive Officer containing:

a. Results of the remedial investigation;
b. Evaluation of the installed interim remedial actions;
c. Feasibility study evaluating alternative final remedial actions;
d. Risk assessment for current and post-cleanup exposures;
e. Recommended final remedial actions and cleanup standards; and,
f. Implementation tasks and time schedule.

Item c shall include projections of cost, effectiveness, benefits, and impact on public health, welfare, and the environment of each alternative action.

Items a through c shall be consistent with the guidance provided by Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), CERCLA guidance documents with respect to remedial investigations and feasibility studies, Health and Safety Code section 25356.1(c), and State Board Resolution No. 92-49 as amended ("Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304").

Item e shall consider the preliminary cleanup goals for soil and groundwater identified in finding 13, and shall address the attainability of background levels of water quality (see finding 11).

7. DELAYED COMPLIANCE

If the Dischargers are delayed, interrupted, or prevented from meeting one or more of the completion dates specified for the above tasks, the Discharger shall promptly notify the Executive Officer and the Board may consider revision to this Order.

C. PROVISIONS

1. **No Nuisance**: The storage, handling, treatment, or disposal of polluted soil or groundwater shall not create a nuisance as defined in Water Code section 13050(m).

2. **Good Operations and Maintenance (O&M)**: The Discharger shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.

3. **Cost Recovery**: The Dischargers shall be liable, pursuant to Water Code section 13304, to the Board for all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. If the site addressed by this Order is enrolled in a State Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Dischargers over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.

4. **Access to Site and Records**: In accordance with Water Code section 13267(c), the Dischargers shall permit the Board or its authorized representative:

a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.

b. Access to copy any records required to be kept under the requirements of this Order.

c. Inspection of any monitoring or remediation facilities installed in response to this Order.

d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the Dischargers.

5. **Self-Monitoring Program**: The Dischargers shall comply with the Self-Monitoring Program as attached to this Order and as may be amended by the Executive Officer.

6. **Contractor/Consultant Qualifications:** All technical documents shall be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.

7. **Lab Qualifications:** All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Board using approved EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control (QA/QC) records for Board review. This provision does not apply to analyses that can only reasonably be performed on-Site (e.g., temperature).

8. **Document Distribution**: Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the following agencies:

- Regional Water Quality Control Board
- City of Pleasant Hill
- County of Contra Costa

The Executive Officer may modify this distribution list as needed.

All reports submitted pursuant to this Order shall be submitted as electronic files in PDF format. All electronic files shall be submitted via the State Water Board's Geotracker website, email (only if the file size is less than 3 MB), or on CD.

9. **Reporting of Changed Owner or Operator**: The Dischargers shall file a technical report on any changes in Site occupancy or ownership associated with the property described in this Order.

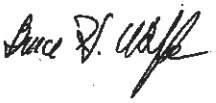
10. **Reporting of Hazardous Substance Release:** If any hazardous substance is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the Dischargers shall report such discharge to the Board by calling (510) 622-2369 during regular office hours (Monday through Friday, 8:00 AM to 5:00 PM).

A written report shall be filed with the Board within five working days. The report shall describe: the nature of the hazardous substance, estimated quantity involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective actions taken or planned, schedule of corrective actions planned, and persons/agencies notified.

This reporting is in addition to reporting to the Office of Emergency Services required pursuant to the Health and Safety Code.

12. **Periodic Site Cleanup Requirement Review**: The Board will review this Order periodically and may revise it when necessary. The Dischargers may request revisions and upon review the Executive Officer may recommend that the Board revise these requirements.

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 November 12, 2014.



Digitally signed by Bruce H. Wolfe
DN: cn=Bruce H. Wolfe, o=SWRCB, ou=Region 2, email=bwolfe@waterboards.ca.gov, c=US
Date: 2014.11.19 18:10:09 -08'00'

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

Attachment: Self-Monitoring Program

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

SELF-MONITORING PROGRAM for:

GREGORY VILLAGE PARTNERS, L.P.,
VILLAGE BUILDERS, L.P.,
JOSEPH J. LEE,
ALAN CHOI, and
KAUEN CHOI

for the property located at:

1643 CONTRA COSTA BOULEVARD
PLEASANT HILL, CONTRA COSTA COUNTY

1. **Authority and Purpose**: The Regional Water Board requests the technical reports required in this Self-Monitoring Program (SMP) pursuant to Water Code sections 13267 and 13304. This Self-Monitoring Program is intended to document compliance with Regional Water Board Order No. R2-2014-0041 (Site Cleanup Requirements).

2. **Monitoring**: The Dischargers shall measure groundwater elevations quarterly in all monitoring wells, and shall collect and analyze representative samples of groundwater according to the following schedule:

Well #	Sampling Frequency	Analyses	Well #	Sampling Frequency	Analyses
MW-1	A	8260B	MW-7	SA	8260B
MW-2	A	8260B	MW-8	SA	8260B
MW-3	SA	8260B	MW-9	SA	8260B
MW-4	SA	8260B	MW-10	SA	8260B
MW-5	A	8260B	MW-11	SA	8260B
MW-6	A	8260B			

Key: SA = Semi-Annually
8260B = EPA Method 8260B or equivalent
A = Annually

The Dischargers shall sample any new monitoring or extraction wells quarterly and analyze groundwater samples for the same constituents as shown in the above table. The Dischargers may propose changes in the above table; any proposed changes are subject to Executive Officer approval.

3. **Semi-Annual and Annual Monitoring Reports**: The Dischargers shall submit semi-annual monitoring reports to the Regional Water Board no later than 45 days following the sampling event. The reports shall include:

   a. Transmittal Letter: The transmittal letter shall discuss any violations during the reporting period and actions taken or planned to correct the problem. The letter shall be signed by the Discharger's principal executive officer or his/her duly authorized representative, and shall include a statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge.

   b. Groundwater Elevations: Groundwater elevation data shall be presented in tabular form, and a groundwater elevation map shall be prepared for each monitored water-bearing zone. Historical groundwater elevations shall be included in the fourth quarterly report each year.

   c. Groundwater Analyses: Groundwater sampling data shall be presented in tabular form, and a map shall be prepared that includes the analytical data for one or more key contaminants for each monitored water-bearing zone, as appropriate. The report shall indicate the analytical method used, detection limits obtained for each reported constituent, and a summary of QA/QC data. Historical groundwater sampling results shall be included in the fourth quarterly report each year. The report shall describe any significant increases in contaminant concentrations since the last report, and any measures proposed to address the increases. Supporting data, such as lab data sheets, need not be included (however, see record keeping - below).

   d. Groundwater Extraction: If applicable, the report shall include groundwater extraction results in tabular form, for each extraction well and for the Site as a whole, expressed in gallons per minute and total groundwater volume for the quarter. The report shall also include contaminant removal results, from groundwater extraction wells and from other remediation systems (e.g., soil vapor extraction), expressed in units of chemical mass per day and mass for the quarter. Historical mass removal results shall be included in the fourth quarterly report each year.

   e. Status Report: The quarterly report shall describe relevant work completed during the reporting period (e.g., site investigation, interim remedial measures) and work planned for the following quarter.

4. **Violation Reports**: If the Dischargers violate requirements in the Site Cleanup Requirements, then the Dischargers shall notify the Regional Board office by telephone as soon as practicable once the Dischargers have knowledge of the violation. Regional Water Board staff may, depending on violation severity, require the Dischargers to submit a separate technical report on the violation within five working days of telephone notification.

5. **Other Reports**: The Dischargers shall notify the Regional Water Board in writing prior to any Site activities, such as construction or underground tank removal, which have the potential to cause further migration of contaminants or which would provide new opportunities for site investigation.

6. **Record Keeping**: The Dischargers or their agents shall retain data generated for the above reports, including lab results and QA/QC data, for a minimum of six years after origination and shall make them available to the Regional Water Board upon request. The six-year period of retention shall be extended during the course of any unresolved litigation regarding this discharge or when requested by the Regional Water Board.

7. **SMP Revisions**: Revisions to this SMP may be ordered by the Executive Officer, either on his/her own initiative or at the request of the Dischargers. Prior to making SMP revisions, the Executive Officer will consider the burden, including costs, of associated self-monitoring reports relative to the benefits to be obtained from these reports.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. R2-2014-0042

ADOPTION OF INITIAL SITE CLEANUP REQUIREMENTS for:

CHEVRON U.S.A. INC. and
MB ENTERPRISES, INC.

for the property located at:

1705 CONTRA COSTA BOULEVARD
PLEASANT HILL, CONTRA COSTA COUNTY

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

1. **Site Location and Description**: The 0.48-acre property (Assessor's Parcel No. 150-103-016-5) is a rectangular-shaped, commercial parcel (the "Site"). The Site is located in the Gregory Gardens area of Pleasant Hill and is currently developed with a Chevron-branded gasoline service station. The Site is bounded by Contra Costa Boulevard to the east, Doris Drive to the north, Linda Drive to the west, and a parking lot and commercial building to the south. The Gregory Village Shopping Center and its main parking lot are located directly north of Doris Drive.

   Site improvements include a small station/convenience store, car wash, three underground storage tanks ("USTs") for automotive fuels, product dispensers and underground piping, underground pavements and landscape areas. A dry cleaner once occupied the southern portion of the Site.

2. **Site History**: An automotive fueling facility has existed on the northern parcel for over 60 years. Standard Oil operated on the northern parcel from 1950 until 1977. The successor to Standard Oil, Chevron U.S.A. Inc. (herein referred to as "Chevron"), operated at the Site from 1977 until 2003. Automotive repairs were undertaken on the Site from approximately 1950 to 1987.

   In 1971, two commercial parcels, a northern lot at 1705 Contra Costa Boulevard (Assessor's Parcel No. 150-103-011) and a southern lot at 1709 Contra Costa Boulevard (Assessor's Parcel No. 103-103-012) were merged to form one parcel, which was then split to create a larger northern parcel to facilitate the construction of an automotive maintenance and repair building (constructed in 1972). Both of these properties were owned jointly by the Lehrmans and Robinsons between 1965 and late 1986. A dry cleaner had reportedly operated at 1709 Contra Costa Boulevard since the mid-1950s. According to information provided by the Contra Costa County Assessor's office, prior to the construction of the new service station building in 1972, the common (central) property line between 1705 and 1709 Contra Costa Boulevard was shifted to the south

approximately 35 feet to create a bigger lot. The southern part of the new building, along with a steel waste oil UST, were then located in a section over the original dry cleaner property.

In late December 1986, Chevron purchased both 1705 and 1709 Contra Costa Boulevard, and sometime in 1987 merged the two lots into one parcel. According to available building permits and inspection reports, by late 1987, the former dry cleaner building had been removed, and in early 1988 Chevron constructed the car wash. Chevron sold the Site in March 2003 to MB Enterprises, Inc., the current property owner and gas station operator.

Unauthorized releases of volatile organic compounds (VOCs) and related constituents, including chlorinated volatile organic compounds (CVOCs), chiefly tetrachloroethylene (PCE) and trichloroethylene (TCE), and various petroleum hydrocarbons (e.g., benzene, toluene, ethylbenzene, xylenes, etc.), were documented at the Site, mainly from former leaking USTs. It is common knowledge that PCE and TCE have been used at automotive repair stations for many years to clean brakes, carburetors, and fuel injection systems and to degrease engines and other parts, and oftentimes USTs were used to store waste oil and related products.[1] [2] [3] PCE is also commonly associated with dry cleaners.

Land Ownership: According to information provided by Chevron, the Site was owned by several different individuals and/or businesses since about 1950, as follows:

1950 to 1960

- Gregory Village, Inc. (a business that no longer exists with no agent for service of process)

1960 to 1986

- Phil Heraty Organization (a business that no longer exists with no agent for service of process)
- Philip and Jane Lehrman (Philip Lehrman is deceased)
- Ned and Marjorie P. Robinson (both are deceased)
- Philip and Jane Lehrman, Ned and Marjorie P. Robinson owned the property between June 25, 1965 and December 31, 1986
- Merle D. Hall Company (no clear evidence of property ownership)
- Max W. Parker (no clear evidence of property ownership)

December 1986 to March 2003

- Chevron U.S.A. Inc.

March 2003 to Present

- MB Enterprises, Inc. (current property owner and gas station operator)

[1] USEPA, November 1993, Economic Impact Analysis of the Halogenated Solvent Cleaning NESHAP, EPA-453/D-93-058.

[2] State of California Environmental Protection Agency/Air Resources Board, June 1997, Status Report, Perchloroethylene Needs Assessment for Automotive Consumer Products.

[3] State of California Environmental Protection Agency, November 2006, Automotive Aerosol Cleaning Products: Low-VOC, Low Toxicity Alternatives, Report prepared by Institute for Research and Technical Assistance for the Department of Toxic Substances Control and City of Santa Monica.

3. **Named Dischargers**: Marjorie P. Robinson has passed away since this Order was noticed and is therefore not being named as a discharger. Jane A. Lehrman is not being named as a discharger because there is insufficient evidence that she permitted a discharge. She owned the Site in name only; her husband was the actual owner. Mrs. Lehrman did not even know she owned the Site, much less what occurred there. She had no role in purchasing, leasing or selling the Site; her husband made those decisions. He would often ask her to sign documents without explaining them to her. At the time of her ownership, Mrs. Lehrman did not know nor should she have known about the dangers inherent in the gas station/auto repair and dry cleaning activities at the Site because her connection to the Site was tenuous other than her nominal ownership.

   Gregory Village, Inc. and Phil Heraty Organization are not being named as dischargers because these businesses no longer exist, and the California Secretary of State has no record for an agent for service of process on file for either company. Merle D. Hall Company and Max W. Parker are not being named as dischargers because there is no clear evidence of their ownership of Site 2.

   Chevron is named as a discharger with respect to the discharge and migration of CVOCs from a former waste oil tank and the former dry cleaner, both located on the Site. First, with respect to CVOC releases from a former on-Site leaking waste oil UST, Chevron is named as a discharger because of substantial evidence that it discharged CVOCs to soil and groundwater at the Site. This evidence includes Standard Oil/Chevron's operation of the waste oil UST for many years, and the pattern of CVOC and petroleum contamination subsequently detected in the vicinity of the former waste oil UST. As of at least 1986, Chevron knew of the discharge or the activities that caused the discharge and had the legal ability to prevent the discharge.

   Second, with respect to CVOC releases from the former on-Site dry cleaner, Chevron is a discharger because it owned the property during the time of an ongoing discharge of CVOCs in soil and groundwater, had knowledge of the discharge and the activities that caused the discharge, and had the legal ability to control the discharge.

   MB Enterprises, Inc. is named as a discharger because it is the current owner of the property on which there is an ongoing discharge of pollutants, has knowledge of the discharge, and the ability to control the discharge.

   Regional Water Board staff was unable to locate a former operator of the dry cleaner, Charles Grant Bostwick and Joanne Bostwick. Regional Water Board staff understands that former operators of the dry cleaner, Morris and Genoise Jorgenson, are also deceased.

   If additional information is submitted indicating other parties caused or permitted any waste to be discharged on the Site where it entered or could have entered waters of the State, the Regional Water Board will consider adding those parties to this order. Collectively the above identified responsible parties are referred as Dischargers.

4. **Regulatory Status**: The Site is currently not subject to a Regional Water Board order.

5. **Site Hydrogeology:** The Site is located within the Ygnacio Valley Groundwater Basin, a structural depression between the Berkeley Hills to the west and the Diablo Range to the east. The basin sediments consist of thick Quaternary-age alluvial and floodplain deposits, generally comprised of unconsolidated to partially consolidated, discontinuous layers of silt, clay, sand, and gravel. The local topography is gently tilted to the north and northwest.

   From June 1989 through May 2013, groundwater levels in various monitoring wells associated with the Site ranged from a low of approximately 20 feet below the ground surface (bgs) to a high of approximately six feet bgs. The lowest groundwater level recorded coincides with a time when Chevron was pumping and treating polluted groundwater. Groundwater flow direction in the shallow zone has been mainly to the north at an average gradient of approximately 0.005 feet per foot.

6. **Hydrology:** The closest major surface water bodies are Grayson Creek, located approximately 2,000 feet to the west, and Walnut Creek, located approximately 2,000 feet to the east. No municipal drinking water supply wells are known to exist within a two-mile radius of the site. Shallow "backyard" irrigation wells are common on residential parcels in Pleasant Hill, but a door-to-door domestic well survey has not been completed in the residential subdivision downgradient of the Site.

7. **Remedial Investigation:** Numerous soil, soil vapor, and groundwater samples collected and analyzed during approximately 26 years of environmental investigation and cleanup activities at the Site have detected a variety of chemicals, several of which are very toxic to human health. The data indicates CVOCs are present in groundwater at levels exceeding the maximum contaminant levels (MCLs)[4] beneath and downgradient (north and northwest) of the Site, and have likely commingled with another CVOC groundwater plume associated with the former P&K Cleaners location north of the Site

   Petroleum and chlorinated VOCs were detected in soil, soil vapor, and shallow groundwater within the boundaries of the Site, adjacent to the Site, and within the Gregory Village Shopping Center parcel downgradient of the Site.

   The Site was an open environmental case from 1986 to early 2005. Chevron indicated the Site did not pose a threat to human health, groundwater and the environment. Based on the findings and analysis in environmental assessment reports from Chevron, groundwater contamination appeared to be localized and adequately characterized. Chevron requested closure of the UST case. Based on the data presented, the Regional Water Board concurred and closed the fuel UST case on January 14, 2005. All groundwater monitoring wells, with the exception of off-Site well EA-5, were destroyed in March 2005.

   An October 31, 2005, letter from Cambria Environmental Technology, Inc. about the destruction of monitoring wells stated, *As part of approved case closure, one sentinel well, EA-5, will remain active and sampled annually for petroleum hydrocarbons and halogenated volatile organic compounds.* EA-5 has been monitored on an annual basis for

[4] The drinking water standard for PCE and TCE, known as the maximum contaminant level, or MCL, is 5 µg/L.

the past eight years. The maximum historic PCE and TCE detections in groundwater samples from off-Site well EA-5 have been 52 µg/L, and 84 µg/L, respectively.[5]

The maximum detected concentrations of contaminants of potential concern are listed by medium in the table below:

	Maximum Concentration Detected		
Analyte	Groundwater (µg/L)	Soil (mg/kg)	Soil Gas (µg/m^3)
PCE	5,000	720	3,247,700
TCE	3,600	1.6	2,100,000
cis-1,2-DCE	2,900	2.7	410,000
vinyl chloride	910	<48	<5,200
benzene	12,000	2.2	520,733
TPH-gasoline	110,000	80	916,667

The CVOC concentrations in groundwater are substantially above the drinking water standards (e.g., the Maximum Contaminant Level, or MCL, for PCE is 5 µg/L). The CVOC concentrations in soil vapor are well above risk-based screening levels (e.g., Regional Water Board's ESLs[6]) for potential vapor intrusion concerns at commercial facilities (e.g., ESL is 2,100 µg/m³), and pose a direct threat to indoor air.

The distribution and types of contaminants in groundwater downgradient of the Site generally mirror the contaminants found in soil, soil vapor and groundwater directly beneath the Site. The data demonstrates that CVOC concentrations in groundwater are generally higher near the former steel waste oil UST, then generally decrease in concentrations as the plume expanded to the north and attenuated, indicating the pollution in groundwater migrated and likely commingled with the P&K Cleaners plume.

Nevertheless, there are several data gaps in regards to the vertical and lateral distribution of CVOCs in soil, soil vapor and groundwater, both on-Site and off-Site. Additional soil, soil vapor and groundwater characterization studies, and a human health risk assessment, are warranted.

8. **Interim Remedial Measures**: The first-generation fueling facilities were removed and replaced in 1971-1972. The second-generation fueling facilities were removed and replaced in 1987-1988. A steel waste oil UST installed in 1972 was removed in 1986. There are no records to indicate contaminated soils were excavated and hauled away during any of the waste oil UST removal and replacement activities.

Between August 1991 and July 1996, pumping, treatment, and permitted disposal of contaminated groundwater was conducted at the Site as an interim remedial measure. Approximately 1,900,000 gallons of polluted groundwater were extracted, treated, and

[5] These concentrations are much lower than on-Site concentrations of CVOCs and in groundwater samples collected more recently and to the west of EA-5 (as discussed below), indicating EA-5 is probably not located in an appropriate area to function as a "sentinel" well.

[6] See Regional Water Board webpage: http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/esl.shtml

discharged to the sanitary sewer system. Chevron reported removal of approximately 12 pounds of Total Petroleum Hydrocarbons and 41 pounds of CVOCs. Chevron reported that the pump and treat system did little to reduce the high concentrations of CVOCs dissolved in groundwater.

In 1995, as part of site renovation activities, trench liners, pea gravel, and product piping were removed, and shallow soil contaminated with petroleum hydrocarbons was excavated to approximately three feet bgs.

Additional interim remedial measures likely will be necessary to reduce the threat to water quality, public health, and the environment posed by the past chemical releases, and to provide a technical rationale behind the selection and design of final remedial measures.

9. **Nearby Sites:** A commercial property to the north, 1601-1699 Contra Costa Boulevard and currently the Gregory Village Shopping Center, is directly downgradient of the Site. A dry cleaner that used PCE in their operations existed in one of the tenant suites within the plaza (with a property address of 1643 Contra Costa Boulevard). CVOC releases from this former dry cleaner are well-documented (Regional Water Board Case No. 07S0132). This property is the subject of another proposed order directed to Gregory Village Partners, L.P., and others.

A former Unocal gas station located at 1690 Contra Costa Boulevard is cross-gradient and approximately 150 feet northeast of the Site. This site, now a McDonald's restaurant, had confirmed releases of petroleum hydrocarbons and fuel oxygenates to soil and groundwater. A waste oil UST was removed from the site in 2000. The case (Regional Water Board Case No. 07-0450) was closed on September 27, 2010. There is insufficient evidence to determine whether MTBE and other fuel-related constituents from this former gas station property have commingled with contamination at the Site.

A former gas station (now a Taco Bell restaurant), located at 1700 Contra Costa Boulevard, is cross-gradient and approximately 100 feet east of the Site., This property had historic releases of petroleum hydrocarbons. A waste oil UST was removed from the site in the past (date unknown). The case (Regional Water Board Case No. 07-0873) was closed on May 20, 2008. There is insufficient evidence to determine whether fuel-related constituents from this property have commingled with contamination at the Site.

Minor concentrations of CVOCs were detected in the groundwater beneath a former gas station at 1521-1529 Contra Costa Boulevard, approximately 600 feet north of the Site and upgradient of CVOC detections in soil vapor and groundwater in the residential neighborhood north of the Gregory Village Shopping Center. The property, which was an automotive service and fueling station until 1977, has an unknown chemical release history. The case (Regional Water Board Case No. 07-0893) is currently open. There is insufficient evidence to determine whether fuel-related constituents from this former gas station property have commingled with contamination at the Site or migrated beneath the adjacent residential neighborhood. Additional data will be necessary to confirm that CVOCs were not released during the historic service station operations.
Two other dry cleaners, located at 1946 Contra Costa Boulevard (07S0088; Former Dutch Girl Cleaners and currently the "Hosanna Cleaners") and 2001 Contra Costa Boulevard, are

upgradient of the Site. The 07S0088 case is inactive and approximately 2,000 feet southeast of the Site. Because of the lateral distance between this property and the Site, it is unlikely that any PCE released on this property migrated in groundwater and commingled with the CVOC plume associated with the Site. The 2001 Contra Costa Boulevard property, currently PH Bargain Cleaners, is located approximately 1,300 feet to the south and is not listed as a case in the Water Board's records.

Former and current automotive maintenance facilities at 1855-1859 Contra Costa Boulevard are located approximately 650 feet upgradient (south) of the Site. CVOCs were released at this site. The case (Regional Water Board Case No. 07-0022) is open. There is insufficient evidence to determine whether fuel-related constituents from this property have commingled with contamination at the Site.

Three current and former paint shops - 1725 Contra Costa Boulevard, 1720 Linda Drive, and 1942 Linda Drive - are located upgradient of the Site. The 1725 Contra Costa Boulevard property, the former "Deen Pierce Paint Company (Case No. 07-0344 and closed on July 20, 1994), had a former UST which reportedly contained mineral spirits; the UST was removed on or about July 16, 1986. Regional Water Board staff does not have any information about the other two paint shops. There is insufficient evidence to determine whether constituents from these properties have commingled with contamination at the Site.

10. **Basin Plan**: The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater, and also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board, U.S. EPA, and the Office of Administrative Law where required.

    The potential beneficial uses of groundwater underlying and adjacent to the Site include:

    a. Municipal and domestic water supply
    b. Industrial process water supply
    c. Industrial service water supply
    d. Agricultural water supply

    At present, there is no known use of the shallow groundwater zone underlying the Site and immediate area for the above purposes. The vertical extent of groundwater contamination is unknown, and a future vertical delineation study is warranted. Because the Regional Water Board has insufficient information regarding the actual use of groundwater in the vicinity of the Site, Task 1 includes a requirement to survey for sensitive receptors. Similarly, the extent to which the shallow groundwater zone is connected to lower zones is not well-defined, necessitating the requirement in Task 1 to study potential vertical conduits and preferential pathways.

11. **State Water Board Policies**: State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this

discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background shall be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives. This order and its requirements are consistent with Resolution No. 68-16.

State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304," applies to this discharge. This order and its requirements are consistent with the provisions of Resolution No. 92-49, as amended.

12. **Other Board Policy**: Regional Water Board Resolution No. 89-39, "Sources of Drinking Water," defines potential sources of drinking water to include all groundwater in the region, with limited exceptions for areas of high TDS, low yield, or naturally-high contaminant levels. The groundwater at this Site is a potential source of drinking water.

13. **Preliminary Cleanup Goals**: The Dischargers will need to make assumptions about future cleanup standards for soil, soil vapor, and groundwater in order to determine the necessary extent of remedial investigation, interim remedial actions, and the draft remedial action plan. Pending the establishment of site-specific cleanup standards, the following preliminary cleanup goals shall be used for these purposes:

    a. Groundwater: Applicable water quality objectives (e.g., lower of primary (toxicity) and secondary (taste and odor) maximum contaminant levels, or MCLs) or, in the absence of a chemical-specific objective, equivalent drinking water levels based on toxicity and taste and odor concerns.

    b. Soil and Soil Vapor: Applicable screening levels as compiled in the Regional Water Board's draft Environmental Screening Levels (ESLs) document or its equivalent. Soil and soil vapor screening levels are intended to address a full range of exposure pathways, including direct exposure, indoor air impacts, nuisance, and leaching to groundwater. For purposes of this subsection, the Dischargers must assume that groundwater is a potential source of drinking water.

14. **Basis for 13267 and 13304 Order**: Water Code section 13267 authorizes the Regional Water Board to require a person who has discharged, discharges or is suspected of having discharged or discharging, to furnish technical or monitoring program reports. The burden of the reports required by this Order bears a reasonable relationship to the need for the report and the benefits to be obtained (to characterize the extent of contamination, the associated risks to human health and the environment, and document success of remediation efforts).

    Water Code section 13304 authorizes the Regional Water Board to issue orders requiring dischargers to cleanup and abate waste where the dischargers have caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the State and creates or threatens to create a condition of pollution or nuisance. As

discussed above, each of the dischargers has caused or permitted waste to be discharged or deposited, causing contamination of groundwater. Contamination of groundwater creates and threatens to create conditions of pollution and nuisance.

15. **Cost Recovery**: Pursuant to Water Code section 13304, the Dischargers are hereby notified that the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this order.

16. **California Environmental Quality Act (CEQA)**: This action is an order to enforce the laws and regulations administered by the Regional Water Board. As such, this action is categorically exempt from the provisions of CEQA pursuant to Title 14 of the California Code of Regulations, section 15321.

17. **Safe Drinking Water Act:** It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This order promotes that policy by requiring discharges to meet the lower of primary and secondary maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.

18. **Notification**: The Regional Water Board has notified the Dischargers and all interested agencies and persons of its intent under Water Code section 13304 to prescribe Site Cleanup Requirements for the discharge, and has provided them with an opportunity to submit their written comments.

19. **Public Hearing:** The Regional Water Board, at a public meeting, heard and considered all comments pertaining to the proposed site cleanup requirement for the Site.

IT IS HEREBY ORDERED, pursuant to sections 13267 and 13304 of the Water Code, that the Dischargers (or its agents, successors, or assigns) shall investigate, cleanup and abate the effects described in the above findings as follows:

A. PROHIBITIONS

1. The discharge of wastes or hazardous substances in a manner which will degrade water quality or adversely affect beneficial uses of waters of the State is prohibited.

2. Further significant migration of wastes or hazardous substances through subsurface transport to waters of the State is prohibited.

3. Activities associated with the subsurface investigation and cleanup which will cause significant adverse migration of wastes or hazardous substances are prohibited.

B. TASKS

1. COMPLETION OF SENSITIVE RECEPTOR SURVEY AND CONDUIT STUDY

COMPLIANCE DATE: January 7, 2015

Submit a technical report acceptable to the Executive Officer documenting completion of an up-to-date sensitive receptor survey and a conduit study. To evaluate the potential impact of the contamination on human health and the environment, the locations of sensitive receptors, including water supply and irrigation wells, shall be identified. A conduit study is needed to evaluate the role of subsurface utilities in the migration or accumulation of CVOCs in the subsurface.

2. PUBLIC PARTICIPATION PLAN

COMPLIANCE DATE: January 7, 2015

Submit a technical report acceptable to the Executive Officer to ensure adequate public participation will be undertaken at key steps in the remedial action process.

3. REMEDIAL INVESTIGATION/DATA GAP WORK PLAN

COMPLIANCE DATE: February 12, 2015

Submit a work plan acceptable to the Executive Officer to further evaluate all source areas and to define the vertical and lateral extent of CVOCs in soil, soil vapor, and groundwater. The work plan shall specify investigation methods and a proposed time schedule.

4. COMPLETION OF REMEDIAL INVESTIGATION

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 3. Work Plan

Submit a technical report acceptable to the Executive Officer documenting completion of necessary tasks identified in the Task 2 work plan. The technical report shall define the vertical and lateral extent of pollution down to concentrations at or below typical cleanup standards for soil, soil vapor, and groundwater.

5. COMPLETION OF HUMAN HEALTH RISK ASSESSMENT

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 4.

Submit a technical report acceptable to the Executive Officer documenting the completion of an appropriate human health risk assessment.

6. DRAFT REMEDIAL ACTION PLAN INCLUDING DRAFT CLEANUP STANDARDS

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 5.

Submit a technical report acceptable to the Executive Officer containing:

a. Results of the remedial investigation
b. Evaluation of the installed interim remedial actions measures
c. Feasibility study evaluating alternative final remedial actions
d. Risk assessment for current and post-cleanup exposures
e. Recommended final remedial actions and cleanup standards
f. Implementation tasks and time schedule

Item c shall include projections of cost, effectiveness, benefits, and impact on public health, welfare, and the environment of each alternative action.

Items a through c shall be consistent with the guidance provided by Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), CERCLA guidance documents with respect to remedial investigations and feasibility studies, Health and Safety Code section 25356.1(c), and State Water Board Resolution No. 92-49 as amended ("Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304").

Item e shall consider the preliminary cleanup goals for soil and groundwater identified in finding 13 and shall address the attainability of background levels of water quality (see finding 11).

7. DELAYED COMPLIANCE

If the Dischargers are delayed, interrupted, or prevented from meeting one or more of the completion dates specified for the above tasks, the Dischargers shall promptly notify the Executive Officer and the Regional Water Board may consider revision to this Order.

C. PROVISIONS

1. **No Nuisance**: The storage, handling, treatment, or disposal of polluted soil or groundwater shall not create a nuisance as defined in Water Code section 13050(m).

2. **Good Operations and Maintenance (O&M)**: The Dischargers shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.

3. **Cost Recovery**: The Dischargers are liable, pursuant to Water Code section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of

such waste, abatement of the effects thereof, or other remedial action, required by this Order. If the site addressed by this Order is enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Dischargers over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.

4. **Access to Site and Records:** In accordance with Water Code section 13267(c), the Dischargers shall permit the Regional Water Board or its authorized representative:

   a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.

   b. Access to copy any records required to be kept under the requirements of this Order.

   c. Inspection of any monitoring or remediation facilities installed in response to this Order.

   d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the Dischargers.

5. **Self-Monitoring Program:** The Dischargers shall comply with the Self-Monitoring Program as may be established by the Executive Officer.

6. **Contractor/Consultant Qualifications:** All technical documents shall be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.

7. **Lab Qualifications:** All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Regional Water Board using approved EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control records for Regional Water Board review. This provision does not apply to analyses that can only reasonably be performed on-Site (e.g., temperature).

8. **Document Distribution:** Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the following agencies:
   - Regional Water Quality Control Board
   - City of Pleasant Hill
   - County of Contra Costa

   The Executive Officer may modify this distribution list as needed.

   All reports submitted pursuant to this Order shall be submitted as electronic files in PDF format. All electronic files shall be submitted via the State Water Board's Geotracker website, email (only if the file size is less than 3 megabytes), or on CD.

9. **Reporting of Changed Owner or Operator**: The Dischargers shall file a technical report on any changes in Site occupancy or ownership associated with the property described in this Order.

10. **Reporting of Hazardous Substance Release**: If any hazardous substance is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the Dischargers shall report such discharge to the Regional Water Board by calling (510) 622-2369 during regular office hours (Monday through Friday, 8:00 AM to 5:00 PM).

    A written report shall be filed with the Regional Water Board within five working days. The report shall describe: the nature of the hazardous substance, estimated quantity involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective actions taken or planned, schedule of corrective actions planned, and persons/agencies notified.

    This reporting is in addition to reporting to the Office of Emergency Services required pursuant to the Health and Safety Code.

11. **Periodic SCR Review**: The Regional Water Board will review this Order periodically and may revise it when necessary. The Dischargers may request revisions and upon review the Executive Officer may recommend that the Regional Water Board revise these requirements.

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 November 12, 2014.

Digitally signed by Bruce H. Wolfe
DN: cn=Bruce H. Wolfe, o=SWRCB, ou=Region 2, email=bwolfe@waterboards.ca.gov, c=US
Date: 2014.11.19 17:56:46 -08'00'

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

Attachment B

Gregory Village Partners, L. P. Comments on Tentative Order - Adoption of Initial Site Cleanup Requirements for 1643 Contra Costa Boulevard, Pleasant Hill, CA

Presentation to Members of the Regional Water Quality Control Board – San Francisco Bay Region

Edward A. Firestone, Esq.
on behalf of Gregory Village Partners, L.P.
November 12, 2014

Background

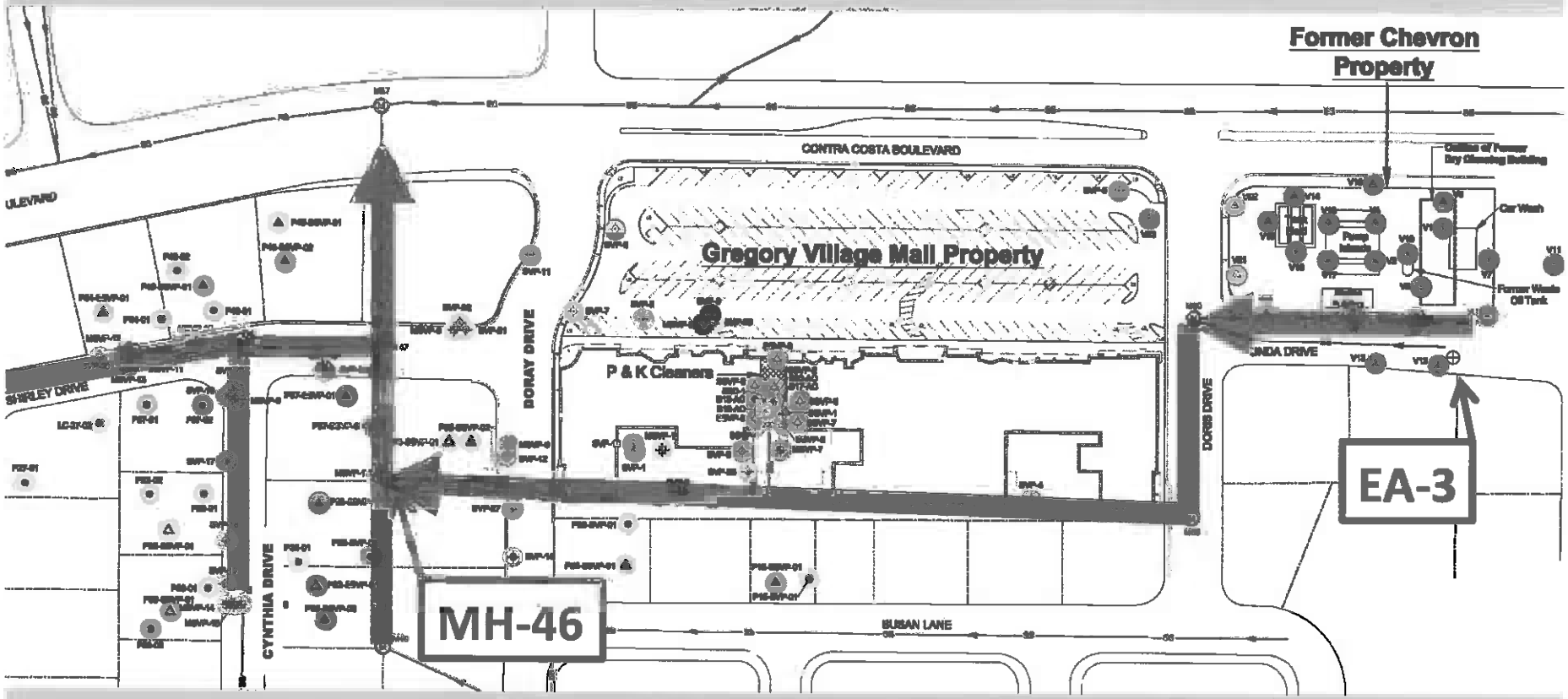
- P & K Cleaners ceased operations in 1991
- Gregory Village (GV) purchased shopping center in 1998
- GV entered voluntary program with Regional Board shortly after purchase
- GV is the only party working affirmatively to address environmental issues in area
- Commingled plume encompassing Chevron Site, GV Site and neighborhood
- There is another party – Central Contra Costa Sanitary District (CCCSD) – which needs to be brought to the table and that is why we are here today; it installed sewers in late 1940s, early 1950s that leaked PCE

- Why should the CCCSD be treated differently than any other potentially responsible party?

Issues

- It is the Regional Board's mandate to protect the waters of the State of California. To do this, CCCSD must be named as a discharger on the Order as both the law and the facts require
- Given the commingled plume, there should be a single order for the area that covers the GV Site, the Chevron Site and the neighborhood, that names all parties, for an efficient, effective and understandable cleanup process

CCCSD's sewer lines connect Chevron and GV Sites to neighborhood (PCE soil vapor)



The Regional Board's Obligations:

- Section 4.25 2) of the San Francisco Basin Plan states:

  "Federal, state, and local ***groundwater protection and remediation programs*** that will result in the overall maintenance or improvement of groundwater quality ***must be implemented Region-wide in a consistent manner*** [emphasis added]."

- State Water Resource Control Board Policy 92-49 states:

  "26. ***It is not the intent of the State or Regional Water Boards to allow dischargers***, whose actions have caused, permitted, or threaten to cause or permit conditions of pollution, ***to avoid responsibilities for cleanup*** [emphasis added]."

- State Water Resource Control Board Policy 92-49 states:

  "1. ***The Regional Water Board shall apply the following procedures*** in determining whether a ***person*** shall be required to investigate a discharge... ***[A.4] Industry-wide operational practices that historically have led to discharges, such as leakage of pollutants from wastewater collection and conveyance systems***, sumps, storage tanks, landfills, and clarifiers [emphasis added];"

CCCSD is clearly a discharger under the Water Code

- Water Code §13304 states:

  "(a) Any ***person who has discharged or discharges waste*** into the waters of this state ... or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state ***and creates***, or threatens to create, ***a condition of pollution*** or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste... [emphasis added]"

- Water Code §13050 (c) defines person as:

  "(c) "***Person***" ***includes any*** city, county, ***district***, the state, and the United States, to the extent authorized by federal law [emphasis added]."

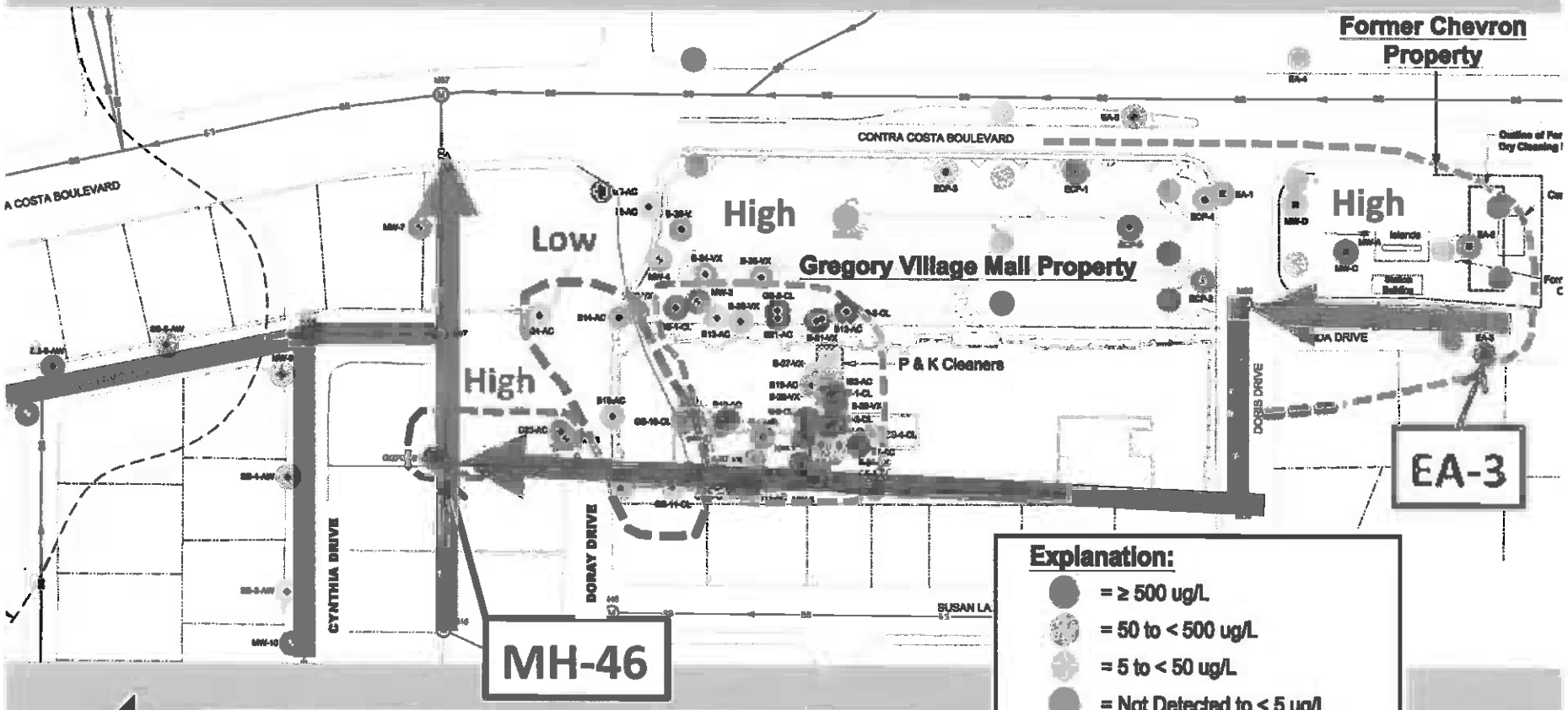
CCCSD has discharged solvents from its sewers

- It is an abdication of the Regional Board's responsibility to ignore a known release of pollutants to groundwater – an arbitrary and capricious act, violating the Basin Plan and State Water Board Policy 92-49 – when there is clear evidence that CCCSD's sewers leaked PCE into the environment

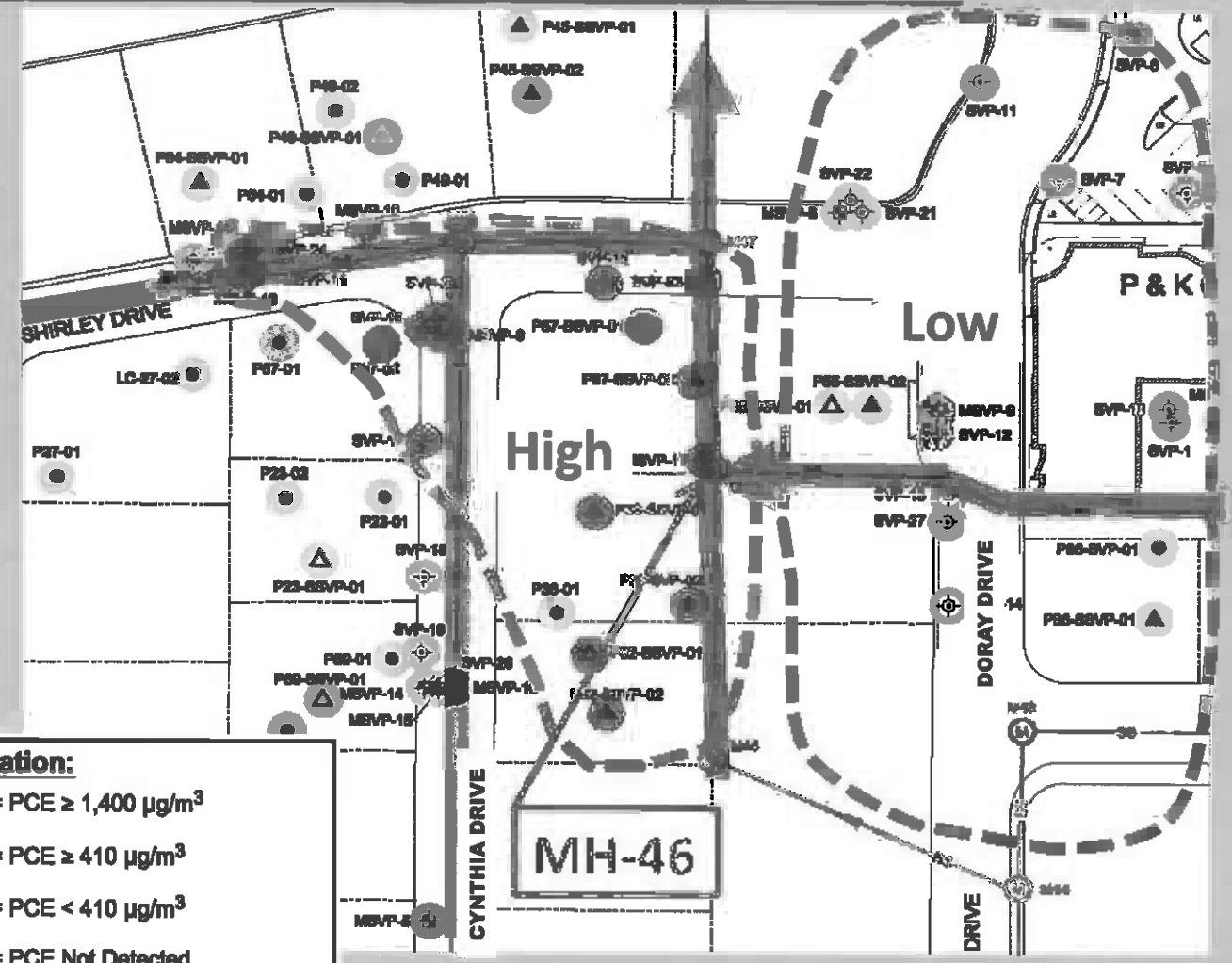
Solvents clearly released from CCCSD's sewers:
–Here's the Evidence–

- PCE detected in groundwater and soil vapor in neighborhood near CCCSD's sewers is at high levels and separate from other source areas
- PCE detected in groundwater at Chevron Site is highest ***next to sewer***, up/cross-gradient and across street from Chevron Site

Separate areas of high PCE concentrations in groundwater indicate separate releases



