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TBS Petroleum, LLC
7

8 STATE WATER RESOURCES CONTROL BOARD
9

10 In re:

11 CLEANUP AND ABATEMENT ORDER
R5-2011-7013 FOR TBS PETROLEUM,
12 LLC, CONCERNING ANTLERS
SHELL/SUBWAY, 20884 ANTLERS
13 ROAD, LAKEHEAD, SHASTA COUNTY,
14

No. _____

PETITION FOR REVIEW (Request to be
Held in Abeyance)

15 In accordance with Water Code Section 13320(a) and Title 23, California Code of
16 Regulations ("C.C.R.") §§ 2050-2068, Petitioner TBS Petroleum, LLC ("TBS") respectfully
17 submits this Petition for Review of Cleanup and Abatement Order R5-2011-0713, Antlers
18 Shell/Subway, 20884 Antlers Road, Lakehead, Shasta County ("Order" or "Final Order"),
19 attached hereto as Exhibit A, issued on December 6, 2011, by the California Regional Water
20 Quality Control Board, Central Valley Region ("Regional Board").¹ Pursuant to 23 C.C.R. §
21 2050.5(d), TBS requests that this Petition be held in abeyance temporarily to provide an
22 opportunity for resolution of its concerns, in cooperation with the Regional Board, regarding the
23 Order.

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26 _____
27 ¹ The heading of the Regional Board's December 6, 2011 transmittal letter references the
28 Cleanup and Abatement Order as Order R5-2004-0713. However, the text of the transmittal
letter references the Order as R5-20011-0713, and the Order itself references the Order as R5-
2011-0713. For purposes of this Petition, TBS will reference the Order as R5-2011-0713.

1 Each of the items of information required by 23 C.C.R. §2050(a) is set forth below:

2 1. Name and Address of Petitioner

3 TBS Petroleum, LLC
4 4544 Mountain Lakes Road
5 Redding, CA 96003
6 Attn: Tony Ackernecht
7 Telephone: (530) 247-1599

8 2. Specific Action to be Reviewed

9 Issuance to TBS of Cleanup and Abatement Order R5-2011-0713 (see footnote 1, above).

10 3. Date of the Regional Board Action

11 December 6, 2011.

12 4. Statement of