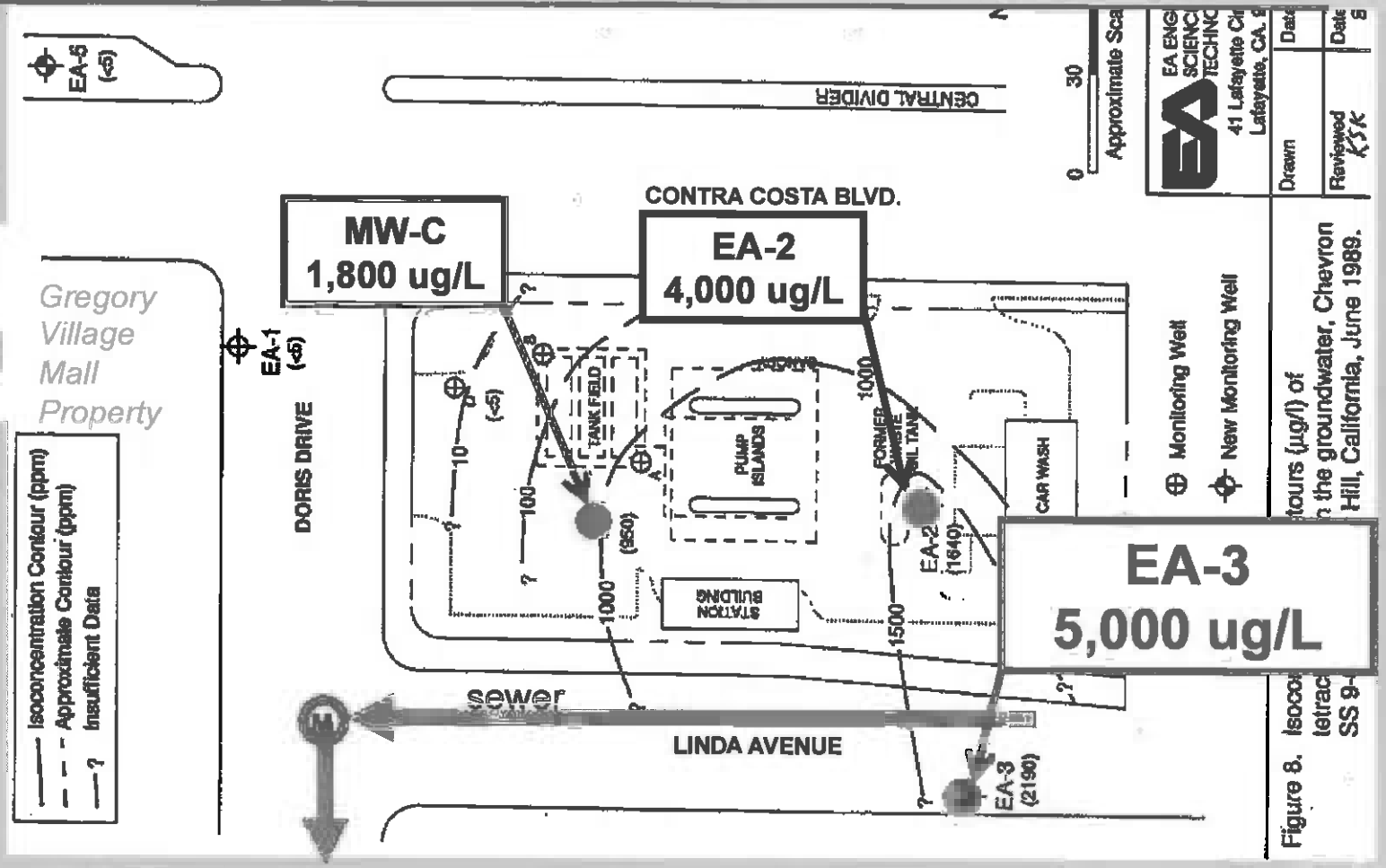
Separate areas of high PCE concentrations in soil vapor indicate separate releases



Explanation:

- = PCE ≥ 1,400 µg/m^3
- = PCE ≥ 410 µg/m^3
- = PCE < 410 µg/m^3
- = PCE Not Detected
- = Not Detected But Reporting Limit > ESL for Property Type

PCE highest in groundwater cross/up-gradient and across street from Chevron Site – next to sewer



General Direction of Groundwater Flow

Background image is from *Report of Investigation Soil Vapor Contaminant Assessment, Chevron SS 9-6817, 1765 Contra Costa Boulevard, Pleasant Hill, California*, prepared for Chevron U.S.A. Inc. by EA Engineering, Science, and Technology, Inc. dated 9 August 1989

CCCSD was aware of leaks and failed to repair them

- In 1977, according to CCCSD personnel, sewer line next to Chevron Site (Linda Dr.) was "in very poor shape has lots of cracks" but CCCSD did not replace it for over 10 years: This is area of highest concentrations of PCE in groundwater near Chevron Site; CCCSD records also show delays to make repairs on Doray Ave., Shirley Ave. near Cynthia Ave. (in neighborhood)

- In its submissions to the Staff and Board, ***CCCSD admits*** root penetrations, cracks, and sags

CCCSD's sewers were in poor condition and/or not maintained

- CCCSD Submission: "No reliable evidence that sewers in poor condition...information suggests that...sewers in question...in good...if not...excellent condition." "...the available evidence demonstrates that the [vitrified clay] pipes from the original installation have not failed."
- ***Reality:*** CCCSD engineer wrote paper in 2003 that states:

  "Clay sewer pipe installed prior to 1955 used oakum and cement mortar, tar, or hot sulfur to seal the joints. These materials have not performed well over time [emph. added]. Maintenance data from the Central Contra Costa Sanitary District in Martinez, California, was analyzed to determine the relationship between cleaning frequency and age for small diameter clay pipe. The clay pipe performed reasonably well for the [sic] approximately 35 years. After 35 years in service, the required cleaning frequency increased as the joint materials failed. In addition, root intrusion accelerated the failure of the pipe. It appears that the joints had fully failed at 50 years." *["Small Diameter Clay Sewer Pipe O&M Strategy; Replace It Now or run It to Failure"; (p. 1), J. Larson, P.E., HDR Engineering Inc., J. Pearl, P.E., CCCSD; Water Environment Federation, Collection Systems Conference, 2003]*

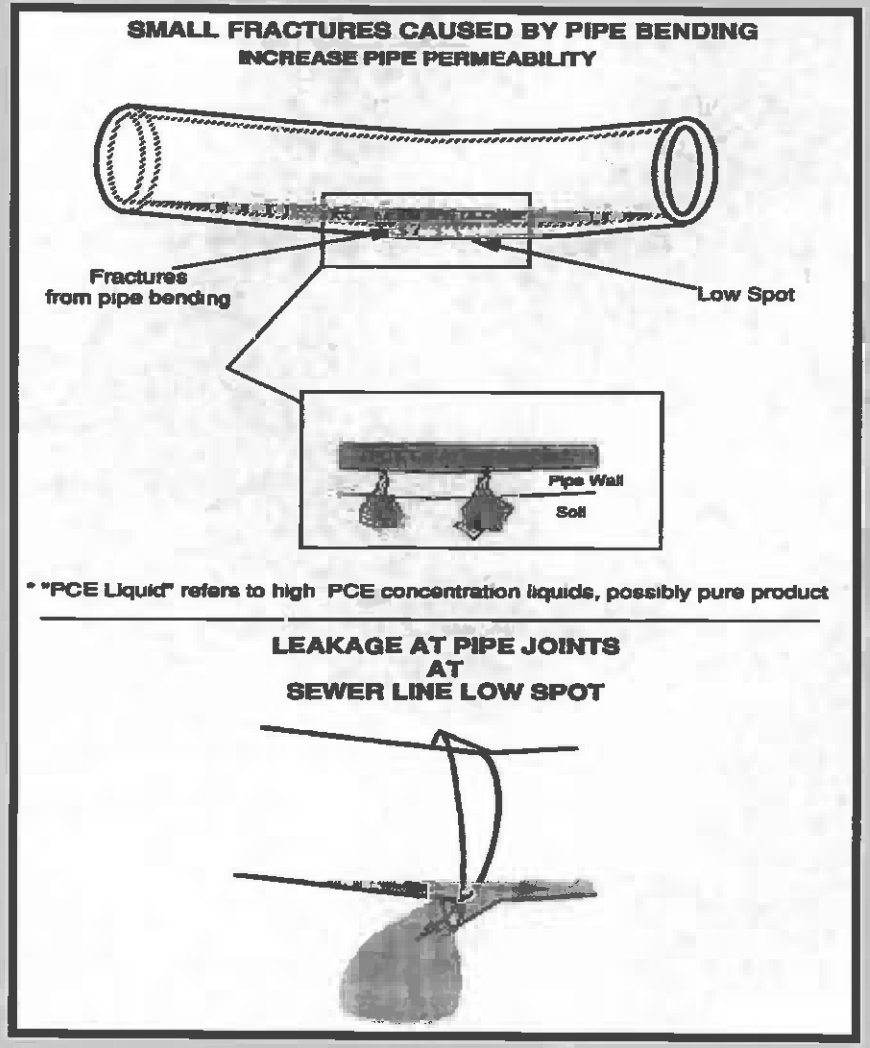
CCCSD's sewers were in poor condition and/or not maintained

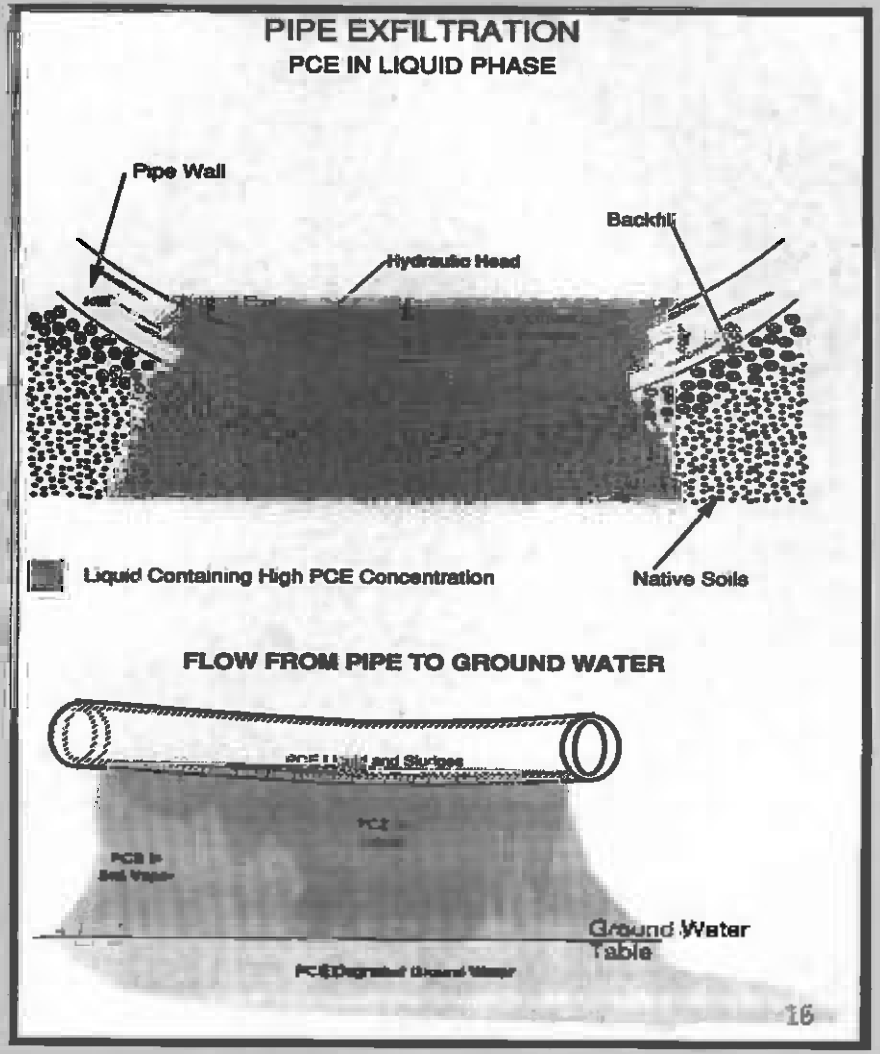
- ***Reality:*** 2003 paper continued:

  "Cement mortar is the most common joint material; it has not performed well over time ... In most cases the joint materials have deteriorated over time. These joints allow ready access for roots. Root growth through the joints causes three problems: (1) the roots grow into the sewer and reduce its capacity and/or cause stoppages and overflows, (2) the open joints allow infiltration, and (3) continued root growth and loss of exterior pipe wall support due to migration of soil ultimately causes the pipe wall to fail structurally. This manifests itself as cracking...Typical maintenance methods involve mechanical cutting of the roots and/or application of growth retarding herbicides. Mechanical cutting impacts pipe condition in two ways: it stimulates further root growth and the mechanical cleaning equipment can cause further structural damage over time." ***["Small Diameter Clay Sewer Pipe O&M Strategy; Replace It Now or run It to Failure"; (p. 2), J. Larson, P.E., HDR Engineering Inc., J. Pearl, P.E., CCCSD; Water Environment Federation, Collection Systems Conference, 2003]***

PCE can leave the sewer line in a number of ways

Dry Cleaners – A Major Source of PCE in Ground Water (RWQCB-CVR, 1992) – "Izzo Report" states: "The main discharge point for dry cleaners is the sewer line."





CCCSD's sewers in neighborhood were in poor condition and/or not maintained

- CCCSD's available records show serious problems:
- Shirley between M45 and M58: sunken spot at Shirley/Luella; TV inspections finds cracks, root intrusions, low section
- Shirley between M54 and M58: cracks, sunken area, open joint/cracked pipes [CCCSD report remarks "not urgent repairs"], dropped joint; cracks not repaired for over 9 years
- Shirley between M47 and M67: root penetration
- Luella between M54 and M58: root intrusion, cracked pipe, repair not made for over 5 years; 19 locations with root penetrations
- Cynthia between M53 and M54: sunken areas, separated joint, root intrusions
- Alley parallel to Susan between M59 and M46: pipe out of bend, "severe bend and cracks", roots, cracks, sags – no repairs noted

CCCSD was aware of and permitted discharges into a leaking sewer

- CCCSD's sewers were built to leak from installation

  Allowed infiltration/exfiltration rate:

  – 1950 CCCSD spec 1,400 gal/day/inch of pipe diameter/mile

  – 2003 CCCSD paper states current rate is 2,500 gal/day/mile for 6" pipe

CCCSD was aware of and permitted discharges into a leaking sewer

- CCCSD allowed high concentrations of PCE to be discharged to its sewers. **Example: Ordinance No. 99 (1974) allowed discharge to sewer of chlorinated solvents at a concentration of 0.002 mg/L "not to be exceeded more than 50% of time" and at a concentration of 0.004 mg/L "not to be exceeded more than 10% of time".**
- What does this mean?

  It means that 10% of the time more than 4 ppb could be discharged to the CCCSD's sewers.

  Thus, for 10% of the time, ***THERE WAS NO LIMIT*** on the amount of PCE to be discharged. This Ordinance allowed slug discharges to sewers of high levels of PCE in separator water and of pure PCE.

CCCSD must be named a discharger

- CCCSD: a) knew its sewers leaked and b) its regulations allowed high levels of PCE to be discharged to its sewers
- Landfills serve similar function in handling waste. This Board names municipal landfills that leak chlorinated solvents as dischargers. No fault or negligence involved. See Order No. R2-2007-0049 issued to City of San Jose (as owner and operator) – Story Road Landfill
- Water Code makes "districts" responsible for discharges – legislature intentionally included sanitary districts as responsible parties – the Regional Board policy should not exclude them

As a matter of policy, CCCSD must be named a discharger

CCCSD should not be treated any differently from other potentially responsible parties

A single order must be issued

- The Board commonly names multiple parties with two or more locations to a single order where there is a commingled plume

  See: R2-1989-0038 (Intersil, Siemens); R2-1991-0139/0140 (Nat'l Semiconductor, AMD, UT, HP); R2-1991-0119 (Micro Storage, Intel); R2-1992-0037 (multiple parties/addresses East Palo Alto); R2-1994-0184 (Teledyne, Spectra-Physics); R2-2001-0066 (multiple parties/addresses Napa); R2-1993-0111 (Hexcel, nearby disposal location); R2-2011-0065 (Kaneka Texas/Foamex, E*Poly Star, Metro Poly, Unipoly [surface discharges])

A single order must be issued

- Staff states:

  The commenter (i.e., GV) does not present any compelling reason to issue one order instead of two

- Response: Two orders will create a strong likelihood of confusion in the residential neighborhood; a single order will reduce confusion and reduce overall costs
- Staff confirms that this is a commingled plume. PCE detected in soil vapor and groundwater in community is thus the responsibility of multiple parties
- With multiple public participation plans and duplicative/ overlapping requirements, the community will be confused and costs will increase, slowing and jeopardizing an effective cleanup process

Conclusions

- Name CCCSD to the Order: *The law and policies are clear*
- Law: CCCSD is a discharger under Water Code §13304, §13050 (c)
- Basin Plan: "...groundwater protection and remediation programs...must be implemented Region-wide in a consistent manner"
- State Water Resource Control Board Policy 92-49: "It is not the intent of the State or Regional Water Boards to allow dischargers, whose actions have caused, permitted, or threaten to cause or permit conditions of pollution, to avoid responsibilities for cleanup"

Conclusions

- Issue a single Order: *To avoid duplication of effort, disparate requirements and confusion in the community*

Alternatively, create an operable unit for neighborhood naming all parties

Attachment C

CSO Maintenance Report

5 records for MAINS ID: 47B6-M60.0 47B6-R99.0									
Downstream Structure	Upstream Structure	Maintenance Date	Crew	Activity/ Tool	Result	Next Activity	Frequency (months)	Overflow/ Property Damage	Comments
47B6-M60.0	47B6-R99.0	06-08-2009	Jose Plascencia					N / N	USA 164300
47B6-M60.0	47B6-R99.0	07-18-2008	Butler	Power Rod / Cutter Blade	CL	Hydroflush	120	N / N	ROUTINE CLEAN
47B6-M60.0	47B6-R99.0	02-09-2005	Sauter					N / N	USA 46838
47B6-M60.0	47B6-R99.0	07-22-2004	Almond	Power Rod	CL	Hydroflush	120	N / N	ROUTINE CLEAN
47B6-M60.0	47B6-R99.0	04-09-2004	Robert Cleland					N / N	USA 126458:H2O MAIN REPLACEMENT

DAILY MAINTENANCE REPORT

JOB ZONE 4, ZONE 3, ZONE E,

DATE THUR MARCH 10, 1977 WEATHER CLEAR

HOURS WORKED 8 7AM A.M. TO 4:15 P.M.

FOREMAN ON JOB KETTLEER 8HRS

NO. OF MAINTENANCE MEN WORKING BROWN 8HRS

BATESTREET 8HRS

EQUIPMENT WORKING FENCE # 1 8HRS

TAP MACH # 2 4HRS

AMOUNT OF WORK INSTALLED

ZONE 4 3HRS

WENT TO SAN RAMON VALLEY BLVD. (AT SAN RAMON) CHECK OUT MAP TO TIE ON EXISTING 8" ZONE 4 NEW ACE HARDWARE STORE FOR PETE JENSEN TWO FIXES, HANDS MAIN TAP IS 10 GA. FROM MAP

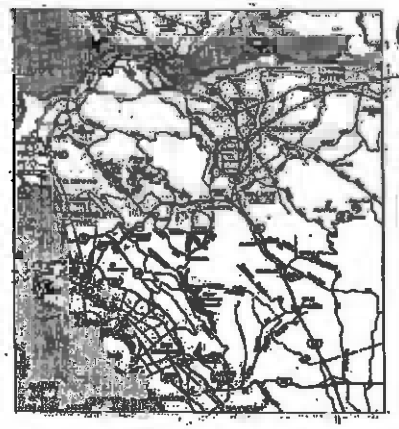
ZONE 3 4HRS

WENT TO BUILDING 19 PM AND INSTALLED 2 X6 CLAMP TEE FOR BUILDING # 170. FOR BACKUP JUST TAPPED MAIN AND PUT IN VALVE TO SEE IF WE HAD PRESSURE IN MAIN. WE DO. THEN CUT 2" COPPER AND PUT IN TEE AND VALVE. WE HAVE HOUSE CHECKS TO BE INSTALLED IN BUILDING # 19 AND 170 AND 2 SPRINKLER SYSTEMS

ACCIDENTS TO PERSONNEL OR DAMAGE TO PRIVATE PROPERTY OR PERSONS: NONE

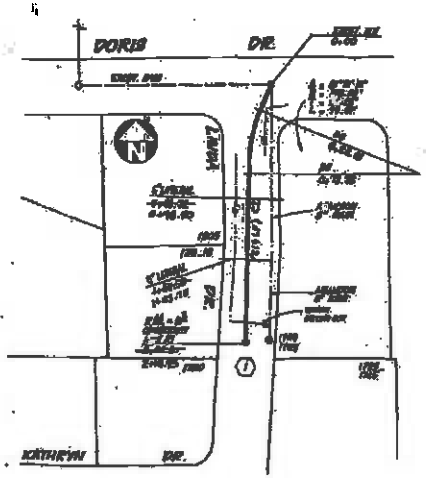
APPROVED: MAINTENANCE SUPT.

PROFILE



VICINITY MAP

SYSTEM MAP
SCALE: 1" = 600'



PLAN
SCALE: 1" = 80'

SEWER QUANTITIES

R/W LOG

1 ENCROACHMENT PERMIT FROM THE CITY OF PLEASANT HILL

RECORD DRAWING

Central Contra Costa Sanitary District
5019 Imhoff Place
Martinez, California 94553

SEWER RELOCATION

LINDA DRIVE PLEASANT HILL

Drawing No. 1

Sheet No. 1 of 1

4786 1 OF 1 CCCSD X4463

Attachment D

Edward A. Firestone
Attorney at Law
775 Guinda St.
Palo Alto, CA 94301
Tel. No. (650) 327-0277
Cell No. (650) 269-4561

July 3, 2012

Mr. Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

Subject: Central Contra Costa Sanitary District Sanitary Sewer
In Vicinity of 1601-1699 Contra Costa Boulevard
Pleasant Hill, California
Regional Board File No. 07S0132

Dear Mr. Wolfe:

This letter is in response to California Regional Water Quality Control Board, San Francisco Bay Region's ("RWQCB") decision not to issue a Water Code Sec. 13267 letter ("13267 letter") to the Central Contra Costa Sanitary District ("CCCSD") that would request a report regarding the release(s) of hazardous materials from CCCSD's sanitary sewer system in the vicinity of the Gregory Village Mall ("GV Mall") in Pleasant Hill, California ("Site"). Further, should the RWQCB determine that it will issue a Cleanup and Abatement Order ("CAO") for the Site, this letter serves to provide information to support the naming of CCCSD to such a CAO.

It is Gregory Village Partners, L.P.'s ("GVP") understanding that the RWQCB's determination not to issue a 13267 letter was based on discussions with individuals in the Central Valley Regional Water Quality Control Board, Sacramento Office ("Central Valley Board") and information presented by CCCSD to RWQCB staff on March 28, 2011. In what the RWQCB staff reported to us about its discussions with the Central Valley Board, we understand that staff learned that, from the Central Valley Board's perspective, unless a sewer district's behavior is egregious or there is willful misconduct, a sewer district should not be deemed to be a discharger for releases of hazardous materials from its sewer system under the Porter-Cologne Water Quality Control Act, Water Code Secs. 13000, et seq. ("Porter-Cologne"). Based on those conversations with the Central Valley Board and the information provided by CCCSD, the RWQCB decided not to issue a 13267 letter to CCCSD.

However, if what we understood the RWQCB staff's report to us is true, the Central Valley Board's unwritten policy is contrary to law and is in conflict with one of its own issued orders. Additionally, as a result of GVP's research, GVP has learned that CCCSD's representatives made statements to RWQCB staff in its meeting with the staff that were either false, incomplete or misleading concerning whether and when it prohibited tetrachlorethene ("PCE") discharge to its sewers. Further, CCCSD omitted a considerable amount of unfavorable information concerning the construction, operation and maintenance of its sanitary sewer system near the Site. Consequently, GVP requests that the Regional Board reconsider its position.

As discussed in more detail below:

1. Porter-Cologne provides for strict liability for dischargers, and there is no legal basis for treating CCCSD differently from any other discharger regarding the standard required to hold it as a "discharger";

2. Based on the materials provided by CCCSD pursuant to a Public Records Act request, CCCSD regulations appeared to specifically allow the discharge of PCE from dry cleaners into the sewer system until apparently 2007 and apparently continue to allow such discharges from other sources today;

3. CCCSD's specifications for sewer construction by their very nature allowed/permitted the significant discharge of materials* from the sewer into the subsurface (including groundwater);

4. According to CCCSD's own records, the sewers were maintained (or improperly maintained) such that there were various failures of the sewers in the vicinity of the Site; and

5. Groundwater and soil vapor testing results clearly show chlorinated hydrocarbons was released into the waters of the state from the sewer system consistent with findings regarding CCCSD's construction specifications and maintenance procedures.

This letter is based primarily on documents produced by CCCSD as a result of a California Public Records Act request made by GVP, a copy of which is attached for your convenience as Exhibit 1. In all likelihood there is more information that would support GVP's position in that (a) there are likely relevant documents in CCCSD files that CCCSD was not required to produce in order to comply with a Public Records Act request; (b) information needed to interpret the documents (such as the meaning of abbreviations and codes) was not provided; (c) a considerable amount of the information is not legible due to age of documents and copying constraints; and (c) few inspection or maintenance records prior to the mid-1990s were made available.

Strict Liability Under Porter-Cologne

Porter-Cologne states that "any person who has discharged or discharges waste into the waters of the state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state," is responsible for the investigation, clean up and abatement of same.[i] The statute expressly includes "districts" in the definition of person, making it clear that the legislature fully intended these semi-governmental agencies to be held to the requirements of the statute.[ii]

CCCSD is a discharger because it operated, and continues to operate, a sewer system that leaks sewage and its constituents into the subsurface as discussed in more detail below. Further, CCCSD knowingly accepted, and continues to accept, hazardous substances, such as PCE, into its sewer system[iii] and permitted those substances to leak into the waters of the state from its pipes. In fact, while CCCSD banned PCE discharges from dry cleaners in 2007, it apparently continues to accept such discharges of chlorinated hydrocarbons from other operations.[iv] Finally, CCCSD is a discharger merely because it owns the sewers, whether or not its actions caused the discharge. State Water Resources Control Board ("SWRCB") and RWQCB orders have long stated that owners of property from which a discharge has

* Trichloroethene (TCE) has also been detected at various concentrations in the vicinity of the Site. The source of TCE is either the result of PCE degradation or TCE that has been discharged into the environment/sanitary sewers by TCE users or a combination of both. TCE and PCE are both chlorinated hydrocarbons and behave similarly in sewers and the environment.

occurred are dischargers because they owned the property during and after the time of the activity that resulted in the discharge, had knowledge of the discharge or the activities that caused the discharge, and had the legal ability to prevent the discharge.[v]

While the Central Valley Board appears to have an unwritten policy that it will not hold a sewer district liable as a discharger chlorinated hydrocarbon wastes unless there has been egregious behavior or willful misconduct, which the RWQCB appears to be adopting, there is no legal basis for treating CCCSD any differently than any other potential discharger. Such a policy contradicts express provisions of the Water Code and its application likely violates provisions of California administrative law as well. It is, however, of interest to note that the CAO in which the Central Valley Board found the City of Lodi to be a discharger does not require egregious behavior or willful misconduct.[†] Of additional note is that, even if there were a legal basis for the Central Valley Board's unwritten policy, an examination of the facts surrounding CCCSD's sewer system near the Site, as discussed in more detail below, establishes that CCCSD's behavior was both egregious and willful in allowing releases of dry cleaning waste from the sewer system.

Based on current law, (a) given CCCSD's active operation of the sewers, (b) its ability to have prevented the discharges, (c) it's ability to investigate and remediate the releases from the sewers, and (d) its control over the sewer system, the RWQCB should conclude that CCCSD is a discharger.[vi] Further, CCCSD: (a) knowingly accepted PCE into its system from dry cleaners until 2007, (b) constructed a sewer system that allowed for significant exfiltration of liquids (and release of gasses), (c) failed to repair significant known leaks, and (d) knowingly permitted PCE and other chlorinated hydrocarbons to leak from its sewers into

---

[†] *In re City of Lodi*, CAO No. R5-2004-0043. According to the CAO, the City of Lodi owned and operated the City's sanitary sewer system. A portion of the sewer line ran into an alleyway and received PCE waste from a dry cleaner and printer. Groundwater near the sewer contained PCE and its degradation products in excess of water quality objectives. In addition, soil in the vicinity of the sewer line contained PCE that threatened groundwater quality. PCE vapor intrusion to indoor air was documented in two buildings and threatened in others. The City of Lodi was named a discharger. The CAO states as follows:

> 2. The City of Lodi is the owner and operator of Lodi sanitary sewer system, of which the alleyway sewer line is a part. The City of Lodi operates its sanitary sewer system pursuant to an NPDES permit, # CA0079243, issued by the Regional Board. The City of Lodi is subject to this Order because as owner and operator of a waste disposal conveyance system the City has caused or permitted waste to be discharged to waters of the state where it has created and threatens to create a condition of pollution or nuisance. The City has had actual or constructive (legally presumed) knowledge of discharges from its sewers, and the ability to prevent further sewer discharges, since at least 1992.
>
> 12. Regional Board staff also requested that the City of Lodi repair the leaking, sagging sewer line in the area of the pure phase liquid PCE release in the Central Plume pollution source area. Although PCE is not currently being discharged into the sewer in this area, the repair was necessary to prevent sewer leakage from causing further migration of PCE already present in the soil. In response to the Regional Board staff's request, the City recently slipped-lined that section of the sewer.

Nowhere in the CAO is there a provision that states that the City of Lodi is being named because its behavior is in any way egregious or there is willful misconduct. Rather, the CAO simply states:

> 23. Based on the facts stated herein and the evidence referenced in the Staff Report, including the Exhibits attached to the Staff Report, the testimony presented at the hearing, and the technical reports submitted with regard to investigation of the sites subject to this Order, the Regional Board finds that City of Lodi... [has] caused or permitted, or [is] causing or permitting, waste, i.e., PCE, to be discharged or deposited where it is, or probably will be, discharged into the waters of the state, specifically the groundwater beneath the central area of the City of Lodi, and [has] created, or threaten to create, a condition of pollution or nuisance, as provided in Water Code Section 13304.

The fact pattern involving CCCSD at the Site is almost identical to the fact pattern involving the City of Lodi. Under California law, it is only necessary to establish that there has been a discharge and that the entity is a discharger; the behavior of the party is neither relevant nor appropriate for a Regional Board to consider in determining a party's status as a discharger.

the environment. Thus, even if the RWQCB were to follow this misguided unwritten policy of the Central Valley Board, CCCSD would still qualify as a discharger.

CCCSD Regulations Expressly Allowed for the Discharge of PCE Until 2007

In its slide presentation on March 28, 2011, CCCSD representatives informed the RWQCB that "CCCSD has excellent source control program – PCE discharge prohibited" (slide 2); "Adopted ordinance in 1963 prohibiting discharge of harmful substances into the sewer system (e.g. PCE); Further strengthened ordinance in 1974 to address specific pollutants including chlorinated hydrocarbons; Ordinance revisions in 1981 and 1991 to further prohibit discharges such as PCE and TCE into sewers" (slide 8); and "CCCSD acted prudently and has a strong history of: Source control prohibitions, Pollution prevention programs, Excellent sewer maintenance" (slide 21). These statements are false, incomplete or misleading.

At all times during the operation of the dry cleaners at the GV Mall (i.e., until 1992), CCCSD did not prohibit the discharge of PCE from dry cleaners to its sewers. Based on the records provided by CCCSD, it apparently did not put such a prohibition in place until 2007. CCCSD quoted general provisions of its code to the RWQCB in its March 28, 2011 Power Point presentation and ignored specific provisions of its regulations that expressly allowed for the discharge chlorinated hydrocarbons into the sewer. Under rules of statutory construction, all language in a statute must be given meaning and should be read whenever possible so as not to create a conflict between the provisions. The only way to interpret the CCCSD code under this rule is that chlorinated hydrocarbons, in general, and PCE specifically, did not fall within the definitions of prohibited substances prior to 2007. A more detailed discussion of specific regulations follows.

From the 1950s through 2007, CCCSD ordinances are either silent on the issue of PCE discharges or expressly allow anyone, including dry cleaners, to discharge PCE into the sewers.[vii] GVP does not have a copy of the 1963 ordinance referenced in the Power Point materials (slide 8) from CCCSD's presentation to the RWQCB. The 1974 ordinance referenced in those materials, contrary to the assertion of the CCCSD, expressly allows the discharge of chlorinated hydrocarbons within certain concentrations.[viii] The 1981 and 1991 ordinances also provide for and permit the discharge of chlorinated hydrocarbons in general and PCE specifically.[ix] It appears that CCCSD did not prohibit the discharge of PCE from dry cleaners to its sewers until 2007 and it appears that CCCSD continues to permit the discharge of PCE from other sources.[x] (Copies of the ordinances referenced in this paragraph and elsewhere in this letter are provided for the RWQCB's convenience as Exhibit 2.)

In addition, CCCSD itself interpreted its regulations to allow for the discharge of PCE into the sewer. Evidence of this includes a letter sent to all dry cleaners in June 1992 that notifies the dry cleaners of the establishment of a PCE discharge limit of 0.5 parts per million (ppm). Interestingly, CCCSD also notes, "[a] recent study[xi] of groundwater and soil contamination in the Central Valley has shown that perchlorethylene exfiltration from sewer lines may cause contamination of the soil and groundwater." (A copy of this letter and applicable portions of the study ("Izzo Report") are attached for your convenience as Exhibits 3 and 4, respectively.) Thus, in direct contradiction to the statements it made to the RWQCB, CCCSD allowed the discharge of PCE to its sewers, even after it was well aware that sanitary sewers were an important source of PCE detected in the environment.

Finally, additional evidence that the CCCSD allowed discharge of PCE into its sewers can be found in the Annual CCCSD Pretreatment Program Reports (copies of which will be provided upon request) which indicate that the CCCSD knew of, tested for, and consistently found measurable PCE concentrations in influent and/or effluent sampling from 1986 to 2010[xii] (excluding only 2005).

CCCSD Knowingly Built a Leaking Sewer System

CCCSD plans show that the sanitary sewers in the vicinity of the GV Mall were constructed by the 1950s. A Plan of Sanitary Sewers for the Gregory Gardens residential development located adjacent to the GV Mall is dated 1949 and notes that 1) sewers will be clay pipe as specified by the Contra Costa County Sanitation District and 2) all work to be done to Central Contra Costa Sanitary District Specifications (Exhibit 5). Also, a 1950 Plan and Profile of Sanitary Sewer shows the sewer extending from Linda Drive, through Doris Drive and the alley behind the GV Mall to manhole M46 (Exhibit 6). See Exhibit 7 for a map showing locations of streets, manholes ("M"), and rodding inlets ("R") referred to in this letter.

Sewer Specifications, which are undated but appear to be from the early 1950's or earlier, expressly provide for an exfiltration tolerance of 1400 gallons per inch of diameter for the length of the sewer in miles per day (Exhibit 8). The sewer line serving the Linda Drive area through the GV Mall to the northern neighborhood (i.e., R61 to M60 to M59 to M46) is 8-inches in diameter (Exhibit 6). The sewer down pipe of M46 to M67 in Contra Costa Boulevard is 15-inches in diameter. The sewer from M44 to M46 to M47 to M67 is 15-inches in diameter and was in existence in 1949 (Exhibit 5). Applying the specifications to these sewer lines, up to two gallons per day per foot of 8-inch diameter pipe and nearly four gallons per day per foot of 15-inch diameter pipe are allowed to exfiltrate into the subsurface. Subsequent specifications in 1956 (Exhibit 9) and 1959 (Exhibit 10) also expressly allow exfiltration. Later specifications do not provide allowed exfiltration amounts but discuss infiltration allowances and allowable air leaks during testing of up to one pound per square inch during a two minute test period – meaning that, by permitting leakage, the system design requirements still allow exfiltration. Based on these regulations, CCCSD intentionally and knowingly built a sewer system that leaked.

Some sewer pipes appear to have been constructed relatively flat, which increases the potential for the accumulation of waste material as well as leakage and/or back-flow through the pipes. The 8-inch diameter sewer from M58 to M47 in Shirley Drive is shown by plan (Exhibit 11) to have a slope of 0.003 feet/foot (0.3%) and the 8-inch diameter sewer behind GV Mall is shown by plan (Exhibit 6) to be at a slope of 0.005 feet/foot (0.5%); both are less than the current CCCSD recommendation of 0.0077 feet/foot (0.77%) (Exhibit 12).

Additionally, the early Sewer Specifications require all pipes for sewers, wye branches, drop connections and flushing inlets to be "un-glazed vitrified clay sewer pipe (Exhibit 8, 9, and 10)." Bituminous (i.e., asphalt) joint compound was used and gaskets were specified as jute or oakum (Exhibit 8, 9 and 10). The Izzo Report found that PCE was released from sewer pipes including intact pipes, stating "Work done by the City of Merced shows that intact sewer lines can and have discharged PCE to the soil" (Izzo, p. 11). The Izzo Report further states: "In this method, PCE volatilizes inside the pipe and moves as a gas through the sewer pipe wall…The piping material is not designed to contain gas" (Izzo, p. 20). The Izzo Report comments: "Sewer pipe is not impermeable to water or PCE" (Izzo, p. 19). Thus, sewer pipes allow PCE vapor to be transported anywhere along their length where it (and wastewater) can migrate from the pipe into the environment.

In addition, the Izzo Report found that older pipe joints and other connections are one of the five likely methods by which PCE can penetrate the sewer line: "At pipe joints and other connections, PCE can move out of the sewer as liquid or gas. Also, as the pipes shift after installation, they could separate at the joints, allowing PCE to discharge even more easily to the vadose zone. Current gasket technology and reduction in leakage factors of pipes by the industry has reduced discharges at this point. But most commercial and retail districts in the cities of the Central Valley have pipes that predate this technology." (Izzo, p. 19). Also the Izzo Report states "Sewer pipes are brittle, so when the line bends, fractures are

likely to occur, increasing the leakage of the pipe. Since PCE is heavier than water (1.63 times the weight of water at 20°C), it tends to collect in these low spots and then flow through the pipe fractures into the vadose zone" (Izzo, p. 19). The potential for leakage is increased where there are low spots in sewer pipes and PCE collects in the low spots (Izzo, p. 19).

CCCSD Operated a Failing Sewer System and Failed to Inspect and/or Maintain the Sewer System in an Appropriate Manner

From the perspective of strict liability for a discharge (as specified by the Water Code), the question of whether a) the sewer system simply failed or b) the failure was due to poor maintenance, are not relevant. But given the RWQCB's reliance on an unwritten policy respecting a sewer district's behavior, CCCSD's records provide evidence that it knowingly operated a failing, leaking sewer system and failed to maintain it properly. Note that this information is based on the limited files that CCCSD provided in response to a Public Records Act request. That request sought records, specifically including maintenance records, from the beginning of CCCSD operations. However, in its response, CCCSD provided sparse information concerning maintenance in early operational timeframes even though the sewers in the area were constructed in the late 1940s and early 1950s. Thus, despite the positive representations of CCCSD in its meeting with RWQCB staff, GVP has little information concerning how well or how poorly the system operated or how well or how poorly CCCSD inspected and maintained the system near the Site prior to the mid-1990s – a gap in history of close to fifty years.

The following information establishes that the sewer system near the Site was not only failing and leaking, but that CCCSD failed to maintain or repair it in a timely fashion. The locations of the sanitary sewer sections discussed below are displayed on Exhibit 7. Copies of the referenced materials are attached, except where noted.

Louella Drive (between R57 and M58; see Exhibit 13)

- A Collection System Operations ("CSO") Maintenance Report for the time period from 1994 through February 2011 for pipes in Louella Drive reflects significant gaps in maintenance including no inspections between February 1995 and October of 1997 and October of 1997 and February of 2003.
- A CSO Work Order reflects knowledge of root intrusion caused by cracked pipes in Shirley Drive ten feet upstream of M58 on October 28, 1997, with the work to repair the cracked pipes not completed until May 22, 2003, over 5½ years from the initial discovery.
- A January 25, 2007 CCTV inspection also reports root penetrations at 19 locations along this sewer.

Shirley Drive (between M45 and M58; see Exhibit 14)

- January 19, 1979 CCCSD inspection notes identify a sunken spot in Shirley Drive at Luella Drive.
- A CCCSD TV Inspection report from 1994 identifies locations with cracks and roots and a low section.

Shirley Drive (between M54 and M58; see Exhibit 15)

- The CSO Maintenance Report for 1985 through 2011 for the pipe on Shirley Drive between Cynthia Drive and Luella Drive reports a trench failure, cracks, and sunken area in 1994 as well as a crack in 1997.

- A CCTV Pipeline Inspection Report performed on December 12, 2006 states that the pipe in Shirley Drive between Luella and Cynthia Drives sags from position 3 to 191.1 and that the camera was underwater from position 8.4 to 191.1.
- An open joint and cracked pipes were discovered in this area and farther north on Shirley Drive in January 13, 1994 along with roots but the CCCSD report remarks "not urgent repairs." Another TV Inspection Daily Work Report of cracks and a "dropped joint" is dated October 10, 1997 and appears to be at the same locations as noted in 1994. The cracks in existence in 1994 do not appear to have been fixed until May 22, 2003, over 9 years after the discovery.

Shirley Drive (between M47 and M54; see Exhibit 16)

- The CSO Maintenance Report establishes that this sewer has required increasingly frequent maintenance by hydroflushing; from once each 4 years from 1994 to 2002, to once each year from 2002 to 2008, then once each 6 months from 2008 to 2010.

Shirley Drive to Contra Costa Drive (between M47 and M67; see Exhibit 17)

- The CSO Maintenance Report identifies only two maintenance events for this sewer, in 1998 and 2006.
- An inspection video for December 19, 2006 shows root penetration at 97 ft from M47.

Cynthia Drive (between R52 and M53; see Exhibit 18)

- CCTV pipeline inspections of the sewer were conducted on March 22, 2004, January 27, 2005, and January 23, 2007 that identified root penetrations into the sewer and an offset joint. No report of sewer repair was received.
- Multiple logs reference sunken trench areas as a result of deteriorating sewer pipes in this area. An April 1, 2005 report indicates that soil was excavated and recompacted but there is no indication of sewer pipe repair.

Cynthia Drive (between M53 and M54; see Exhibit 19)

- The CSO Maintenance Report from 1994 through 2011 indicates no maintenance between August 23, 1996 and March 22, 2004. Additionally, "sunken areas" related to problems with the sewer pipe are recorded on July 23, 1996, March 22, 2004, April 26, 2006, October 13, 2006, and February 23, 2007.
- CCTV Pipeline Inspection Reports indicate separated joint and/or root intrusions on January 27, 2005 and January 23, 2007.
- An inspection on March 22, 2004 indicated sunken trenches all over the street.
- Multiple repairs along this line have occurred including on or about April 26, 2006, March 7, 2007, April 1, 2008, and February 25, 2008. These repairs appear limited to excavation and recompaction of soil, no repair to the pipeline is identified.

Sewer between Doray Drive and Cynthia Drive near Shirley Drive (M44 to M45 to M46 to M47)

- No inspection, maintenance or repair records prior to 2006 were provided by the CCCSD for these sections of pipe.

Doray Drive (between M44 and M48; see Exhibit 20)

- A February 15, 2006 CCTV inspection report found a hole in the sewer pipe. The report states ""Hole in Pipe" was found around the manhole ring. It was not found in the previous inspection (see below). Therefore, this is not a potential source of contamination." The prior inspection referred to was conducted on May 27, 2005.

Alley Parallel to Susan Lane (between M59 and M46; see Exhibit 21)

- There is a May 3, 2000 CCCSD TV inspection report that states: "pipe out at bend," referring to the bend in the sewer pipe at the south edge of Doray Drive (558 feet down pipe from M59).
- This report also identifies infiltration, roots and/or cracks at four other locations, at 122, 132, 401, and 406 feet down pipe (north) from M59. There is no record for repair of these sections of the pipe.
- Also on May 3, 2000, a CCCSD TV inspection was conducted from M46 south to Doray Drive where a bend in the sewer alignment prevented the inspection from including the pipe under Doray Drive. The inspection report states that at the north edge of Doray Drive (106 feet south of M46) there is a "severe bend and cracks." In addition, the report says that an 11 feet long section of pipe with cracks is located 83 to 94 feet south of M46. There is no record that this cracked pipe was repaired.
- A May 9, 2000 notation on a CCCSD Work Order states that a repair was completed in Doray Drive, on the south side of the street.
- A December 18, 2006 CCTV Pipeline Inspection Report identifies that a "sag begins" at 416 feet from M59. In addition, the video from this inspection shows that a change in pipe material (from vitrified clay to galvanized iron) begins at about 77 feet south of M46 and extends to at least Doray Drive where the video stops due to a bend in the pipe. The change in pipe material suggests that a repair of the sewer pipe was needed and completed, extending approximately 30 feet north of Doray Drive.

Doris Drive (between M59 and M60; see Exhibit 22)

- The CSO Maintenance Report from 1994 to 2010 indicates no maintenance from May 1994 to July 2004. Additionally, an almost three and half year gap exists between February 2005 and July 2008.
- A December 11, 2006 report indicates a sag in this line and that the line is partially under water.

Linda Drive (between M60 and R99/R61; see Exhibit 23)

- The CSO Maintenance Report provided for this area consists solely of the 2004 to 2009 time period.
- A March 10, 1977 Daily Maintenance Report describes the condition of the sewer main in Linda Drive during the installation of a tee connection. The line at the tee connection located "153' up from M.H. at Linda Dr and Doris Dr" is described as "in very poor shape has lots of cracks."
- The CSO Maintenance Report states that the main was replaced in on April 9, 2004. However, the CCCSD also prepared a Sewer Relocation plan, dated March 3, 1988, that has a Record Drawing date of September 12, 2008, more than 20 years later. It is not clear based on the available information whether sewer replacement work was implemented when planned in 1988 or not until much later in 2004, or if there was a need to replace the sewer in both 1988 and 2004.
- A December 12, 2006 CCTV inspection video and a September 2, 2008 CCTV inspection report provide somewhat different results. The 2006 video indicates a sag of approximately 120 feet in this line. The 2008 report does not mention a sag.

Groundwater and Soil Vapor Data Shows Sewers Leaked

Groundwater and soil vapor investigations conducted by GVP identify at least three suspected sewer leakage locations that have resulted in chlorinated hydrocarbon releases and detections in the subsurface. A summary of environmental sampling data that implicates the sewers as a source of chlorinated hydrocarbons to the subsurface follows.

Apparent Source Area Near the Intersection of Shirley Drive and Cynthia Drive

A discussion of this leak area is provided in Section 4.1 of Erler & Kalinowski, Inc.'s ("EKI's") *Off-Site Property-Specific Soil Vapor and Sub-Slab Vapor Investigation Report*, dated 19 January 2011. The data suggest a source and release of PCE and other chlorinated hydrocarbons from the sewer line in the proximity of Shirley Drive and Cynthia Drive, as follows:

- The soil vapor results for sampled off-Site properties and streets indicate that concentrations of PCE and other chlorinated hydrocarbons are high in the vicinity of Shirley Drive and Cynthia Drive, near manhole M54. PCE was measured at high concentrations at several sampling locations in this area; MSVP-6 (at 6 feet below ground surface ("bgs")) = 52,100 micrograms per cubic meter ("ug/m^3"), SVP-15 = 35,000 ug/m^3, SVP-16 = 38,000 ug/m^3, and SVP-25 = 21,000 ug/m^3. This area of higher PCE concentration is distinguished from generally lower concentrations (i.e. below RWQCB Environmental Screening Levels ("ESL")) east of Shirley Drive and north of Cynthia Drive, with the exception of parcel P67 located at the intersection of Shirley and Cynthia Drives. South of the intersection, the subsurface vapor data show a sharp decline in PCE concentrations moving southward on parcel P55, i.e., south of the east-west trending sanitary sewer line that traverses parcel P55/P87. This finding provides support for a separation between elevated soil vapor concentrations detected on-Site at the location of the former P&K Cleaners and the elevated PCE concentrations in subsurface vapor observed in proximity to the suspected off-Site sanitary sewer lines to the north. This separation is illustrated on Figure 5 of the January 2011 EKI report (see Exhibit 24) by the general demarcation of the area found to contain subsurface vapor above the ESL for PCE along the sewer line that traverses parcel P55/P87 and that runs at the southern boundary of parcels P38 and P82.

Apparent Source Area in the Vicinity of Manhole M46

A discussion of the leak area near M46 is also provided in EKI's 19 January 2011 report. The environmental sampling data suggest a source of PCE and other chlorinated hydrocarbons in close proximity to M46 and generally north of the sewer line that runs between M45 and M47, approximately halfway between Cynthia Drive and Doray Drive. This sanitary sewer receives the wastewater flow (at M46) from the sewer lines that serve the GV Mall and the surrounding commercial and residential properties, including the Chevron property located at 1705 Contra Costa Boulevard (locations of former dry cleaning and auto repair facilities). High concentrations of PCE are present (a) in soil vapor and in shallow groundwater near M46 and (b) in soil vapor sampled near the segment of sanitary sewer that is located between M45 and M46 (see Exhibit 24). Data supporting these findings are summarized as follows:

- Concentrations of PCE in soil vapor samples collected from MSVP-17 located near M46 increase with depth, which indicates that chlorinated hydrocarbons found in shallow groundwater are the source of chlorinated hydrocarbons in soil vapor in this area, and the sanitary sewer at this location is generally at the depth of, or just below, the groundwater table.
- The PCE concentration (1,960 micrograms per liter, "ug/L") measured in the grab groundwater sample (GG-P87-01) collected approximately five feet north of MSVP-17 and approximately 13 feet north of M46 is the highest concentration of PCE measured to date in groundwater in the off-Site area north of the GV Mall.
- Coupled with elevated sub-slab and soil vapor concentrations of PCE measured at parcels P38 and P82 located adjacent on the northern side of the sewer from M45 to M46 and the observed lower subsurface vapor concentrations at parcel P55 south of M46, these recent sampling data

indicate the proximity of PCE and chlorinated hydrocarbon releases near M46 with additional releases or migration of chlorinated hydrocarbons along the segment of sewer line and its associated backfill from M46 to M45.

- The sanitary sewer line from M44 to M46, which runs along the back (southern side) of these residential properties is located in the uphill direction from the segment of sanitary sewer entering from the south and into which the former P&K Cleaners discharged; the confluence of these two sewer lines is at M46. The slope of the sewer line between M45 and M46 is relatively shallow, i.e., approximately 0.04 feet per foot. Flow backed up within this segment of sewer line or preferential migration of chlorinated hydrocarbons in sh allow groundwater or in vapor phase along the sewer line backfill are plausible explanations for the elevated concentrations of PCE measured in the SSVP samples at parcel P82 and in the soil vapor at P38-SVP-02.
- The soil vapor sample at P38-SVP-02 (PCE = 2,800 ug/m^3) was collected at a depth of approximately 5 feet bgs in a location in the back yard approximately 10 feet north of the sewer line between M45 and M46. The soil vapor sample at P38-SVP-01 (220 ug/m^3 PCE) was collected at a depth of approximately 5 feet bgs in a location in the front yard, approximately 75 feet north of the sewer line between M45 and M46.

Suspected Source Area in Linda Drive Along Sewer

As presented in Chevron site investigation reports dated in 1989 and 2012 (Exhibit 25 and the *Additional Site Investigation Report and Site Conceptual Model Report* by Canestoga-Rovers & Associates, dated 2 March 2012), very high concentrations of chlorinated hydrocarbons have been found on the Chevron property in soil vapor (maximum PCE = 3,250,000 ug/m^3) and in groundwater (maximum PCE = 4,000 ug/L) and high concentrations have migrated off the Chevron property onto the adjoining streets (Linda Drive and Doris Drive) and onto the GV Mall property. In a Chevron site investigation report dated 3 February 1989 (Exhibit 25), groundwater and soil sampling data were reported at former monitoring well EA-3 located in Linda Drive near the sanitary sewer directly west of and across the street from the Chevron site. Chevron reported that PCE and TCE were present in 1988 soil samples collected at location EA-3 at concentrations of 328 micrograms per kilogram ("ug/kg") and 86 ug/kg, respectively, which would have been above the groundwater table at this location and thus may have resulted from leakage from the sewer. Groundwater sampled in monitoring well EA-3, on 3 January 1989, had a reported PCE concentration of 5,000 ug /L and a TCE concentration of 750 ug/L providing further data suggesting a source of PCE and other chlorinated hydrocarbons in the proximity of sewer line in Linda Drive and extending along Linda Drive to the GV property. High concentrations of chlorinated hydrocarbons have migrated in groundwater from the area of the Chevron property onto the GV Mall property (maximum PCE = 3,380 ug/L; EKI's *Quarterly Groundwater Monitoring Report*, Fourth Quarter 2009, dated 16 February 2010).

As shown by the sewer inspection reports provided by the CCCSD, there are many sewer leak locations in Linda Drive, Doris Drive and along the sewer in the alley behind the GV Mall building that would act as release locations for chlorinated hydrocarbons discharged to the sewer from the Chevron property by former dry cleaning and auto repair operations. To summarize, these damaged sewer locations are as follows:

- *Linda Drive (between M60 and R99/R61):* A 1977 report describes the condition of the sewer main in Linda Drive as "in very poor shape has lots of cracks." A 2006 inspection identifies a sag in the sewer line. The sewer line in this area was replaced by CCCSD. The records provided by CCCSD do not discuss why this line was replaced.

- *Doris Drive (between M59 and M60):* A 2006 report identifies a sag in the sewer line.

- *Alley Parallel to Susan Lane (between M59 and M46):* In 2000, inspection reports identify infiltration, roots and/or cracks at 122, 132, 401, and 406 feet down pipe from M59 and "pipe out at bend" at the south edge of Doray Drive at 558 feet from M59. The reports also identified a "severe bend and cracks" at the north edge of Doray Drive (106 feet south of M46) and an 11 feet long section of pipe with cracks located 83 to 94 feet south of M46.

Conclusion

The California legislature expressly intended that districts be strictly liable under the Porter-Cologne Water Quality Control Act for releases from their facilities. CCCSD owns and operates the sewer pipes from which sewage leaks occur or have occurred into the subsurface. In addition to being strictly liable, by designing a system that in its very specifications permitted leakage, in operating a failing system, and in failing to repair the system in a timely manner, CCCSD actively discharged waste into the waters of the state. As such, CCCSD must be named as a discharger.

Please call if you have any questions.

Sincerely,

Edward A. Firestone

Enclosures

cc: K. Alm, Esq. (with enclosures)

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[i] Water Code Secs. 13267 and 13304.

[ii] Water Code Sec. 13050(c).

[iii] The fact that such activity may have been permitted under the laws at the time does not alleviate CCCSD of responsibility for addressing the current issues. *In the Matter of the Petitions of Aluminum Company of America; ALCOA Construction Systems; and Challenge Developments, Inc,* WQ Order No. 93-9.

[iv] Currently, we understand that the discharge of PCE to the sanitary sewer is apparently allowed from some non-dry cleaner operations so long as the amount of Total Toxic Organics ("TTO"), which include PCE, do not exceed 2.10 milligrams per liter. A copy of the "CCCSD List of Total Toxic Organic (TTO) Pollutants Subject To TTO Local Limit Or TTO Management Plan" is the last page of Exhibit 2.

[v] A partial list of the numerous cases supporting this proposition include: *In re Zoecon*, Order No. WQ 86-2 (2/20/86); *In Petition of Southern California Edison Ca.* WQ Order 86-11 (7/17.86); and *In the matter of Wenwest, Inc. et al*, Order No. 92-13 (10/22/92); *Ford Aerospace, et al.*, SFRWQCB Order No. R2-2007-0022.

[vi] See v.

[vii] A partial list of ordinances addressing this issue is as follows:

1. Ordinance 23 –Adopted June 4, 1953, prohibits the discharge of any substance other than human excrement in the sewers *unless under permit from CCCSD.*

2. Ordinance 99 – Adopted July 11, 1974 amends Article 4 of Chapter 8 of the Code of the CCCSD relating to Control of Industrial Waste. This amendment permits the discharge of chlorinated hydrocarbons provided that the concentrations not exceed 0.002 mg/l 50% of the time and 0.004 mg/l 10% of the time. Hence, it appears that CCCSD permitted higher concentrations of chlorinated hydrocarbons to be discharged to the sanitary sewer, so long as the time restrictions for such discharges were not violated. Sec 8-403.B(12).
3. Ordinance 147 – Adopted August 27, 1981 replaces the prior Source Control Ordinance. This ordinance expressly allows for the disposal of specific toxics into the sewer within specified limits. Sec 8-402.A4 and D (limit on total chlorinated hydrocarbons plus PCE listed in Appendix A as a toxic for which an effluent limit will set.)
4. Ordinance 147 – Adopted August 27, 1981 replaces the prior Source Control Ordinance. This ordinance expressly allows for the disposal of specific toxics into the sewer within specified limits. Sec 8-402.A4 and D (limit on total chlorinated hydrocarbons plus PCE listed in Appendix A as a toxic for which an effluent limit will set.)
5. Ordinance 176 – Adopted April 18, 1991, provides for the disposal of specific pollutants with specified constituent levels. Sec. 10.80.70. Resolution 91-024 allows for the discharge of Total Identifiable Chlorinated Hydrocarbons with a discharge limit of 0.5 mg/l.
6. Source Control Ordinance, Title 10, Effective July 12, 1991 as amended April 2, 1992, August 3, 1992 (Ordinance 183), August 1, 1996 (Ordinance No. 198), February 15, 2007 (Ordinance 242) and October 2, 2008. A review of the assorted amendments between 1991 and 2008 show that the discharge of PCE into the sewer system by dry cleaners was not prohibited until 2007. (See Sec. 10.080.040.P first added in 2007.)

[viii] See vii 2.

[ix] Ordinance 147 – Adopted August 27, 1981 replaces the prior Source Control Ordinance. This ordinance expressly allows for the disposal of specific toxics into the sewer within specified limits. Sec 8-402.A4 and D (limit on total chlorinated hydrocarbons plus PCE listed in Appendix A as a toxic for which an effluent limit will set). Ordinance 176 – Adopted April 18, 1991, provides for the disposal of specific pollutants with specified constituent levels. Sec. 10.80.70. Resolution 91-024 allows for the discharge of Total Identifiable Chlorinated Hydrocarbons with a discharge limit of 0.5 mg/l.

[x] Source Control Ordinance, Title 10, Effective July 12, 1991 as amended April 2, 1992, August 3, 1992 (Ordinance 183), August 1, 1996 (Ordinance No. 198), February 15, 2007 (Ordinance 242) and October 2, 2008. A review of the assorted amendments between 1991 and 2008 show that the discharge of PCE into the sewer system by dry cleaners apparently was not prohibited until 2007. (See Sec. 10.080.040.P first added in 2007.)

[xi] "Dry Cleaners – A Major Source of PCE in Ground Water", V. I. Izzo, 27 March 1992, p.2 ("Izzo" and "Izzo Report").

[xii] Years 1990-1992 not provided by CCCSD, so cannot verify for that time period.

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August 10, 2012

Via Hand Delivery

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Proposed Cleanup and Abatement Order for Cleanup of Property at 1601-1699 Contra Costa Blvd., Pleasant Hill, California
Regional Board File No. 07S0132

Dear Mr. Wolfe:

Our firm serves as General Counsel to the Central Contra Costa Sanitary District ("District"). In that capacity, this letter is to respond to the letter submitted by Ed Firestone on behalf of Gregory Village Partners ("GVP") urging the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") to name the District on a Cleanup and Abatement Order to cleanup releases from the P&K Cleaners located on GVP property at 1601-1699 Contra Costa Boulevard and releases from a former dry cleaner ("Pleasant Hill One Hour Cleaners" or "JS Pleasant Hill Cleaners") located on the current Chevron Property at 1701-1709 Contra Costa Boulevard in Pleasant Hill, California.

GVP's 12-page letter lacks any proof that the sanitary sewers in the area caused, permitted, threatened to release or released contamination into the environment. The reality is that GVP purchased a shopping center in the late 1990s in which dry cleaning businesses had operated continuously for over 30 years. GVP's Phase I Investigation revealed likely contamination that was subsequently confirmed. Instead of taking responsibility for the problem, GVP is attempting to justify having the rate-paying public pay for the cost of cleaning up the area by requesting that the Regional Board require the District to clean up the contamination under a Cleanup and Abatement Order ("CAO"). Naming the District on a CAO or Water Code section 13267 letter based on speculative evidence is contrary to the public policy of requiring the polluters and those who profited from polluting the property to pay for the cleanup.

GVP's letter alleges that 1) the District is strictly liable for the contamination originating from the Gregory Village Shopping Center; 2) the District permitted

tetrachloroethylene ("PCE") discharges into the sanitary sewer system; 3) the District knowingly built a leaky sewer system; 4) the District failed to properly maintain the sewer system; and 5) the data show that the sewer system leaked.

As explained below, the evidence shows that each of GVP's allegations is based on either faulty reasoning or insufficient evidence. The reality is that the District has met or exceeded industry standards for maintenance and repair of its sewers, that no evidence exists showing that PCE leaked from the sewer system, and that the District has prohibited discharges of dry cleaning chemicals into the sewer system since 1953. Moreover, it is contrary to good public policy to require the rate-payers to cleanup contamination from a known source in the absence of evidence showing that the District actively caused or its substandard conduct permitted the contamination.

I. THERE IS NO LEGAL BASIS FOR NAMING THE DISTRICT ON A CAO

California Water Code section 13304(a) authorizes the Regional Board to issue an order to, "Any person who has . . . caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance . . . ." "The Regional Board must show substantial evidence to support naming a party in a cleanup order." (*In re Chevron Products Company, State Board Order No.* WQO 2004-0005, *citing In re Larry and Pamela Canchola*, State Board Order No. WQO 2003-0020, p. 8.) Therefore, in order to name the District as a discharger under section 13304, the Regional Board must have substantial evidence that the District "caused or permitted" waste to be discharged from the sewer system.

A. The District is not Strictly Liable under the Water Code for Actions of Third Parties

GVP argues that the District is a discharger merely because it owns and operates a sewer system, "whether or not its actions caused the discharge." (GVP July 3, 2012 letter, p.1.) Owning and operating a sewer system does not *ipso facto* make the sewer agency a responsible party. (*Lincoln Properties v. Higgins*, (E.D. Cal. 1992) 823 F. Supp. 1528.)[1] Like GVP has done here, in *Lincoln Properties v. Higgins*, a shopping center owner filed suit against several dry cleaners and against the County

[1] The *Lincoln Properties* Court, in deciding a case very similar to this one stated:

> Even assuming that PCE leaked from the County-owned sewer line, there is no evidence of conduct by the County that contributed to the releases. In fact, the County took reasonable precautions to prevent releases of hazardous substances. The releases were not foreseeable. Similarly, to the extent that there is a threat that PCE will be released from the wells, the County's conduct was "so indirect and insubstantial" that it has been displaced as a causative element. . . To hold the County liable for its "normal" activities in owning and maintaining the sewer line and wells would be an anomalous result. (*Id.* at 1542-1543.)

as owner of the sewer system. The Court in *Lincoln Properties* reiterated "the well-settled rule" that operator liability attaches only if the defendant actively participated in operations involving the disposal of hazardous substances or had the authority to control the cause of the contamination at the time the hazardous substances were released into the environment. (*Id.* at 1534-1535.) To name the District on a CAO, substantial evidence must show that the District actively participated in or had some authority to control the discharge and failed to do so—neither of which can be supported.

While *Lincoln Properties* was decided under the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the result would have been the same under the Porter Cologne Water Quality Act. Liability under the Water Code follows the law of nuisance. "[I]t appears that the Legislature not only did not intend to depart from the law of nuisance, but also explicitly relied on it in the Porter-Cologne Act." (*City of Modesto Redevelopment Agency v. Superior Court*, (2004) 119 Cal.App.4th 28, 37-38.) "[L]iability for nuisance does not hinge on whether the defendant owns, possesses or controls the property, nor on whether he is in a position to abate the nuisance; the critical question is whether the defendant created or assisted in the creation of the nuisance." (*Id.* at 38 (citation omitted).) If either of the dry cleaners in the Gregory Village Shopping Center area illegally disposed of hazardous chemicals into the sewer system, the District would not have liability under the Water Code merely because it owns the sewer system.

Courts have repeatedly required active participation in polluting the property before conferring liability. (*Resolution Trust Corp. v. Rossmoor Corp.*, (1995) 34 Cal.App.4th 93, 100 (citations omitted).) In *Redevelopment Agency of the City of Stockton v. BNSF Railway Co.*, the Court held that a railroad that built a french drain on its property did not have liability as a discharger under Water Code section 13304 or nuisance when contamination migrated through the french drain over its property. (*Redevelopment Agency of the City of Stockton v. BNSF Railway Co.*, (9th Cir. 2011) 643 F.3d 668.) The Court based this holding on the premise that the railroad did not know, and had no reason to know, that the french drain contributed to the migration of contamination. (*Id.* at 675-678.) "Because the Railroads' conduct with regard to the specific nuisance condition-the contamination-was not active, affirmative, or knowing, the Railroads simply did not 'create or assist in the creation' of the nuisance on the Property." (*Id.* at 674.)

Similarly, in *City of Los Angeles v. San Pedro Boat Works*, the Ninth Circuit held that California nuisance law follows the Restatement approach to private nuisance. (*Los Angeles v. San Pedro Boat Works*, (9th Cir. 2011) 635 F.3d 440, 452-53, *citing San Diego Gas & Elec. Co. v. Superior Court*, (1996) 13 Cal. 4th 893.) As discussed on both *City of Los Angeles* and *BNSF Railway*, the Restatement says:

> A possessor of land upon which a third person carries on an activity that causes a nuisance is subject to liability for the nuisance if it is otherwise actionable and,

> (a) The possessor knows or has reason to know that the activity is being carried on and that it is causing or will involve an unreasonable risk of causing the nuisance, and
>
> (b) He consents to the activity or fails to exercise reasonable care to prevent the nuisance.

(*Los Angeles v. San Pedro Boat Works*, (9th Cir. 2011) 635 F.3d 440, 452-53, *citing Restatement (Second) of Torts* § 838 (1979).) Here as in the *BNSF* case, the District had no knowledge of any discharges by the dry cleaners. Early on in the District's existence as a public entity, it promulgated prohibitions on discharging anything but human excrement into the sewer system. (See Ordinance 23 attached as Exhibit A.) Thus, the District neither had knowledge of any discharges, nor did it consent to discharges of PCE into the sewer system.

The District first promulgated discharge restrictions in 1953, roughly 20 years prior to enactment of the federal Clean Water Act, the Resource Conservation and Recovery Act or the Comprehensive Environmental Response Compensation and Liability Act. The District's prohibition on discharging hazardous substances into the sewers existed throughout the time that the P&K Cleaners and the JS Pleasant Hill Cleaners operated. Since the promulgation of the major environmental laws in the 1970's and early 1980's, the discharge standards have been refined and have in most cases become more specific (i.e. they now include numerical discharge limits). GVP is asking the Regional Board to apply 2012 standards to prohibitions promulgated nearly 60 years ago, when in reality, the question should be "did the District exercise reasonable care to prohibit discharges of hazardous substances to its sewers during the time that the dry cleaners in question operated." The answer unequivocally is yes, the District indeed exercised reasonable care.

Mere knowledge of the operation of a lawful activity does not create liability under either the law of nuisance or Water Code section 13304. (*See Redevelopment Agency v. BNSF Railway,* 643 F.3d at 674 (Railroad's knowledge of the french drain was not enough to establish that it knew of contamination); *City of L.A.,* 635 F.3d at 452-454 (knowledge of boat works operation was not sufficient to establish nuisance liability for sublessor absent knowledge of a discharge); *Resolution Trust Corp.,* 34 Cal.App.4th at 103 (unreasonable to require property owner to refuse to rent to a gasoline station to avoid liability); *Salinas v. Martin,* (2008) 166 Cal. App.4th 404, 412 (landlord must have actual knowledge of a dangerous condition plus the right and ability to cure the condition before liability can attach to the property owner).) Neither the P&K Cleaners nor JS Pleasant Hill Cleaners requested any kind of a variance to discharge wastewater containing PCE into the sewer system. Accordingly, the District's knowledge that dry cleaners operated in the Gregory Village Shopping Center or on the Chevron property is insufficient to establish liability under Water Code section 13304, without specific knowledge respecting illegal discharges into and from the sewer system.

In 1953, the District promulgated Ordinance. No 23 restricting the discharge of any substances other than sewage into the sewer system. JS Pleasant Hill Cleaners operated on the current Chevron property from roughly 1956 through 1986. P&K Cleaners cleaned clothes at the Gregory Village Shopping Center from 1965 through 1991. Neither entity requested a variance from the prohibitions in Ordinance 23. The District was not the entity with the authority to issue permits or business licenses. Thus, the District did not know, nor was it in a position to know, how the dry cleaners operated or how they disposed of their PCE, except that the District specifically restricted discharge of hazardous materials into the sewer system during the entire time the dry cleaners operated.[2] The District could not have foreseen, nor was it aware, of any illegal discharges to the sewer system.

The District did not actively participate in contaminating the soil and groundwater. As discussed below, there is no evidence of a discharge from the sewer system. Moreover, absent evidence of actively causing or permitting a nuisance, or even knowledge of the discharge, the Water Code does not confer liability. Since knowledge and the ability to control the actions of a third party are required to affix liability under the Porter Cologne Water Quality Act, strict liability for mere ownership of the sewers is not the standard. Here, the District specifically prohibited discharges of any substances, other than sewage, to the sewer system; the District did not know of illegal discharges from either of the dry cleaners; and the District maintained the sewers in conformance with, or above, industry standards. There is no legal basis to name the District on a CAO.

B. <u>The City of Lodi CAO is Not Persuasive</u>

GVP cites the Central Valley Regional Board's CAO issued to the City of Lodi as precedent for the San Francisco Bay Regional Board to name the District on a CAO. GVP's reliance on Lodi is misplaced because Lodi was a unique situation, its facts are not before the Regional Board, and thus Lodi has no bearing on how the Regional Board should exercise its discretion in this situation. Equally as important, the District is informed and believes that, of the hundreds of administrative orders that the nine regional water boards have issued, the Lodi CAO is one of the few orders that names a sewer agency as a responsible party for cleanup of soil and groundwater contamination that originated from dry cleaning operations. This reality

[2] In the 1980's and early 1990's, EPA required that all pretreatment programs obtain EPA approval under the federal regulations in 40 CFR Part 403. The early pre-treatment requirements focused on large industrial water users that discharged 25,000 gallons a day or more. Dry cleaning operations, which discharge significantly less than 25,000 gallons a day, were thus not covered by the early pre-treatment programs. Nevertheless, it was at this time that the general prohibitions in the District Code were modified to include prohibited effects and prohibited substances consistent with the federal pretreatment regulations, but that does not obviate the fact that the general prohibitions on discharging anything other than sewage into the system, without a variance, continued to apply to smaller dischargers in the District like they had for 35 years prior to the approved pretreatment program.

should give the Regional Board pause, for it underscores the general recognition that sewer operators should not be penalized for providing sewer services to the public and proactively maintaining those sewers.

C. Naming the District as a Responsible Party Would Set a Dangerous Precedent and Have Serious Public Policy Implications

Naming the District as an additional responsible party would have serious implications for other sewer agencies in the state, as well as for their customers. If the Regional Board names the District as a responsible party based on evidence of root intrusion, cracks, or other possible defects in a sewer pipe, then every municipality or sewer district could face enormous liability for groundwater and soil contamination from dry cleaners, and the burden of paying for cleanup would ultimately fall on the taxpayers and ratepayers. The cost of determining the presence of hazardous substances alone is often overwhelming to public entities, and such costs would be passed on to the general public in the form of higher taxes or usage rates. Surely the Regional Board would not want to routinely extend the class of potentially responsible parties to the general public. Moreover, expending limited resources to investigate or clean up contamination from dry cleaners under a 13267 or 13304 order may result in the neglect or abandonment of other government functions, which would produce no resulting public benefit. Absent substantial evidence that a public sewer agency caused or permitted contamination to occur, the protection of municipal fiscal health clearly favors the exclusion of public sewer systems from liability for the conduct of its industrial and commercial customers. In this case, the Regional Board has already identified responsible parties with the ability to control the contamination and that can effectuate the investigation and cleanup of the Site. Accordingly, the Regional Board should not name the District on a CAO.

II. THE DISTRICT PROHIBITED DISCHARGES OF HAZARDOUS MATERIALS, INCLUDING PCE TO THE SEWER SYSTEM

As discussed above, shortly after the District was established, the District adopted Ordinance No. 23 that contained prohibitions and significant limitations on the discharges of non-domestic wastewater to its system. These prohibitions and limitations were established to protect the District's operations (prevent inhibition, upsets and pass-through), the District's workers and the public. The District's Code relied on narrative standards for many years and started to establish numeric discharge limits in 1974 with the adoption of Article 4, Section 8, Control of Industrial Wastes. Merely because the earlier discharge prohibitions were narrative rather than numeric does not invalidate the fact that there were valid prohibitions adopted by ordinance with which all industrial and residential customers were obligated to comply. Numeric limits were established to clarify a level of treatment that would be required in order for non-domestic wastewater to be safely discharged to the District's system. Numeric limits were retained in the District Code until the District

adopted Local Discharge Limits (effective 7/12/91) using the standards established in the federal pretreatment regulations in 40 CFR Part 403. The numeric limits are set at a level that can be met after extensive treatment prior to discharge to the sanitary sewer system, or that might be present at incidental levels for specific pollutants.

Wastes and wastewaters generated from dry cleaning operations were, and continue to be, prohibited for discharge to the sanitary sewer system by the District's narrative prohibitions and numeric limits. The numeric limits reinforce the narrative discharge prohibitions when applied to dry cleaning operations. The standard wastes generated from dry cleaners are spent PCE and still bottoms if the dry cleaner conducts on-site reclamation of PCE. The standard process wastewater from dry cleaners is separator water which is a mixture of PCE solvent with moisture from the garments being cleaned. All of these wastes and wastewater were prohibited from discharge to the District's system under the historic discharge prohibitions prior to the very specific current prohibition adopted in 2007. Based on available data, all dry cleaner wastes and wastewater would significantly exceed the historic and current numeric discharge limits by multiple orders of magnitude. Therefore, discharges from dry cleaners complying with either the narrative or numeric standard could not have caused the contamination levels found in the general area of the Gregory Village Shopping Center.[3] In addition, all dry cleaner wastes and wastewater meet the criteria of hazardous waste in California since these standards were established, which are prohibited from discharge to the sanitary sewer under the state laws and regulations.

During much of the 1990s, the District and the Bay Area Air Quality Management District ("BAAQMD") had an informal cooperative agreement whereby the BAAQMD inspected dry cleaning establishments and the District inspected other kinds of businesses. If the BAAQMD identified a problem or potential problem that could impact the District's sewers, BAAQMD would notify the District and the District would respond. Only once, in 1997, the BAAQMD notified the District about a dry cleaner (in Concord, CA) that had elevated levels of PCE in its wastewater. Further investigation revealed this dry cleaner to be discharging PCE-contaminated water to the sanitary sewer in violation of the District Code. The PCE-contaminated wastewater was not from a discharge of traditional wastes or wastewater but resulted from a leak in the PCE recovery system contacting the water in the pass through cooling water line. This dry cleaner was cited for the violation of the District Code and a formal enforcement action was processed resulting in assessment of a penalty and imposition of specified Compliance Schedule. The District does not tolerate violations of the District Code and pursues appropriate enforcement actions

[3] Even if the dry cleaners were discharging illegally, the high levels of contamination identified in the soil beneath the Gregory Village Shopping Center and other areas cannot be attributed to the sewers because there is no sewer under the Gregory Village Shopping Center where some of the highest levels have been found.

to ensure that industrial and commercial customers comply with discharge standards.

III. THERE IS NO EVIDENCE THAT THE DISTRICT'S SEWERS LEAK OR HAVE EVER LEAKED

GVP cannot substantiate that the District's pipes leak or have ever leaked, or more importantly that there was PCE in the pipes at the time of the leak, if any. Instead, GVP presents various facts and asks the Regional Board to conclude from those facts that the District knowingly built a leaky sewer system and as such is a responsible party for the contamination in the area of the P&K Cleaners. Upon closer inspection, few if any of the facts noted, alone or in combination, provide evidence that the sewers in the area of the Gregory Village Shopping Center leaked.

The noted facts are: The sewer pipes in the area of the Gregory Village Shopping Center were constructed in the late 1940s and early 1950s. At the time of construction, leakage testing is required to determine if the pipe is laid properly. Any leakage beyond the leakage tolerance requires the pipes to be replaced or repaired. The sewers in the area of the Gregory Village Shopping Center do not lie on a significant grade. The District does not dispute these facts. The District does, however, dispute that one could conclude from these facts that the District's sewers leak or ever leaked.

GVP points to a report prepared by Victor Izzo analyzing sewers in California's Central Valley and concluding that PCE can be discharged into the environment from the sewers. GVP cites this report for the contention that the District's sewer's leaked and that the District should have known that its sewers leaked. Notably Mr. Izzo published this Report long after the JS Pleasant Hill Cleaners closed and one year after P&K Cleaners allegedly stopped on-site dry cleaning. The District does not challenge the conclusion of the Izzo Report, but the Report alone is not conclusive evidence that the District's sewers ever conveyed wastewater containing PCE or that these sewers leaked. Employing this broad brushed causation would be analogous to saying: Smoking is known to cause cancer. Bob smoked, so he must have cancer. Merely because sewers were constructed in the 1950s in accordance with Federal standards coupled with the fact that dry cleaners operated and discharged sewage into the sewer system does not equate to the conclusion that PCE entered the District's sewers and was released therefrom in a quantity that could have resulted in the levels of contamination found in the soil and groundwater around Gregory Village Shopping Center. This conclusion, aside from being overly broad, ignores other pertinent information.

As discussed above, since 1953, the District has prohibited depositing any substance other than sewage down the drain. Sewer service customers could request variances from Ordinance No. 23. Neither P&K Cleaners nor JS Pleasant Hill Cleaners ever requested such a variance.

As discussed with the Regional Board in our March 28, 2011 meeting, up through the 1970s the 8-inch diameter the sewer pipe into which the dry cleaners in the Gregory Village Shopping Center area discharge, in turn connected into a 15-inch diameter trunk sewer along Doray Drive that carried the flow from the entire surrounding neighborhoods. In the1970s, an Interceptor was installed that directed the wastewater from some of the surrounding neighborhoods to the new interceptor. Even after this interceptor was installed, the volume of flow through the sewer pipe into which the Gregory Village Shopping Center discharges is still very large and was constantly and rapidly flowing through the system. Wastewater from the dry cleaners and other tenants in Gregory Village Shopping Center did not remain long in the sewers in this area.

GVP cites the Hydrostatic Leakage Section of District's Specifications for Sewering as evidence that the District constructed sewers that leak. The Hydrostatic test is to test the pipe joints for soundness. According to the test procedures, the sewer line is plugged at the downstream end. At the upstream end, water is added until the height of the water is 4 to 9 feet above the invert of the sewer. Under this pressure test, an allowable exfiltration rate is 1400 gallons per inch diameter per mile per day. However during normal use, the sewer will operate under gravity flow conditions and not pressure conditions. Under gravity conditions, the sewer will not flow full. It will be less than three-fourths full at peak flow, and less full at other times. Unlike the pressure test, during normal operation, there will not be a driving force to push water out of the pipe.

Moreover, under gravity flow conditions, water follows the path of least resistance and would stay in the pipes. If the water and sewage could move through the sewer system unimpeded, it would most likely follow that path rather than pushing out through the joints or walls of the pipes and then through the soil. The path of least resistance is for water to enter into the sewer system, and not the other way around. This is true in the Gregory Village Shopping Center area where there is a high groundwater level. Infiltration can be a serious problem for sewer systems because at peak flow times, the system can be overwhelmed if there is substantial infiltration. In an effort to contain infiltration, the District (and most sewer agencies) try to maintain a tight system, but allow for infiltration in designing the capacity of sewers so as not to have sewage overflows. Hence, while the specifications allow for an infiltration allowance, the District works to maintain tight pipes. The majority of any infiltration into a sewer system comes from the private sewer service laterals that connect to the public sewer. There is no evidence in this case that the District's pipes are not tight.

Finally sags in the sewer pipes are not the same as breaks and do not mean that there have been releases from the sewer line. Sags are low spots in the sewer pipes. Water and debris can collect in the sag, and could possibly cause blockage or sewer overflow. GVP mentions a sag in the line in the alley way behind the Gregory Village Shopping Center. There is no evidence that the sag in the line resulted in a release because 1) the high flow volume in the line that P&K cleaners

connected to would not have allowed water and debris to be detained for long in the sag; 2) groundwater monitoring data in the vicinity of the District's line in the alley behind GVP property does not show higher levels of contamination downgradient of the sag on the line; and 3) District records document that except for a grease blockage in 2010, (long after P&K Cleaners stopped on-site dry cleaning) there have been no blockages or overflows in the system as a result of any sags in the line. Without data indicating that PCE laden debris settled into sags and ultimately settled out into the environment, the evidence is insufficient to name the District on a CAO.

IV. THE DISTRICT MAINTENANCE PROGRAM MEETS AND EXCEEDS INDUSTRY STANDARDS

It should be noted that the District has won numerous awards of excellence for its maintenance system. (CWEA Large Collection System of the Year in California 2007, 2002, 1992 and 1988; CWEA Collection System Person of the Year in the Bay Section in 1997, 1996, 1995, 1994, and 1992; CWEA Collection System Person of the Year in California 1992.) These awards are not given out lightly. They are the result of a well-designed, methodical and thorough maintenance program.

GVP combed the District's maintenance records for evidence of faulty maintenance. GVP cites each instance over roughly a 10-year period (notably a ten year period that occurred years after the dry cleaners in this area ceased operating) wherein maintenance needs were identified and cured. As a routine, the District cleaned every sewer line in its collection system at least every 10 years up until 2005. Since 2005, in response to Federal and State rules, the District routinely has cleaned each sewer line at least once every five years. Sewers with known problems were and are cleaned on a more frequent basis. It is ironic that GVP's ability to cite to maintenance issues exists only because the District maintains an aggressive, frequent and thorough maintenance and repair program. If the District was not tenacious about maintaining the sewer system, issues such as tree roots, sags, and bends would only be identified following a blockage or overflow in the system. Blockages in this area rarely occur precisely because of the excellent maintenance program. Instead, maintenance issues are identified, prioritized and resolved in a timely manner.

Moreover, GVP cites seven examples of alleged poor maintenance in and around Luella Drive, Shirley Drive and Cynthia Drive. Even if the District had failed to maintain the sewer conveyance system on these streets (which is not accurate), leakage from these pipes could not have caused or contributed to the contamination in the area because flow in these pipes is towards Doray Drive and not from the Gregory Village Shopping Center. (See sewer map in Exhibit B.) In other words, these pipes collect sewage from a residential neighborhood and would not have any PCE in them. Therefore if they leaked (of which there is no proof), the leakage would not contain PCE.

Addressing GVP's specific maintenance concerns along the sewer lines abutting the Chevron property and the Gregory Village Shopping Center, or flowing downstream from those properties, the District responds as follows:

A. **Doray Drive (between Manhole 44 and Manhole 48)**

GVP notes that a hole was found at the top of the six-inch diameter pipe and that the hole was not identified during an earlier inspection eight months prior. The hole in the pipe was on the top of the pipe and did not impact the sewer flows because there was enough air space in the pipe such that the top of the sewer flow did not touch the top of the pipe in this area. The sewer pipes in the vicinity of the Gregory Village Shopping Center, like most sewers in the District, are gravity flow pipes. Gravity flow in six-inch diameter pipes are designed to flow half full at peak capacity. The hole in this pipe presented more of an infiltration problem than an exfiltration problem. This is another case of the District's excellent investigation and maintenance program identifying problems immediately and correcting them in a timely manner. Industry standards generally call for inspection of each sewer line every 120 months. Obviously in this case, the District monitored the sewer lines much more frequently.

B. **Alley parallel to Susan Lane (between Manhole 59 and Manhole 46)**

The pipe repair GVP notes in this section was discussed with the Regional Board at the March 28, 2011 meeting. As you recall, a break in the pipe was identified on May 3, 2000. Within one week, by May 9, 2000, the pipe was repaired and the repairs were accepted by the District. This is not, as GVP contends evidence of problems or poor maintenance of the pipes. Quite the opposite, this quick identification and resolution of a problem in the sewage conveyance system is precisely the affirmative action taken by the District that would preclude naming the District on a CAO.

The sag in the line discussed in this section is addressed, in section 3, above. In summary, however, a sag in the line that does not create a blockage does not necessarily need to be corrected. Based on the groundwater monitoring conducted by GVP, there is no evidence that this sag contributed to the groundwater contamination problem originating at the Gregory Village Shopping Center.

C. **Doris Drive (between Manhole 50 and Manhole 60)**

GVP complains that there was no maintenance on this line for 16 years. As noted above, sewer lines are routinely cleaned or monitored on a regular basis in accordance with the District's regular maintenance schedule. This sewer line was cleaned three times between 1994 and 2008. There were no blockages or serious problems that required more frequent cleaning or repairs. If there were problems, the sewer would have been scheduled to be cleaned more frequently. The next

cleaning for this sewer line will be in 2013. GVP mentions a sag in this line. As noted above, sags in and of themselves do not represent a problem. The District believes the pipe in this area is sound. Moreover, if GVP is pointing to the sag on this line as a possible pathway to contaminating groundwater with VOCs, that is a preposterous allegation. The sag was identified in 2006, two decades after the dry cleaner ceased operating on the Chevron property. To the District's knowledge no one is legally discharging VOCs to the sewer in that area.

D. Linda Drive (between Manhole 60 and R99/R61)

GVP appears to have misunderstood the maintenance records for this segment of the line. The District replaced the sewer line between Manhole 60 and R66 in 1987 and the repairs were accepted by the District in 1987. The pipe replacement that GVP notes in 2004 was a water line, not a sewer line. The District marked the location of the sewer line in advance of the water line construction in accordance with Underground Service Alert rules. The water supply line was likely replaced by the East Bay Municipal Utility District, and not by the District. Accordingly, there was not a 20-year delay in maintenance on this line.

Additionally, GVP notes that a 2006 video report noted a sag in this line, but that a 2008 does not mention the sag. In 2006, Roto Rooter identified a sag. District staff conducted additional video inspections of the line in 2008 and 2011 and could not find any sags in the line, nor were there any blockages or concerns with the line that would have indicated a sag.

V. THERE IS NO EVIDENCE SHOWING RELEASES FROM THE SEWER SYSTEM

GVP alleges that the sewer conveyance system leaked resulting in releases of chlorinated hydrocarbons to the environment. GVP re-submits data prepared by Erler & Kalinowski, Inc. ("EKI"). It should be noted that in the meeting on March 28, 2011, the District and Regional Board staff had a detailed discussion about the allegations made by EKI in its January 19, 2011 report. Accordingly the responses in this section simply reiterate the District's response to GVP's allegations.

A. Shirley & Cynthia Drive

GVP states that there are high concentrations of PCE and other chlorinated hydrocarbons detected in soil vapor samples collected near manhole M54 and that these concentrations are higher than those detected in soil vapor samples collected away from manhole M54 (see EKI, 1/19/2011. Off Site Property Specific Soil Vapor and Sub-Slab Vapor Investigation Report, Figure 5). As a result of these findings, GVP suggests that there is an "apparent source area" near this location. The soil vapor samples, sample depths and PCE concentrations for the locations identified by GVP to support his allegation are MSVP-6 (6 feet below ground surface [bgs]; 52,100 micrograms/cubic meter [$\mu g/m^3$]), SVP-15 (5 ft. bgs; 35,000 $\mu g/m^3$), SVP-16

(5 ft. bgs; 38,000 µg/m^3), and SVP-25 (5 ft. bgs; 21,000 µg/m^3). As presented below, our response to GVP's allegation regarding manhole M54 is multi-faceted, and shows the flaws in his reasoning.

First, for leakage from the District's sewer pipes to be a cause of PCE contamination near manhole M54, PCE-laden wastewater must have been present in the sanitary sewer pipes near manhole M54. As shown on EKI Figure 5, the portion of the sanitary sewer that could have received PCE-laden wastewater from former dry cleaning operations was located in an alley along the western portion of the Gregory Village Shopping Center. This sanitary sewer pipeline does not intersect manhole M54; in fact, it intersects with manhole M47 which is located over 100 feet downstream (i.e., south) from manhole M54. As noted above, the flow in the pipes at manhole M54 is towards manhole M47. In other words, the sewage from the residential neighborhood empties into a larger line at M47. The intersection connecting the pipe in Shirley Lane to manhole M47 is several inches above the sewer line running from manhole M45 to M67 requiring the wastewater to drop several inches. There is no evidence of any backups (literally backing up several vertical inches) into the neighborhood from the line running from manhole M45 to M67. Stated simply, PCE-laden wastewater, if any, from former dry cleaning operations at Gregory Village Shopping Center and at the Chevron Service Station site located at 1705 Contra Costa Boulevard did not flow to manhole M54.

Second, there is a conspicuous lack of soil vapor sampling data north of the former P&K Cleaners leased space in Gregory Village Shopping Center. For example, sub slab soil vapor samples SSVP-1 and SSVP-4 located beneath the floor of the former P&K Cleaners leased space contained PCE at 848,000 µg/m^3 and 1,490,000 µg/m^3, respectively (EKI, 6/29/2010. On Site Sub Slab Vapor Sampling Report and Work Plan for Sub Slab Depressurization System). Only two additional sub slab soil vapor samples (SSVP-8 and SSVP-9) were collected north and beneath the former P&K Cleaners leased space and these samples contained PCE at 61,200 µg/m^3 and 59,600 µg/m^3, respectively. Additional leased spaces at the Gregory Village Shopping Center extend over 150 feet north of the former P&K Cleaners leased space and there has been no characterization of soil vapor concentrations in this area. Further, there are no soil vapor data beyond the leased spaces at the Gregory Village Shopping Center for over 125 feet north of the Gregory Village Shopping Center. GVP uses this data gap in an attempt to show a separation between elevated PCE concentrations at manhole M54 and elevated PCE concentrations at the former P&K Cleaners leased space.

B. Manhole M46

GVP states that the high concentrations of PCE in soil vapor and shallow groundwater near manhole M46 as well as in soil vapor near the sanitary sewer between manholes M45 and M46 suggest an "apparent source area" for PCE and other chlorinated hydrocarbons. Wastewater from the sanitary sewer serving the former P&K dry cleaners at Gregory Village Shopping Center and the Chevron

Service Station site located at 1705 Contra Costa Boulevard flows through manhole M46. GVP provides five bullet points in an attempt to support these findings, but given the data gaps between the primary source (P&K Cleaners) and the sampling locations along the sewer line, GVP's conclusions are misleading, if not simply disingenuous. Nonetheless, the District's responses to these bullet points are presented below.

Bullet 1 – On November 1, 2010, soil vapor samples were collected near manhole M46 at multi-depth soil vapor point MSVP-17 at three depths (i.e., 3, 6 and 9 feet bgs). The PCE concentrations measured in MSVP-17(3 ft.), MSVP-17(6 ft.), and MSVP-17(9 ft.) were 433 µg/m^3, 1,040 µg/m^3, and 4,620 µg/m^3, respectively. Generally, soil vapor samples showing an increasing PCE concentration with depth indicate a subsurface PCE source. Given that the depth to groundwater in nearby groundwater monitoring well MW-8 was approximately 10 feet (measured on December 7, 2010), we agree that a reasonable interpretation of the PCE concentration profile at MSVP-17 is that shallow groundwater is a potential source for the PCE.

Bullet 2 – The District agrees that the highest PCE concentration (1,960 micrograms/liter [µg/L]) detected in a groundwater sample downgradient (i.e., north) of the Gregory Village Shopping Center is the grab groundwater sample collected on October 29, 2010 at GGP87-01(11-13 ft. bgs). We do not agree that comparison of PCE concentrations from grab groundwater samples with PCE concentrations from properly constructed groundwater monitoring wells is appropriate. As indicated above, the grab groundwater sample GGP87-01 was collected from a depth interval of 11 to 13 feet bgs using a bailer lowered through the augers of a track-mounted auger drill rig. On the other hand, groundwater monitoring wells downgradient (i.e., north) of the Gregory Village Shopping Center have screened intervals of 15 feet and sand pack intervals of 17 feet. It is not surprising that a grab groundwater sample from a 2-foot thickness of shallow saturated sediments has a higher PCE concentration than groundwater samples from monitoring wells with 15 foot screened intervals opposite saturated sediments.

The environmental data that are more compelling with regard to the source of PCE are found at monitoring well MW-8 which is upgradient (i.e., south) of manhole M46 and grab groundwater sample GGP87-01. PCE concentrations measured in well MW-08 ranged up to 1,000 µg/L during the 2006-2007 monitoring events and have remained elevated through the March 2012 monitoring event (620 µg/L). The persistent elevated PCE concentration detected in groundwater samples from Well MW-8 is consistent with a continuing, unremediated source of PCE upgradient of Well MW-8. The continuing PCE source is located at the former P&K Cleaners where sub slab soil vapor samples SSVP-1 and SSVP-4 contained PCE at 848,000 µg/m^3 and 1,490,000 µg/m^3, respectively, in May 2010, and where grab groundwater sample B-2 contained PCE at 27,000 µg/L in 1997.

Bullets 3 through 5 - PCE-laden wastewater from former dry cleaning operations at Gregory Village Shopping Center and at the Chevron Service Station site located at 1705 Contra Costa Boulevard did not flow in the sanitary sewer from manhole M44 to manhole M46 and is not a source for PCE found at parcels P38 and P82. There is no evidence to support GVP's claim that sewer backups occurred between manhole M44 and manhole M46.

C. Linda Drive

GVP states that very high concentrations of chlorinated hydrocarbons including PCE have been found in soil vapor and groundwater at the Chevron Service Station site located at 1705 Contra Costa Boulevard. Further, GVP states that high concentrations have migrated from the 1705 Contra Costa Boulevard property to Linda and Doris Drive and to the Gregory Village Shopping Center. The District agrees that high concentrations of chlorinated hydrocarbons including PCE have been found at and around the 1705 Contra Costa Boulevard property.

GVP attempts to implicate the sanitary sewers in Linda Drive and Doris Drive as release points for PCE and trichloroethene (TCE) associated with the 1705 Contra Costa Boulevard property. GVP identifies a soil sample collected in August 1988 from a depth interval of 5-10 feet bgs at location Well EA-3 that contained 328 micrograms/kilogram (µg/kg) PCE and 86 µg/kg TCE. GVP's claims that this soil sample "would have been above the groundwater table" and "may have resulted from leakage from the sewer" are unsupported. The available documents do not specify the depth of the soil sample, and groundwater fluctuations coupled with the capillary fringe likely impacted this soil sample. In fact, historical water levels measured at Well EA-3 show that the groundwater was as shallow as 5.58 feet below ground surface (Conestoga-Rovers & Associates, 3/2/2012. Additional Site Investigation Report and Site Conceptual Model, Table 1.)

In addition, GVP reports that a groundwater sample collected in January 1989 from Well EA-3 contained PCE at 5,000 µg/L and TCE at 750 µg/L "suggesting a source of PCE and other chlorinated hydrocarbons in the proximity of sewer line in Linda Drive." Evaluation of groundwater data from 1996 to 2010 for the former Unocal 76 service station at 1690 Contra Costa Boulevard (i.e., just east of 1705 Contra Costa Boulevard) show that shallow groundwater gradients in this area are oriented to the northwest. As a result, the finding of PCE and TCE in groundwater samples from Well EA-3 is consistent with a northwesterly groundwater migration from the former dry cleaning location to Well EA-3.

VI. CONCLUSION

GVP's accusations that the District's sewers leaked causing contamination in the area of the Gregory Village Shopping Center, or that the District permitted discharge of hazardous substances into or from the sewers remain unsupported. The District never consented to the disposal of any hazardous substances into the sewer system

by either P&K Cleaners or JS Pleasant Hill Cleaners, nor did the District ever have any reason to believe that these businesses were illegally discharging PCE laden wastewater into the sewer system. Since the District's formation in the late 1940s, the District has maintained a stellar reputation in the industry winning several awards for its excellent maintenance programs. The substantial evidence necessary to name the District on a CAO does not exist. Accordingly, naming the District in this case would be contrary to good public policy. Naming the District on this CAO or section 13267 letter would set a dangerous precedent of transferring the cleanup costs and obligations rightly belonging to the polluter and property owner to the tax-paying and rate-paying public.

Many thanks for your time and attention to this matter. Please do not hesitate to call with any questions or comments.

Sincerely yours,

Leah S. Goldberg

Leah S. Goldberg
LSG:kw
Attachments: Exhibit A – CCCSD Ordinance No. 23
Exhibit B – Sewer Map
cc: Ann E. Farrell
Kenton L. Alm
Edward Firestone

1938400.2

EXHIBIT A

ORDINANCE NO. 23

The District Board of the CENTRAL CONTRA COSTA SANITARY DISTRICT does ordain as follows:

That it shall be unlawful, and a violation of this Ordinance for any person, firm or corp oration to deposit, cause to be deposited, or perform any act through which there will be deposited into the sewer system of the District any substance other than human excreta, and its transporting agent, and domestic washing, unless there shall first be obtained a permit therefor to be issued by the District Board upon such terms and conditions as the Board shall determine.

Any person violating the provision of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not to exceed One Hundred Dollars ($100.00), or by imprisonment in the County Jail of Contra Costa County, California, not to exceed one (1) month, or by both such fine and imprisonment. This provision being declarative of penalties imposed by the State Legislature for violations of general regulations of the CENTRAL CONTRA COSTA SANITARY DISTRICT and not a penalty prescribed by said District.

PASSED AND ADOPTED by the District Board of CENTRAL CONTRA COSTA SANITARY DISTRICT of Contra Costa County, State of California, this 4th day of June, 1953.

AYES: Members: Stanley, Spiegl, Salfingere, Boemer

NOES: Members: None

ABSENT: Members: Johnson

Ernest J. Spiegl

President of the District Board of Central Contra Costa Sanitary District of Contra Costa County, State of California

COUNTERSIGNED:

Secretary of the District Board of Central Contra Costa Sanitary District of Contra Costa County, State of California.

JOHN A. NEJEDLY
ATTORNEY AT LAW
1336 MAIN STREET
WALNUT CREEK, CALIF.
PHONE 9355

EXHIBIT B

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Revised: 10/20/2010
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December 18, 2012

Bruce Wolfe, Executive Director
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

Re: Proposed Cleanup and Abatement Order for Cleanup of Property at 1601 – 1699 Contra Cost Blvd., Pleasant Hill, California, ("Site") Regional Board File No. 07S0132

Dear Mr. Wolfe:

I am writing to comment upon the letter of August 10, 2010 (the "CCCSD Letter") written by the firm serving as General Counsel to the Contra Costa County Sanitary Sewer District ("CCCSD").

The CCCSD Letter was in response to my detailed letter on behalf of Gregory Village Partners, L. P. ("GVP") dated July 3, 2012 that requested that the California Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB") reverse its decision not to issue a Water Code Sec. 13267 letter ("13267 Letter") to the CCCSD requesting a report regarding the release(s) of hazardous materials from the CCCSD's sanitary sewer system and, should the RWQCB determine that it will issue a Cleanup and Abatement Order ("CAO") for the Site, to provide information to support the RWQCB naming the CCCSD to such a CAO.

My letter to you laid out clear and compelling reasons for the RWCQB to find that the CCCSD is a discharger at the Site. These reasons are as follows:

1. There is clear, well-established precedent for naming a sanitary district as a discharger for discharges of tetrachloroethylene ("PCE") to the environment;
2. The Porter-Cologne Water Quality Control Act, Water Code Secs. 13000, et seq. ("Porter-Cologne") provides for strict liability for dischargers such as the CCCSD;
3. The CCCSD's own regulations permitted the discharge of PCE to its sewer system;
4. The CCCSD's sewer system was constructed so as to allow PCE to leak from the system;

5. According to the CCCSD's own records, the sewers were maintained (or improperly maintained) such that there were various failures of the sewers in the vicinity of the Site; and
6. Groundwater and soil vapor testing results clearly show chlorinated hydrocarbons were released into the waters of the state from the sewer system consistent with findings regarding the CCCSD's construction specifications and maintenance procedures.

Nothing in the CCCSD letter refutes any of the above reasons for naming CCCSD as a discharger at the Site.

Rather, CCCSD attempts to a) shift the blame to others; b) misinterpret controlling case law and ignore other cases that are on point; c) argue that the RWQCB should ignore the clear precedent set by another Regional Board on a case with the very same fact pattern; d) argue that possible impact on municipal fiscal health trumps legal responsibility for the CCCSD's acts; e) misrepresent the CCCSD's regulations; and f) argue that that there is no evidence that the CCCSD pipes ever leaked PCE, when the facts show quite the opposite.

I. The actions of another party do not relieve the CCCSD of liability.

The CCCSD Letter opens with the following argument: Because GVP knew that there had been a release from the dry cleaner at Site at the time of the property's purchase, all other parties should be relieved of liability for remediating the impact of any releases associated with the Site and its surrounds.

But there is no basis in law or policy for such a position.

All parties responsible for a discharge are liable under the law for investigating and remediating the discharge. GVP is not avoiding responsibility for detected contamination; rather, it has expended significant resources to investigate and ameliorate the situation. At the time of purchase, GVP engaged environmental consultants who informed GVP that the release from the dry cleaner was limited; no one believed nor had any reason to believe that CCCSD's sewers up-gradient and down-gradient of the Site had leaked PCE throughout the area. The fact that the sewers leaked and were a source of the PCE detected in the area was not confirmed until 2009.

CCCSD is responsible for this discharge regardless of GVPs knowledge at the time of purchase.

II. The CCCSD is a discharger.

The CCCSD Letter argues that the CCCSD has no liability under the Porter-Cologne Water Quality Control Act, CERCLA, and California administrative and common law for the following reasons: a) under CERCLA, mere ownership and operation of the sewer system does not make the CCCSD a responsible party for releases from the system

because the CCCSD did not actively participate in the release of the PCE to the environment, and b) to be liable under other legal theories, the CCCSD must have had knowledge of discharges to the sewer system by dry cleaners and it had no such knowledge.

The CCCSD's analysis fails for multiple reasons including (a) it misapplies and ignores applicable case law on owner/operator liability under CERCLA; (b) sanitary districts are named to CAO's all the time for failures of their systems; (c) the discharge of PCE into the sewers was foreseeable and was permitted by the CCCSD; and d) the CCCSD failed to take adequate steps to prevent the releases of PCE into the environment.

A. The CCCSD caused and permitted a discharge.

The CCCSD Letter correctly states that the Water Code authorizes a Regional Board to issue an order to "Any person who has ... caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged...." It then cites two State Board decisions for the proposition that, if there is not substantial evidence to support the naming of a party, such a party should not be named.

But neither of these decisions has anything to do with this situation, which involves the past and current owner/operator of a leaking sewer system that permitted the release of PCE to the environment.

Rather, the two State Board decisions that the CCCSD cites involve prior owners of property who successfully proved that the releases in question either originated solely on another's property or after their ownership had ended. (*In re Chevron Products Company, State Board Order No. WQO 2004 – 2005* in which Chevron proved the contamination on its former property was from a plume that originated wholly off site; and *In re Larry and Pam Canchola, State Water Board Order No. WQO 2003 -0020* in which a former property owner and the operator were able to prove they did not cause the release of MTBE given that MTBE did not come into use until after the operator stopped operations and after the owner sold the property.)

As noted above, the CCCSD is a current (and past) owner of the sewer and has allowed the sewer to leak waste into the waters of the state. Nothing more needs to be shown for the CCCSD to be considered a discharger under the Water Code.

B. The CCCSD is liable Under CERCLA.

The CCCSD relies heavily on the 1992 case *Lincoln Properties, Ltd. v. Higgins* (823 F. Supp. 1528 (1992)) to argue that sewer districts cannot be held liable under CERCLA.

Not so. *Lincoln Properties* does not say that; rather, it expressly holds the opposite. The court held that as an owner of the sewer system: "...as a matter of law, the County may be liable for releases from its facilities – *viz*, its portion of the sewer ..." (emphasis added) (823 F. Supp. at 1539).

Once the court held that the County could be liable for releases from its sewer system, it then analyzed whether the County had an affirmative defense to such CERCLA liability. The court found that the County had an affirmative defense because it was successful in showing that a) a third party was the sole cause of the release of the hazardous substance; b) it had exercised due care with respect to the hazardous substance; and c) it had taken precautions against foreseeable acts or omissions of third parties. The court determined that these elements should be interpreted as follows: "If the defendant's release was not foreseeable, and if its conduct - including acts as well as omissions - was "so indirect and insubstantial" in the chain of events leading to the release, then the defendant's conduct was not the proximate cause of the release and the third party defense may be available." (*Id.* at 1542) The court found the County met this defense because (a) it could not have foreseen that an ordinance prohibiting the discharge of solvents would be violated, and (b) the county took due care and precautions with respect to maintaining the sewer system. (*Id.* at 1542 – 1545).

Later case decisions have made it considerably harder for parties to qualify for the affirmative defenses. In the much more recent California case of *Adobe Lumber, Inc. v. Hellman* (2009 E.D CA) (658 F. Supp. 1188), the Court disagreed with *Lincoln Properties* and stated its belief that an ordinance prohibiting discharge is not enough alone for an affirmative defense: "The only evidence the City presents to negate proximate causation is the undisputed fact that the Taeckers poured PCE into a floor drain connected to the sewer and that this violated state and local laws... While it is undisputed that the Taeckers were *a* cause of the contamination, this fact alone does not demonstrate that they were the *sole* cause, i.e., that the Taecker's activities were unforeseeable. Indeed, the fact that the Taeckers' conduct violated state and local law - standing alone - does not render this conduct unforeseeable as a matter of law." (italics in original) *Adobe* at 1205. Further, the Court held that it was the City's duty to prove that it had taken due care and precautions to qualify as an innocent landowner and that reactive maintenance programs (i.e. only repairing after failure) and documentation of joints and sags that are not responded to until failure are all evidence of inadequate due care. *Adobe* at 1206 – 1207.

In summary, *Lincoln* and *Adobe* hold that owners of sewer facilities can be held liable under CERCLA. There is nothing in CERCLA itself that provides blanket immunity to a sewer district. These cases merely recognize an affirmative defense under which a sewer district has the burden to prove that someone else was the sole cause of the release, that the sewer district could not have foreseen the potential for the discharge and that the sewer district took reasonable precautions to prevent the discharge. It should be noted that CCCSD's counsel, in a published article, has acknowledged that sewer districts can be liable under CERCLA if they permit leaks from their sewers and have failed to take adequate preventative measures.[1]

[1] When the *Adobe* decision was issued, the CCCSD's General Counsel (which wrote the August 10 letter to you) analyzed the *Adobe* case. In that article, the General Counsel stated "maintenance and replacement programs along with adopting zero discharge ordinances or other restrictive measures," may be necessary for sewer districts to avoid liability under CERCLA. (http://www.meyersnave.com/publications/us-district-court-holds-owners-and-operators-

Based on the evidence, none of the affirmative defenses under CERCLA are available to the CCCSD because the CCCSD did not adopt a zero discharge ordinance for PCE until 2007[2], and the CCCSD's sewer design (which allows leakage)[3] and maintenance records (which show significant problems) establish that the CCCSD did not take due care of its system[4].

For those reasons, the CCCSD cannot bear the burden of proving an affirmative defense under either *Lincoln* or *Adobe*.

The CCCSD also asserts that "[t]o name the District on a CAO, substantial evidence must show that the District actively participated or had some authority to control the discharge and failed to do so…" and that the courts require "active participation in polluting the property before confirming liability" (p. 3).

Without arguing whether or not this is the correct statement of law or RWQCB policy, it is abundantly clear that there is substantial evidence that the CCCSD actively participated in the discharge of PCE to its sewers, had the authority to control the discharge and failed to do so. Because of its flawed sewer design and deficient sewer maintenance, which were also discussed in detail in my first letter to you, the CCCSD allowed the PCE, legally discharged to its sewers, to leak out and enter the waters of the state. Consequently, the CCCSD's "active participation in polluting" is not open to question.

III. The RWQCB should follow the precedent of the Central Valley Regional Water Quality Control Board in the City of Lodi CAO. Naming the CCCSD to a CAO does not set a "dangerous" public policy precedent but failing to name it does.

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municipal-sewer-systems-may-be-liable-unde (October 29, 2009)). Thus, the attorney for CCCSD recognized that sewer districts can indeed be held liable under CERCLA if they permit leaks of contaminants out of their sewers and recommends a standard of care that the CCCSD did not meet during the times the dry cleaners were in operation on the Site.

[2] The CCCSD did not adopt a zero discharge ordinance for PCE until 2007. As such, the affirmative defense discussed in *Lincoln Properties* does not fit the CCCSD position at all. There, the County specifically prohibited the disposal of cleaning solvents to the sewer at the time of the disposal. While there appears to have been an early CCCSD Ordinance (Ordinance No. 23 passed in June 1953) that prohibited the discharge of anything but fecal material into the sewers "unless there shall first be obtained a permit therefore," the CCCSD Ordinances after that Ordinance allow levels of PCE (and many other materials) to be discharged to the sewers. The existence of these ordinances clearly shows that the CCCSD had knowledge that PCE was being discharged into its system as well. A more detailed analysis of when disposal of PCE was permitted under the CCCSD ordinances is set forth in Section IV below.

[3] As explained in my first letter to you, the CCCSD designed its sewers knowing that they would leak and knowingly (by its own ordinances and resolutions) allowed PCE to be discharged to the sewers.

[4] As discussed more fully below, the CCCSD's maintenance records for the last decade and a half (this limited number of years of records was provided under a Public Records Act request; we have no other information from the CCCSD and the CCCSD provided no additional records with its August 10 letter to the RWQCB) show joints, multiple root intrusions, cracks and sags in the sewers in the area of the Site. There is no evidence that the CCCSD has taken any steps to repair any of these problems prior to a pipe failure. Similar evidence in *Adobe* led the Court to conclude that the City in that case could not establish that it had used due care and thus had no affirmative defense to CERCLA liability. *Adobe* at 1206 – 1207. Of further note is that of the awards for its system's quality that the CCCSD presents as evidence of taking due care of its system, only one of the awards was received during the entire 25+ year time period that the two dry cleaners at the Site were in operation (1965 – 1991). Thus, the volume of awards is not evidence of the quality of operation of the system by the CCCSD during the most relevant time. [It is important to note that the CCCSD has not provided either the RWQCB or us with any evidence that contravenes the conclusion that CCCSD's maintenance program was flawed.]

A. The City of Lodi CAO is an Appropriate Precedent.

With respect to the City of Lodi CAO, the CCCSD makes the following arguments: any reliance on the City of Lodi case is misplaced, because it was "a unique situation", "its facts are not before" the RWQCB and that "is one of the few orders that names a sewer agency as a responsible party for cleanup of soil and groundwater contamination that originated from dry cleaning operations." None of these arguments are persuasive. The City of Lodi case is not "a unique situation." Its fact pattern is quite similar to this fact pattern. The statement that "its facts are not before" the RWQCB here is a truism, but has no probative value. Finally, the admission that there are other orders that name sewer districts under these facts gives support that the CCCSD should be named to a CAO here.

B. Public Policy Considerations Support Naming the CCCSD to a CAO

The remediation of releases of dry cleaner PCE from sewers is a key groundwater protection issue for the RWQCB.[5] To rule out the CCCSD as a responsible party here, merely because it is a governmental agency, places unnecessary obstacles in the RWQCB's path to meeting that objective, as well as being contrary to legislative intent. As stated my original letter to you: "The Porter-Cologne Water Quality Control Act, Cal. Water Code Secs. 13000 et seq., states that "any person who has discharged or discharges waste into the waters of the state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state," is responsible for the investigation, clean up and abatement of same." The statute

[5] As stated in the San Francisco Bay Basin Water Quality Control Plan:

> 4.26.4 GROUNDWATER PROTECTION ISSUES
>
> Groundwater protection studies conducted by Water Board staff identified several key groundwater protection issues and are summarized below.
>
> 4.26.4.2 HORIZONTAL CONDUITS/SANITARY SEWER LEAKS TO GROUNDWATER
>
> Sanitary sewer lines may also allow pollutants to migrate to groundwater. Exfiltration is leakage from sanitary sewer lines into the subsurface and, in most cases, into surrounding groundwater. This phenomenon usually occurs in areas where the water table is below the sewer line. Leaking sewer lines can introduce pathogens into surrounding groundwater. Of more significance are chemicals transported in sewer lines that are released and migrate to and affect both shallow and deeper aquifers. The most significant historical impacts of leaking sewer lines are often associated with dry cleaning operations and the use of chlorinated solvents in electronics industries, such as wafer fabricators, plating shops, and printed circuit board shops.

Early in 2011, the RWQCB received a staff report on the emerging significant threat of PCE releases from dry cleaning facilities to groundwater and the associated cleanup challenges (Dry Cleaner Status Report, February 9, 2011). The report recognized that one source of PCE in soil and groundwater was its discharge from dry cleaners to the sanitary sewers, which also contribute to migration "either by providing a preferential pathway through pipeline backfill or by exfiltration of PCE-containing wastewater." Importantly, the report comments on the difficulty in finding responsible parties and that often the dry cleaner operators cannot afford to perform any environmental work. Here, the CCCSD is a responsible party with the resources to perform such work.

expressly includes "districts" in the definition of person, making it clear that the legislature fully intended these semi-governmental agencies to be held to requirements of the statute. In passing the law the legislature made a clear policy decision to hold governmental agencies responsible, fully intending those agencies to participate as any private party.[6]

The CCCSD argues that it should not be held liable under Porter-Cologne because forcing the public sewer agencies to spend their limited resources on such matters would result in the "neglect or abandonment of other government functions" (emphasis added). This is an important acknowledgement by CCCSD that one of its government functions is to address contamination resulting from its sewer operations. We know of no reason that the CCCSD should not be held accountable for satisfying all of its acknowledged governmental functions.

Although the CCCSD asserts that naming it to a CAO would have "serious public policy considerations," not naming it also has serious policy implications that are far more powerful. To fail to name the CCCSD to a CAO would send a message that sanitary districts are not liable for discharges in violation of the Water Code in the face of clear RWQCB precedent to name sanitary districts for such violations. Sanitary districts are frequently named in orders. Usually this is a result of the sanitary district failing to prevent or control the discharge of sewage or chemicals. (See, for example, Sanitary District #1 of Marin, R2-2012-055; City of Oakland, R2-2009-0078; and City of Calistoga, R2-2010-0107 (which involved the discharge of chlorodibromomethane and dichlorobromomethane)). In addition, however, as CCCSD admits in its letter to you, there is precedent set by other Regional Boards to name sanitary districts in orders as a responsible party for cleanup of soil and groundwater contamination that originated from dry cleaning operations.[7]

The CCCSD also asserts in its letter that naming it a responsible party for "evidence of root intrusion, cracks, or other possible defects in a sewer pipe" would place "the burden of paying for cleanup…on the taxpayers and ratepayers." The CCCSD states: "The cost

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[6] While CERCLA is not the statute governing the RWQCB, cases that interpret the statute are instructive regarding the public policy issues. In *B.F. Goodrich Company v. Murtha*, 958 F.2d 1192 (2d Cir. 1992), in response to the appellants arguing that municipalities should not be held liable under CERCLA because the cost will just be passed on to taxpayers, the Court responded, "We agree that this will inevitably result, but are unable to agree that it is adverse to Congress' aim. To the contrary, a narrow interpretation of CERCLA that exempts municipalities arranging for the disposal of municipal solid waste from liability increases the probability that cleanup costs will never be recovered and will be paid instead from the Superfund funded in part by the tax payers at large. To accept the municipalities argument that the municipal exemption in [RCRA] should apply to CERCLA would free a potentially responsible party from liability, in blatant contravention to the statute's goals." *Murtha* at 1204. It goes on to state, "burdensome consequences are not sufficient grounds to judicially graft an exemption onto a statute, a graft that would thwart the language, purpose and agency interpretation of the statute." *Murtha* at 1206. *See also*, Kopel, David B., *"Privileged Polluters - The Case Against Exempting Municipalities from Superfund,"* (March 1998), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=742686 and Davison, Steven G., *"Government Liability Under CERCLA,"* 25 B.C. Envtl. Aff. L. Rev. 47 (1997), http://lawdigitalcommons.bc.edu/ealr/vol25/iss1/3.

[7] The closest analogy for holding sanitary districts liable in this situation involves municipal landfills, as stated in *Adobe*: "*see, e.g., Transp. Leasing Co. v. State of Cal. (CalTrans)*, 861 F.Supp. 931, 939 (C.D.Cal.1993) (holding municipalities liable for contamination from a landfill even though their conduct constituted a "non-contributory exercise of sovereign power")…"

of determining the presence of hazardous substances alone is often overwhelming to public entities and such costs would be passed on to the general public in the form of higher taxes or usage rates." (p. 6). This arguments ignores the possibility of the CCCSD's insurance coverage for these issues, but more importantly the fact that the both state and federal legislative bodies weighed this policy issue and found that maximizing the parties responsible for cleanup, including governmental agencies, was important to assure adequate resources for clean, even if it ultimately resulted in increased costs to rate payers.

A sanitary district raised similar arguments in a 1995 case involving PCE leaking from a sewer owned by that sanitary district and that case provides a clear analysis of this policy issue. The Federal Court of Appeals in *Westfarm Associates v. Washington Suburban Sanitary Commission* (4th Cir. 66 F.3d 669 (1995)) rejected the argument that sanitary districts should not be liable for policy reasons. In that case, the Washington Suburban Sanitary Commission ("WSSC") owned a sewer lateral into which the International Fabricare Institute (a dry cleaner research institute) had dumped PCE. An investigation of WSSC's sewer line found "numerous flaws along the length of the line, including open joints, improper alignment resulting in sags in the line and offset joints, cracks, broken pipes, improperly installed gaskets and improper manhole construction." (*Westfarm* at 674).

WSSC argued that, "to require state and local governments to pay for the cleanup of wastes dumped by others into sewers would be unfair -- because taxpayers generally will foot the bill for the polluters -- and unwise -- because polluters will not internalize their own externalities..." The Court disagreed, finding contrary public policy considerations including the need for governmental agencies to internalize their own externalities and the benefit to tax payers of having a cleanup by spreading costs rather than risking no cleanup at all.[8] The court further stated: "While the public policy arguments raised by WSSC may be meritorious, we can only presume that those arguments were weighed and rejected by Congress when it enacted CERCLA..." (*Westfarm* at 679-680). Similarly, the California legislature could have excluded sanitary districts from the Water Code's definition of "discharger" but it did not do so.

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[8] "However, contrary public policy arguments come to mind quickly. First, in light of the fact that many small business polluters are no longer in business or have pockets too shallow to pay for costs of environmental cleanup, all taxpayers, who are all hurt by pollution, benefit from paying for the cleanup rather than facing no cleanup at all. *Cf. Shore Realty*, 759 F.2d at 1045 ("Congress had well in mind that persons who dump or store hazardous waste sometimes cannot be located or may be deceased or judgment-proof."). Second, all taxpayers benefitted from lower tax rates during the period when WSSC failed to spend funds needed to mend leaks in the sewer pipes. Finally, although Congress can regulate pollution so as to internalize environmental costs in the future, Congress cannot turn back the clock and truly internalize the costs of past pollution because the people who bought dry cleaning at the former, artificially low prices are not necessarily the same people who would buy dry cleaning at the artificially high prices which would occur if the dry cleaner were now forced to pay all of the costs of past pollution. The infeasibility of perfectly internalizing past costs compared to the potentially perfect ability to internalize future costs may explain why Congress limited the liability of POTWs under RCRA and CWA, both forward-looking statutes, yet did not exempt POTWs from liability under CERCLA, a remedial statute. *See Goodrich*, 958 F.2d at 1202." (*Westfarm* at 680).

IV. Until 2007, the CCCSD did not prohibit discharge of PCE into its sanitary sewer system and the CCCSD has had full knowledge that dry cleaners were discharging PCE into its sewers.

The CCCSD asserts that in 1953, it adopted Ordinance No. 23 that, it argues, prohibited the discharge of PCE to its sewers from industrial sources, unless a permit was obtained for such discharge. It then makes a convoluted and confusing argument that somehow its later ordinances and resolutions that allowed the discharge of PCE don't actually allow for the discharge of PCE.[9] Nothing is further from the truth.

If the CCCSD meant to prohibit discharged of PCE, it would make no sense for them to adopt ordinances that expressly allow such discharge. By way of example, on July 11, 1974, during the time that both dry cleaners at the Site were in operation, the CCCSD adopted Ordinance 99. This Ordinance expressly permitted the discharge of chlorinated hydrocarbons provided that the concentrations did not exceed 0.002 mg/l "50% of the time" and 0.004 mg/l "10% of the time" (we are not aware of how the Ordinance defined "of the time"). [These limits appear in Section 4.03.B.(12) of Ordinance 99.] Under Ordinance 99, it appears that much higher, perhaps unlimited, concentrations of chlorinated hydrocarbons could be legally discharged to the sewer, so long as the time restrictions (whatever they were) for such discharges were not violated. For example, it appears that daily single discharges of pure PCE would be permitted as long as the ordinance's time frames were not violated. Thus, we do not understand how the CCCSD can possibly argue that it specifically prohibited the disposal of PCE since 1953.

A number of other CCCSD ordinances establish that the CCCSD also clearly knew that dry cleaners were using its sewers. At least as early as 1959[10], the CCCSD had a rate sheet that specifically charged dry cleaners different rates than others to use its sewers. Further, one must question why there was a need for the CCCSD to pass "its very specific current prohibition" in 2007 if the CCCSD believed that PCE discharges from dry cleaners were already prohibited. In fact, what the 2007 ordinance shows is that the discharge of PCE was allowed until this time.

Finally, CCCSD's letter sent to dry cleaners in 1992, after its analysis of the Izzo Report, clearly indicates that the CCCSD had knowledge of, and had expressly allowed, prior to 1992, the discharge of PCE into its sewer system. A copy of this letter was provided in

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[9] Another possible interpretation of the CCCSD's argument is that it is taking the position that general laws control over specific. However it is a well-established principal of law that specific and general narrative provisions are to be read in a manner that can be reconciled; however, in the case where there appears to be a direct conflict, the specific provisions control. *See California Code of Civil Procedure Sec. 1859* ("when a general and particular provision are inconsistent, the latter is paramount to the former") and *87 Ops.Cal.Atty.Gen.5, 7-8 (2004)*. GVP believes that the specific and the general are reconcilable: discharges into sewers that meet the specific regulatory limits set by CCCSD's regulations are effectively considered non-hazardous by CCCSD. Alternatively, if the RWQCB believes that there is an irreconcilable difference between the Ordinance No. 23 and the many subsequent CCCSD regulations that set permissible number limits (these are documented in our first letter to you), we believe the RWQCB must conclude that the specific regulations controls and allows for the discharge of PCE.

[10] CCCSD Ordinance 33 – Adopted August 20, 1959 set a rate for connection charges for cleaning plants at three times the residential rate. Additional evidence of this knowledge is the 1992 letter concerning the Izzo Report that the CCCSD sent to all dry cleaners using its system.

our prior letter; but is again included here as it clearly evidences both the CCCSD's knowledge of the issue and its interpretation of its own ordinances. To interpret this letter any differently would mean that the CCCSD sanctioned violations of its regulations.[11]

Given these ordinances, releases of PCE to the sewers were legal and expected. Because of the CCCSD's flawed design and deficient maintenance, the releases of PCE from the sewers to the waters of the state were expected and foreseeable. CCCSD's acts were direct and substantial in the chain of events that has led to the current problems at the Site and its surrounds.

V. There is substantial evidence that the CCCSD's sewers leaked PCE into the environment.

As explained in my July 3, 2012 letter, there is substantial evidence that the CCCSD's sewers leaked PCE into the environment.

First, it is important to provide some clarity regarding a number of assertions presented by the CCCSD.

The CCCSD argues that, because the Izzo Report came out after the two dry cleaners at the Site closed, the CCCSD could not have known its sewers leaked. That misstates the issue. When the Izzo Report was issued is irrelevant– the Izzo Report merely documented that sewers leaked PCE deposited into the sewers from dry cleaners and explains the various ways that PCE escaped from the sewers into the environment. There is plenty of evidence that the CCCSD knew that the sewers leaked well before the Izzo Report was issued (including construction specifications that allowed for exfiltration as discussed in my prior letter) and that PCE was discharged into the sewers (including testing for PCE in effluent sampling at least as early as 1986). The CCCSD also knew that its sewers leaked or were likely to leak because of the tolerances of the tests it ran when the sewer was installed in the 1940s – 1950s. The CCCSD admits that a) it performed leakage tests and that b) the sewers do not lie on a significant grade.

Concerning the leakage tests, as the CCCSD notes, its tests allowed an exfiltration rate of 1400 gallons per inch pipe diameter per mile. The CCCSD implies that, because this is a pressure test, when the pipe is not under pressure during normal operation, it will not leak. A quick reading of the Izzo Report dispels this notion. As the Izzo Report shows, PCE can escape in many ways from the sewer pipe, and most of the ways have nothing to do with pressure within the sewer pipe.

[11] The CCCSD emphasizes that it had an informal cooperative enforcement program with the Bay Area Air Quality Management District "during much of the 1990's" that would have identified a problem with PCE discharges to the CCCSD's sewers. We do not know the date that this program came into existence or any details concerning whether Air District inspectors were competent to perform sewer discharge sampling or how the program worked. It may all be academic; the dry cleaners at the Site had ceased operation in 1991, perhaps before the informal program was started.

Next, the CCCSD asserts that "under gravity flow conditions, water follows the path of least resistance and would stay in the pipes. If the water and sewage could move through the sewer system unimpeded, it would most likely follow that path rather than pushing out through the joints or wall of the pipes and then through the soil." A statement about water following the path of least resistance does not contravene any of the Izzo Report's findings on how PCE leaves sewer pipes. However, it clear that the path of least resistance includes through joints, at root intrusions and through cracks in the pipes.

The CCCSD notes that sags in a sewer line do not mean that there have been releases from the sewer line. Sags are evidence of poor design, poor installation and poor maintenance.[12] As the Izzo Report notes, sags can be spots where there are tiny fractures in the sewer pipe due to pipe bending or where a joint can leak. Even if there are no cracks, the Izzo Report shows how PCE can flow from low spots or sags in a sewer line.

The CCCSD asserts that it had an excellent maintenance program, at least recently, and, as a result, should not be held liable for releases of dry cleaner PCE from its system. Yet, as described in detail in my July 3, 2012 letter to you, the CCCSD did not have an "excellent" maintenance program in the area of the Site.

Second, in its letter, the CCCSD asserts that its maintenance program meets and exceeds industry standards, even if this assertion is true, it does not address the key question of whether the District's inspection and maintenance programs were sufficient to prevent leaks from the its sewer system over the past several decades. As explained in my July 3, 2012 letter, the limited files that CCCSD produced in response to a Public Records Act request provide ample evidence that the sewers leaked. The reports identify locations of sewer pipe cracks, open joints, sags, and root penetrations. These inspection and maintenance records generally cover the period of time from the mid-1990s to the present but are for a sewer system that was constructed in the late 1940s and 1950s, a gap in history of close to fifty years. The CCCSD continues to tout how good its current programs are and how many recent awards it has received to try to establish the strength of its maintenance programs. But these awards are irrelevant and, as noted above, not really supportive of that premise during the relevant times because all but one award was received after the dry cleaners ceased operations. Even if the assertions of excellence are true, one cannot conclude, without any evidence, that no PCE leaked from the CCCSD sewers during the time the dry cleaners were operational because the CCCSD now has an "excellent investigation and maintenance program" – this is incomplete logic based on a non-existent premise.

Third, the CCCSD asserts that: "few if any of the facts noted, alone or in combination, provide evidence that the sewers in the area of the Gregory Village Shopping Center leaked." To the contrary, there are substantial facts that establish that the CCCSD's sewer lines in the neighborhood are a source of PCE. The presentation to the RWQCB in February 2011 by Erler & Kalinowski, Inc., GVP's consultant, documents how multi-

[12] In addition, as noted in Section II. B., the *Adobe* court determined that sags are evidence of inadequate due care; their existence at the Site makes it extremely difficult for the CCCSD to prove that it has an affirmative defense to liability under CERCLA.

depth soil vapor probes placed in the neighborhood establish that the concentration of PCE in soil vapor decreases with distance from the CCCSD's sanitary sewers. If, as the CCCSD argues, the PCE vapor originates solely from the groundwater, the vertical profile of vapor concentrations would be similar with lateral distance from the sewer. However, as the data show, this is not the case. Slides 39 – 41 of the presentation (enclosed) show that decreases in PCE soil vapor concentrations correlate with the distance from the sanitary sewer line located in the middle of the street, even allowing for some variability in soil stratigraphy. Further, slide 35 (enclosed) shows that there has been separate releases of PCE from the sewers in the neighborhood, demonstrated by the low concentration of PCE in soil vapor along Doray Avenue, which lies between the area of higher concentrations in the northern neighborhood and the GVP property. Please refer to the entire presentation for more details.

Lastly, a more detailed rebuttal showing the facts supporting leakage of PCE from the CCCSD's sewers is presented below.

A. Shirley & Cynthia Drive

CCCSD contends that there were no releases of PCE-laden waste-water from the sewer in the vicinity of Shirley and Cynthia Drive. This contention is counter to the actual investigation data for samples collected in the area and relies in part on the lack of historical inspection and maintenance records for this 1950s-era sewer. As explained above and in my July 3, 2012 letter, the soil vapor data show a separation between the elevated soil vapor concentrations detected on-site at the location of the former P&K Cleaners and the elevated PCE concentrations in subsurface vapor observed in proximity to the suspected off-site sanitary sewer lines to the north, e.g., near the intersection of Shirley and Cynthia Drives. This separation distance and elevated PCE concentrations in soil vapor suggest PCE release(s) and source area(s) near the sewer line in this intersection. The CCCSD argues that the separation is due to a lack of data, particularly on the northern end of the GV Mall property. However, the separation is shown sufficiently by the prior sampling results for eight soil vapor sample locations along Doray Avenue (SVP-12, SVP-21, SVP-22, SVP-27, MSVP-8, MSVP-9, and P55-SSVP-01, and P55-SSVP-02; see Exhibit 24 to my July 2012 letter and attached Slide 13.

For the limited years and locations that the CCCSD has provided to us actual maintenance and inspection records, these records generally show a sewer system with numerous problems in the vicinity of Shirley Drive and Cynthia Drive. For example, these reports identify cracks and roots (1994 report on the sewer between M45 and M54), open joint and cracked pipes (1994 report on the sewer between M54 andM58), and an increasing need for maintenance (2011 report on the sewer between M47 and M54). Further, the CCCSD's contention that there is no evidence of a flow backup in the sewer in this area may be a consequence of the fact that there is very limited historical information concerning these sewers.

B. Manhole M46

My July 2012 letter describes an apparent PCE source area near manhole M46 that has been identified based on soil vapor and groundwater data in the area, particularly at MSVP-17/GG-P87-01. Further, as noted above, the soil vapor data along Doray Drive demonstrate there is a separation of on-site and off-site source areas (see attached Slide 42). Based on these data, it can be concluded that PCE in waste-water was released from the sewer system near M46 and/or its adjoining sewer lines. The CCCSD provides an alternative interpretation of the source of the PCE in soil vapor and groundwater near M46 based on data from groundwater monitoring well MW-8, which is located in Doray Drive more than 100 feet south of M46. The CCCSD contends that the PCE migrated only in groundwater from the former P&K Cleaners site and that can entirely explain the high PCE concentrations detected in both groundwater and soil vapor near M46. This contention ignores the separation of sources previously identified by the soil vapor data. Simply put, if a migrating groundwater plume of PCE were the only source of PCE found in vapor, similarly elevated vapor concentrations would be found away from sewer lines and along the plumes length. But this not the case. The CCCSD also relies on the limited available historical inspection and maintenance records for the sewer to contend that there is no evidence of a release from the sewer near M46. In fact, the available records describe significant problems with the sewer in this area. For example, an inspection report in 2000 for the sewer from Doray Drive to M46 identified more than 10 feet of cracked pipe (cracks were reported at 106 feet south and from 83 to 94 feet south of M46; see Exhibit 21 to my letter).

C. Linda Drive

CCCSD contends that soil and groundwater sampling data collected at former Chevron monitoring well location EA-3 in Linda Drive are not indicative of a release of waste water containing PCE from the sewer in Linda Drive. This contention is based in significant part on the use of groundwater gradient information that is not representative of the direction in which the contaminants from the Chevron Property and Linda Drive have actually migrated. The CCCSD uses groundwater data from the property at 1690 Contra Costa Boulevard, located east and across Contra Costa Boulevard from the Chevron Property and where the shallow groundwater gradient is reported to be to the northwest. The 1690 Contra Costa Boulevard site is approximately 250 feet from Linda Drive. Groundwater investigations at the Chevron Property (see page 3 of CRA's Additional Site Investigation and Conceptual Site Model report, 2 March 2012) and the P&K Cleaners Site (see EKI's quarterly groundwater monitoring reports on GeoTracker) have consistently identified the shallow groundwater gradient to be the north or northeast, not to the northwest. In addition, even a northwestern groundwater flow direction would not explain the concentrations of PCE found at former monitoring well EA-3 because the well was located west, not northwest, of the former dry cleaning and service station operations on the Chevron Property (Figure 13, EA Engineering, Science, and Technology, Inc. Report of Investigation, 3 February 2012).

A release from the sewer of PCE-laden waste water discharged from dry cleaner and service station operations on the Chevron Property would explain the 1988/1989

detections of PCE in soil (328 mg/Kg) and in groundwater (5,000 ug/L) at the location of former monitoring well EA-3. No other nearby upgradient sources of PCE have been identified that might reasonably explain these data in Linda Drive.

VI. The CCCSD's maintenance program allowed for the release of PCE into the environment, long after the District was aware of the associated risks of such releases.

As discussed above, the CCCSD knew that its sewers leaked because its installation tests allowed substantial leakage. The CCCSD's records, though sparse and nearly all from after the dry cleaners at the Site closed, provide evidence of a pattern and practice of shoddy maintenance.

Doray Drive (between M44 and M48) - The CCCSD explains that the February 2006 repair of a hole in a sewer pipe - that was reported to have been discovered in May 2005 - is an example of the timely manner at which they correct such problems. But the hole existed for over 8 months before the repair was made.

Alley Parallel to Susan Lane (between M59 and M46) - The CCCSD explains that the break in the sewer pipe that was discovered in May 2000 was repaired in a week. However, there is no information to identify when the break first occurred. The break may have been present for many years prior to its discovery. In other comments, the CCCSD has noted that this is a high flow section of the sewer pipe, so a break even for a short period of time could result in a significant release from the sewer. As has been noted repeatedly, no inspection or maintenance reports are available for the many early decades of sewer system operation.

Doris Drive (between M59 and M60) - The CCCSD explains that the "sag" in this line was identified in 2006, but there is no information regarding when the sewer line first began to sag and no repair of the sag is reported. As noted above, low spots or "sags" were identified in the Izzo Report as locations of potential sewer leaks (Izzo Report, 1992, pages 19-20).

Linda Drive (between M60 and R99/R61) - The District commented on the timing for repair work conducted in 1987 through 2004, and on a reported sag in this section of pipe that was later determined not to be present. However, no comment was made to explain the need for the sewer replacement in this area or to clarify the 1977 maintenance report that stated that a section of the Linda Drive sewer was in very poor shape with many cracks.

VII. Conclusion

As my July 2012 letter to you stated, the California legislature expressly intended that sanitary districts, such as the CCCSD, be strictly liable under the Porter-Cologne Water Quality Control Act for releases from their facilities. Federal law, case law and RWQCB precedent also support naming the CCCSD to an Order for its liability for releases of

PCE from its system. There is nothing in the CCCSD letter to you that refutes that its own regulations allowed dry cleaners to discharge PCE to its system, that its system was designed to leak, that its maintenance efforts did not prevent leaks (even though very limited, mostly recent records were provided by the CCCSD), and that environmental data show that PCE was released from its sewers in the neighborhood resulting in increased concentrations of PCE in groundwater and vapor at locations remote from the former P&K Cleaners. Consequently, the CCCSD actively discharged waste into the waters of the State and should be named as a discharger.

Sincerely,

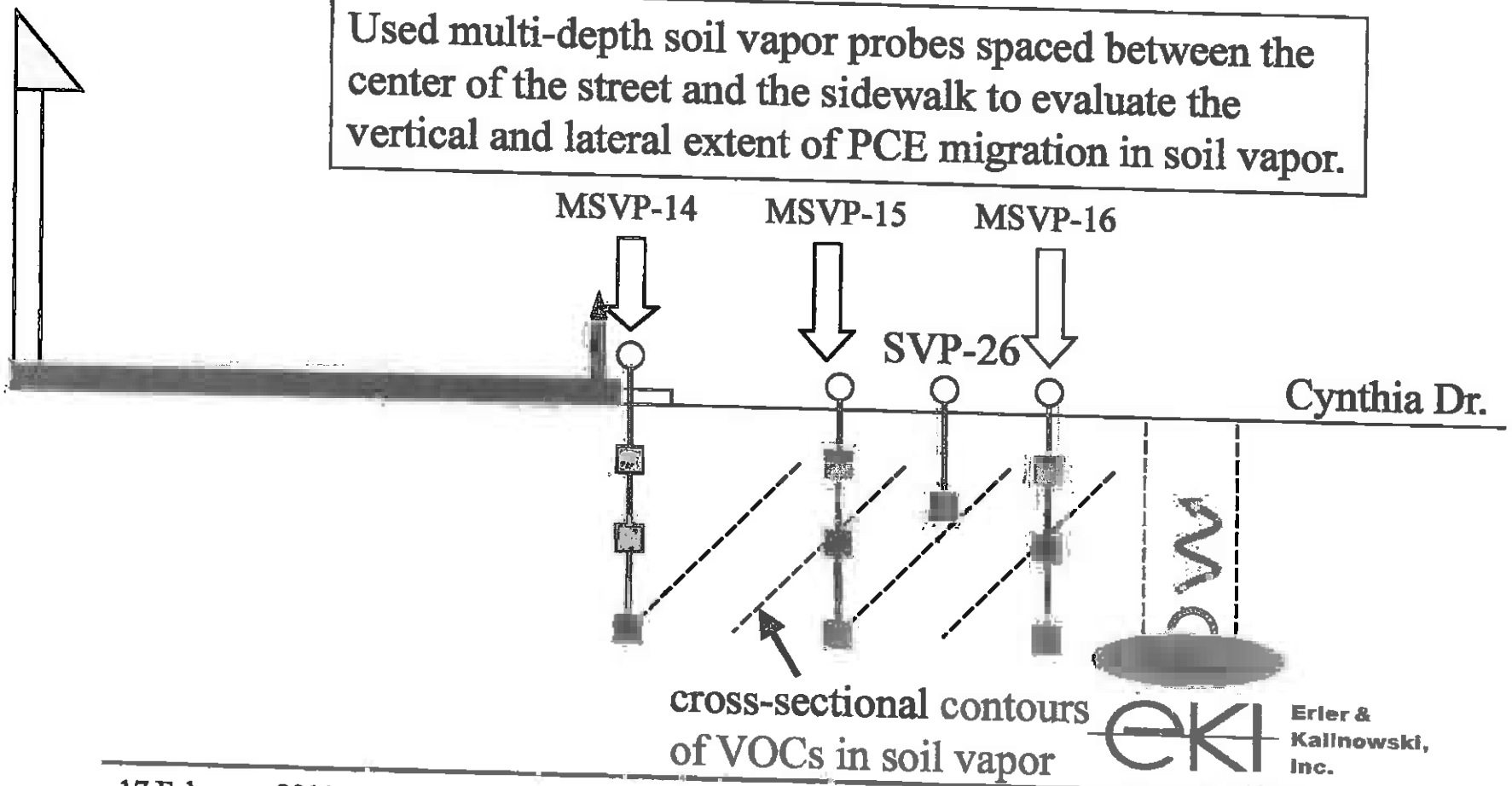
Edward A. Firestone

Enclosures

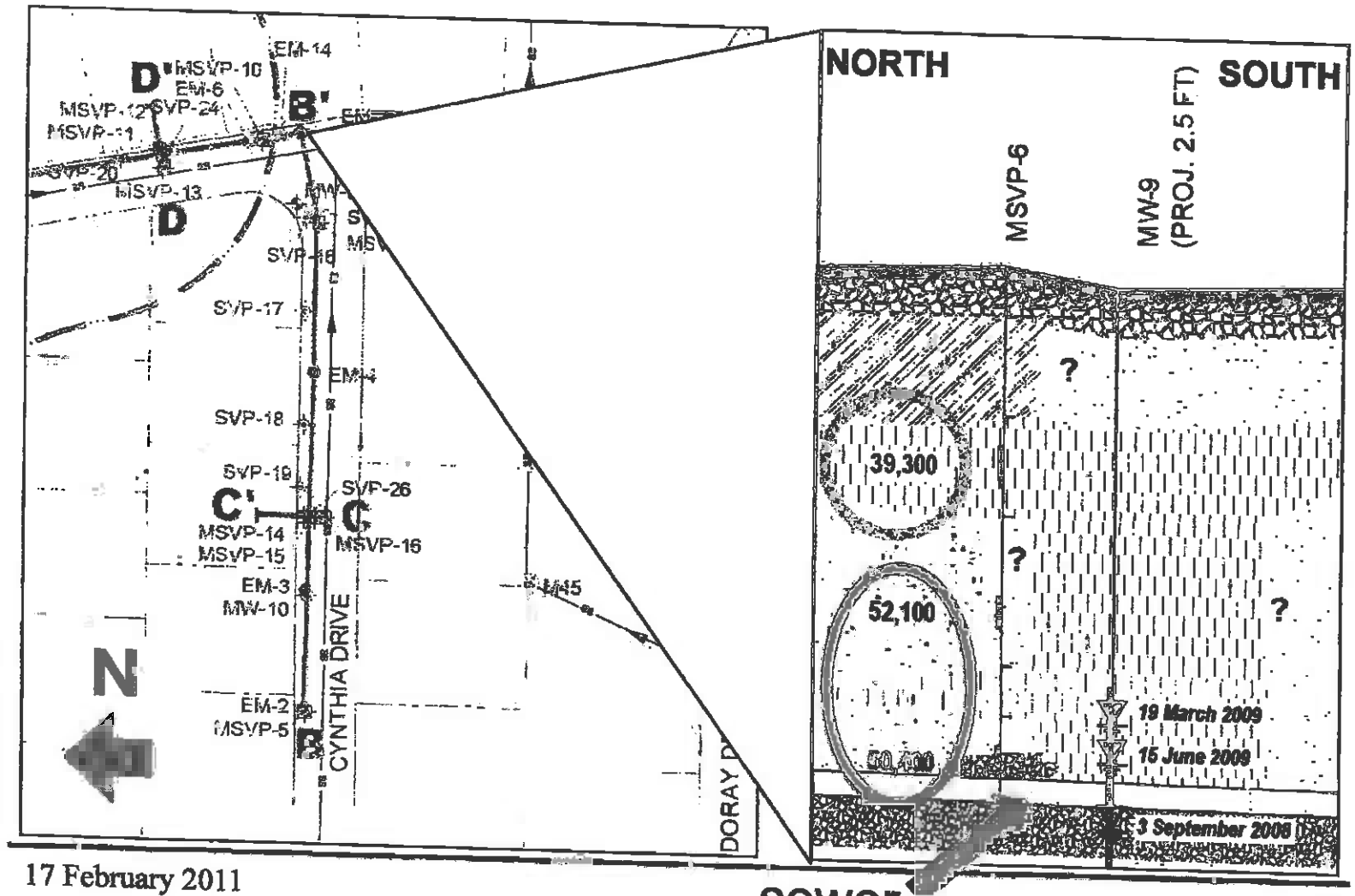
cc: K. Alm
L. Goldberg

2009 Soil Vapor Investigation

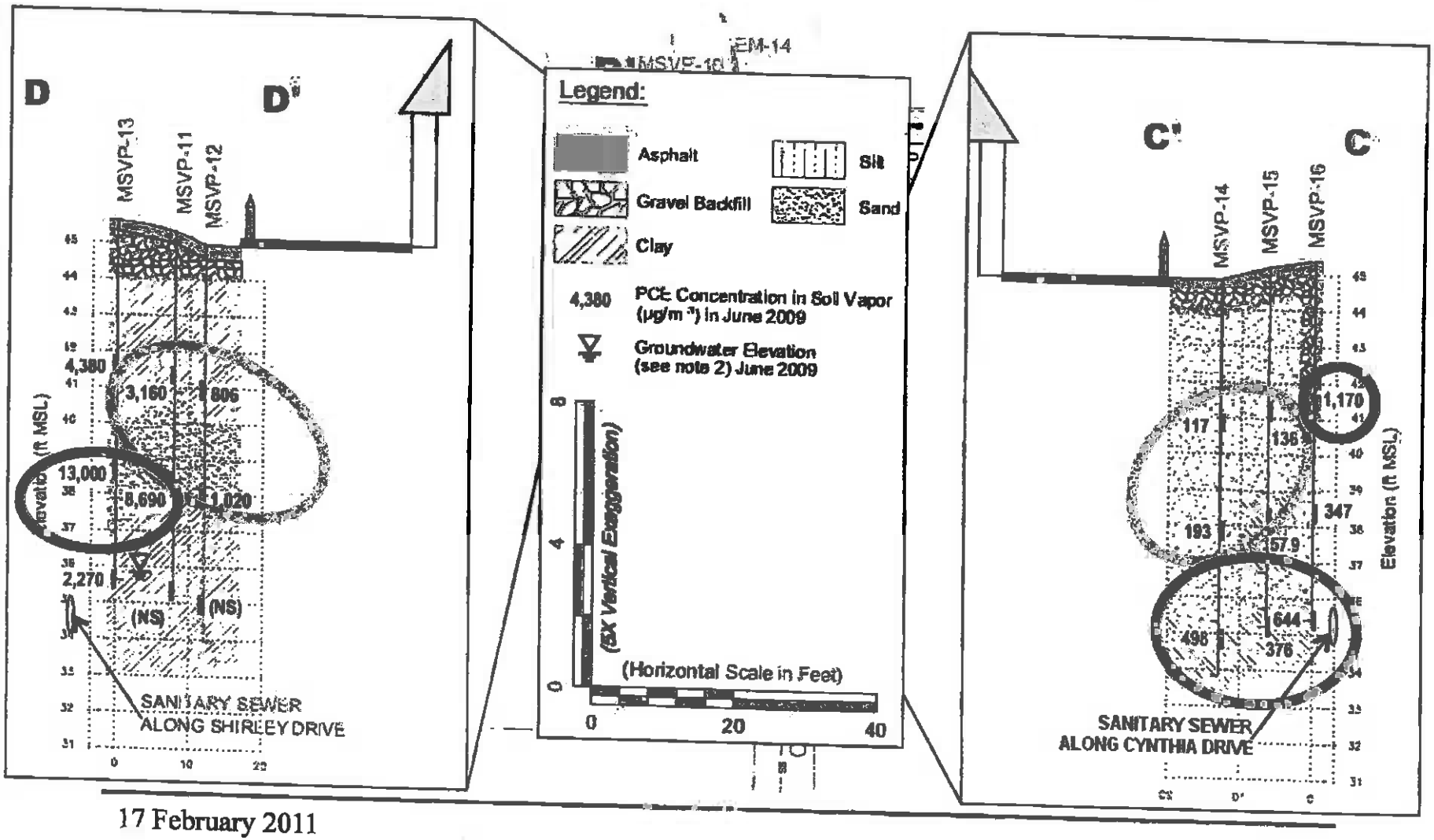
Used multi-depth soil vapor probes spaced between the center of the street and the sidewalk to evaluate the vertical and lateral extent of PCE migration in soil vapor.



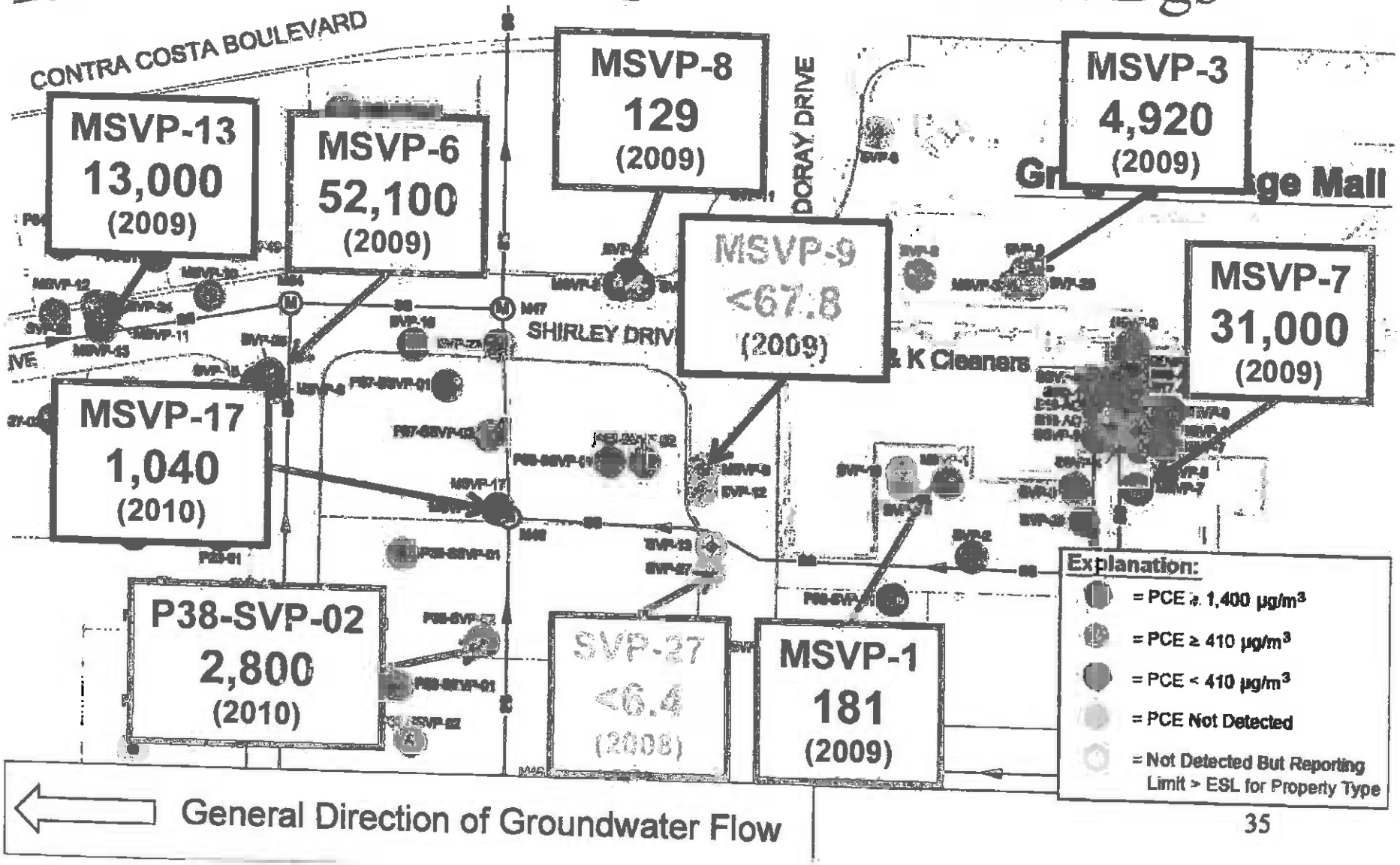
Section Map & MSVP-6 (2009)



MSVP Cluster Results (2009)



PCE in Soil Vapor at 5 to 6 Feet Bgs



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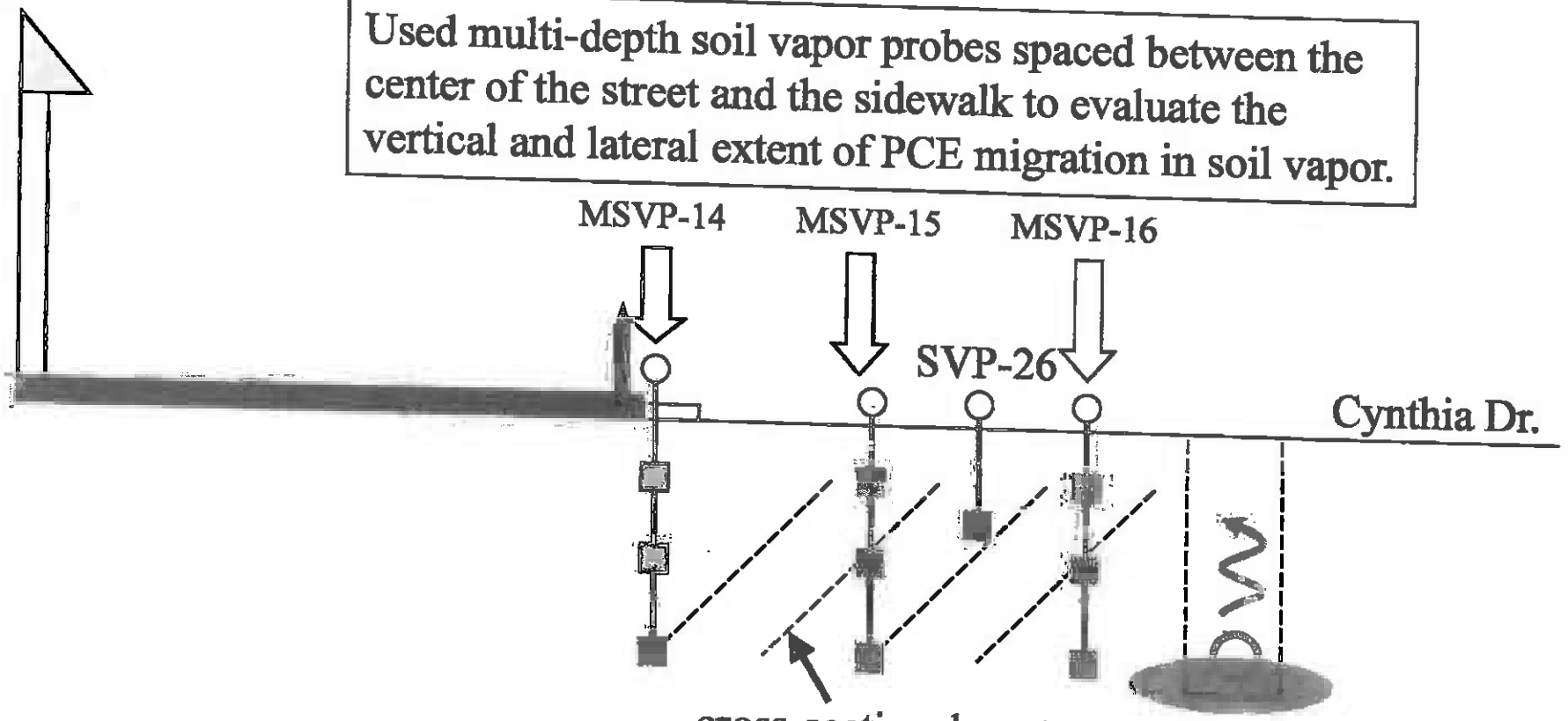
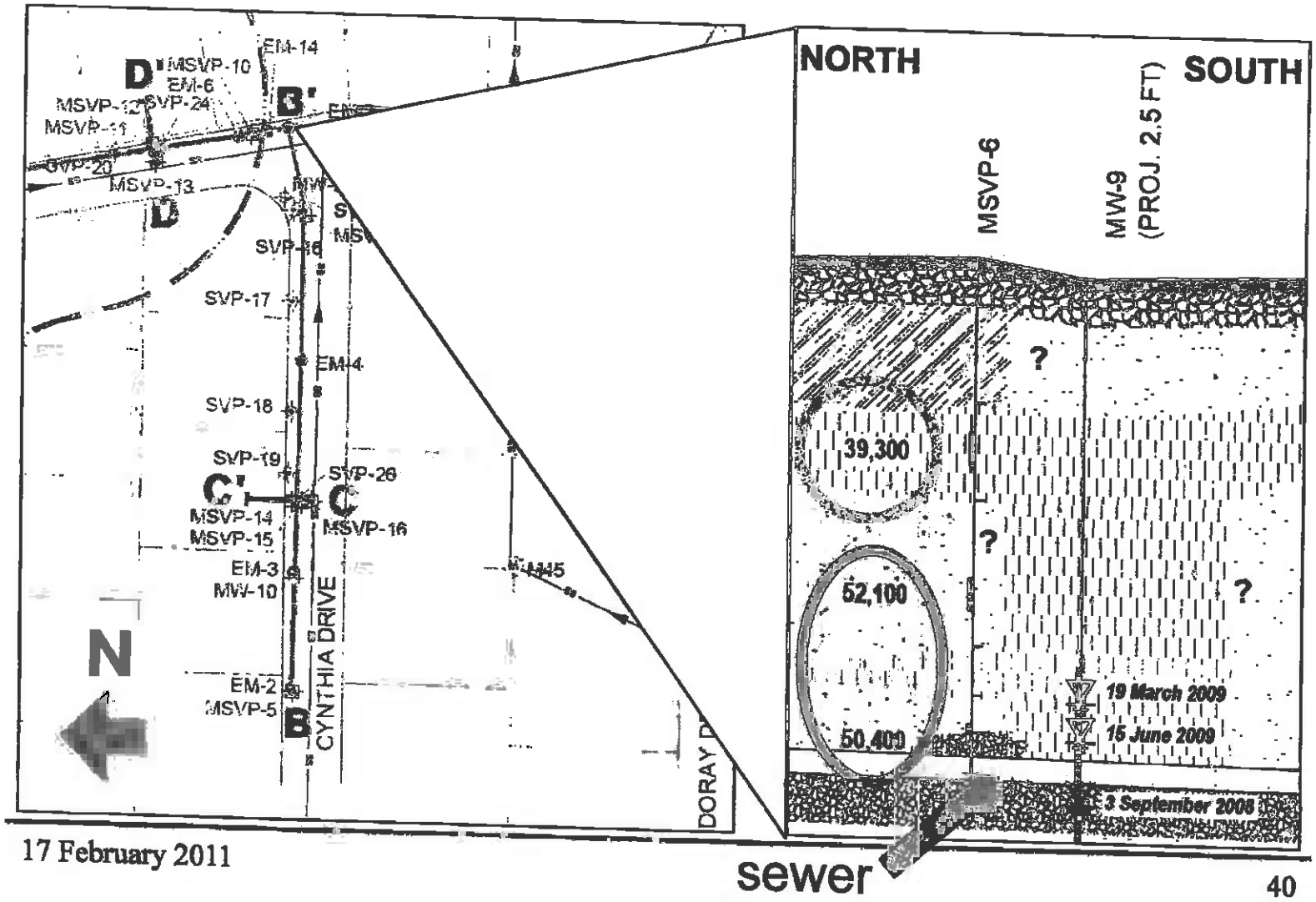
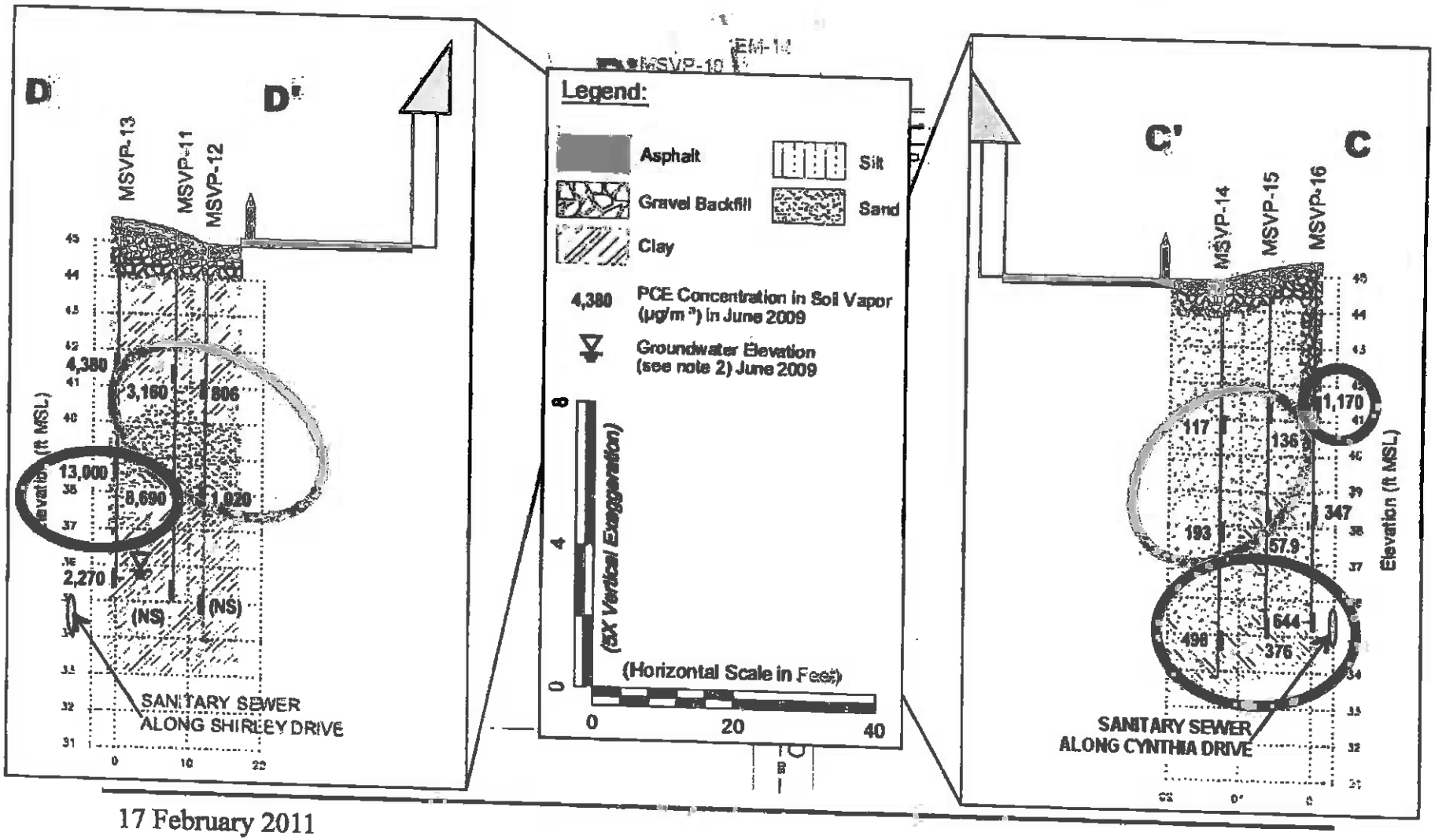


Erler & Kalinowski, Inc.

Section Map & MSVP-6 (2009)



MSVP Cluster Results (2009)



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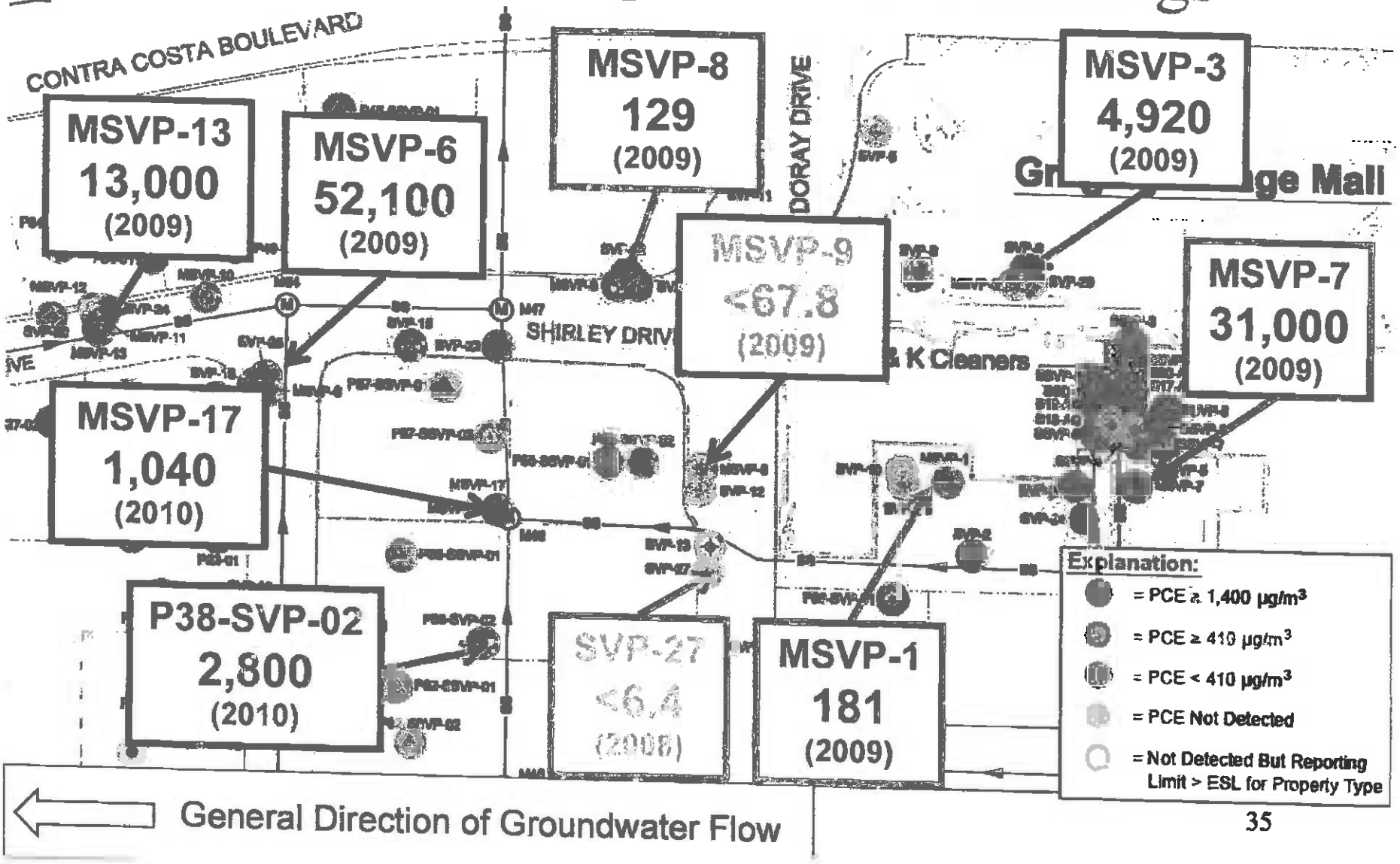

Attachment E

California Water Boards

Edmund G. Brown Jr.
Governor

Matthew Rodriquez
Secretary for
Environmental Protection

San Francisco Bay Regional Water Quality Control Board

July 2, 2014
File No. 07S0132 (KEB)
File No. 07S0204 (KEB)

1643 Contra Costa Boulevard parties*
Gregory Village Partners, L.P.
Village Builders, L.P.
Joseph J. Lee and Grace M. Lee
Alan Choi and Kauen Choi
Joseph William O'Malley
Floyd G. Taylor

1705 Contra Costa Boulevard parties**
Chevron U.S.A. Inc.
MB Enterprises, Inc.
Philip M. Lehrman
Jane A. Lehrman
Marjorie P. Robinson

SUBJECT: Transmittal of Staff Report and Tentative Orders – Site Cleanup Requirements for 1643 Contra Costa Boulevard and 1705 Contra Costa Boulevard, Pleasant Hill, Contra Costa County

Dear Addressees:

Attached are the Staff Report and Tentative Orders (Site Cleanup Requirements) for the subject sites. This transmittal letter is addressed to the named dischargers listed in the Tentative Orders for the properties located at 1643 and 1705 Contra Costa Boulevard. The attached materials will also be posted on the following Regional Water Board webpage: http://www.waterboards.ca.gov/sanfranciscobay/public_notices/#sitecleanup

This matter will be considered by the Regional Water Board during its regular meeting on September 10, 2014. The meeting will start at 9:00 am 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 the Regional Water Board offices by August 4, 2014. Comments submitted after this date will not be considered by the Regional Water Board.

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

If you have any questions, please contact Kevin Brown of my staff at (510) 622-2358 [e-mail kebrown@waterboards.ca.gov].

Sincerely,

for

Digitally signed by Stephen Hill
Date: 2014.07.02 14:53:31 -07'00'

Bruce H. Wolfe
Executive Officer

Attachments: Tentative Orders
Staff Report

cc w/attachments: Mailing List Interested Parties

*** 1643 Contra Costa Boulevard parties:**

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Fullerton, CA 92833

Mr. Joseph William O'Malley
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Mr. Floyd G. Taylor
300 Melanie Drive
Pittsburg, CA 94565

**** 1705 Contra Costa Boulevard parties:**

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PLehrman1@earthlink.net

Ms. Jane A. Lehrman
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Marjorie P. Robinson
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Mailing List Interested Parties

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EKI
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SMiller@ekiconsult.com

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Contra Costa County Public Health
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WBrunner@cd.cccounty.us

Paladin Law Group LLP
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Walnut Creek, CA 94595
JTill@PaladinLaw.com

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

ADOPTION OF INITIAL SITE CLEANUP REQUIREMENTS for:

GREGORY VILLAGE PARTNERS, L.P.,
VILLAGE BUILDERS, L.P.,
JOSEPH J. LEE,
GRACE M. LEE,
ALAN CHOI,
KAUEN CHOI,
JOSEPH WILLIAM O'MALLEY, and
FLOYD G. TAYLOR

for the property located at:

1643 CONTRA COSTA BOULEVARD
PLEASANT HILL, CONTRA COSTA COUNTY

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

1. **Site Location and Description**: The 3.6-acre Gregory Village Shopping Center, a commercial retail plaza with an address of 1601-1699 Contra Costa Boulevard (Assessor's Parcel No. 150-052-009-1), is located on the west side of Contra Costa Boulevard in Pleasant Hill, California. A dry cleaner, with an address of 1643 Contra Costa Boulevard (the "Site"), once operated out of a small suite within the shopping center. Several commercial parcels are located directly north and south of the plaza, and residential properties also exist to the west and north.

2. **Site History**: The Gregory Village Shopping Center, reportedly constructed in 1950, contains approximately twenty retail and commercial tenants in a one-story building, and is currently owned by Gregory Village Partners, L.P. (herein "GVP"). Historical records indicate a dry cleaner operated within the Site from at least 1965 until the present. Gregory Cleaners and P&K Cleaners occupied the Site, from 1965-1984 and 1984-2002, respectively.

   In 1997, chlorinated volatile organic compounds ("CVOCs"), primarily the common dry cleaning solvent tetrachloroethylene (also known as "PCE" or "Perc"), were detected in shallow soil and groundwater beneath and near the dry cleaner during a due diligence investigation. PCE, a potential human carcinogen, was also detected in shallow soil vapor. Trichloroethylene ("TCE"), cis-1,2-dichloroethene ("cis-1,2-DCE"), trans-1,2-DCE, and vinyl chloride, toxic compounds formed from the degradation of PCE, were detected in soil, soil vapor, and groundwater. A CVOC groundwater plume formed from the past PCE

releases, and the plume currently extends beneath a residential subdivision to the north of the shopping center. CVOCs were detected beneath the concrete slab-on-grade floors of the former dry cleaner and several homes, and also within the indoor air of several houses.

Dry Cleaning Business Operations: According to information provided by GVP, the first dry cleaner to occupy the Site was "Gregory Cleaners", which reportedly started operations on or about December 2, 1965. Gregory Cleaners reportedly operated until August 1, 1984, when its name was changed to "P&K Cleaners." The dry cleaner was renamed "Nob Hill Cleaners" on or about May 6, 2002, and retained this name to approximately May 20, 2004, when it was renamed "Park Avenue Cleaners" (a name it currently holds).

According to GVP, Joseph William O'Malley and Floyd G. Taylor (February 9, 1979 to approximately 1983), Alan Choi and Kauen Choi (December 1, 1983 to August 1, 1984), and Joseph J. Lee and Grace M. Lee (August 1, 1984 to April 1, 1988), reportedly operated a dry cleaner at the Site when PCE was likely used and discharged. According to GVP, on-Site dry cleaning operations occurred between 1964 and March 1991, after which the dry cleaner became a "drop-off" and clothes were cleaned at an off-Site facility.

Regional Water Board staff was not provided with any information about operators of the dry cleaner prior to 1979, however, given the lack of records indicating a change in type of equipment, and the propensity of dry cleaners to use PCE prior to 1979, it is reasonable to conclude that PCE was used and discharged at the Site before 1979.

Regional Water Board staff discovered a reference to an April 10, 1987, Uniform Hazardous Waste Manifest (for the disposal of hazardous wastes), provided by the Department of Toxic Substances Control, for "P&K Gregory Cleaners" with the Site's address. This is consistent with the timeframe when dry cleaners using PCE used hazardous waste haulers to dispose of PCE-contaminated wastewater and other waste.

Furthermore, high concentrations of PCE were detected in soil vapor directly beneath the former dry cleaner, strong evidence that PCE was used and released at the property.

Land Ownership during Dry Cleaner Operations: The Gregory Village Shopping Center property was owned by several different individuals and entities since approximately 1949 to the present. The chain-of-title to the property, since December 1965 (when dry cleaning activities reportedly commenced) is as follows:

<u>December 1965 through February 25, 1998</u>

- Ken Lowry/Kenlow Corporation
    - According to the California Secretary of State's web-site, the business license for the Kenlow Corporation, who reportedly owned the shopping center starting on August 1, 1960, was suspended in 2000. No agent for service of process is listed for the company.

<u>February 25, 1998 through Present</u>

- Gregory Village Partners, L.P. (60% tenancy-in-common interest)
- Village Builders, L.P. (40% tenancy-in-common interest)

- On March 29, 2004, the Village Builders' interest was sold to Gregory Village Partners, L.P., currently holding 100% fee interest in the property

The Site currently houses Park Avenue Cleaners. Since PCE was not used at the Site for many years (reportedly since at least 1991), there is no reason to suspect the current business is responsible for the pollution.

3. **Named Dischargers:**

GVP is named as a discharger because it is the current owner of the property on which there is an ongoing discharge of pollutants, it has knowledge of the discharge or the activities that caused the discharge, and it has the legal ability to control the discharge.

Joseph J. Lee, Grace M. Lee, Alan Choi, Kauen Choi, Joseph William O'Malley, and Floyd G. Taylor are named as dischargers because of substantial evidence that they discharged pollutants to soil and groundwater at the Site: it is common knowledge that releases occurred during routine operations involving chlorinated solvents in dry cleaning; these same pollutants are present in soil and groundwater directly beneath and in the immediate vicinity of the dry cleaner; and these same pollutants are present in groundwater at and downgradient of the dry cleaner in concentrations that generally diminish with distance. Each of these dischargers knew of the discharge or activities that caused the discharge, and each had the legal ability to control the discharge during their respective period of operating the dry cleaner.

Village Builders, L.P. is named as a discharger because it is a former owner of the property during whose ownership there was an ongoing discharge of pollutants, it had knowledge of the discharge or the activities that caused the discharge, and it had legal ability to control the discharge.

If additional information is submitted indicating other parties caused or permitted any waste to be discharged on the Site where it entered or could have entered waters of the State, the Regional Water Board will consider adding those parties to this Order.

4. **Regulatory Status:** The Site is currently not subject to a Regional Water Board order.

5. **Site Hydrogeology:** The Site is located within the Ygnacio Valley Groundwater Basin, a structural depression between the Berkeley Hills to the west and the Diablo Range to the east. The basin sediments consist of thick Quaternary-age alluvial and floodplain deposits, generally comprised of unconsolidated to partially-consolidated, discontinuous layers of silt, clay, sand, and gravel. The local topography is gently tilted to the north and northwest.

Groundwater levels in the first-encountered/shallow water-bearing zone below and downgradient of the Site have fluctuated between approximately seven and 14 feet below the ground surface. The groundwater flow direction in the shallow zone has varied from northwest to northeast, with a regional flow direction to the north, at an average gradient of approximately 0.005 feet per foot.

6. **Hydrology:** The closest major surface water bodies to the Site are Grayson Creek, located approximately 2,000 feet to the west, and Walnut Creek, located roughly 2,000 feet to the east. No municipal drinking water supply wells are known to exist within a two-mile radius of the site. Shallow "backyard" irrigation wells are common on residential parcels in Pleasant Hill, but a door-to-door domestic well survey has not been completed in the residential subdivision downgradient of the Site.

7. **Remedial Investigation:** Numerous soil, soil vapor, and groundwater samples collected and analyzed during approximately 17 years of environmental investigation and cleanup activities at the Site have detected a variety of chemicals, several of which are very toxic to human health. CVOCs were detected in soil, soil vapor, and shallow groundwater within the boundaries of the shopping center and also in soil vapor and groundwater upgradient and downgradient of the Site, at concentrations above health-based standards. For example, the data indicates CVOCs are present in groundwater at levels exceeding the maximum contaminant levels (MCLs).[1]

   In 1997, several environmental assessments identified the Site as a source of PCE contamination and confirmed that two previous tenants used PCE in their dry cleaning operations. The studies confirmed the presence of CVOCs, mainly PCE, in soil and groundwater in the vicinity of the Site. PCE was detected in soil up to 1.1 mg/kg, and groundwater samples contained PCE up to 27,000 micrograms per liter (µg/L) near a sewer lateral at the rear of the Site.

   Following site investigations in 2003 and 2008 that detected PCE in soil vapor at the rear of the suite and below the Site's slab-on-grade floor, in June 2009 soil vapor samples were collected from multi-depth soil vapor probes ("MSVPs"). These MSVPs were installed in several streets within a residential neighborhood downgradient of the Site. PCE, TCE, and cis-1,2-DCE were detected at maximum concentrations of 52,100 µg/m³ at six feet, 15,700 µg/m³ at nine feet, and 16,300 µg/m³ at nine feet, respectively. The highest on-Site soil vapor concentrations were detected in MSVP-7, a probe advanced directly to the rear (west) of the dry cleaner; at this location, PCE and TCE were discovered at 54,800 µg/m³ and 6,240 µg/m³ at a depth of nine feet.

   In May 2010, five sub-slab soil vapor probes (SSVPs) were installed beneath the Site, while four probes were constructed beneath the two adjacent commercial units. Beneath the Site, PCE soil vapor concentrations ranged from 5,720 µg/m³ to 1,490,000 µg/m³, with the highest concentration directly beneath the former dry cleaner machine. Below the 1637 Contra Costa Boulevard unit (a suite directly north of the Site), PCE concentrations were 61,200 µg/m³ and 59,600 µg/m³, while PCE concentrations beneath the 1649 Contra Costa Boulevard unit (a suite directly south of the Site) were 2,100 µg/m³ and 3,080 µg/m³.

[1] The drinking water standard for PCE and TCE, known as the maximum contaminant level, or MCL, is 5 µg/L. The Regional Water Board's 2013 Environmental Screening Levels (ESLs) for potential vapor intrusion concerns at commercial facilities are 2,100 µg/m³ (PCE) and 3,000 µg/m³ (TCE), respectively.

In June 2010, PCE was detected in a sub-slab soil vapor sample collected directly beneath the garage floor of a residential property (95 Cynthia Drive) located downgradient of the Site at a concentration of 12,800 µg/m³. PCE was detected in an exterior probe (5.5 feet deep) at a concentration of 220 µg/m³. A follow-up sub-slab sample collected on August 17, 2010, detected PCE in soil vapor beneath the garage at 18,600 µg/m³. Two indoor air samples were also collected on August 16 and 17, 2010, and PCE was detected at concentrations of 6.46 µg/m³ and 1.04 µg/m³. In November 2010, samples collected from two sub-slab soil vapor probes installed at 99 Cynthia Drive detected PCE at concentrations of 1,540 µg/m³ and 6,530 µg/m³.

The maximum detected concentrations of contaminants of potential concern are listed by medium in the table below:

	Maximum Concentration Detected		
Analyte	Groundwater (µg/L)	Soil (mg/kg)	Soil Gas (µg/m³)
PCE	27,000	5.3	1,490,000
TCE	130	0.03	<12,900
cis-1,2-DCE	<40	<0.04	<9,520
vinyl chloride	<50	<0.05	<6,130

The CVOC concentrations in groundwater are substantially above the drinking water standards (e.g., the Maximum Contaminant Level, or MCL, for PCE is 5 µg/L). The concentrations of PCE detected in soil vapor directly beneath the dry cleaner and adjacent units (subslab) are well above the Regional Water Board's 2013 *Environmental Screening Levels* (ESLs) [2] for potential vapor intrusion concerns at commercial facilities, which is 2,100 µg/m³. The concentrations of PCE detected in sub-slab soil vapor beneath several homes exceed the Regional Board's 2013 ESLs for potential vapor intrusion concerns at residential sites (210 µg/m³).

Based on the characterization studies completed to date, additional delineation of CVOCs in soil, soil vapor and groundwater is necessary.

8. **Interim Remedial Measures**: In October 1999, approximately 30 gallons of PCE were removed from the dry cleaning machine and transported off-Site to a disposal facility. In November 1999, approximately 30 cubic yards of soil were excavated from beneath the concrete floor slab and transported to the Altamont Landfill in March 2000.

In 2011, sub-slab depressurization (SSD) systems were installed as mitigation measures beneath the concrete floor of the Site (dry cleaner only) and two residential properties; 95 Cynthia Drive and 99 Cynthia Drive. The SSD systems were installed to prevent soil vapors from entering the structures; the systems are not remediating CVOC-contaminated soil and groundwater beneath the structures.

[2] See Regional Water Board webpage: http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/esl.shtml

Additional interim remedial measures likely will be necessary to reduce the threat to water quality, public health, and the environment posed by the past chemical releases, and to provide a technical rationale behind the selection and design of final remedial measures.

9. **Nearby Sites**: The property at 1705 Contra Costa Boulevard, directly south of the shopping center, is currently a Chevron-branded gas station. Between 1972 and 1986, a former steel waste oil Underground Storage Tank (UST) leaked petroleum hydrocarbons and CVOCs into soil and groundwater at this property. A former dry cleaner used to operate in the southern part of the property; the dry cleaner used and leaked PCE into the subsurface. The property has a long and well-documented history of chemical use and unauthorized releases, including significant CVOC releases to soil and groundwater. Petroleum and CVOC releases at this property have commingled with the CVOC plume originating from the Site. This property is the subject of another proposed order directed to Chevron U.S.A., Inc. and others.

   A former Unocal gas station located at 1690 Contra Costa Boulevard is cross-gradient and east of the southern part of the main parking lot. This site, now a McDonald's restaurant, had confirmed releases of petroleum hydrocarbons and fuel oxygenates to soil and groundwater. A waste oil UST was removed from the site in 2000. The case (Regional Water Board Case No. 07-0450) was closed on September 27, 2010. It is possible that MTBE and other fuel-related constituents have migrated in groundwater from this property and onto the Site, but there is insufficient evidence to reach this conclusion at this time.

   A former gas station (now a Taco Bell restaurant, 1700 Contra Costa Boulevard) is located cross-gradient and approximately 150 feet southeast of the main parking lot. This property had historic releases of petroleum hydrocarbons. A waste oil UST was removed from the site in the past (date unknown). The case (Regional Water Board Case No. 07-0873) was closed on May 20, 2008. It is possible that fuel-related chemicals have migrated in groundwater from this property and beneath the Site, but there is insufficient evidence to reach this conclusion at this time.

   Minor concentrations of CVOCs were detected in the groundwater beneath a former gas station at 1521-1529 Contra Costa Boulevard, located directly north of the main parking lot and upgradient of CVOC detections in soil vapor and groundwater in the residential neighborhood north of the Gregory Village Shopping Center. The property, which was an automotive service and fueling station until 1977, has an unknown chemical release history. The case (Regional Water Board Case No. 07-0893) is currently open. It is possible that fuel-related chemicals have migrated in groundwater from this property and beneath the Site, but there is insufficient evidence to reach this conclusion at this time. Additional data will be necessary to confirm that CVOCs were not released during the historic service station operations.

   Two other dry cleaners, located at 1946 Contra Costa Boulevard (07S0088; Former Dutch Girl Cleaners and currently the "Hosanna Cleaners") and 2001 Contra Costa Boulevard, are upgradient of the Site. The 07S0088 case is inactive and approximately 2,000 feet south-southeast of the Site. It is highly unlikely, primarily because of the lateral distance between this property and the Site, that any PCE released on this property has migrated in

groundwater and commingled with the CVOC plume associated with the Site. The 2001 Contra Costa Boulevard property, currently named PH Bargain Cleaners, is located approximately 1,300 feet to the south, and is not listed as a case in the Water Board records.

Three former and current paint shops - 1725 Contra Costa Boulevard, 1720 Linda Drive, and 1942 Linda Drive - are located upgradient of the Chevron property. The 1725 Contra Costa Boulevard property, the former "Deen Pierce Paint Company (Case No. 07-0344 and closed on July 20, 1994), had a former UST which reportedly contained mineral spirits; the UST was removed on or about July 16, 1986. Regional Water Board staff does not have any information about the other two paint shops. There is insufficient evidence to determine whether constituents from these properties have commingled with contamination at the Site.

Former and current automotive maintenance facilities at 1855-1859 Contra Costa Boulevard are located approximately 1,100 feet upgradient of the Site. CVOCs and petroleum hydrocarbons were released at this site. The case (Regional Water Board Case No. 07-0022) is open. No evidence was presented to the Regional Water Board to indicate a groundwater plume from this property has migrated all the way to 1705 Contra Costa Boulevard (the "Chevron" property).

10. **Basin Plan**: The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater, and also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board, U.S. EPA, and the Office of Administrative Law where required.

The potential beneficial uses of groundwater underlying and adjacent to the Site include:

a. Municipal and domestic water supply
b. Industrial process water supply
c. Industrial service water supply
d. Agricultural water supply

At present, there is no known use of the shallow groundwater zone underlying the Site for the above purposes. The vertical extent of groundwater contamination is unknown, and a future vertical delineation study is warranted. Because the Regional Water Board has insufficient information regarding the actual use of groundwater in the vicinity of the Site, Task 1 includes a requirement to survey for sensitive receptors. Similarly, the extent to which the shallow groundwater zone is connected to lower zones is not well-defined, necessitating the requirement in Task 1 to study potential vertical conduits and preferential pathways.

11. **State Water Board Policies**: State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background shall be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives. This order and its requirements are consistent with Resolution No. 68-16.

    State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304," applies to this discharge. This order and its requirements are consistent with the provisions of Resolution No. 92-49, as amended.

12. **Other Board Policy**: Regional Water Board Resolution No. 89-39, "Sources of Drinking Water," defines potential sources of drinking water to include all groundwater in the region, with limited exceptions for areas of high TDS, low yield, or naturally-high contaminant levels. The groundwater at this Site is a potential source of drinking water.

13. **Preliminary Cleanup Goals**: The Dischargers will need to make assumptions about future cleanup standards for soil, soil vapor, and groundwater in order to determine the necessary extent of remedial investigation, interim remedial actions, and the draft remedial action plan. Pending the establishment of site-specific cleanup standards, the following preliminary cleanup goals shall be used:

    a. Groundwater: Applicable water quality objectives (e.g., the lower of primary/toxicity and secondary/taste and odor MCLs) or, in the absence of a chemical-specific objective, equivalent drinking water levels based on toxicity and taste and odor concerns.

    b. Soil and Soil Vapor: Applicable screening levels as compiled in the Regional Water Board's Environmental Screening Levels (ESLs) document or its equivalent. Soil and soil vapor screening levels are intended to address a full range of exposure pathways, including direct exposure, indoor air impacts, nuisance, and leaching to groundwater. For purposes of this subsection, the Discharger shall assume that groundwater is a potential source of drinking water.

14. **Basis for 13267 and 13304 Order**: Water Code section 13267 authorizes the Regional Water Board to require a person who has discharged, discharges or is suspected of having discharged or discharging, to furnish technical or monitoring program reports. The burden of the reports required by this Order bears a reasonable relationship to the need for the report and the benefits to be obtained (to characterize the extent of contamination, the associated risks to human health and the environment, and document success of remediation efforts). Water Code section 13304 authorizes the Regional Water Board to issue orders requiring a discharger to cleanup and abate waste where the discharger has caused or permitted waste to be discharged or deposited where it is or probably will be

discharged into waters of the State and creates or threatens to create a condition of pollution or nuisance. As discussed above, each of the dischargers has caused or permitted waste to be discharged or deposited, causing contamination of soil and groundwater. Contamination of groundwater creates and threatens to create conditions of pollution and nuisance.

15. **Cost Recovery:** Pursuant to Water Code section 13304, the Dischargers are hereby notified that the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this order.

16. **California Environmental Quality Act (CEQA):** This action is an order to enforce the laws and regulations administered by the Regional Water Board. As such, this action is categorically exempt from the provisions of CEQA pursuant to Title 14 of the California Code of Regulations, section 15321.

17. **Safe Drinking Water Act:** It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This order promotes that policy by requiring discharges to meet the lower of primary and secondary maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.

18. **Notification:** The Regional Water Board has notified the Dischargers and all interested agencies and persons of its intent under Water Code section 13304 to prescribe Site Cleanup Requirements for the discharge, and has provided them with an opportunity to submit their written comments.

19. **Public Hearing:** The Regional Water Board, at a public meeting, heard and considered all comments pertaining to the proposed site cleanup requirement for the Site.

IT IS HEREBY ORDERED, pursuant to sections 13267 and 13304 of the Water Code, that the Dischargers (or their agents, successors, or assigns) shall investigate, cleanup, and abate the effects described in the above findings as follows:

A. PROHIBITIONS

1. The discharge of wastes or hazardous substances in a manner which will degrade water quality or adversely affect beneficial uses of waters of the State is prohibited.

2. Further significant migration of wastes or hazardous substances through subsurface transport to waters of the State is prohibited.
3. Activities associated with the subsurface investigation and cleanup which will cause significant adverse migration of wastes or hazardous substances are prohibited.

B. TASKS

1. COMPLETION OF SENSITIVE RECEPTOR SURVEY AND CONDUIT STUDY

COMPLIANCE DATE: November 7, 2014

Submit a technical report acceptable to the Executive Officer documenting the completion of an up-to-date sensitive receptor survey and a conduit study. To evaluate the potential impact of the contamination on human health and the environment, the locations of sensitive receptors, including all water supply and irrigation wells, shall be identified. A door-to-door well survey shall be completed in the residential subdivisions to the north and west of the shopping plaza. A conduit study is needed to evaluate the role of subsurface utilities in the migration or accumulation of CVOCs in the subsurface.

2. PUBLIC PARTICIPATION PLAN

COMPLIANCE DATE: November 7, 2014

Submit a technical report acceptable to the Executive Officer to ensure adequate public participation will be undertaken at key steps in the remedial action process.

3. REMEDIAL INVESTIGATION/DATA GAP WORK PLAN

COMPLIANCE DATE: December 12, 2014

Submit a work plan acceptable to the Executive Officer to further evaluate source areas and to define the vertical and lateral extent of CVOCs in soil, soil vapor, and groundwater including, but not limited to: new vapor sampling at certain residential parcels and units within the shopping center; resampling of existing soil vapor probes; and, deeper groundwater investigation and sampling, both on- and off-Site.
The work plan shall specify investigation methods and a proposed time schedule.

4. COMPLETION OF REMEDIAL INVESTIGATION

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 3. Work Plan

Submit a technical report acceptable to the Executive Officer documenting completion of necessary tasks identified in the Task 2 work plan. The technical report shall define the vertical and lateral extent of pollution down to concentrations at or below typical cleanup standards for soil, soil vapor, and groundwater.

5. COMPLETION OF HUMAN HEALTH RISK ASSESSMENT

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 4.

Submit a technical report acceptable to the Executive Officer documenting the completion of an appropriate human health risk assessment.

6. **DRAFT REMEDIAL ACTION PLAN INCLUDING DRAFT CLEANUP STANDARDS**

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 5.

Submit a technical report acceptable to the Executive Officer containing:

a. Results of the remedial investigation;
b. Evaluation of the installed interim remedial actions;
c. Feasibility study evaluating alternative final remedial actions;
d. Risk assessment for current and post-cleanup exposures;
e. Recommended final remedial actions and cleanup standards; and,
f. Implementation tasks and time schedule.

Item c shall include projections of cost, effectiveness, benefits, and impact on public health, welfare, and the environment of each alternative action.

Items a through c shall be consistent with the guidance provided by Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), CERCLA guidance documents with respect to remedial investigations and feasibility studies, Health and Safety Code section 25356.1(c), and State Board Resolution No. 92-49 as amended ("Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304").

Item e shall consider the preliminary cleanup goals for soil and groundwater identified in finding 13, and shall address the attainability of background levels of water quality (see finding 11).

7. **DELAYED COMPLIANCE**

If the Dischargers are delayed, interrupted, or prevented from meeting one or more of the completion dates specified for the above tasks, the Discharger shall promptly notify the Executive Officer and the Board may consider revision to this Order.

C. PROVISIONS

1. **No Nuisance**: The storage, handling, treatment, or disposal of polluted soil or groundwater shall not create a nuisance as defined in Water Code section 13050(m).

2. **Good Operations and Maintenance (O&M)**: The Discharger shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.

3. **Cost Recovery**: The Dischargers shall be liable, pursuant to Water Code section 13304, to the Board for all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. If the site addressed by this Order is enrolled in a State Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Dischargers over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.

4. **Access to Site and Records**: In accordance with Water Code section 13267(c), the Dischargers shall permit the Board or its authorized representative:

   a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.

   b. Access to copy any records required to be kept under the requirements of this Order.

   c. Inspection of any monitoring or remediation facilities installed in response to this Order.

   d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the Dischargers.

5. **Self-Monitoring Program**: The Dischargers shall comply with the Self-Monitoring Program as attached to this Order and as may be amended by the Executive Officer.

6. **Contractor/Consultant Qualifications**: All technical documents shall be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.

7. **Lab Qualifications**: All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Board using approved EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control (QA/QC) records for Board review. This provision does not apply to analyses that can only reasonably be performed on-Site (e.g., temperature).

8. **Document Distribution**: Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the following agencies:

   - Regional Water Quality Control Board
   - City of Pleasant Hill
   - County of Contra Costa

   The Executive Officer may modify this distribution list as needed.

All reports submitted pursuant to this Order shall be submitted as electronic files in PDF format. All electronic files shall be submitted via the State Water Board's Geotracker website, email (only if the file size is less than 3 MB), or on CD.

9. **Reporting of Changed Owner or Operator:** The Dischargers shall file a technical report on any changes in Site occupancy or ownership associated with the property described in this Order.

10. **Reporting of Hazardous Substance Release:** If any hazardous substance is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the Dischargers shall report such discharge to the Board by calling (510) 622-2369 during regular office hours (Monday through Friday, 8:00 AM to 5:00 PM).

    A written report shall be filed with the Board within five working days. The report shall describe: the nature of the hazardous substance, estimated quantity involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective actions taken or planned, schedule of corrective actions planned, and persons/agencies notified.

    This reporting is in addition to reporting to the Office of Emergency Services required pursuant to the Health and Safety Code.

12. **Periodic Site Cleanup Requirement Review:** The Board will review this Order periodically and may revise it when necessary. The Dischargers may request revisions and upon review the Executive Officer may recommend that the Board revise these requirements.

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

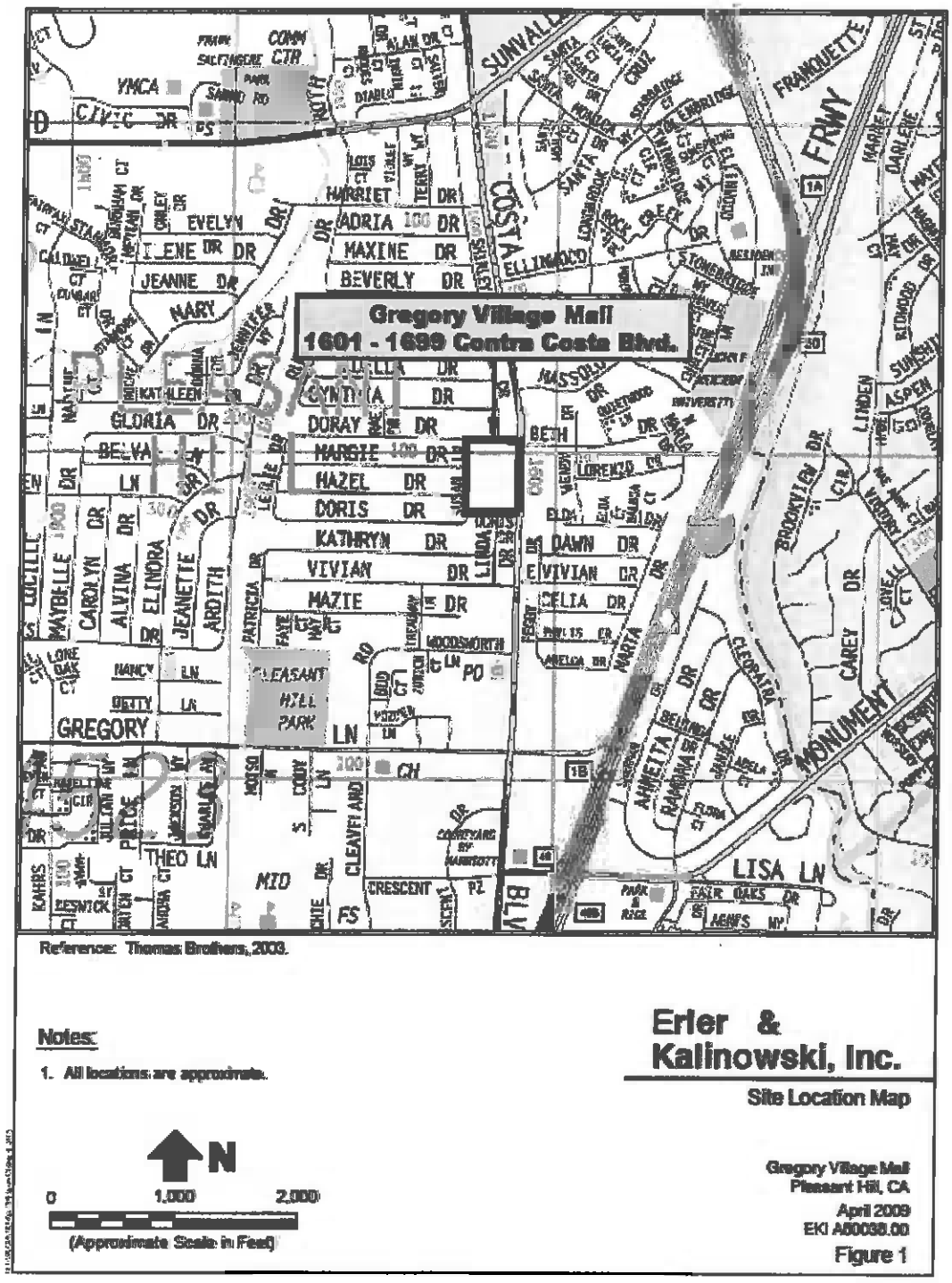
FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO: IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER CODE SECTIONS 13268 OR 13350, OR REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY

Attachments

Attachment A: Site Map
Attachment B: Self-Monitoring Program

Attachment A

Site Map


Gregory Village Mall
1601 - 1699 Contra Costa Blvd.
Reference: Thomas Brothers, 2003.
Notes:
1. All locations are approximate.
N
0
1,000
2,000
(Approximate Scale in Feet)
Erler & Kalinowski, Inc.
Site Location Map
Gregory Village Mall
Pleasant Hill, CA
April 2009
EKI A60038.00
Figure 1

Attachment B

Self-Monitoring Program

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

SELF-MONITORING PROGRAM for:

GREGORY VILLAGE PARTNERS, L.P.
VILLAGE BUILDERS, L.P.,
JOSEPH J. LEE,
GRACE M. LEE,
ALAN CHOI,
KAUEN CHOI,
WILLIAM O'MALLEY, and
FLOYD G. TAYLOR

for the property located at:

1643 CONTRA COSTA BOULEVARD
PLEASANT HILL, CONTRA COSTA COUNTY

1. **Authority and Purpose**: The Regional Water Board requests the technical reports required in this Self-Monitoring Program (SMP) pursuant to Water Code sections 13267 and 13304. This Self-Monitoring Program is intended to document compliance with Regional Water Board Order No. R2-2014-XXX (Site Cleanup Requirements).

2. **Monitoring**: The Dischargers shall measure groundwater elevations quarterly in all monitoring wells, and shall collect and analyze representative samples of groundwater according to the following schedule:

Well #	Sampling Frequency	Analyses	Well #	Sampling Frequency	Analyses
MW-1	A	8260B	MW-7	SA	8260B
MW-2	A	8260B	MW-8	SA	8260B
MW-3	SA	8260B	MW-9	SA	8260B
MW-4	SA	8260B	MW-10	SA	8260B
MW-5	A	8260B	MW-11	SA	8260B
MW-6	A	8260B			

Key: SA = Semi-Annually
8260B = EPA Method 8260B or equivalent
A = Annually

The Dischargers shall sample any new monitoring or extraction wells quarterly and analyze groundwater samples for the same constituents as shown in the above table. The Dischargers may propose changes in the above table; any proposed changes are subject to Executive Officer approval.

3. **Semi-Annual and Annual Monitoring Reports**: The Dischargers shall submit semi-annual monitoring reports to the Regional Water Board no later than 45 days following the sampling event. The reports shall include:

   a. Transmittal Letter: The transmittal letter shall discuss any violations during the reporting period and actions taken or planned to correct the problem. The letter shall be signed by the Discharger's principal executive officer or his/her duly authorized representative, and shall include a statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge.

   b. Groundwater Elevations: Groundwater elevation data shall be presented in tabular form, and a groundwater elevation map shall be prepared for each monitored water-bearing zone. Historical groundwater elevations shall be included in the fourth quarterly report each year.

   c. Groundwater Analyses: Groundwater sampling data shall be presented in tabular form, and a map shall be prepared that includes the analytical data for one or more key contaminants for each monitored water-bearing zone, as appropriate. The report shall indicate the analytical method used, detection limits obtained for each reported constituent, and a summary of QA/QC data. Historical groundwater sampling results shall be included in the fourth quarterly report each year. The report shall describe any significant increases in contaminant concentrations since the last report, and any measures proposed to address the increases. Supporting data, such as lab data sheets, need not be included (however, see record keeping - below).

   d. Groundwater Extraction: If applicable, the report shall include groundwater extraction results in tabular form, for each extraction well and for the Site as a whole, expressed in gallons per minute and total groundwater volume for the quarter. The report shall also include contaminant removal results, from groundwater extraction wells and from other remediation systems (e.g., soil vapor extraction), expressed in units of chemical mass per day and mass for the quarter. Historical mass removal results shall be included in the fourth quarterly report each year.

   e. Status Report: The quarterly report shall describe relevant work completed during the reporting period (e.g., site investigation, interim remedial measures) and work planned for the following quarter.

4. **Violation Reports:** If the Dischargers violate requirements in the Site Cleanup Requirements, then the Dischargers shall notify the Regional Board office by telephone as soon as practicable once the Dischargers have knowledge of the violation. Regional Water Board staff may, depending on violation severity, require the Dischargers to submit a separate technical report on the violation within five working days of telephone notification.

5. **Other Reports:** The Dischargers shall notify the Regional Water Board in writing prior to any Site activities, such as construction or underground tank removal, which have the potential to cause further migration of contaminants or which could provide new opportunities for site investigation.

6. **Record Keeping:** The Dischargers or their agents shall retain all data generated for the above reports, including lab results and QA/QC data, for a minimum of six years after origination and shall make them available to the Regional Water Board upon request. The six-year period of retention shall be extended during the course of any unresolved litigation regarding this discharge or when requested by the Regional Water Board.

7. **SMP Revisions:** Revisions to this SMP may be ordered by the Executive Officer, either on his/her own initiative or at the request of the Dischargers. Prior to making SMP revisions, the Executive Officer will consider the burden, including costs, of associated self-monitoring reports relative to the benefits to be obtained from these reports.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

ADOPTION OF INITIAL SITE CLEANUP REQUIREMENTS for:

CHEVRON U.S.A. INC.,
MB ENTERPRISES, INC.,
PHILIP M. LEHRMAN,
JANE A. LEHRMAN, and
MARJORIE P. ROBINSON

for the property located at:

1705 CONTRA COSTA BOULEVARD
PLEASANT HILL, CONTRA COSTA COUNTY

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

1. **Site Location and Description**: The 0.48-acre property (Assessor's Parcel No. 150-103-016-5) is a rectangular-shaped, commercial parcel (the "Site"). The Site is located in the Gregory Gardens area of Pleasant Hill, California, and is currently developed with a Chevron-branded gasoline service station. The Site is bounded by Contra Costa Boulevard to the east, Doris Drive to the north, Linda Drive to the west, and a parking lot and commercial building to the south. The Gregory Village Shopping Center and its main parking lot are located directly north of Doris Drive.

   Site improvements include a small station/convenience store, car wash, three underground storage tanks ("USTs") for automotive fuels, product dispensers and underground piping, underground pavements and landscape areas. A dry cleaner once occupied the southern portion of the Site.

2. **Site History**: An automotive fueling facility has existed on the northern parcel for over 60 years. Standard Oil operated on the northern parcel from 1950 until 1977. The successor to Standard Oil, Chevron U.S.A. Inc. (herein referred to as "Chevron"), operated at the Site from 1977 until 2003. Automotive repairs were undertaken on the Site from approximately 1950 to 1987.

   In 1971, two commercial parcels, a northern lot at 1705 Contra Costa Boulevard (Assessor's Parcel No. 150-103-01) and a southern lot at 1709 Contra Costa Boulevard (Assessor's Parcel No. 103-012-012) were merged to form one parcel, which was then split to create a larger northern parcel to facilitate the construction of an automotive maintenance and repair building (constructed in 1972). Both of these properties were owned jointly by the Lehrmans and Robinsons between 1965 and late 1986. A dry cleaner

had reportedly operated at 1709 Contra Costa Boulevard since the mid-1950s. According to information provided by the Contra Costa County Assessor's office, prior to the construction of the new service station building in 1972, the common (central) property line between 1705 and 1709 Contra Costa Boulevard was shifted to the south approximately 35 feet to create a bigger lot. The southern part of the new building, along with a steel waste oil UST, were then located in a section over the original dry cleaner property.

In late December 1986, Chevron purchased both 1705 and 1709 Contra Costa Boulevard, and sometime in 1987 merged the two lots into one parcel. According to available building permits and inspection reports, by late 1987, the former dry cleaner building had been removed, and in early 1988 Chevron constructed the car wash. Chevron sold the Site in March 2003 to MB Enterprises, Inc., the current property owner and gas station operator.

Unauthorized releases of volatile organic compounds (VOCs) and related constituents, including chlorinated volatile organic compounds (CVOCs), chiefly tetrachloroethylene (PCE) and trichloroethylene (TCE), and various petroleum hydrocarbons (e.g., benzene, toluene, ethylbenzene, xylenes, etc.), were documented at the Site, mainly from former leaking USTs. It is common knowledge that PCE and TCE have been used at automotive repair stations for many years to clean brakes, carburetors, and fuel injection systems and to degrease engines and other parts, and oftentimes USTs were used to store waste oil and related products.[1] [2] [3] PCE is also commonly associated with dry cleaners.

Land Ownership: According to information provided by Chevron, the Site was owned by several different individuals and/or businesses since about 1950, as follows:

1950 to 1960

- Gregory Village, Inc. (a business that no longer exists with no agent for service of process)

1960 to 1986

- Phil Heraty Organization (a business that no longer exists with no agent for service of process)
- Philip and Jane Lehrman
- Ned and Marjorie P. Robinson (Mr. Robinson is deceased)
- Merle D. Hall Company (no clear evidence of property ownership)
- Max W. Parker (no clear evidence of property ownership)

[1] USEPA, November 1993, Economic Impact Analysis of the Halogenated Solvent Cleaning NESHAP, EPA-453/D-93-058.

[2] State of California Environmental Protection Agency/Air Resources Board, June 1997, Status Report, Perchloroethylene Needs Assessment for Automotive Consumer Products.

[3] State of California Environmental Protection Agency, November 2006, Automotive Aerosol Cleaning Products: Low-VOC, Low Toxicity Alternatives, Report prepared by Institute for Research and Technical Assistance for the Department of Toxic Substances Control and City of Santa Monica.

December 1986 to March 2003

- Chevron U.S.A. Inc.

March 2003 to Present

- MB Enterprises, Inc. (current property owner and gas station operator)

3. **Named Dischargers:** Philip M. Lehrman, Jane A. Lehrman, and Marjorie P. Robinson are named as dischargers because they owned the entire property during the time when CVOCs were discharged, had knowledge of the discharge and/or the activities that caused the discharge, and had the legal ability to prevent the discharge.

   Gregory Village, Inc. and Phil Heraty Organization are not being named as dischargers because these businesses no longer exist, and the California Secretary of State has no record for an agent for service of process on file for either company. Merle D. Hall Company and Max W. Parker are not being named as dischargers because there is no clear evidence of their ownership of Site 2.

   Chevron is named as a discharger with respect to the discharge and migration of CVOCs from a former waste oil tank and the former dry cleaner, both located on the Site. First, with respect to CVOC releases from a former on-Site leaking waste oil UST, Chevron is named as a discharger because of substantial evidence that it discharged CVOCs to soil and groundwater at the Site. This evidence includes Standard Oil/Chevron's operation of the waste oil UST for many years, and the pattern of CVOC and petroleum contamination subsequently detected in the vicinity of the former waste oil UST. As of at least 1986, Chevron knew of the discharge or the activities that caused the discharge and had the legal ability to prevent the discharge.

   Second, with respect to CVOC releases from the former on-Site dry cleaner, Chevron is a discharger because it owned the property during the time of a discharge of CVOCs to soil and groundwater, had knowledge of the discharge and/or the activities that caused the discharge, and had the legal ability to control the discharge.

   MB Enterprises, Inc. is named as a discharger because it is the current owner of the property on which there is an ongoing discharge of pollutants, has knowledge of the discharge, and the ability to control the discharge.

   Regional Water Board staff was unable to locate a former operator of the dry cleaner, Charles Grant Bostwick and Joanne Bostwick. Regional Water Board staff understands that former operators of the dry cleaner, Morris and Genoise Jorgenson, are also deceased.

   If additional information is submitted indicating other parties caused or permitted any waste to be discharged on the Site where it entered or could have entered waters of the State, the Regional Water Board will consider adding those parties to this order. Collectively the above identified responsible parties are referred as Dischargers.

4. **Regulatory Status:** The Site is currently not subject to a Regional Water Board order.

5. **Site Hydrogeology**: The Site is located within the Ygnacio Valley Groundwater Basin, a structural depression between the Berkeley Hills to the west and the Diablo Range to the east. The basin sediments consist of thick Quaternary-age alluvial and floodplain deposits, generally comprised of unconsolidated to partially consolidated, discontinuous layers of silt, clay, sand, and gravel. The local topography is gently tilted to the north and northwest.

   From June 1989 through May 2013, groundwater levels in various monitoring wells associated with the Site ranged from a low of approximately 20 feet below the ground surface (bgs) to a high of approximately six feet bgs. The lowest groundwater level recorded coincides with a time when Chevron was pumping and treating polluted groundwater. Groundwater flow direction in the shallow zone has been mainly to the north at an average gradient of approximately 0.005 feet per foot.

6. **Hydrology:** The closest major surface water bodies are Grayson Creek, located approximately 2,000 feet to the west, and Walnut Creek, located approximately 2,000 feet to the east. No municipal drinking water supply wells are known to exist within a two-mile radius of the site. Shallow "backyard" irrigation wells are common on residential parcels in Pleasant Hill, but a door-to-door domestic well survey has not been completed in the residential subdivision downgradient of the Site.

7. **Remedial Investigation**: Numerous soil, soil vapor, and groundwater samples collected and analyzed during approximately 26 years of environmental investigation and cleanup activities at the Site have detected a variety of chemicals, several of which are very toxic to human health. The data indicates CVOCs are present in groundwater at levels exceeding the maximum contaminant levels (MCLs) [4] beneath and downgradient (north and northwest) of the Site, and have likely commingled with another CVOC groundwater plume associated with the former P&K Cleaners location north of the Site

   Petroleum and chlorinated VOCs were detected in soil, soil vapor, and shallow groundwater within the boundaries of the Site, adjacent to the Site, and within the Gregory Village Shopping Center parcel downgradient of the Site.

   The Site was an open environmental case from 1986 to early 2005. Chevron indicated the Site did not pose a threat to human health, groundwater and the environment. Based on the findings and analysis in environmental assessment reports from Chevron, groundwater contamination appeared to be localized and adequately characterized. Chevron requested closure of the UST case. Based on the data presented, the Regional Water Board concurred and closed the fuel UST case on January 14, 2005. All groundwater monitoring wells, with the exception of off-Site well EA-5, were destroyed in March 2005.

   An October 31, 2005, letter from Cambria Environmental Technology, Inc. about the destruction of monitoring wells stated, *As part of approved case closure, one sentinel well, EA-5, will remain active and sampled annually for petroleum hydrocarbons and halogenated volatile organic compounds.* EA-5 has been monitored on an annual basis for

[4] The drinking water standard for PCE and TCE, known as the maximum contaminant level, or MCL, is 5 µg/L.

the past eight years. The maximum historic PCE and TCE detections in groundwater samples from off-Site well EA-5 have been 52 µg/L, and 84 µg/L, respectively.[5]

The maximum detected concentrations of contaminants of potential concern are listed by medium in the table below:

Analyte	Maximum Concentration Detected		
	Groundwater (µg/L)	Soil (mg/kg)	Soil Gas (µg/m^3)
PCE	5,000	20	3,247,700
TCE	3,600	1.4	2,100,000
cis-1,2-DCE	2,900	0.45	410,000
vinyl chloride	910	<48	<5,200
benzene	12,000	2.2	520,733
TPH-gasoline	110,000	80	916,667

The CVOC concentrations in groundwater are substantially above the drinking water standards (e.g., the Maximum Contaminant Level, or MCL, for PCE is 5 µg/L). The CVOC concentrations in soil vapor are well above risk-based screening levels (e.g., Regional Water Board's ESLs[6]) for potential vapor intrusion concerns at commercial facilities (e.g., ESL is 2,100 µg/m^3), and pose a direct threat to indoor air.

The distribution and types of contaminants in groundwater downgradient of the Site generally mirror the contaminants found in soil, soil vapor and groundwater directly beneath the Site. The data demonstrates that CVOC concentrations in groundwater are generally higher near the former steel waste oil UST, then generally decrease in concentrations as the plume expanded to the north and attenuated, indicating the pollution in groundwater migrated and likely commingled with the P&K Cleaners plume.

Nevertheless, there are several data gaps in regards to the vertical and lateral distribution of CVOCs in soil, soil vapor and groundwater, both on-Site and off-Site. Additional soil, soil vapor and groundwater characterization studies, and a human health risk assessment, are warranted.

8. **Interim Remedial Measures**: The first-generation fueling facilities were removed and replaced in 1971-1972. The second-generation fueling facilities were removed and replaced in 1987-1988. A steel waste oil UST installed in 1972 was removed in 1986. There are no records to indicate contaminated soils were excavated and hauled away during any of the waste oil UST removal and replacement activities.

Between August 1991 and July 1996, pumping, treatment, and permitted disposal of contaminated groundwater was conducted at the Site as an interim remedial measure.

[5] These concentrations are much lower than on-Site concentrations of CVOCs and in groundwater samples collected more recently and to the west of EA-5 (as discussed below), indicating EA-5 is probably not located in an appropriate area to function as a "sentinel" well.

[6] See Regional Water Board webpage: http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/esl.shtml

Approximately 1,900,000 gallons of polluted groundwater were extracted, treated, and discharged to the sanitary sewer system. Chevron reported removal of approximately 12 pounds of Total Petroleum Hydrocarbons and 41 pounds of CVOCs. Chevron reported that the pump and treat system did little to reduce the high concentrations of CVOCs dissolved in groundwater.

In 1995, as part of site renovation activities, trench liners, pea gravel, and product piping were removed, and shallow soil contaminated with petroleum hydrocarbons was excavated to approximately three feet bgs.

Additional interim remedial measures likely will be necessary to reduce the threat to water quality, public health, and the environment posed by the past chemical releases, and to provide a technical rationale behind the selection and design of final remedial measures.

9. **Nearby Sites:** A commercial property to the north, 1601-1699 Contra Costa Boulevard and currently the Gregory Village Shopping Center, is directly downgradient of the Site. A dry cleaner that used PCE in their operations existed in one of the tenant suites within the plaza (with a property address of 1643 Contra Costa Boulevard). CVOC releases from this former dry cleaner are well-documented (Regional Water Board Case No. 07S0132). This property is the subject of another proposed order directed to Gregory Village Partners, L.P., and others.

A former Unocal gas station located at 1690 Contra Costa Boulevard is cross-gradient and approximately 150 feet northeast of the Site. This site, now a McDonald's restaurant, had confirmed releases of petroleum hydrocarbons and fuel oxygenates to soil and groundwater. A waste oil UST was removed from the site in 2000. The case (Regional Water Board Case No. 07-0450) was closed on September 27, 2010. There is insufficient evidence to determine whether MTBE and other fuel-related constituents from this former gas station property have commingled with contamination at the Site.

A former gas station (now a Taco Bell restaurant), located at 1700 Contra Costa Boulevard, is cross-gradient and approximately 100 feet east of the Site., This property had historic releases of petroleum hydrocarbons. A waste oil UST was removed from the site in the past (date unknown). The case (Regional Water Board Case No. 07-0873) was closed on May 20, 2008. There is insufficient evidence to determine whether fuel-related constituents from this property have commingled with contamination at the Site.

Minor concentrations of CVOCs were detected in the groundwater beneath a former gas station at 1521-1529 Contra Costa Boulevard, approximately 600 feet north of the Site and upgradient of CVOC detections in soil vapor and groundwater in the residential neighborhood north of the Gregory Village Shopping Center. The property, which was an automotive service and fueling station until 1977, has an unknown chemical release history. The case (Regional Water Board Case No. 07-0893) is currently open. There is insufficient evidence to determine whether fuel-related constituents from this former gas station property have commingled with contamination at the Site or migrated beneath the adjacent residential neighborhood. Additional data will be necessary to confirm that CVOCs were not released during the historic service station operations.

Two other dry cleaners, located at 1946 Contra Costa Boulevard (07S0088; Former Dutch Girl Cleaners and currently the "Hosanna Cleaners") and 2001 Contra Costa Boulevard, are upgradient of the Site. The 07S0088 case is inactive and approximately 2,000 feet southeast of the Site. Because of the lateral distance between this property and the Site, it is unlikely that any PCE released on this property migrated in groundwater and commingled with the CVOC plume associated with the Site. The 2001 Contra Costa Boulevard property, currently PH Bargain Cleaners, is located approximately 1,300 feet to the south and is not listed as a case in the Water Board's records.

Former and current automotive maintenance facilities at 1855-1859 Contra Costa Boulevard are located approximately 650 feet upgradient (south) of the Site. CVOCs were released at this site. The case (Regional Water Board Case No. 07-0022) is open. There is insufficient evidence to determine whether fuel-related constituents from this property have commingled with contamination at the Site.

Three current and former paint shops - 1725 Contra Costa Boulevard, 1720 Linda Drive, and 1942 Linda Drive - are located upgradient of the Site. The 1725 Contra Costa Boulevard property, the former "Deen Pierce Paint Company (Case No. 07-0344 and closed on July 20, 1994), had a former UST which reportedly contained mineral spirits; the UST was removed on or about July 16, 1986. Regional Water Board staff does not have any information about the other two paint shops. There is insufficient evidence to determine whether constituents from these properties have commingled with contamination at the Site.

10. **Basin Plan:** The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater, and also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board, U.S. EPA, and the Office of Administrative Law where required.

The potential beneficial uses of groundwater underlying and adjacent to the Site include:

a. Municipal and domestic water supply
b. Industrial process water supply
c. Industrial service water supply
d. Agricultural water supply

At present, there is no known use of the shallow groundwater zone underlying the Site and immediate area for the above purposes. The vertical extent of groundwater contamination is unknown, and a future vertical delineation study is warranted. Because the Regional Water Board has insufficient information regarding the actual use of groundwater in the vicinity of the Site, Task 1 includes a requirement to survey for sensitive receptors. Similarly, the extent to which the shallow groundwater zone is connected to lower zones is not well-defined, necessitating the requirement in Task 1 to study potential vertical conduits and preferential pathways.

11. **State Water Board Policies:** State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background shall be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives. This order and its requirements are consistent with Resolution No. 68-16.

    State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304," applies to this discharge. This order and its requirements are consistent with the provisions of Resolution No. 92-49, as amended.

12. **Other Board Policy:** Regional Water Board Resolution No. 89-39, "Sources of Drinking Water," defines potential sources of drinking water to include all groundwater in the region, with limited exceptions for areas of high TDS, low yield, or naturally-high contaminant levels. The groundwater at this Site is a potential source of drinking water.

13. **Preliminary Cleanup Goals:** The Dischargers will need to make assumptions about future cleanup standards for soil, soil vapor, and groundwater in order to determine the necessary extent of remedial investigation, interim remedial actions, and the draft remedial action plan. Pending the establishment of site-specific cleanup standards, the following preliminary cleanup goals shall be used for these purposes:

    a. Groundwater: Applicable water quality objectives (e.g., lower of primary (toxicity) and secondary (taste and odor) maximum contaminant levels, or MCLs) or, in the absence of a chemical-specific objective, equivalent drinking water levels based on toxicity and taste and odor concerns.

    b. Soil and Soil Vapor: Applicable screening levels as compiled in the Regional Water Board's draft Environmental Screening Levels (ESLs) document or its equivalent. Soil and soil vapor screening levels are intended to address a full range of exposure pathways, including direct exposure, indoor air impacts, nuisance, and leaching to groundwater. For purposes of this subsection, the Dischargers must assume that groundwater is a potential source of drinking water.

14. **Basis for 13267 and 13304 Order:** Water Code section 13267 authorizes the Regional Water Board to require a person who has discharged, discharges or is suspected of having discharged or discharging, to furnish technical or monitoring program reports. The burden of the reports required by this Order bears a reasonable relationship to the need for the report and the benefits to be obtained (to characterize the extent of contamination, the associated risks to human health and the environment, and document success of remediation efforts).

Water Code section 13304 authorizes the Regional Water Board to issue orders requiring dischargers to cleanup and abate waste where the dischargers have caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the State and creates or threatens to create a condition of pollution or nuisance. As discussed above, each of the dischargers has caused or permitted waste to be discharged or deposited, causing contamination of groundwater. Contamination of groundwater creates and threatens to create conditions of pollution and nuisance.

15. **Cost Recovery**: Pursuant to Water Code section 13304, the Dischargers are hereby notified that the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this order.

16. **California Environmental Quality Act (CEQA)**: This action is an order to enforce the laws and regulations administered by the Regional Water Board. As such, this action is categorically exempt from the provisions of CEQA pursuant to Title 14 of the California Code of Regulations, section 15321.

17. **Safe Drinking Water Act:** It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This order promotes that policy by requiring discharges to meet the lower of primary and secondary maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.

18. **Notification**: The Regional Water Board has notified the Dischargers and all interested agencies and persons of its intent under Water Code section 13304 to prescribe Site Cleanup Requirements for the discharge, and has provided them with an opportunity to submit their written comments.

19. **Public Hearing**: The Regional Water Board, at a public meeting, heard and considered all comments pertaining to the proposed site cleanup requirement for the Site.

IT IS HEREBY ORDERED, pursuant to sections 13267 and 13304 of the Water Code, that the Dischargers (or its agents, successors, or assigns) shall investigate, cleanup and abate the effects described in the above findings as follows:

A. PROHIBITIONS

1. The discharge of wastes or hazardous substances in a manner which will degrade water quality or adversely affect beneficial uses of waters of the State is prohibited.

2. Further significant migration of wastes or hazardous substances through subsurface transport to waters of the State is prohibited.

3. Activities associated with the subsurface investigation and cleanup which will cause significant adverse migration of wastes or hazardous substances are prohibited.

B. TASKS

1. COMPLETION OF SENSITIVE RECEPTOR SURVEY AND CONDUIT STUDY

COMPLIANCE DATE: November 7, 2014

Submit a technical report acceptable to the Executive Officer documenting completion of an up-to-date sensitive receptor survey and a conduit study. To evaluate the potential impact of the contamination on human health and the environment, the locations of sensitive receptors, including water supply and irrigation wells, shall be identified. A conduit study is needed to evaluate the role of subsurface utilities in the migration or accumulation of CVOCs in the subsurface.

2. PUBLIC PARTICIPATION PLAN

COMPLIANCE DATE: November 7, 2014
Submit a technical report acceptable to the Executive Officer to ensure adequate public participation will be undertaken at key steps in the remedial action process.

3. REMEDIAL INVESTIGATION/DATA GAP WORK PLAN

COMPLIANCE DATE: December 12, 2014

Submit a work plan acceptable to the Executive Officer to further evaluate all source areas and to define the vertical and lateral extent of CVOCs in soil, soil vapor, and groundwater. The work plan shall specify investigation methods and a proposed time schedule.

4. COMPLETION OF REMEDIAL INVESTIGATION

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 3. Work Plan

Submit a technical report acceptable to the Executive Officer documenting completion of necessary tasks identified in the Task 2 work plan. The technical report shall define the vertical and lateral extent of pollution down to concentrations at or below typical cleanup standards for soil, soil vapor, and groundwater.

5. COMPLETION OF HUMAN HEALTH RISK ASSESSMENT

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 4.

Submit a technical report acceptable to the Executive Officer documenting the completion of an appropriate human health risk assessment.

6. DRAFT REMEDIAL ACTION PLAN INCLUDING DRAFT CLEANUP STANDARDS

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 5.

Submit a technical report acceptable to the Executive Officer containing:

a. Results of the remedial investigation
b. Evaluation of the installed interim remedial actions measures
c. Feasibility study evaluating alternative final remedial actions
d. Risk assessment for current and post-cleanup exposures
e. Recommended final remedial actions and cleanup standards
f. Implementation tasks and time schedule

Item c shall include projections of cost, effectiveness, benefits, and impact on public health, welfare, and the environment of each alternative action.

Items a through c shall be consistent with the guidance provided by Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), CERCLA guidance documents with respect to remedial investigations and feasibility studies, Health and Safety Code section 25356.1(c), and State Water Board Resolution No. 92-49 as amended ("Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304").

Item e shall consider the preliminary cleanup goals for soil and groundwater identified in finding 13 and shall address the attainability of background levels of water quality (see finding 11).

7. DELAYED COMPLIANCE

If the Dischargers are delayed, interrupted, or prevented from meeting one or more of the completion dates specified for the above tasks, the Dischargers shall promptly notify the Executive Officer and the Regional Water Board may consider revision to this Order.

C. PROVISIONS

1. **No Nuisance**: The storage, handling, treatment, or disposal of polluted soil or groundwater shall not create a nuisance as defined in Water Code section 13050(m).

2. **Good Operations and Maintenance (O&M)**: The Dischargers shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.

3. **Cost Recovery**: The Dischargers are liable, pursuant to Water Code section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of

such waste, abatement of the effects thereof, or other remedial action, required by this Order. If the site addressed by this Order is enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Dischargers over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.

4. **Access to Site and Records**: In accordance with Water Code section 13267(c), the Dischargers shall permit the Regional Water Board or its authorized representative:

   a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.

   b. Access to copy any records required to be kept under the requirements of this Order.

   c. Inspection of any monitoring or remediation facilities installed in response to this Order.

   d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the Dischargers.

5. **Self-Monitoring Program**: The Dischargers shall comply with the Self-Monitoring Program as may be established by the Executive Officer.

6. **Contractor/Consultant Qualifications**: All technical documents shall be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.

7. **Lab Qualifications**: All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Regional Water Board using approved EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control records for Regional Water Board review. This provision does not apply to analyses that can only reasonably be performed on-Site (e.g., temperature).

8. **Document Distribution**: Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the following agencies:
   - Regional Water Quality Control Board
   - City of Pleasant Hill
   - County of Contra Costa

   The Executive Officer may modify this distribution list as needed.

All reports submitted pursuant to this Order shall be submitted as electronic files in PDF format. All electronic files shall be submitted via the State Water Board's Geotracker website, email (only if the file size is less than 3 megabytes), or on CD.

9. **Reporting of Changed Owner or Operator:** The Dischargers shall file a technical report on any changes in Site occupancy or ownership associated with the property described in this Order.

10. **Reporting of Hazardous Substance Release:** If any hazardous substance is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the Dischargers shall report such discharge to the Regional Water Board by calling (510) 622-2369 during regular office hours (Monday through Friday, 8:00 AM to 5:00 PM).

    A written report shall be filed with the Regional Water Board within five working days. The report shall describe: the nature of the hazardous substance, estimated quantity involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective actions taken or planned, schedule of corrective actions planned, and persons/agencies notified.

    This reporting is in addition to reporting to the Office of Emergency Services required pursuant to the Health and Safety Code.

11. **Periodic SCR Review:** The Regional Water Board will review this Order periodically and may revise it when necessary. The Dischargers may request revisions and upon review the Executive Officer may recommend that the Regional Water Board revise these requirements.

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

Attachments
Attachment A: Site Map

Attachment A

Site Map

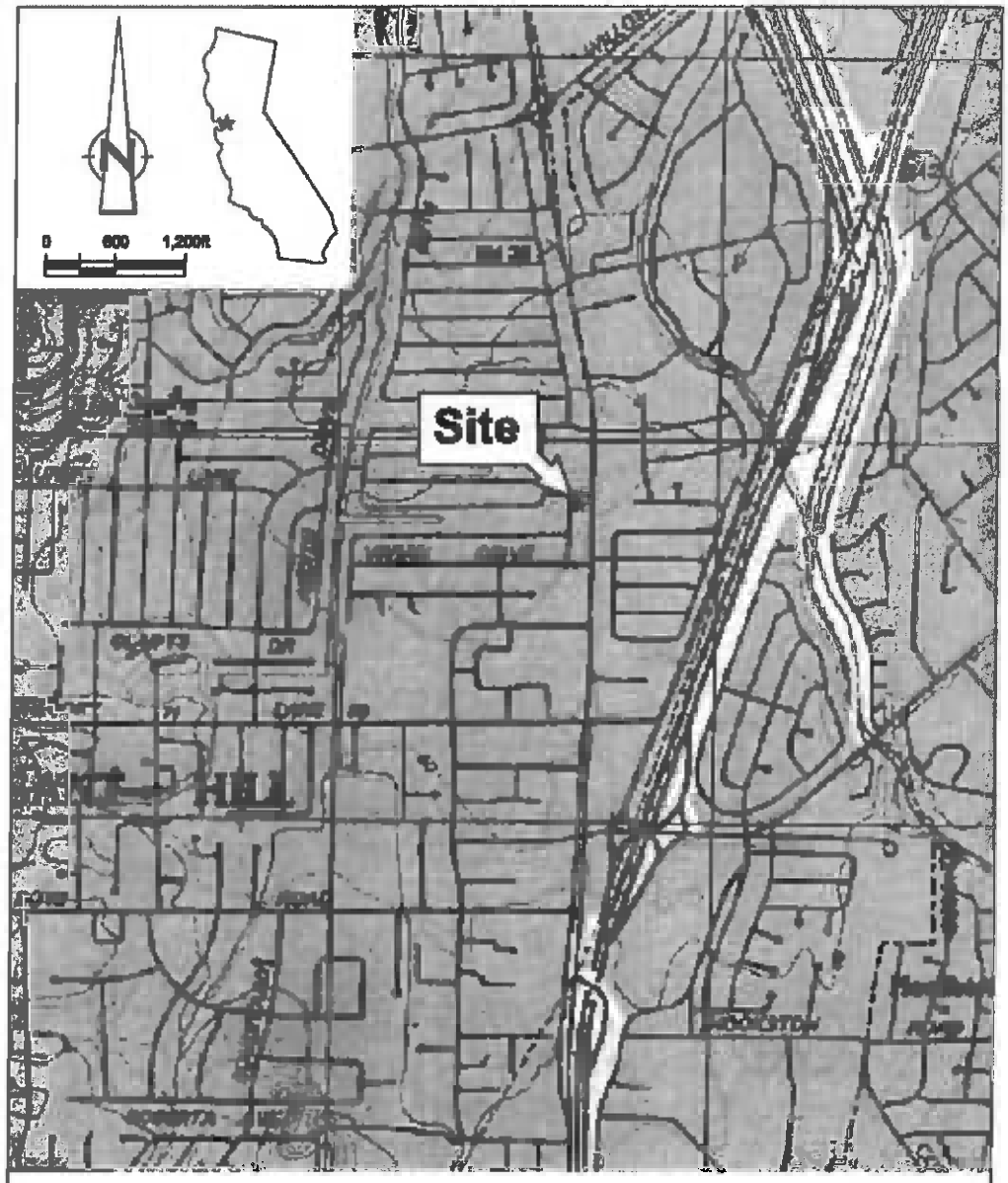


Figure 1

VICINITY MAP
CHEVRON SERVICE STATION 9-6817
1705 CONTRA COSTA BOULEVARD
Pleasant Hill, California

E:\CHEVRON\9117-\911741 9-6817 PLEASANT HILL\911741-FIGURES\911741_EM001-VMAP.DWG

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

July 2, 2014
File Nos. 07S0132 (KEB) and 07S0204 (KEB)

Cleanup Team Staff Report

Basis for Recommendation to Adopt Initial Site Cleanup Requirements Orders (SCRs) Naming:

Gregory Village Partners, L.P., Village Builders, L.P., Joseph J. Lee, Grace M. Lee, Alan Choi, Kauen Choi, Joseph William O'Malley, and Floyd G. Taylor as Dischargers for the real property located at 1643 Contra Costa Boulevard, Pleasant Hill, Contra Costa County (Site 1), and

Chevron U.S.A. Inc., MB Enterprises, Inc., Philip M. Lehrman, Jane A. Lehrman, and Marjorie P. Robinson as Dischargers for the real property located at 1705 Contra Costa Boulevard, Pleasant Hill, Contra Costa County (Site 2)

I. Summary

The Water Board Staff Cleanup Team (Staff) recommends that the Water Board adopt individual SCRs for Sites 1 and 2. This Staff Report provides the technical basis for the following assertions:

1. Chlorinated volatile organic compounds (CVOCs) were released from a former waste oil tank and a former dry cleaner at Site 2 (see Section III below).
2. Chevron is appropriately named as a discharger at Site 2, based on its prior ownership and operations (see Section IV below).
3. A CVOC groundwater plume from Site 2 has commingled with a different CVOC groundwater plume from Site 1 (see Section V below).
4. Central Contra Costa Sanitary District (CCCSD) should not be named as a discharger in either SCR (see Section VI below).

II. General Background

The Sites 1 and 2 are located about 500 feet apart in a commercial district of Pleasant Hill, Contra Costa County (Figures 1and 2). Staff has provided direct regulatory oversight of Site 1 since 2002 when Gregory Village Partners, L.P. (GVP) voluntarily enrolled in the Water Board's cost recovery program. GVP conducted site investigation and cleanup, and does not object to being named as a discharger in the SCR. Because both CVOCs and petroleum-related chemicals are present in groundwater beneath the eastern and southeastern areas of Site 1, GVP asked the Regional Water Board to issue a SCR for Site 2 naming Chevron and MB Enterprises, Inc. as dischargers. In addition, GVP and Chevron asserted that CCCSD should be named as a discharger in both SCRs.

Site 1 is a small suite located in the Gregory Village Shopping Center, a rectangular-shaped commercial parcel improved with a one-story building that was constructed in approximately 1950. The shopping center is bounded by Contra Costa Boulevard to the east, Doris Drive to the south, Doray Drive to the north, and single-family residential properties to the north and west. Based on soil, soil vapor, and groundwater analytical data, a dry cleaner at Site 1 released tetrachloroethylene (PCE) to the subsurface.

Site 2 is a rectangular-shaped parcel bounded by Contra Costa Boulevard to the east, Doris Drive to the north, Linda Drive to the west, and a parking lot and commercial building to the south. The main parking lot for the Gregory Village Shopping Center is located directly to the north of Doris Drive. Underground storage tanks (USTs) that leaked chemicals into the environment, along with a former dry cleaner, were once present on Site 2. Based on soil, soil vapor, and groundwater data, the subsurface beneath and downgradient of Site 2 is contaminated with multiple CVOCs (i.e., PCE, trichloroethylene or TCE, and the degradation compounds cis-1,2-Dichloroethene, trans-1,2-Dichloroethene, and vinyl chloride) and various petroleum constituents.

The historical maximum detections of critical CVOCs associated with both sites are listed in Table 1. Groundwater data indicates the CVOC plume from Site 2 has commingled with the CVOC plume from Site 1 (Figure 3).

III. Substantial Evidence of CVOC Releases from the Former Steel Waste Oil UST and Former Dry Cleaner at Site 2

There are two suspected sources of these compounds at the Site: the former dry cleaner and the former waste oil tank. PCE is the major dry cleaning solvent used in the United States (Reich 1979). TCE is only rarely used in dry cleaning but is frequently used in metal degreasing (Schneberger 1979; Kimbrough et al. 1985)." The evidence present below supports staff's assertion that unauthorized releases of several CVOCs, chiefly PCE (a common dry cleaning and automotive repair solvent) and trichloroethylene (TCE, a common metal degreaser and parts cleaner solvent), and various petroleum constituents (e.g., benzene, toluene, ethylbenzene, xylenes, MtBE, etc.), occurred at Site 2.

CVOC Release from Steel Waste Oil UST

An automotive fueling facility existed on the northern portion of Site 2 for over 60 years. Standard Oil, the predecessor of Chevron, operated from 1950 until 1977. Chevron operated at Site 2 from 1977 until 2003. Automotive repair work was conducted on Site 2 from approximately 1950 to 1987. In 1972, Standard Oil installed a 1,000-gallon steel waste oil UST at the time a large automotive repair and maintenance building was constructed at Site 2. A waste oil UST was used at Site 2 from 1972 to 1988.

Prior to the 1972 construction, the common (central) property line between 1705 and 1709 Contra Costa Boulevard was shifted to the south approximately 35 feet. The southern part of the new service station building, along with the steel waste oil UST, were positioned over a section of the former dry cleaner parcel. In late 1986, Chevron purchased the two

properties and merged them into a single parcel (the present-day 1705 Contra Costa Boulevard parcel).

In May 1986, fourteen years after the steel waste oil UST was installed, the UST was removed by Chevron and replaced with a double-walled, fiberglass waste oil UST. During the removal of the steel UST, the tank was severely damaged, and multiple holes were discovered. A soil sample collected beneath the tank pit, at a depth of eight feet, contained 11 mg/kg of "waste oil." In January 1988, the fiberglass waste oil UST was removed during a major reconstruction project and found to be in good condition, with no holes or other damage observed.

It is common knowledge that PCE and TCE were used at automotive repair and maintenance facilities to clean brakes, carburetors, and fuel injection systems, and to degrease engines and other parts.[1] [2] [3] USTs were commonly used to store waste oil and other chemicals by the automotive repair industry. Staff's conclusion that the contamination emanating from Site 2 comes from these sources is consistent with Chevron's consultant's data. A February 3, 1989, report from EA Engineering, Science, and Technology, Inc. (EA) to Chevron regarding Site 2 states "The chlorinated hydrocarbons detected at the Pleasant Hill site are tetrachloroethylene (PCE), trichloroethylene (TCE), cis-1,2-dichloroethylene (DCE), trans-1,2-dichloroethylene (also DCE), vinyl chloride (VC), chloromethane, methylene chloride, chloroform, and 1,2-dichloroethane.

Soil Data

High CVOC soil concentrations generally reflect a specific release point/area. Figures 4 and 7 show the maximum concentrations of PCE and TCE detected in various soil samples collected within and near the former steel waste oil UST.

A soil sample collected within the tank pit at 10 feet below grade in 1988 contained 0.2 mg/kg of PCE and 0.035 mg/kg of TCE. In December 2011, a soil sample collected at a depth of five feet within the former waste oil UST excavation from vapor probe boring VP-1 contained PCE and TCE at 1.2 mg/kg and 1.4 mg/kg, respectively. Another soil sample collected at a depth of 9.5 feet from boring CPT-13, which was also advanced adjacent to/within the former waste oil UST pit, contained PCE at 0.34 mg/kg and TCE at 0.21 mg/kg, respectively.

[1] USEPA, November 1993, Economic Impact Analysis of the Halogenated Solvent Cleaning NESHAP, EPA-453/D-93-058.

[2] State of California Environmental Protection Agency/Air Resources Board, June 1997, Status Report, Perchloroethylene Needs Assessment for Automotive Consumer Products.

[3] State of California Environmental Protection Agency, November 2006, Automotive Aerosol Cleaning Products: Low-VOC, Low Toxicity Alternatives, Report prepared by Institute for Research and Technical Assistance for the Department of Toxic Substances Control and City of Santa Monica.

For comparison, soil concentrations of 0.7 mg/kg for PCE and 0.46 mg/kg for TCE are sufficient to cause leaching to groundwater, according to this Regional Water Board's Environmental Screening Levels (ESLs).[4]

The soil data depicted on Figures 4 and 7 indicates a distinct CVOC release from the former steel waste oil UST.

Soil Vapor Data

High soil vapor concentrations generally reflect a specific release point/area. Figures 5 and 8 show the maximum concentrations of PCE and TCE detected in various soil vapor samples collected within and near the former steel waste oil UST.

In May 1988, very high concentrations of PCE (up to 3,247,500 µg/m³) and TCE (up to 109,500 µg/m³) were detected in a soil vapor sample collected from probe V10, which was advanced directly within the former waste oil UST pit. In contrast, the maximum PCE concentrations detected in V2 and V3, two 1988 soil vapor probes advanced about 25 feet north and 25 feet west of V10, were 40,800 µg/m³ and 900,000 µg/m³, respectively.

Soil vapor sampling conducted by Chevron in 2011 revealed the highest concentrations of PCE and TCE in soil vapor (e.g., 2,500,000 µg/m³ and 2,100,000 µg/m³, respectively), from VP-1, a soil vapor point installed less than 10 feet away from V10.

For comparison, this Regional Water Board's ESLs for the soil vapor to indoor air concern at commercial developments for PCE and TCE are 2,100 µg/m³ and 3,000 µg/m³, respectively.

The soil vapor data depicted on Figures 5 and 8 indicates a distinct CVOC release occurred from the former steel waste oil UST.

Groundwater Data

High groundwater concentrations generally reflect a specific release point/area. Figures 6 and 9 show the maximum concentrations of PCE and TCE detected in various groundwater samples collected within and near the former steel waste oil UST.

In December 1987-January 1988, approximately one year after Chevron purchased and merged the two properties into a single parcel, groundwater samples analyzed from on-Site monitoring well MW-C (located about 100 feet north of the former waste oil UST) detected PCE at 1,800 µg/L and TCE at 570 µg/L. In January 1989, PCE and TCE were detected in on-Site monitoring well EA-2, which was installed within the filled excavation of the former waste oil USTs, at < 0.5 µg/L and 1,700 µg/L. A February 1989 EA report stated "Well EA-2 was installed near SVCA point V10 (the location of the former waste oil tanks), the point of highest chlorinated hydrocarbons in the soil gas." A September 1989 EA report indicates a groundwater sample from EA-2 contained TCE at 2,700 µg/L, while the PCE concentration was < 25 µg/L. The 1989 groundwater data are additional

[4] See Regional Water Board webpage:
http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.shtml

supporting evidence that TCE was released at the location of the former steel waste oil UST.

A pump and treat remediation system was operated by Chevron for about five years (1991 to 1996) to mitigate the high concentrations of CVOCs and petroleum hydrocarbons. This interim remedial measure was designed to utilize monitoring well EA-2, the well installed within the former waste oil UST pit. However, well MW-D was later added to the treatment system due to the detection of separate-phase petroleum hydrocarbons or "free product" downgradient of the fuel USTs. During the extraction and treatment of polluted groundwater, the maximum influent concentrations of PCE and TCE were 6,000 µg/L and 1,300 µg/L, both from a sample collected on April 3, 1995. In the last influent groundwater sample collected on January 3, 1996, the concentrations of PCE and TCE were 2,000 µg/L and 750 µg/L, respectively.

In May 2003, a groundwater sample from EA-2 contained PCE, TCE, cis-1,2-DCE, and vinyl chloride at concentrations of 3,100 µg/L, 3,600 µg/L, 2,900 µg/L, and 81 µg/L, respectively. EA-2 was destroyed by Chevron in March 2005.

For comparison, this Regional Water Board's ESL for PCE and TCE where groundwater is considered a current or potential source of drinking water is 5 µg/L.

Based on the above information and the groundwater data depicted on Figures 6 and 9, Staff conclude that a distinct CVOC release from the former steel waste oil UST occurred.

CVOC Release from the Former Dry Cleaner

According to Chevron, a dry cleaner operated for 30 years at 1709 Contra Costa Boulevard (the southern part of Site 2), reportedly from 1956 until late 1986.

According to telephone books reviewed at the Pleasant Hill Public Library, a dry cleaning business operated on the former 1709 Contra Costa Boulevard property from at least 1962 through 1984. Telephone directories further provide evidence that One Hour Martinizing Cleaners operated at the Site in August 1961 and continued until at least late 1966. The concept to use PCE, a non-flammable solvent, in the dry cleaning business, was pioneered by chemist Henry Martin in the 1930s. It is common knowledge that One Hour Martinizing revolutionized the use of PCE in their dry cleaning machinery. PCE has been detected in the subsurface at various One Hour Martinizing franchises in the United States and California due to releases from leaking dry cleaning equipment, floor drains, and private sewer laterals.[5]

An August 1966 advertisement in a phone book included the words "ONE HOUR DRY CLEANING AT NO EXTRA CHARGE!" and "WE OPERATE OUR OWN CLEANING PLANT & SHIRT LAUNDRY." This notice confirms that dry cleaning actually occurred

[5] State Coalition for Remediation of Drycleaners: http://www.drycleancoalition.org/search/?search_text=One+Hour+Martinizing&go=Search This search page lists a subset of One Hour Martinizing sites located in the United States where PCE was used and released to soil and/or groundwater.

at Site 2; the business was not merely a "drop off" location. By 1970, the dry cleaner was named "Pleasant Hill One Hour Cleaners." A permit from the City of Pleasant Hill Building Department, dated August 17, 1971, describes proposed construction activities at 1709 Contra Costa Blvd. to consist of "REMODEL DRY CLEANERS." The renovation of the dry cleaner coincided with a major reconstruction project for the Standard Oil service station at 1705 Contra Costa Boulevard.

In 1980 and 1985, the dry cleaner was named "J's Pleasant Hill Cleaners." An undated, unsigned "LEASE AGREEMENT" provided by Chevron, reportedly covering the former dry cleaner parcel and covering a five year time period between September 1, 1981, and August 31, 1986, states "Lessees shall use the premises for a dry cleaning establishment ..." The lease agreement contains the names of prior property owners, Ned and Marjorie P. Robinson and Philip M. Lehrman and Jane A. Lehrman, and the previous operators of the dry cleaner, Morris E. Jorgenson and Genoise M. Jorgenson. The November 1986 phone book contained no entry for the dry cleaner. A building permit application to Chevron for demolition of the dry cleaner building indicates the structure remained on-Site until December 1987.

As described below, there is evidence, mainly soil and groundwater data, that CVOCs were released at the location where a dry cleaner operated at Site 2. Several exploratory borings were advanced on the parcel, and soil and groundwater samples were found to contain PCE and related CVOCs that are typical degradation products of PCE in the environment (e.g., TCE, cis-1,2-DCE, and vinyl chloride).

Soil Data

High CVOC soil concentrations generally reflect a specific release point/area. As shown on Figure 4, the maximum detected concentration of PCE from a soil sample collected within the footprint of the former dry cleaner is 20 mg/kg, from boring CPT-14.

For comparison, soil concentrations of 0.7 mg/kg for PCE are sufficient to cause leaching to groundwater, according to this Regional Water Board's Environmental Screening Levels (ESLs).[6]

The soil data depicted on Figures 4 and 7 likely reflects a distinct CVOC release from the former dry cleaner.

Soil Vapor Data

High soil vapor concentrations generally reflect a specific release point/area. Figures 5 and 8 show the maximum concentrations of PCE and TCE detected in various soil vapor samples collected within and around the former dry cleaner.

In 1988 four soil vapor probes were installed on the former dry cleaner parcel. The maximum detected concentrations of PCE and TCE were 19,347 $\mu g/m^3$ and 1,095 $\mu g/m^3$, respectively, from vapor probe V1 located approximately 25 feet east of EA-2. These

[6] See Regional Water Board webpage:
http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.shtml

concentrations are significantly lower than the soil vapor samples collected adjacent to the former steel waste oil UST.

For comparison, this Regional Water Board's ESLs for the soil vapor to indoor air concern at commercial developments for PCE and TCE are 2,100 µg/m³ and 3,000 µg/m³, respectively.

Staff believes the western section of the previous building near soil boring CPT-14 is the area where the former dry cleaner equipment was present, however, no soil vapor samples have been collected in this area of Site 2. Nevertheless, the soil vapor data depicted on Figures 5 and 8 points to a distinct CVOC release from the former dry cleaner.

Groundwater

High groundwater concentrations generally reflect a specific release point/area. Figures 6 and 9 show the maximum concentrations of PCE and TCE detected in various groundwater samples collected within the former dry cleaner footprint. The maximum concentrations of PCE and TCE detected in groundwater were from samples collected and analyzed from CPT-14 were 630 µg/L and 8 µg/L, respectively.

The groundwater data depicted on Figures 6 and 9 generally indicates a separate and distinct CVOC release from the former dry cleaner on Site 2.

Based on the above information, Staff concludes that there is substantial evidence that CVOCs were released from the dry cleaner on Site 2.

No Substantial Evidence of Upgradient CVOC Source

Chevron suggested, without providing direct evidence, that an upgradient source, or sources, could be contributing to the CVOCs detected in the subsurface beneath Site 2. There is no direct evidence the CVOCs detected in soil, soil vapor and groundwater beneath and downgradient of Site 2 originated from an upgradient (off-Site) source. The adjacent upgradient property (1725 Contra Costa Boulevard), formerly the Dean Pierce Paint Company, has a long history of use as a paint manufacturer and supplier. A 1,000-gallon steel UST was removed from the property on July 16, 1986. The UST reportedly contained "mineral spirits." Several holes were noted in the UST after it was exhumed, and two soil samples contained low concentrations of mineral spirits (referred to in the records as "paint thinner") up to 18 mg/kg. The environmental case for the leaking UST was closed by the Contra Costa County Health Services Department on July 20, 1994. The concentrations of mineral spirits found on the adjacent site were not substantial enough to migrate to Site 2 and, indeed, soil and groundwater samples from Site 2 do not contain constituents that would be indicative of "mineral spirits" or "paint thinner."

Conclusion

Based on the detections of PCE and TCE in soil, soil vapor, and groundwater samples collected and analyzed over the past 28 years (Table 1), Staff conclude that both of these CVOCs were used and released as a result of historic automotive repair and dry cleaning activities at Site 2. PCE and TCE soil concentrations are high at the former steel waste oil

UST location, while only PCE soil concentrations are high at the former dry cleaner. This data are consistent with a release from the former steel waste oil UST.

The discharges of both PCE and TCE are a result of common industry-wide practices for dry cleaners and automotive repair stations that operated from the 1950s to the mid-1980s in the San Francisco Bay area.

IV. Basis for Naming Chevron Under the Water Code as a Discharger at Site 2

Water Code Section 13304(a) provides the standard for naming parties to cleanup orders. It states in part:

> *Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.*

Staff recommend naming Chevron as a discharger at Site 2 because:

1. Chevron was the owner/operator of the former steel waste oil UST that discharged contaminants which have migrated into waters of the State; and,
2. Chevron was the former landowner where a dry cleaner operated and discharged contaminants which have migrated into waters of the State.

Chevron was the Owner/Operator of the Former Steel Waste Oil UST

Water Code section 13304 allows the Water Board to name an operator or former operator to a cleanup order if there is substantial evidence that it discharged pollutants to soil or groundwater during its tenure. Staff concludes that there is substantial evidence that CVOCs were released from the steel waste oil UST at Site 2 during Chevron's tenure.

From 1972 to 1988, Standard Oil and its successor Chevron owned and/or and operated at the portion of Site 2 where CVOC discharges from a steel waste oil UST occurred. There is substantial soil, soil vapor, and groundwater data which demonstrates the steel UST released CVOCs to the environment (see section III above).

Chevron was the Former Landowner Where a Dry Cleaner Operated

Precedential State Water Board orders provide the framework for naming former landowners to cleanup orders. A former landowner can be named to a cleanup order if it meets all of these three criteria:

1. Former landowner owned the property at the time of the discharge;
2. Former landowner had knowledge of the activities that resulted in the discharge;
3. Former landowner had the legal ability to prevent the discharge.

In this case, Chevron meets all three criteria above.

From December 31, 1986, to March 2003, Chevron owned the parcel where a dry cleaner previously operated, had knowledge of the activities that resulted in the release of CVOCs to the environment, and had the legal ability and technical knowledge to clean up the discharge and prevent the discharge from migrating.

Not only did Chevron have knowledge of CVOC contamination before they purchased Site 2 and during their ownership of Site 2, Chevron had the legal ability to conduct source removal, and characterize and remediate to the maximum extent feasible to prevent further migration of the CVOCs. Although Chevron may contest the source of the contaminants (former dry cleaner versus steel waste oil UST), or whether the discharge occurred during Chevron's ownership or occupancy, State Board Orders clarify that "an actual movement of waste from soils to groundwater and from contaminated to uncontaminated ground water at the site … is sufficient to constitute a 'discharge.'" (State Water Board Order 86-2). Given the shallow groundwater flow direction and gradient, and lack of any known subsurface barriers to CVOC migration, there is no question that the CVOC contamination Chevron discovered in 1986 continued to migrate or "discharge" during Chevron's ownership of Site 2.

Chevron had the legal ability to appropriately conduct remediation of CVOCs in soil and groundwater during their time of ownership to prevent the CVOCs from migrating beneath other properties. The interim groundwater pump and treat system installed by Chevron was not initiated in a timely manner (the system start-up occurred over four years after Chevron purchased Site 2), nor was the system effective in preventing off-Site plume migration.

Furthermore, Chevron was aware of a significant soil contamination problem at Site 2. Despite the high detections of PCE and TCE in shallow soil and soil vapor, no remediation efforts were undertaken by Chevron to reduce the mass of CVOCs in soil in the areas of the former steel waste oil UST or former dry cleaner. A fundamental tenet of proper site remediation is to conduct adequate source removal activities; such remediation was not conducted during Chevron's ownership of Site 2. As a result of deficient remedial efforts, CVOCs are currently present at concentrations well above risk-based standards, thereby posing a significant threat to human health and groundwater quality.

Previous UST Case Closure

Chevron may claim that the 2005 UST case closure precludes the Regional Water Board naming Chevron as a discharger now. The Regional Water Board's 2005 UST case closure at Site 2, however, was based on technical information available at the time. New information undermines the case closure rationale presented by Chevron. Therefore, the

previous case closure should not be used as a reason for excluding Chevron from the SCR issued for Site 2.

On September 13, 2004, Chevron issued a report to the Regional Water Board titled "Closure Request." The report concluded the extent of contamination had been adequately characterized as follows, "The subsurface impact has been defined to the degree necessary to determine if the site poses a threat to human health, the environment, or other sensitive nearby receptors."

Our January 14, 2005, the Regional Water Board issued a uniform case closure letter to Chevron Environmental Management Company (a subsidiary to Chevron) for the formerly leaking USTs at Site 2. As stated above, the case closure determination was based on Chevron's assertion that the extent of petroleum hydrocarbons and CVOCs in soil and groundwater had been adequately characterized, and that the residual chemicals did not pose a risk to human health, groundwater quality, and the environment. The Water Board's January 3, 2005, *Site Closure Summary* states, in part:

"Petroleum hydrocarbons and halogenated volatile organic compounds (HVOCs) will persist on the Site and into the public right-of-way of Linda Avenue, Dorris (sic) Drive and Contra Costa Boulevard. The petroleum hydrocarbons and HVOCs are stable, and both the petroleum hydrocarbons and HVOCs appear to be naturally attenuating, though the petroleum hydrocarbons are attenuating more rapidly."
"A site management plan will be maintained until the residual petroleum hydrocarbons and HVOCs no longer pose a threat. Currently, there appears to be not threat to public health, the environment or water resources. Future potential threats, though not expected, can be limited through implementation of a site management plan."

Based on data provided by Chevron, Staff believed the groundwater plume emanating from Site 2 was localized in extent, lay mainly beneath City streets, and did not extend to the north and northwest beneath the adjacent and downgradient Gregory Village Shopping Center. Additional new information clearly demonstrates the groundwater plume was not adequately characterized and, in fact, underlies the eastern part of the shopping center and commingles with a different CVOC plume associated with the former P&K Cleaners (Site 1).

In 2004, Chevron argued that "the site appears to present no significant risk to human health or the environment." The 2004 closure request included an evaluation of the postulated inhalation risk to workers within the existing service station building by using groundwater concentrations from an on-Site well (MW-C) and not the available historic soil vapor data. From their analysis, Chevron concluded "The constituents of concern are below the screening level applied by the RWQCB-SFBR to identify commercial risk."

In 2004-2005, vapor intrusion at dry cleaner CVOC release sites was not given a lot of regulatory attention. In 2011, the California Department of Toxic Substances Control issued vapor intrusion guidance which recommends lower indoor air and soil vapor screening levels for vapor intrusion and a rigorous process to evaluate and mitigate vapor intrusion. Similarly, the Regional Water Board lowered indoor air and soil vapor in 2013 ESLs. The current screening levels for CVOCs in soil vapor and groundwater are

dramatically exceeded at Site 2. High CVOC concentrations in soil vapor pose a significant risk to on-Site workers, building occupants within the Gregory Village Shopping Center, and other commercial and residential properties adjacent to and near Site 2 (and also near Site 1). For these reasons, the site meets the criteria for re-opening sites.

V. Evidence of Commingled CVOC Plume

There is evidence that the CVOC plume from Site 2 migrated in groundwater to the north and northwest and beneath the Gregory Village Shopping Center, and commingled with the CVOC plume associated with Site 1, which has migrated beneath a residential subdivision north of Site 1. This is important because in order to protect human health and groundwater quality, the different sources of the CVOC contamination must be cleaned up to appropriate levels. Oftentimes, commingled groundwater plumes are more spatially extensive and contain higher contaminant concentrations than a plume from a single source.

Figure 3 shows the maximum concentrations of PCE detected in groundwater for both Site 1 and Site 2. Evidence of a commingled plume includes the following:

- In 1997, during a due diligence investigation for GVP, CVOCs were detected in grab groundwater samples collected from multiple soil borings advanced upgradient and cross-gradient of Site 1. For example, PCE and TCE were detected in GS-3, a soil boring advanced about 25 feet upgradient/southeast of Site 1 at 830 µg\L and 240 µg\L. (see figure 3).

- PCE, TCE, and other CVOCs were detected in shallow groundwater beneath and adjacent to the hydraulically-upgradient Chevron gas station/former dry cleaner (1705 Contra Costa Boulevard), with detections of PCE up to 5,000 µg/L from an off-site groundwater sample collected in 1989. Prior to the 2005 destruction of groundwater monitoring wells by Chevron for the fuel UST case at Site 2, PCE, TCE, cis-1,2-DCE, and vinyl chloride were detected in groundwater samples at concentrations up to 3,100 µg/L, 3,600 µg/L, 2,900 µg/L, and 81 µg/L, respectively (see figure 3).

- On December 22, 2009, GVP advanced multiple borings and completed a grab groundwater investigation within the southeastern part of their property, downgradient of Site 2 and upgradient of Site 1. Several CVOCs (including PCE, TCE, cis-1,2-DCE, and trans-1,2-DCE), total petroleum hydrocarbons reported as gasoline (TPH-g), benzene, toluene, ethylbenzene and xylenes (the BTEX compounds), and MtBE, a gasoline additive, were detected in groundwater samples collected in the eastern main parking lot by Site 1 (see figure 3). Both the petroleum-related constituents and the CVOCs are consistent with the contaminants found in soil and groundwater beneath Site 2. The concentrations and distribution of these contaminants in groundwater are indicative of a plume that migrated off-Site from Site 2.

- TPH-g and MtBE (constituents related to automotive fuel releases), and several CVOCs, were detected in a shallow groundwater sample collected from CPT-1,

a boring approximately 75 feet southeast (upgradient) of Site 1 (see figure 3).and advanced by Chevron in 2011. The presence of TPH-g, MtBE, and CVOCs in shallow groundwater upgradient of Site 1 indicate these chemicals migrated in a north to northwesterly direction from Site 2.

VI. Central Contra Costa Sanitary District (CCCSD) is not a Discharger

In a standard evaluation of whether a party is a discharger, Regional Water Board Staff considers whether the party:

- owned the property where the discharge occurred;
- had knowledge of the discharge or activities that caused the discharge; and,
- had legal ability to prevent the discharge.

Based on the analysis presented below, Staff concludes that there is insufficient data to assert that a discharge from CCCSD's sewer lines resulted in the contamination at issue in the two SCRs.

Because of numerous policy considerations, as well as guidance from the California courts,[7] Regional Water Boards historically have not named sewer owners/operators as dischargers merely because they owned or operated a sewer system which released contamination. Staff is only aware of one instance in which a Regional Water Board named a sewer owner/operator as a discharger, and in that case there was evidence to support each of the following criteria:

1) There was a release from the sewer main that contributed to the plume;
2) The sewer owner/operator knew of leaks and failed to repair them;
3) The sewers were in poor condition and/or were not maintained; and,
4) The sewer owner/operator was aware of/or permitted discharges into a leaking sewer.

In order to determine whether CCCSD should be named as a discharger, Staff considered evidence submitted by CCCSD and GVP and compared it to the four criteria above. Staff has reviewed evidence submitted by GVP and CCCSD and

[7] GVP notes in their submission that Porter-Cologne (Water Code section 13304) is a strict liability statute. The cases which provide guidance here pertain to similar claims brought under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) concerning the responsibility of a sewer owner/operator for contamination resulting from releases from sewers. CERCLA, like Water Code section 13304, is a strict liability statute, and while these cases are not binding precedent, they do provide useful guidance. In these cases, the courts have refrained from identifying sewer owners/operators as "responsible parties" (the CERCLA rough equivalent of the Water Code's "discharger") merely because they owned or operated a sewer system. (*See, e.g., Fireman's Fund Insurance Co. v. City of Lodi* (9th Cir. 2002) 302 F.3d 928, 946 ["it is doubtful whether Lodi may be considered a PRP merely as a result of operating its municipal sewer system"]; *Lincoln Properties, Ltd. V. Higgins*(E.D. Cal. 1992) 823 F.Supp. 1528, 1542-43 ["To hold the County liable for its 'normal' activities in owning and maintaining the sewer line and wells would be an anomalous result]; *Adobe Lumber, Inc. v. Hellman* (E.D. Cal. 2009) 658 F.Supp.2d 1188, 1205-06 [declined to find that the City was an innocent party where the City knew of dry cleaning operation, had a "reactive" sewer maintenance management and no studies of leakage].) Staff finds the criteria from these cases useful in ensuring a complete analysis of the facts concerning CCCSD.

concluded that CCCSD is not an appropriate discharger because the sewer lines in the Gregory Village area of Pleasant Hill are in good condition. There is no direct evidence that leaking sewer lines under CCCSD ownership have caused or contributed significantly to the groundwater contamination. None of the above four criteria are met in this case, as explained in more detail below.

1. **No evidence that the sewer system contributed to the groundwater plume**

While there is evidence of incidental leakage from the sanitary sewer lines, there is no direct evidence the leakage contributed substantially to the creation of the CVOC commingled groundwater plume.

We conclude, based upon a review of records submitted by GVP and CCCSD, that the overall sanitary sewer system in the Gregory Village area of Pleasant Hill appears to have been well maintained and is in generally good condition. Inspections are routinely conducted, and when clogs and breaks in pipes are discovered, they are routinely investigated and repaired.

Fate and transport modeling (PES Environmental, Inc., 2013) adequately demonstrates the levels and locations of contamination in the environment resulted from the releases of CVOCs directly from past dry cleaning and automotive repair businesses, including releases from private sewer laterals, but not directly from the sewage conveyance system owned and operated by CCCSD.[8] [9]

GVP asserts that "at least three suspected sewer leakage locations that have resulted in chlorinated hydrocarbon releases and detections in the subsurface."[10] Staff addresses each of these locations below:

- Apparent Source Area Near the Intersection of Shirley Drive and Cynthia Drive

  GVP identified an area near the intersection of Shirley Drive and Cynthia Drive and manhole M54, an area within the residential subdivision, as an "apparent source area." based on the detection of elevated concentrations of PCE in soil vapor. Additionally, records from CCCSD comment on cracks, open joints, and root infiltration in a sewer line beneath Shirley Drive. CCCSD notes that sewer lines in this area "collect sewage from a residential neighborhood and would not have any PCE in them." Staff does not find this location to be a source area.

- Apparent Source Area in the Vicinity of Manhole M46

  GVP presents several data points and the argument that these points demonstrate a source of PCE in close proximity to manhole M46. However, the highest concentrations of PCE in soil vapor samples were at lower depths near the

[8] CCCSD, May 28, 2013, CCCSD Responses to 13267 Letter Questions, Pages 2-5.
[9] CCCSD, December 18, 2013, Summary of Response to Water Board 13267 Letter, Pages 1-3.
[10] GVP Submission, July 3, 2012, at pp. 8-11.

groundwater table, indicating that shallow groundwater is the likely source of the CVOCs rather than the soil surrounding the sewer lines.

Staff conclude that the data suggests separate groundwater plumes migrated from the former dry cleaners at Sites 1 and 2, and the former steel waste oil UST at Site 2, to the north-northwest, generally diminishing in concentration from the source areas. Within the commingled groundwater plume, there are a number of wells with variable contaminant concentrations. GVP focused on a single grab groundwater sample from a higher elevation and compared it with deeper samples from groundwater wells. Staff does not find this single data set to be compelling evidence of a source area based on the data originating from different monitoring well screen intervals.

With respect to GVP's evidence and contentions regarding the presence of CVOCs between manholes M44 and M46 and the adjacent parcels, the CCCSD submission notes that the "PCE-laden wastewater from former dry cleaning operations at Gregory Village Shopping Center and at the Chevron Service Station site located at 1705 Contra Costa Boulevard did not flow in the sanitary sewer from manhole M44 to manhole M46 and is not a source for PCE found at adjacent parcels." Staff finds that CVOCs at these locations could not be from a release along the sanitary sewer lines.

- Suspected Source Area in Linda Drive Along Sewer

The area along Linda Drive, a street establishing the western boundary of Site 2, is an area where Staff specifically identifies a need for additional data. The original vitrified clay sewer line in this area was replaced in 1987-1988 as part of Chevron's station upgrade project, and the new cast iron line was put in a location different than the original clay line. The original sewer line served both the former Standard Oil automotive repair station and the former dry cleaner. CCCSD has supplied several figures which show the locations of both the original and existing sewer lines. There is insufficient soil and groundwater data to reach the conclusion that the older sewer line was a release point.

2. No evidence of the sewer operator's knowledge that the sewer system is leaking or needs repair

CCCSD asserts that it had no knowledge that the sewer collection system in the area of the Gregory Village Shopping Center and Site 2 leaked significantly in the past or is currently leaking and needs repair.[11] [12] Neither Chevron nor GVP have presented evidence to the contrary. CCCSD submitted evidence of a robust maintenance program, which included video inspections, regular cleaning of the sewer pipes, and spot repairs, to identify and address problem areas. These measures are designed to ensure the overall integrity of the sewer conveyance system. There are many

[11] CCCSD, May 28, 2013, CCCSD Responses to 13267 Letter Questions, Pages 5-11.
[12] CCCSD, December 18, 2013, Summary of Response to Water Board 13267 Letter, Pages 3-4.

instances where minor leaks in the sewer mains were detected and repaired, but there is no evidence of major leakage or deferred maintenance of the sewer lines by CCCSD.

GVP submitted information concerning CCCSD's alleged failing sewer lines[13], but admits that "GVP has little information concerning how well or how poorly the system operated … near the Site prior to the mid-1990s." It is Staff understanding that dry cleaning operations ceased at Site 1 in 1991 and at Site 2 in 1986. Evidence of a "failing sewer system" in the late 1990s or 2000s is not indicative of CCCSD's behavior during the time when the dry cleaners would have disposed of separator wastewater down drains and/or private sewer laterals.

GVP documented two instances from the relevant time period above that Staff specifically reviews and addresses here:

Instance 1

- January 19, 1979 - CCCSD inspection notes identify a sunken spot in Shirley Drive at Luella Drive.

  GVP identifies a "sunken spot" in a sewer line in Shirley Drive at Luella Drive.[14] A January 2, 2003, drawing provided by CCCSD entitled "Collection System Renovations – Spot Repairs" shows that a 10-foot section of 6-inch diameter vitrified clay pipe in Luella Drive leading from manhole M58 was repaired. CCCSD's repair of the sanitary sewer in this location suggests reasonable sewer maintenance.

Instance 2

- March 10, 1977 – A "Daily Maintenance Report" describes the condition of the sewer main in Linda Drive during the installation of a "tee" connection. The line at the tee connection located "153' up from M.H. at Linda Dr and Doris Dr" is described as "in very poor shape has lots of cracks."

  Linda Drive forms the western boundary of Site 2, and is an area where Staff has specifically identified a need for additional soil and groundwater data. Staff understands that the original sewer line in this area was replaced as part of a Chevron service station construction project in 1987-1988, and that the new sewer was put in a different location from the original line.

  According to GVP submissions concerning the more recent condition (e.g., 1990s-2000s) of CCCSD's sewer system, Staff does not find evidence of major repairs needed on the CCCSD sewer lines in the area of the groundwater contamination. There is no tangible evidence CCCSD was aware of any needed repair beyond routine maintenance.

[13] GVP Submission, July 3, 2012, pp. 6-8
[14] GVP Submission, July 3, 2012, p. 6

3. No evidence of poor maintenance or inspection schedules

CCCSD provided numerous records pertaining to the maintenance and inspection of the sanitary sewer lines in the areas around Site 1 and Site 2 (CCCSD, 2013). Staff reviewed the information, and concurs that the sewer lines owned and operated by CCCSD were maintained and inspected appropriately since the 1970s.

GVP submitted information concerning CCCSD's alleged failure to inspect and maintain sewer lines.[15] Similar to section VI.B.2 above concerning leaks in the sewer system, GVP's submission indicates that "GVP has little information concerning … how well or how poorly CCCSD inspected and maintained the system near the Site prior to the mid-1990s." Evidence of a "failing sewer system" in the late 1990s or 2000s is not indicative of the condition of the sewer system during the time when the dry cleaners would have disposed of separator wastewater to the sanitary sewer lines.

4. No evidence that the sewer operator knew of or permitted discharges of separator wastewater into the leaking sewers

Staff reviewed information provided by CCCSD and GVP on the question of whether CCCSD permitted or knew that dry cleaners discharged separator wastewater into the sanitary sewers. GVP has not provided any evidence that CCCSD knew of separator wastewater disposal from the dry cleaners at either Site 1 or Site 2 during the relevant time period.

Staff does not agree with CCCSD that discharges of PCE-laden wastewater into the sewer system have been prohibited since 1953. CCSD maintains that any discharge of PCE to the sewer collection system would have been illegal. However, documents reveal a complete prohibition of PCE-laden wastewater to the main sewer lines did not go into effect until 2007.[16]

Prior to 2007, CCCSD allowed for PCE to be discharged to the sanitary sewer within specified limits. For example, Ordinance No. 99 (adopted on July 11, 1974) allowed the discharge of "Total Identifiable Chlorinated Hydrocarbons" to sanitary sewers at a concentration not exceeding 0.002 mg/L for "50% of time" and not exceeding 0.004 mg/L for "10% of time." CCCSD Ordinance No. 147 (adopted on August 27, 1981) states "No person shall discharge wastewater containing in excess of "0.50 mg/l total identifiable chlorinated hydrocarbons."

The allowable PCE discharge concentrations before 2007 were far lower than what would be expected in PCE-impacted wastewater, which would be on the order of 150,000 µg/L.[17] Neither GVP nor Chevron have provided any evidence that CCCSD had specific knowledge at any time that PCE-laden wastewater in excess of the

[15] GVP Submission, July 3, 2012, pp. 6-8
[16] CCCSD, May 28, 2013, Attachment E
[17] Dry Cleaners – A Major Source of PCE in Ground Water, March 27, 1992
http://www.swrcb.ca.gov/rwqcb5/water_issues/site_cleanup/dry_cleaner_rpt.pdf

Ordinance's low levels was being discharged into their system from either Site 1 or Site 2.[18]

Attachments

Figure 1: Site Vicinity Map
Figure 2: Site Location Map
Figure 3: Maximum PCE Concentrations in Groundwater at 1643 and 1705 Contra Costa Boulevard and Immediate Vicinity, Pleasant Hill, Contra Costa County
Figure 4: Maximum PCE Concentrations in Soil at 1705 Contra Costa Boulevard and Immediate Vicinity, Pleasant Hill, Contra Costa County
Figure 5: Maximum PCE Concentrations in Soil Vapor at 1705 Contra Costa Boulevard and Immediate Vicinity, Pleasant Hill, Contra Costa County
Figure 6: Maximum PCE Concentrations in Groundwater at 1705 Contra Costa Boulevard and Immediate Vicinity, Pleasant Hill, Contra Costa County
Figure 7: Maximum TCE Concentrations in Soil at 1705 Contra Costa Boulevard and Immediate Vicinity, Pleasant Hill, Contra Costa County
Figure 8: Maximum TCE Concentrations in Soil Vapor at 1705 Contra Costa Boulevard and Immediate Vicinity, Pleasant Hill, Contra Costa County
Figure 9: Maximum TCE Concentrations in Groundwater at 1705 Contra Costa Boulevard and Immediate Vicinity, Pleasant Hill, Contra Costa County

Table 1: Historic Maximum Detected Concentrations of Volatile Organic Compounds (VOCs)

[18] CCCSD, May 28, 2013, Attachment E

Figure 1: Site Vicinity Map

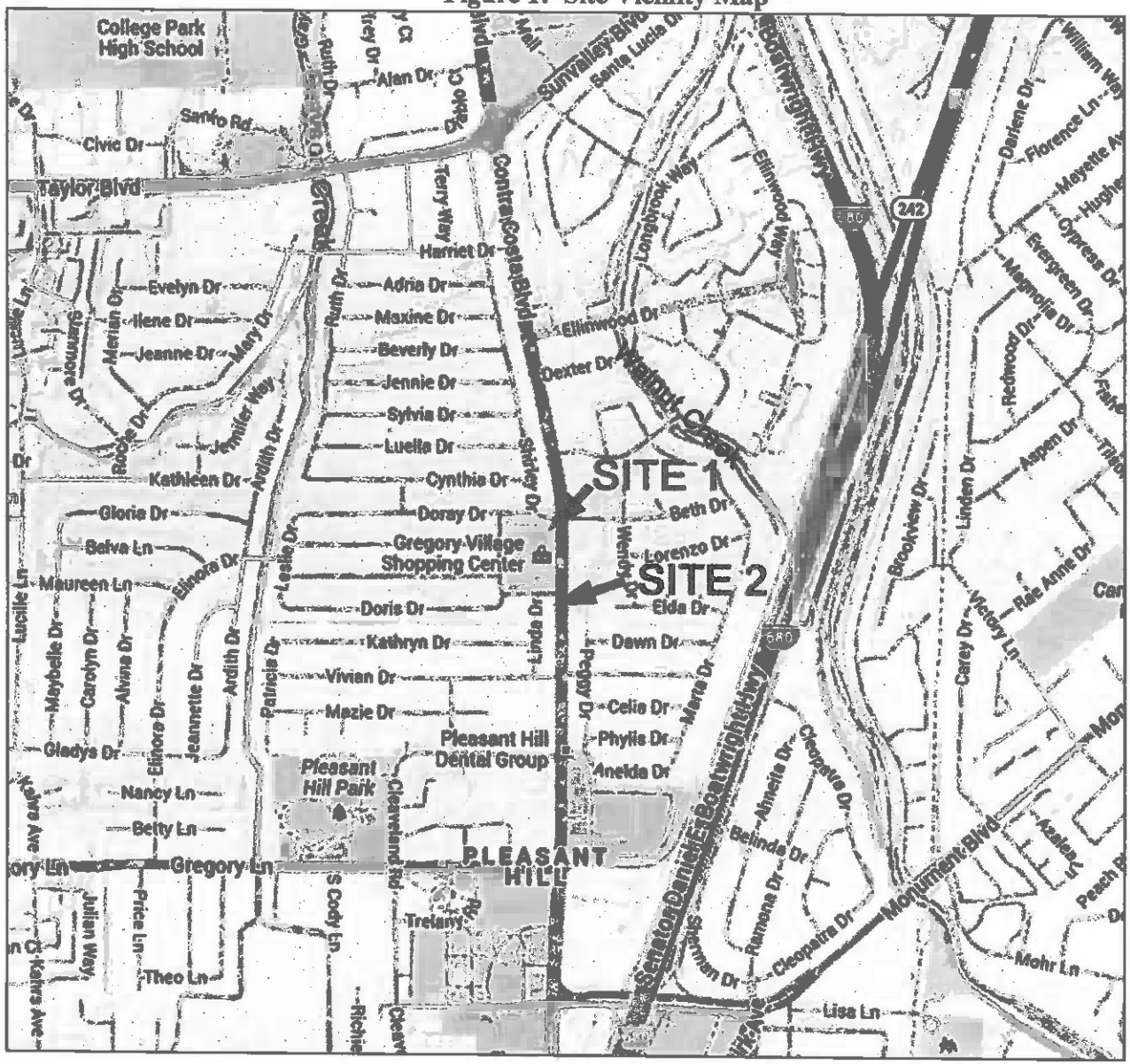


Figure 2: Site Location Map

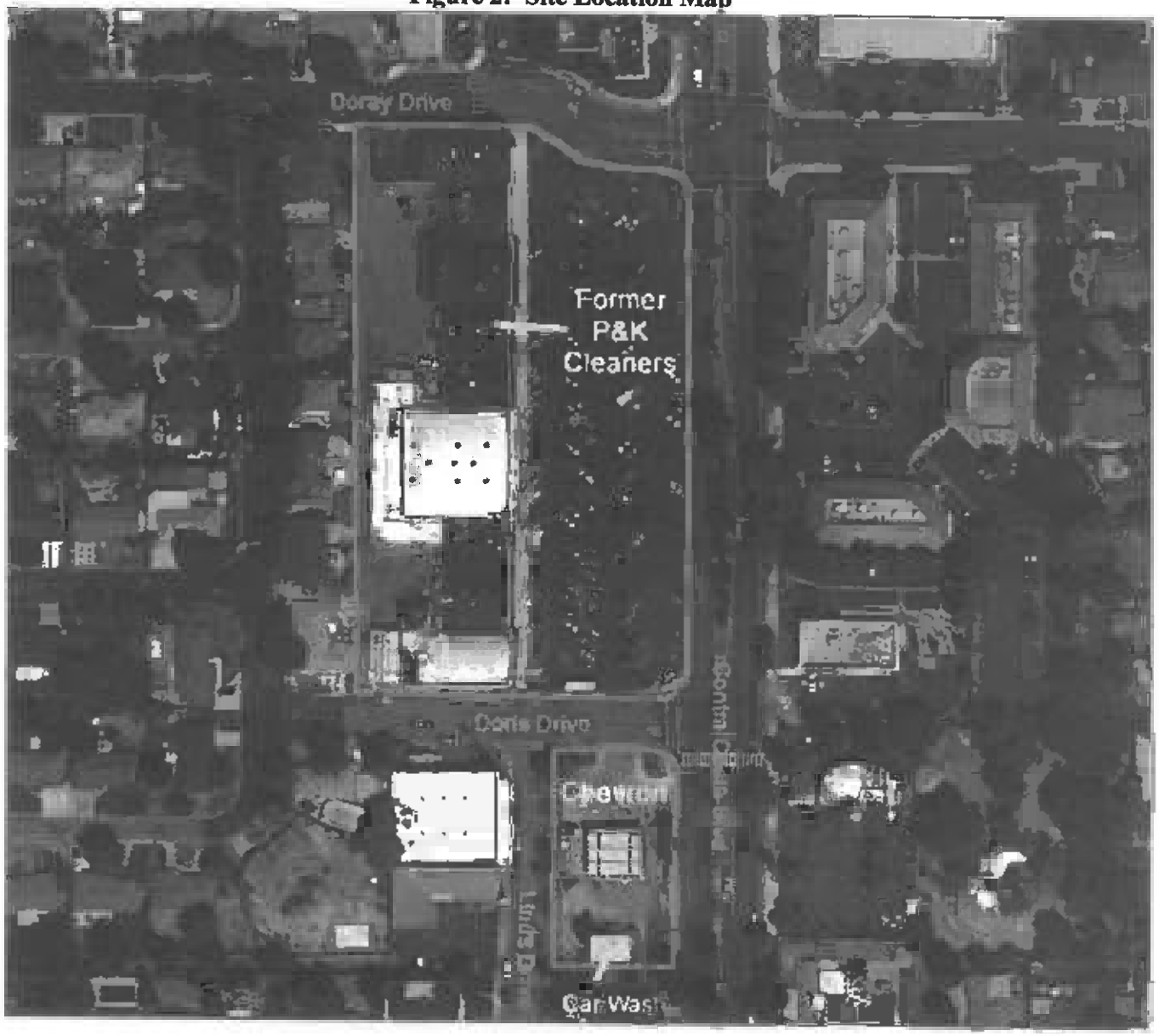


Figure 3: Maximum PCE Concentrations in Groundwater at 1643 and 1705 Contra Costa Boulevard and Immediate Vicinity, Pleasant Hill, Contra Costa County

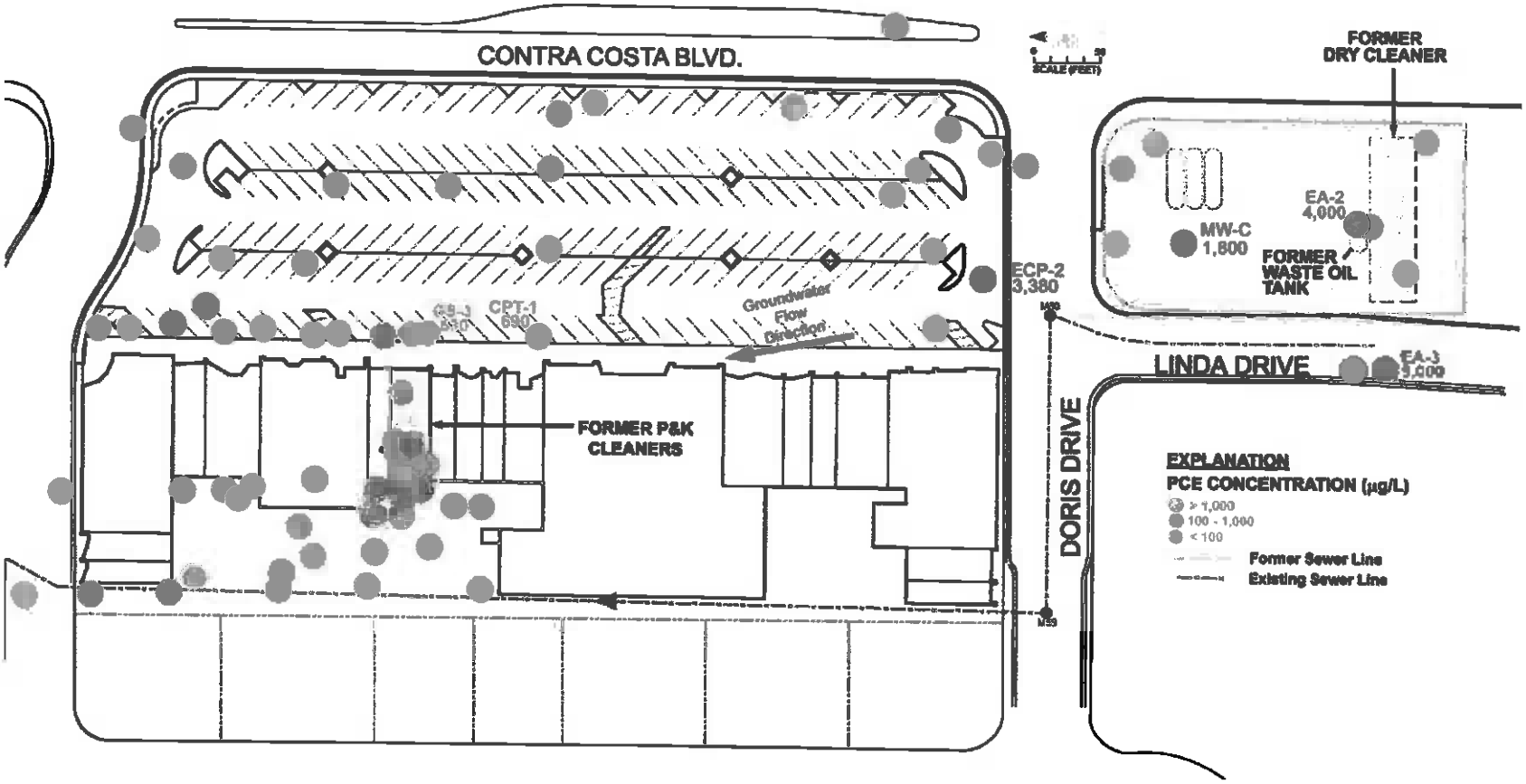


Figure 4: Maximum PCE Concentrations in Soil at 1705 Contra Costa Boulevard and Immediate Vicinity, Pleasant Hill, Contra Costa County

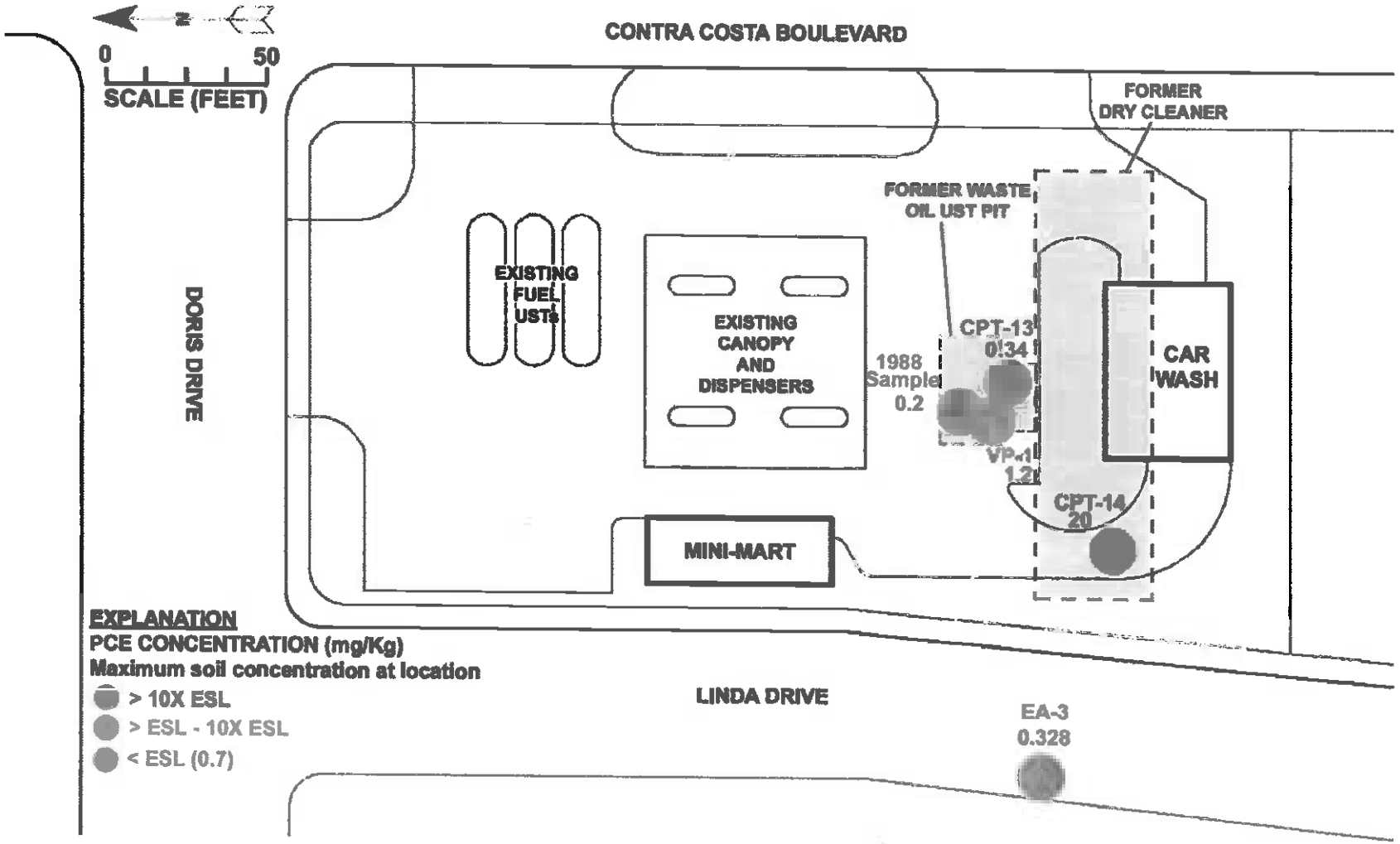


Figure 5: Maximum PCE Concentrations in Soil Vapor at 1705 Contra Costa Boulevard and Immediate Vicinity, Pleasant Hill, Contra Costa County

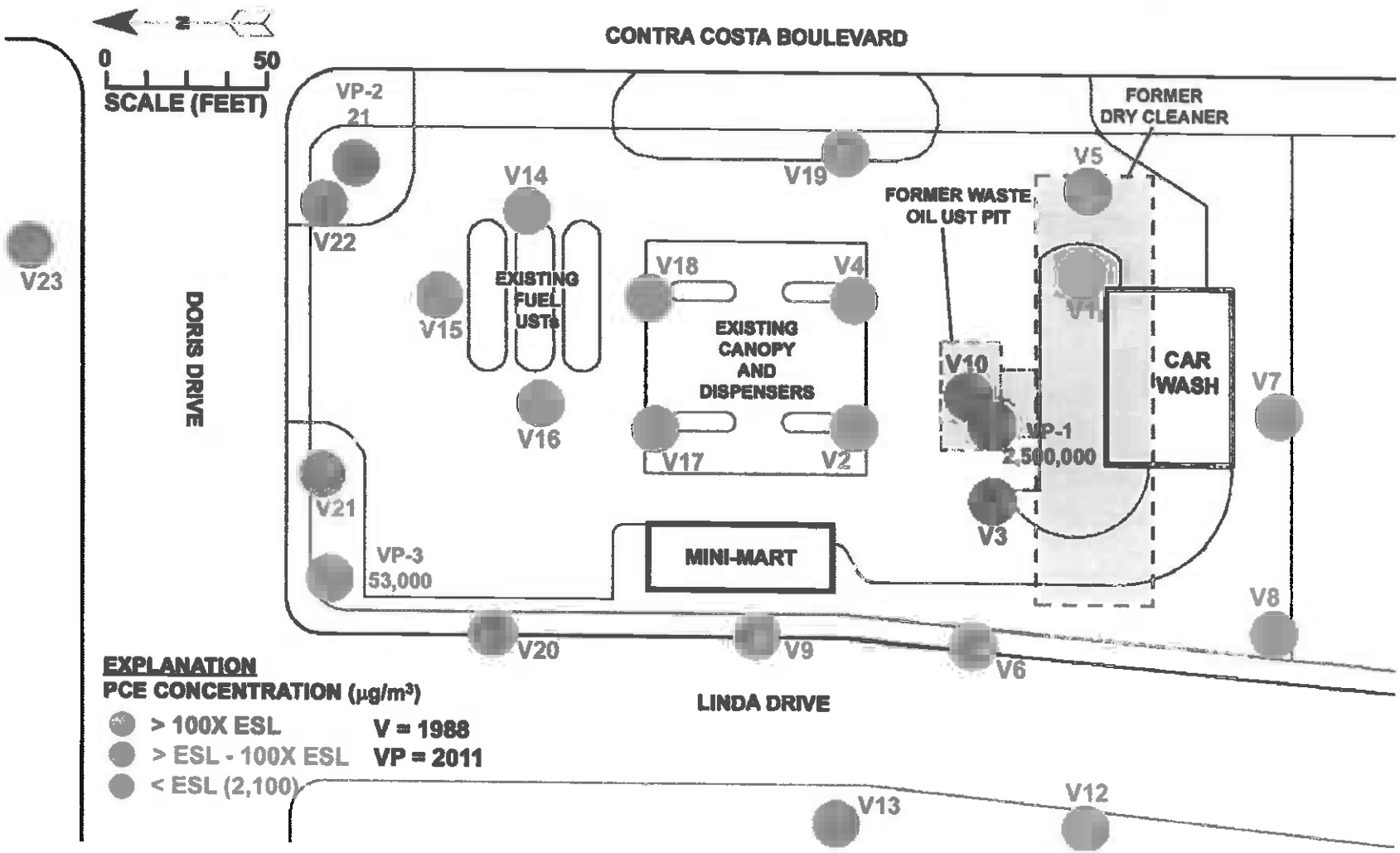


Figure 6: Maximum PCE Concentrations in Groundwater at the 1705 Contra Costa Boulevard Propertyand Immediate Vicinity, Pleasant Hill, Contra Costa County

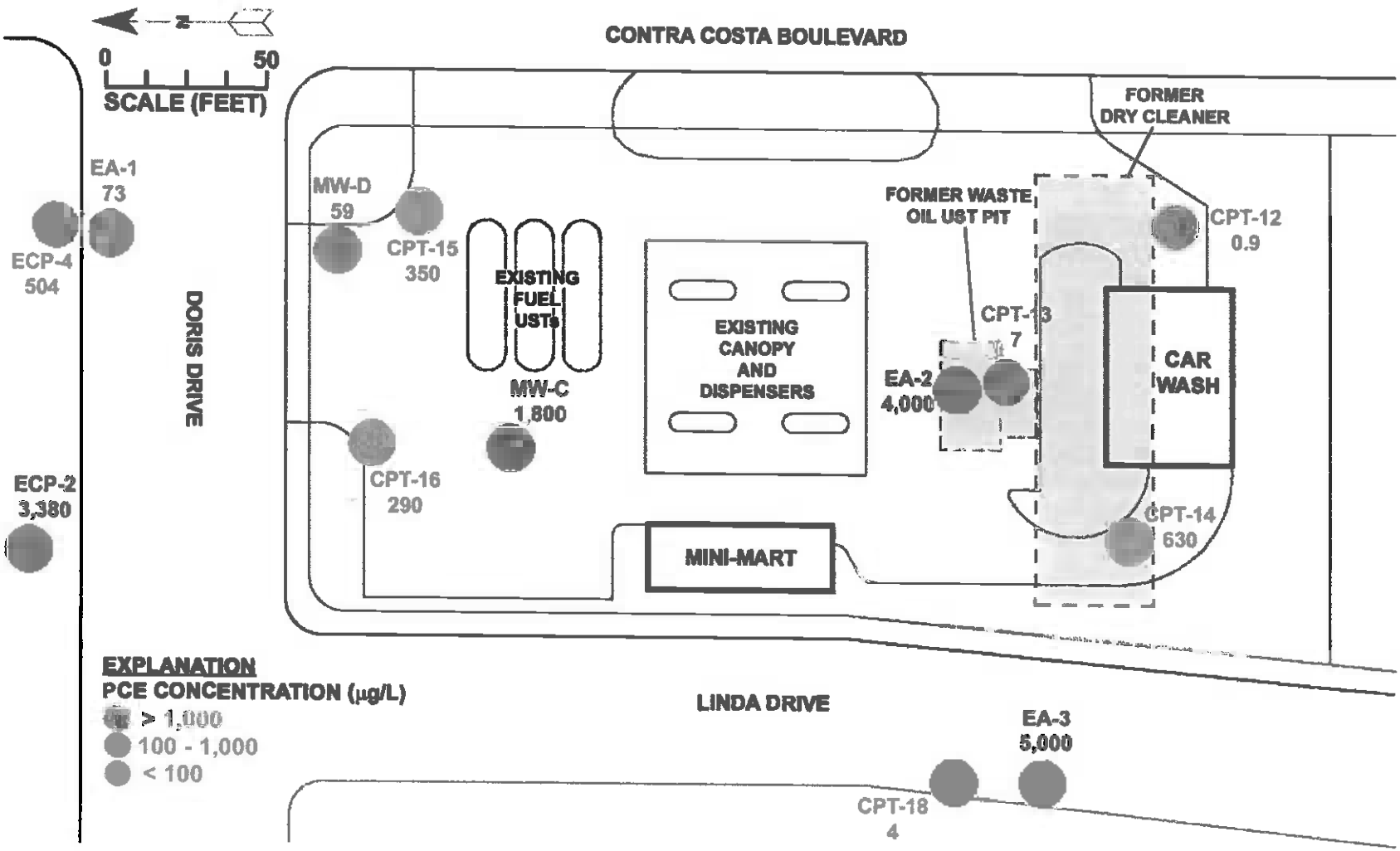


Figure 7: Maximum TCE Concentrations in Soil at the 1705 Contra Costa Boulevard Property and Immediate Vicinity, Pleasant Hill, Contra Costa County

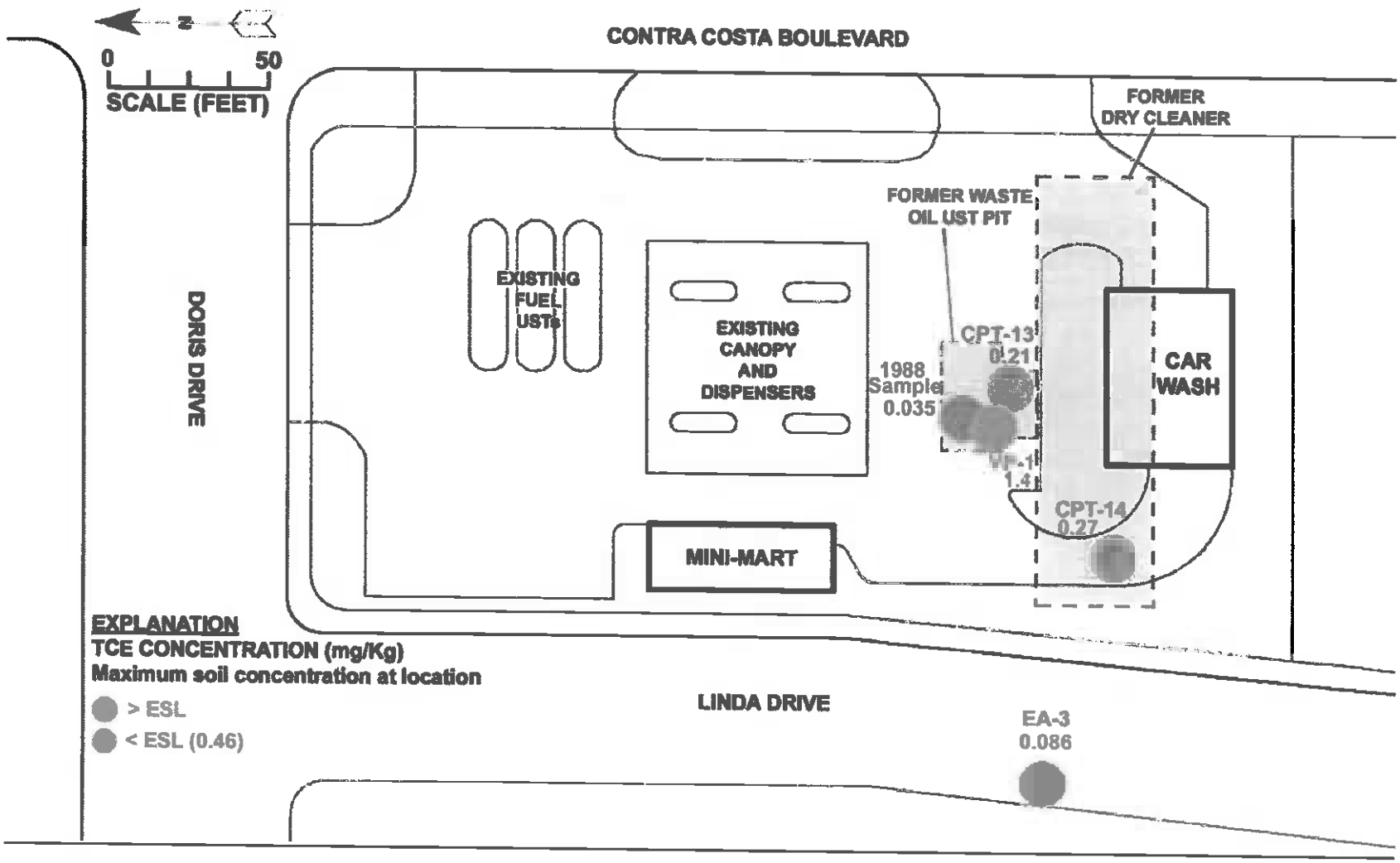


Figure 8: Maximum TCE Concentrations in Soil Vapor at 1705 Contra Costa Boulevard and Immediate Vicinity, Pleasant Hill, Contra Costa County

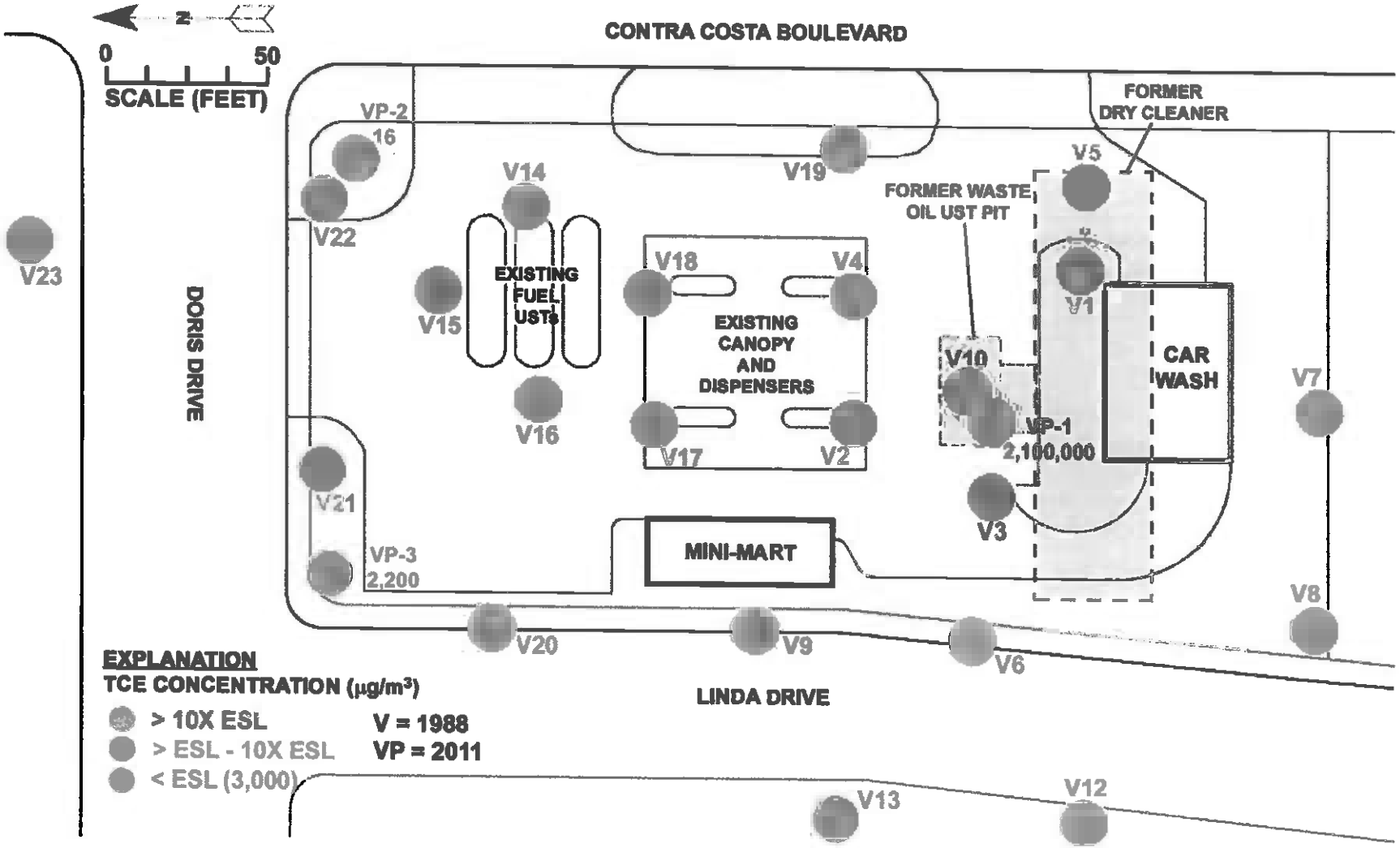


Figure 9: Maximum TCE Concentrations in Groundwater at 1705 Contra Costa Boulevard and Immediate Vicinity, Pleasant Hill, Contra Costa County

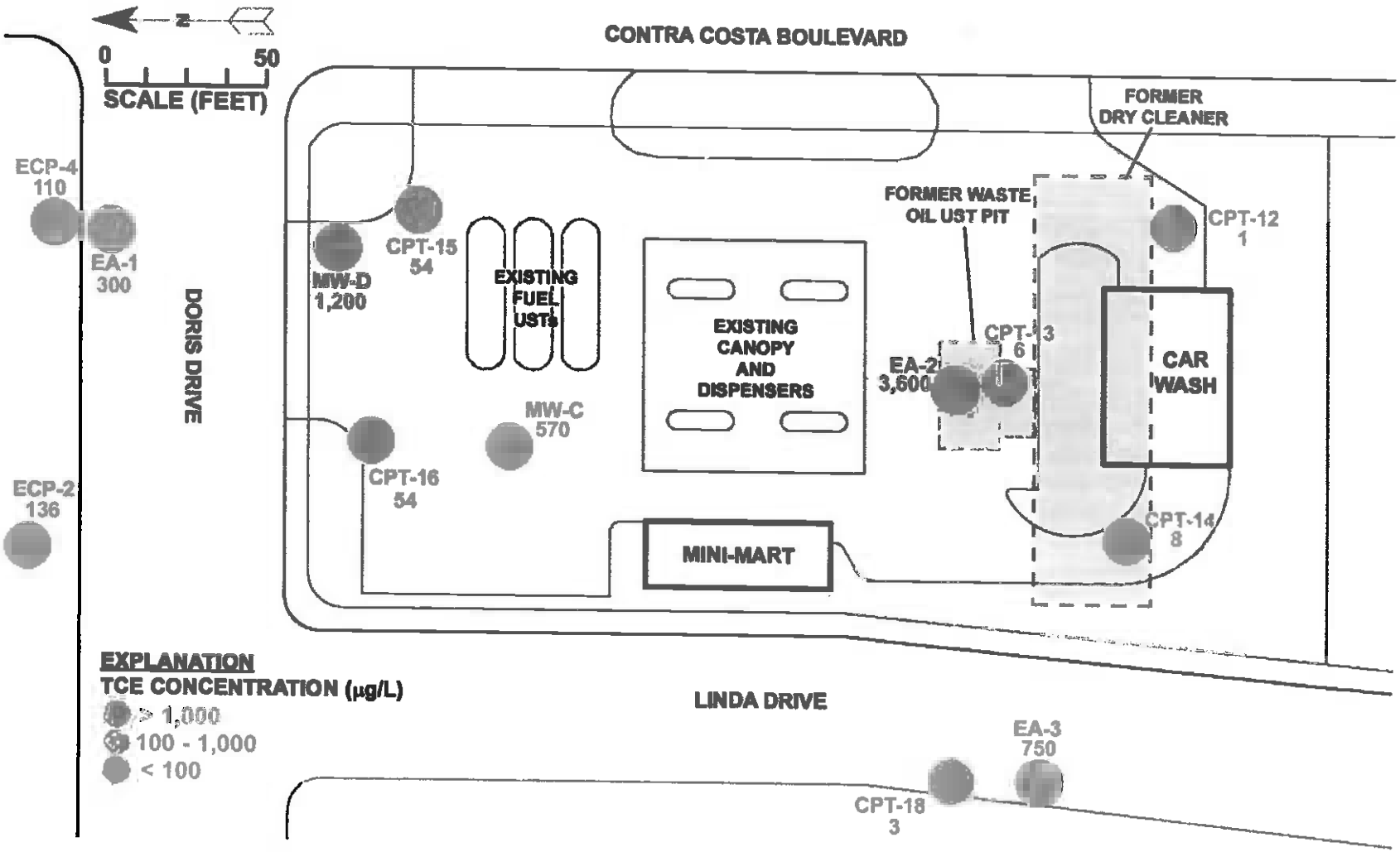


Table 1: Historic Maximum Detected Concentrations of Volatile Organic Compounds (VOCs)

	SITE 1 (P&K Cleaners)			SITE 2 (Chevron)		
Chemical/Compound	Soil (mg/kg)	Groundwater (µg/L)	Soil Vapor (µg/m³)	Soil (mg/kg)	Groundwater (µg/L)	Soil Vapor (µg/m³)
PCE	5.3	27,000	1,490,[illegible]	[illegible]20	5,000	3,247,700
TCE	0.03	130	[illegible]00	[illegible]	3,600	2,100,000
cis-1,2-DCE	<0.04	<40	[illegible],520	0.45	2,900	410,000
Vinyl chloride	<0.05	<50	[illegible]6,130	<48	910	<5,200
Benzene	NA	NA	[illegible]2	2.2	SPH ([illegible] dissolved)	520,733
TPH-g	NA	[illegible]	NA	80	SPH (110,000 dissolved)	916,667
MtBE	NA	14[illegible]	NA	<1	540	<7,300*

Key

mg/kg Micrograms per kilogram

µg/L Micrograms per liter

µg/m³ Micrograms per cubic meter

NA Not Applicable (site is not a source of these compounds) or Not Analyzed

SPH Separate-phase hydrocarbons/free product detected in on-site wells

* Although the laboratory detection limit is typically determined by the appropriate screening value, due to dilution of samples (most likely because of the presence of chlorinated compounds in high concentrations), the reporting limit was elevated.

Attachment F

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August 4, 2014

Mr. Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

Subject: Tentative Order – Initial Site Cleanup Requirements for
1643 Contra Costa Boulevard Pleasant Hill, CA ("Site 1")
Regional Board File No. 07S0132 (KEB)

Tentative Order – Initial Site Cleanup Requirements for
1705 Contra Costa Boulevard Pleasant Hill, CA ("Site 2")
Regional Board File No. 07S0204 (KEB)

Dear Mr. Wolfe:

I am writing to you with comments on the above tentative orders on behalf of Gregory Village Partners, L.P ("GVP"). GVP has a very specific reason to place its comments on both orders in a single letter: rather than two orders, an inclusive, single order should be drafted that encompasses both the geographic area and all dischargers associated with that area. Thus, the named dischargers on the single order should be the GVP parties, the Chevron parties and Central Contra Costa Sanitary District ("CCCSD").

GVP's comments are organized into two sections. The first section explains why there should be a single order. The second section discusses the legal and technical justifications for naming CCCSD to this single order.

GVP's also wishes to provide detailed remarks on various portions and paragraphs of the tentative orders and the Cleanup Team Staff Report ("Staff Report"). These remarks are attached as Exhibit G.

I. A Single Order Should be Issued for 1643 Contra Costa Blvd., 1705 Contra Costa Blvd., and CCCSD

The Regional Board should issue a single order because the plumes are commingled.

The Staff Report states on page 11:

> There is evidence that the CVOC plume from Site 2 [Chevron] migrated in groundwater to the north and northwest and beneath the Gregory Village Shopping Center, and commingled with the CVOC plume associated with Site 1 [GVP], which has migrated beneath a residential subdivision north of Site 1.

Plumes that commingle from multiple sites are more effectively handled in a single site order because, as a practical matter, the plumes cannot be adequately addressed separately. In the past, this Regional Board has handled similar situations with a single order[1] and we believe that this is the appropriate manner in which to handle the subject sites.

As currently structured, the two orders will lead to inefficiencies in addressing the requirements, disagreements between parties (and enforcement challenges), and far greater Staff time to manage than a single order would. The inefficiencies go beyond whether or not it makes sense to have two sensitive receptor surveys and public participation plans. Most significantly, both parties are required to investigate the vertical and lateral extent of their plume (but with differing degrees of specificity). Two orders would be duplicative, with the GVP parties and Chevron parties independently performing overlapping investigations of commingled plumes, which makes no sense.

The investigation tasks also illustrate the difficulty of attempting to coordinate two different orders, which should be much easier at this stage compared to when issues arise in the field causing delays for one party or another.[2] While both the GVP parties and the Chevron parties are required to define the vertical and lateral extent of their plumes, the GVP parties' order expressly references the deep zone and the neighborhood but the Chevron parties' order does not. The likelihood, if the orders remain separate, is that Chevron will do an investigation that does not include those items and there will be needless delays for both sites, as well as GVP having to perform additional work to prove what the RWQCB has already concluded – the plume is commingled down gradient of

[1] Order R2-1989-0038 was issued with respect to two sites in Cupertino, CA. Two separate release areas at two separate locations were the subjects of this single order. The Siemens Site had releases of CVOCs from underground waste solvent tanks and an acid dilution basin. The Intersil Site nearby had releases of CVOCs from underground waste handling systems. In a situation very similar to the situation here, the Intersil/Siemens Order states that "[t]he groundwater pollution plumes from Siemens and Intersil have commingled in the A-zone and have migrated to the B-zone and C-zone. The off-site groundwater pollution plume extends approximately 2500 feet down gradient from the sites" (paragraph 6).

[2] On a side note, GVP would like to point out that it has worked very hard with the Staff under the Spills, Leaks, Investigation and Cleanup program and has cooperated to mitigate detections of PCE in the neighborhood north of the GVP site. In light of this fact, we find it disturbing that the GVP parties are the only ones that are being expressly required by an order to work on any off-site matters or the deep aquifer. It does not appear to he an approach that will encourage cooperation from parties in the future.

P&K cleaners and in the neighborhood. There is no justification to place this extra burden on GVP.

In short, a single order is imperative to avoid confusion, higher costs for all parties, and the unnecessary expenditure of valuable Staff resources in mediating disputes between the parties that would occur with separate orders.

II. CCCSD Must Be Named to the Order

Based on the law and the evidence, CCCSD must be named to the two orders or to a single order for the entire area because, as will be described in detail below, CCCSD is a discharger under the Water Code, and a responsible party under a hybrid Water Code/Superfund (CERCLA) analysis, which the Staff has appeared to have adopted. In addition, as will be discussed below, there is strong evidence that the sewers leaked in both the neighborhood and near the Chevron Site and these leaks are sources of PCE that is detected in soil gas and groundwater.

a) CCCSD Is a Discharger Under Section 13304 of the California Water Code

This matter is straightforward. Section 13304 of the Water Code defines a discharger as "(a) Any person who has discharged or discharges waste into the waters of this state ... who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance..." Further, Section 13030 of the Water Code states that a: "Person includes any city, county, district, the state..." (emphasis added).

Section 13304 is a strict liability statute. Strict liability means that an entity has legal responsibility for damages or injuries even if the entity was neither at fault nor negligent. The statute contains no exceptions or defenses. Simply put, if an entity's actions fit into the definition, it is a discharger.[3]

[3] The Staff Report points out that CERCLA is also a strict liability statute, and that the cases under CERCLA, while "not binding precedent ... do provide useful guidance" (footnote 7 on page 12). We agree. However, the Staff report also states that: "courts have refrained from identifying sewer owner/operators as "responsible parties" (the CERCLA rough equivalent of the Water Code's "discharger") merely because they owned or operated a sewer system". This is not a true statement. The Staff Report quotes language from or refers to the *Fireman's Fund, Lincoln Properties* and *Adobe Lumber* cases. In referring to these cases, the Staff Report is misleading and incomplete. For example, the Staff Report is misleading because the quote from *Fireman's Fund* is in fact "dicta" and not a holding (i.e. not binding law). The Staff quoted that case as follows: "["it is doubtful whether Lodi may be considered a PRP merely as a result of operating its municipal sewer system"]". However, the entire quote from the Court of Appeals in *Fireman's Fund* is: "While we decline to decide whether Lodi is a PRP on the record before us, we note that it is doubtful whether Lodi may be considered a PRP merely as a result of operating its municipal sewer system" (emphasis added). After discussing the various cases on the issue, some of which hold that an owner of a sewer lines is liable for discharges of hazardous waste and some of which hold the opposite, the Court of Appeals remanded (i.e. sent back) to the District Court the question of whether Lodi is a PRP. [On remand, the District Court determined that Lodi is a PRP (a holding based on Lodi's admission in open court that it was a PRP)]. Note also that *Lincoln Properties* does not hold what the Staff asserts. In that case, the court held that as an owner of the sewer system: "...as a matter of law, the County may be liable for releases from its facilities – *viz*, its portion of the sewer ..." (emphasis added) (823 F. Supp. at 1539). The court then found that the County had an affirmative defense under CERCLA [a portion of that defense was later rejected in *Adobe Lumber]*. The Staff Report is misleading because it references *Adobe Lumber* (659 F. Supp.2d 1188 (E.D. Ca. 2009)) to support its statement that: "courts have refrained from identifying sewer owner/operators as

GVP has made this point to you before in letters dated July 3, 2012, December 18, 2012 and May 28, 2013 ("GVP Letters"). Due to the length of the letters, they are not attached in their entirety to these comments, but the letters and associated exhibits are in the Regional Board's files and on GeoTracker. They are an important part of the administrative record for the sites and are incorporated by this reference.

Rather than reiterate the points that were made in the letters here, we want to highlight the fact that this question was answered many years ago by the Office of the Chief Counsel of the State Water Resources Control Board. In a letter to Walt Pettit, Executive Director of the State Water Resources Control Board dated April 27, 1992, William R. Atwater, Chief Counsel, reviewed testimony of the Central Valley Regional Water Quality Control Board as follows:

> The Staff gave testimony that PCE is discharged to the sewer system by dry-cleaning operations, and that it escapes the sewer collection system by various means, including leaks and permeation as a gas. For purposes of this memorandum, it will be assumed that the testimony of the Regional Water Board staff regarding the movement of PCE through sewer pipes is accurate. Making that assumption, this memorandum will address whether such releases from sewer pipes which are part of the collection system of a POTW are adequate grounds for holding the operator of the POTW responsible for cleanup and abatement of the PCE.

Based on the above facts, Mr. Atwater determined the following:

> These owners and operators have sole control over the collection systems and responsibility for proper operation and maintenance. Water Code Section 13304 authorizes the issuance of cleanup and abatement orders to persons who "cause" or "permit" discharges which cause pollution or threaten pollution of ground water. It is clear that owners and operators of POTWs, from which hazardous wastes such as PCE leak or permeate, have caused or permitted such discharges...
>
> Under Section 13304, both the owner or operator of the POTW, who controls the collection system and has responsibility for discharges therefrom, and the dry cleaner who places the waste into the collection system, may be held responsible.

A copy of this memorandum is attached as Exhibit A.

"responsible parties" (the CERCLA rough equivalent of the Water Code's "discharger") merely because they owned or operated a sewer system." But that premise is never discussed or considered by the court in the case. Rather, the court found that the City of Woodland was a PRP, that its sewers were "facilities" under CERCLA, and that it was a responsible party under CERCLA. The court refused to dismiss the City from the case and allowed the case to go to trial. It did allow the City to try to carry the burden at trial to establish the innocent party defense under CERCLA §9607(b)(3). Finally, the Staff Report is incomplete because it fails to mention *Westfarm Assocs. v. Wash. Suburban Sanitary Comm'n,* 66 F.3d 669, (4th Cir.1995) in which the Court of Appeals held that a municipal operator of a sewer system is liable under CERCLA for the acts of a third party that discharges hazardous waste into the system.

Given the clarity of the law as described by the Chief Counsel (and that there does not appear to be any dispute over whether CCCSD owns the sewers) the only open question in this analysis is whether the sewers leaked. And CCCSD sewers did in fact leak. It is common knowledge that discharges from sanitary sewers into soil and groundwater around and beneath sanitary sewers continuously occur. By their very design and construction, sanitary sewers leak. If PCE from dry cleaners is placed into a sanitary sewer, it will leak out in many different ways. This fact was discussed in detail in "Dry Cleaners - A Major Source of PCE in Ground Water, Regional Water Quality Control Board, Central Valley Region" (1992), the so-called "Izzo Report", and has been generally accepted by experts in the field since that publication was released. The Izzo Report is attached as Exhibit B.

Additionally, in its records, CCCSD has acknowledged that there have indeed been root intrusions, cracks, and sags in the sewer in the Gregory Village area, which make the likelihood and extent of leakage greater. Finally, the data reflect that leakage from the pipes occurred both near the Chevron property and in the neighborhood downgradient of the Gregory Village property.

GVP's letters present a very detailed analysis describing how the sewers leaked; consequently, those details will not be repeated here. However, because of the critical nature of this fact we would like to remind the Regional Board of the following: 1) CCCSD accepted PCE from dry cleaners into its sanitary sewers; 2) CCCSD's sanitary sewer lines were installed with a substantial allowable leakage tolerance; 3) sanitary sewer lines built in the 1950s and 1960s used joint compounds that failed and leaked; 4) over time, sanitary sewer lines sag and break due to local earth movements caused by earthquakes, large vehicles passing over the lines, etc.; and 5) PCE as liquid and as vapor escapes from sanitary sewers in the ways described in the Izzo Report, including through places where roots have penetrated and through the pipes themselves.

Exhibit C is a short presentation of some of the data by Erler & Kalinowski, Inc. ("EKI") that provides strong evidence that the sewers leaked in both the neighborhood and near the Chevron Site and these leaks are sources of PCE that is detected in soil gas and groundwater.

Exhibit D is a declaration from Bonneau Dickson, P.E. a sanitary sewer expert that provides additional background on sewer construction and operation and discusses how sewers leak in general, and how PCE leaves sewer pipes and enters the environment, including PCE migration in backfill and up-slope as vapor.

b) CCCSD Is Liable Under a Hybrid Water Code/CERCLA Analysis When Appropriate Standards of Proof Are Applied

GVP does not believe any further analysis is necessary to find CCCSD liable as a discharger under the Water Code because the Water Code has a strict liability standard and there is evidence that CCCSD's sewers leaked PCE.

However, the Staff proposes four, new, non-statutory criteria that must be met for CCCSD to be named a discharger. These criteria are 1) there was a release from the sewer main that contributed to the plume; 2) the sewer owner/operator knew of leaks and failed to repair them; 3) the sewers were in poor condition and/or were not maintained; and, 4) the sewer owner/operator was aware of/or permitted discharges into a leaking sewer.

From discussions with the Staff, GVP understands that these criteria are based on the City of Lodi case, where the City, as the sanitary system operator, was named as a discharger.[4] To GVP's knowledge, these criteria (or similar criteria) have never been published or publicly used by the Staff to determine whether an entity is a discharger. The criteria do not appear in the City of Lodi Order. The criteria are not in California law or regulations.

The Staff's creation of the four criteria appears to be based on a wayward adoption of some concept of CERCLA defenses as a justification for not naming CCCSD as a discharger. Under CERCLA, once a party has been determined to be an owner or operator of a facility from which a release has occurred, it can only escape liability if it pleads and proves the elements of an affirmative defense.[5] It is not up to a regulatory agency to make the defense for an otherwise responsible party; the party itself must prove its defense by a preponderance of the evidence.

In creating these criteria, the Staff has adopted an approach that has no connection to the concept of a "discharger" in the Water Code. Additionally, the Staff has converted an affirmative defense to be used only by an already responsible party under CERCLA into something wholly different: a methodology used by a regulator as a pretext to discount and avoid evidence. The Staff is forcing other responsible parties to prove the Staff wrong when, in fact, CCCSD should be proving it qualifies for the defense. By its language, the Staff believes that someone else must present some amount of evidence (and the Staff has not shared what that amount is) to support all four criteria before the Staff will name a sanitary district a discharger.

[4] It should be noted that there is at least one other applicable California precedent that is not mentioned in the Staff Report. The site is located in Sacramento and is under the jurisdiction of the Central Valley Regional Board. In that case a sanitary district recognized that it was responsible for leaks from its sewer system and voluntarily led the effort to clean up PCE that leaked from its sewers. As presented in that Board's Executive Officer's Report dated 23/24 June 2005, the Sacramento County Sanitation District 1 [CSD] "owns and maintains the sewer lines to which wastewater containing PCE was disposed and from which PCE was released to the soil and groundwater. The CSD is cleaning up the soil and groundwater pollution on behalf of itself and all the other responsible parties, including the former owners and operators of Southgate Norge Dry Cleaners."

[5] CERCLA has an affirmative defense (42 USC Sec. 9607(b)(3)) that can be used by an otherwise liable person. This provision provides: "There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by (3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant ... if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions..."

i) The Staff has not fairly evaluated the available data and provides no clear standard for its evidentiary burden of proof

If, for arguments sake, one were to accept that the burden was on non-CCCSD parties to prove that the four criteria were met, given the available data, GVP believes that the criteria have been met and believes that the Staff has not performed a fair evaluation. Instead, the Staff has accepted every statement by CCCSD regarding CCCSD's evaluation of the data as true and rejected any interpretation that is inconvenient or contradicts CCCSD's position. (This is an odd approach by the Staff given CCCSD's assertion to the Staff that it never allowed PCE from dry cleaners to be discharged into its system, when in reality it allowed these discharges until 2007. This fact alone should have cast serious doubt on CCCSD's credibility.) Rather than objectively analyzing the evidence, or providing clarity as to how it is analyzing the evidence, the Staff instead uses conclusive and inaccurate statements to dismiss any evidence with which it does not agree.[6]

ii) There is clear evidence to support all four criteria

Even though the burden is clearly on CCCSD to exonerate itself, the GVP Letters and Exhibits B, C and D provide the evidence that CCCSD should be named a discharger because the four criteria have been met. Nevertheless, it is instructive to focus, as an example, on information related to CCCSD's maintenance program, which is the core of two of the Staff's criteria.

CCCSD's maintenance practices regarding sewer blockages and sewer backups, which appear to be reactive, have remained substantially the same over time. A CCCSD outreach document from 1975 describes rodding in response to sewer backups into homes, a purely reactive approach to the problem. A copy of that document is attached as Exhibit E. In 1983, the Regional Board requested CCCSD respond as to how it was addressing maintenance issues due to concerns over sewer backups. Again CCCSD

[6] A review of the Staff's language in Section VI of the Staff Report regarding why CCCSD is not a discharger is revealing. Nowhere is there a clear explanation regarding the amount and type of evidence that is required. What is clear is that burden of proof was mistakenly put on the other responsible parties rather than CCCSD as all the references are to insufficient evidence or lack thereof. More specifically:
- In the second paragraph of the Section, the Staff Report "concludes there is insufficient data to assert that a discharge from CCCSD's sewer lines resulted in the contamination at issue…" (emphasis added).
- In the first paragraph of page 13, the Staff states: "there is no direct evidence that leaking sewer lines under CCCSD ownership have caused or contributed significantly to the groundwater contamination" (emphasis added).
- In item #1 on page 13, the Staff Report states: "While there is evidence of incidental leakage from the sanitary sewer lines, there is no direct evidence the leakage contributed substantially to the creation of the CVOC commingled groundwater plume" (emphasis added).
- On page 14, in the data discussion of Apparent Source Area in the Vicinity of Manhole M46, the Staff Report states: "Staff does not find this single data set to be compelling evidence of a source area…" (emphasis added).
- On page 14, in the data discussion of Suspected Source Area in Linda Drive Along Sewer, the Staff Report states: "There is insufficient soil and groundwater data to reach the conclusion that the older sewer line was a release point" (emphasis added).
- In Instance 2 on page 15, the Staff Report states: "Staff does not find evidence of major repairs [NB: there is no definition of "major repairs"] needed on the CCCSD sewer lines in the area of the groundwater contamination. There is no tangible evidence CCCSD was aware of any needed repair beyond routine maintenance" (emphasis added).

described a reactive maintenance system. A copy of that letter is attached as Exhibit F.

As stated by B. Dixon in his Declaration (Exhibit D, p. 7):

> The CCCSD sewer maintenance program consists of cleaning the sewers at various intervals, responding to blockages and sanitary sewer overflows (SSOs) when they occur, and repairing defects when they are found if the defects are deemed to be significant and to require repair. Root penetrations usually are corrected by cutting out the roots or by chemically treating the roots. These methods of getting rid of the roots do not get rid of the openings through which they entered the pipes, i.e. the maintenance procedures are aimed at restoring flow in the sewers but not at stopping leakage from the sewers…
>
> Cleaning the sewers tends to reduce the number of blockages that occur but does nothing to stop the sewer pipes from leaking. Similarly, clearing blockages merely clears the sewer pipe, but does not address leaks.

Nothing exemplifies this reactive nature better than CCCSD describing the sewer pipe in Linda Drive adjacent to the Chevron Site in 1977 as "in very poor shape has lots of cracks" but taking at least ten years to replace it.

(iii) CCCSD's assertion that the system is currently in good condition and that it has recent awards for operation and maintenance are not relevant in understanding that its sewers released PCE

In its May 28, 2013 response to the Staff's 13267 letter requesting evidence concerning how CCCSD maintained its system, CCCSD provided no material other than the sparse records that had already been produced in response to GVP's Public Records Act request. CCCSD provided no evidence of its operations prior to the 1990's, it merely stated: "the sanitary sewer lines in the Gregory Village area are in good condition, meaning that they were in even better condition in the past…" CCCSD continued: "It is a truism that the capability of sanitary sewer collection systems to retain wastewater does not improve over time and that absent replacement or other major repairs, sewer lines are in the best condition when they are newer" (page 2). "As summarized below, the general condition of the sanitary sewers in the Gregory Village area is good, which means their condition was at least as good, if not better, during the period of time the dry cleaners operated in the area (1956-1991)" (page 3).[7]

However, CCCSD provided no information and attached no records or documents in its letter regarding these earlier time periods to support this "truism" that, incidentally, is not

[7] CCCSD asserts that the "general condition" of the area sewers is "good". In fact, CCCSD's records, including its video logs of the sewers, identify sags, cracks and root penetrations, which calls into question what CCCSD's statement really means.

a "truism." As discussed in Exhibit D (Declaration of B. Dickson), sanitary sewer pipes begin to leak soon after they are installed. The fill in which the pipes were placed settles, causing sags and joint failures in the installed system.

In further response to the Staff's questions concerning maintenance, CCCSD states:

> The District operates an award winning operation and maintenance program for its sanitary sewer collection system. These awards are not given out lightly ... Because these award programs have only been in existence for the past 20-25 years, these awards were received after the dry cleaning operations in the Gregory Village area ceased. However, if awards were available prior, the District is confident that its operation and maintenance programs and personnel would have received them (p. 12).

GVP questions whether the statements that the system is now in good condition and that the program is recently "award winning" has any probative value in this situation. To this day, CCCSD's maintenance system is focused on keeping the sewage flowing, not to prevent leaks from its pipes into the groundwater. Maintenance, short of failure or imminent failure of a pipe, is primarily rodding or chemical treatment to remove roots and other obstructions. These techniques do not repair the cracks or holes created by the roots and, in fact, are reactive – they only address the issue once the roots have substantially penetrated the pipes, long after creating a leakage point (see Exhibit D Declaration of B. Dickson).

iv) Lack of evidence should not be used to CCCSD's benefit

Given the Staff's approach, we note that it is in a sanitary district's best interest to have no evidence or records that may help to establish, under the Staff's criteria, that the district is a discharger. Later in the letter to the Staff, CCCSD admits that it has no maintenance records:

> Up until the early 1990s, maintenance was tracked by a manual card system (cardex system). Although the cardex records were not retained, the system was used to effectively plan and track the maintenance events on individual sanitary sewer lines including the lines in the Gregory Village area.

Given that there is <u>no</u> substantive evidence that the sewers <u>did not</u> leak, the key question remains: What inference should be drawn concerning the behavior of CCCSD and the quality of its operation in the absence of records or where records have been destroyed?

The Staff believes that the lack of records from before 1990 means that it can't be proven that the CCCSD has any liability. However, the Staff has its analysis backward – in the absence of historical evidence, given that the burden of proof is on CCCSD – the Staff must conclude that CCCSD has not met its burden of proof and is thus a discharger.

In short, the evidence is that a) all sanitary sewers leak PCE (see the Izzo Report), b) according to the Staff Report, CCCSD allowed PCE to be discharged to its system (page 16, #4), and c) CCCSD's system leaked. In this circumstance, there should be no controversy: CCCSD should be named a discharger in the order.

c) There are strong policy reasons for holding the CCCSD is a discharger

The Staff has noted that there are policy reasons for not holding CCCSD liable as a discharger, but has failed to enumerate those reasons. It appears that the Staff's policy reason for not holding CCCSD liable is that costs of investigation and cleanup should not be shifted to the taxpayers and ratepayers when there are other parties that might pay.[8] This argument gives little incentive for CCCSD to repair damage caused by root intrusions or heavy traffic rather than just clearing the pipe, which it still does to this day, unless there is an actual or imminent pipe failure.

Another policy argument that could be made is that CCCSD should not be liable a discharger because CCCSD is a mere conveyor of materials doing a public service and that it should not, from a public policy perspective, be held responsible for leaks from its system of material that others placed in its system that subsequently leaked out. But CCCSD is not a "mere conveyor." As noted in the Staff Report (p. 16), CCCSD knowingly accepted CVOCs, including PCE, into its system and thus should be liable for these releases.[9] [10]

To fail to name CCCSD to the order sends a message that sanitary districts are not liable for discharges in violation of the Water Code in the face of clear RWQCB precedent to name sanitary districts for such violations. Sanitary districts are frequently named in orders. Usually this is a result of the sanitary district failing to prevent or control the

[8] This argument was made in a CERCLA context by another sanitary district that was contesting liability for releases of PCE that had been discharged to that district's sanitary sewer. In that case, the Court of Appeals rejected the argument. See *Westfarm Assocs. v. Wash. Suburban Sanitary Comm'n,* 66 F.3d 669, (4th Cir.1995): "[w]hile the public policy arguments raised by WSSC may be meritorious, we can only presume that those arguments were weighed and rejected by Congress when it enacted CERCLA without including a broad exemption for state and local governments or their POTWs." Similarly, the Water Code contains no "sanitary district" exemption preventing a district from being named a discharger. As noted earlier, "districts" are a "person" subject to Water Code Section 13304. Section 13030 of the Water Code states that a: "Person includes any city, county, district, the state..."(emphasis added).

[9] The Staff has misinterpreted CCCSD's regulations with respect to the amount of PCE it allowed to be discharged into its system. As the Staff correctly states: "Prior to 2007, CCCSD allowed for PCE to be discharged to the sanitary sewer within specified limits. For example, Ordinance No. 99 (adopted on July 11, 1974) allowed the discharge of "Total Identifiable Chlorinated Hydrocarbons" to sanitary sewers at a concentration not exceeding 0.002 mg/L for "50% of time" and not exceeding 0.004 mg/L for "10% of time." But the Staff then incorrectly concludes, with respect to the period prior to 1981: "The allowable PCE discharge concentrations before 2007 were far lower than what would be expected in PCE-impacted wastewater, which would be on the order of 150,000 µg/L." In fact, prior to 1981, CCCSD's restrictions were temporal, which means that extremely high concentrations, including pure PCE, could be discharged to CCCSD's sewers so long as the discharges did not violate the temporal restriction contained in the applicable ordinance.

[10] A close analogy for holding CCCSD liable involves municipal landfills, as stated in *Adobe Lumber*: "*see, e.g., Transportation Leasing Company. v. The State of California (CalTrans),* 861 F. Supp. 931, 939 (C.D.Cal.1993) (holding municipalities liable for contamination from a landfill even though their conduct constituted a "non-contributory exercise of sovereign power")..." Also, the Court of Appeals in *B.F. Goodrich v Murtha, 958 F. 2d 1192, 1199 (2nd Cir.1992)* held that there was no exemption under CERCLA "for municipalities arranging for the disposal of municipal solid waste that contains hazardous substances simply because the municipality undertakes such action in furtherance of its sovereign status."

discharge of sewage or chemicals.[11]

Both the Water Code and CERCLA cleanup provisions were drafted to cast a wide net in order to assure the resources necessary to clean up the environment. By making a policy decision to walk away from one of those sources, the Board is walking away from a resource needed to address the problem as most dry cleaners and the owners of single properties do not have the resources to address the issue alone.[12]

III. Conclusion

Because there is a commingled plume, a single order is not only appropriate, but imperative to avoid confusion, higher costs for all parties, and the unnecessary expenditure of valuable Staff resources. There is clear Board precedent for this approach. Further, the California legislature expressly intended that sanitary districts be strictly liable under Section 13304 of the California Water Code for releases from their facilities. CCCSD owns and operates the sewer pipes from which wastewater containing CVOCs has leaked into the subsurface. In addition to being strictly liable, by designing a system that in its very specifications permitted leakage, in operating a failing system, and in failing to repair the system in a timely manner, CCCSD actively discharged CVOC waste into the waters of the state which have become part of a commingled plume. In these circumstances, it is both appropriate and imperative that CCCSD be named a discharger on the single order that names the GVP parties and the Chevron parties.

Sincerely,

Edward A. Firestone

Edward A. Firestone

Exhibits Attached

[11] See, for example, Sanitary District #1 of Marin, R2-2012-055; City of Oakland, R2-2009-0078; and City of Calistoga, R2-2010-0107 (which involved the discharge of chlorodibromomethane and dichlorobromomethane).

[12] It is likely that CCCSD has general liability insurance coverage from the pre-1986 period that could be triggered to help pay for the investigation and remediation of CVOCs released from its system. If these policies were triggered and the investigation and cleanup work were covered losses, the burden would fall on insurance that was paid for by taxpayers and ratepayers.

EXHIBIT A

State of California

Memorandum

To : Walt Pettit
Executive Director

Date: APR 27 1992

William R. Attwater
Chief Counsel
OFFICE OF THE CHIEF COUNSEL
From : STATE WATER RESOURCES CONTROL BOARD

Subject: RESPONSIBILITY OF OPERATORS OF PUBLICLY OWNED AND OPERATED SEWER SYSTEMS FOR DISCHARGES FROM THEIR SYSTEMS WHICH POLLUTE GROUND WATER

ISSUE

Is the operator of a publicly owned and operated sanitary sewer system responsible for discharges of waste from its sewer system which pollute or threaten to pollute ground water?[1]

Conclusion

Public agencies which own or operate sanitary sewer systems are responsible for discharges of waste from their collection and treatment systems. If the waste creates or threatens to create a condition of pollution or nuisance, the public agencies may be ordered to clean up the wastes or abate the effects thereof.

Discussion

The Central Valley Regional Water Quality Control Board (Regional Water Board) has requested an opinion concerning whether operators of publicly owned treatment works (POTW) are responsible for releases of waste through their sewer collection systems. The issue arose in the Regional Water Board's

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1 The issue here involves situations where discharges of volatile organics to publicly owned treatment works escape from the collection system prior to treatment. The chemical releases occur prior to the planned discharge from the system, and also do not occur through any outfall established for overflows. Rather, the releases are considered leaks through the collection system.

consideration of adoption of a cleanup and abatement order (CAO) regarding discharges of solvents used in dry cleaning.

According to testimony of the staff of the Regional Water Board, the use of perchloroethylene (PCE) as a solvent in dry-cleaning operations has resulted in the detection of PCE in ground water and the creation of pollution or threats of pollution of water used for human consumption. The staff gave testimony that PCE is discharged to the sewer system by dry-cleaning operations, and that it escapes the sewer collection system by various means, including leaks and permeation as a gas. The result is that PCE has been detected in ground water and in municipal wells at levels which threaten to exceed drinking water standards.

For purposes of this memorandum, it will be assumed that the testimony of the Regional Water Board staff regarding the movement of PCE through sewer pipes is accurate. Making that assumption, this memorandum will address whether such releases from sewer pipes which are part of the collection system of a POTW are adequate grounds for holding the operator of the POTW responsible for cleanup and abatement of the PCE.

Section 13304(a) of the Water Code describes persons who may be held responsible for cleanup and abatement of pollution or threatened pollution:

> "Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit **any** waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance . ..." (Emphasis added.)

The issue, therefore, is whether operators of **POTWs** can be found to "cause" or "permit" the discharge of PCE through the sewer pipes and, thence, to ground water where it creates or threatens to create a condition of pollution or nuisance.

The first issue in determining responsibility for discharges from the sewer pipes is whether the operator is the owner of the collection system. **POTWs** are defined by the federal Environmental Protection Agency (EPA) as:

> "**[A]ny** device and system which is used in the treatment (including recycling and reclamation) of

> municipal sewage or industrial wastes of a liquid nature which is owned by a 'State' or 'municipality'. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment." 40 CFR Section 122.2.

The language in Section 122.2 clearly includes sewage collection systems within the term "treatment works". Throughout the federal Clean Water Act, responsibilities for such systems is placed upon the public owners of "treatment works". See, e.g., Sections 301(b)(1)(B), 301(h), 402(b)(8). While the PCE in the matter before the Regional Water Board leaked from the sewer pipes prior to treatment, these pipes are clearly intended to convey wastewater to the POTW. See Montgomery Environmental Coalition v. Castle (3d Cir. 1980) 646 F.2d 568 (POTW responsible for discharges from overflow points). It must be concluded that the owner or operator of a POTW is responsible for discharges from the sewer collection system.

The responsibility of owners and operators of POTWs for discharges into the collection system is also reflected in the provisions of the California Water Code. Section 13260 provides that the Regional Water Boards may prescribe waste discharge requirements for all discharges "except discharges into a community sewer system". Section 13260 clearly shifts responsibility to the owner or operator of the POTW once the waste is placed in its system. See State Water Board Order No. WQ 80-2 (permit properly included public entities responsible for conveyance of pollutants to a treatment facility, as well as the public entity responsible for treatment operation). For discharges which are subject to NPDES permits, the POTW owner or operator may in turn place pretreatment requirements upon dischargers to its system. Water Code Section 13370.5. Because owners or operators of POTWs are responsible for discharges into the collection system, it follows that they must be responsible for releases therefrom. These owners and operators have sole control *over* the collection systems and responsibility for proper operation and maintenance. Water Code Section 13304 authorizes the issuance of cleanup and abatement orders to persons who "cause" or "permit" discharges which cause pollution or threaten pollution of ground water. It is clear that owners and operators of POTWs, from which hazardous wastes such as PCE leak or permeate, have caused or permitted such discharges.

It is important to note that unlike Section 13260, Section 13304 of the Water Code does not restrict its application to dischargers to POTW. Instead, Section 13304 more broadly applies to any person:

> "[W]ho has caused or permitted, causes or permits, or threatens to cause or permit any waste to be

discharged or deposited where it is, or probably will be, discharged into the waters of the state . ..."

Under Section 13304, both the owner or operator of the POTW, who controls the collection system and has responsibility for discharges therefrom, and the dry cleaner who places the waste into the collection system, may be held responsible.

cc: Dale Claypoole, EXEC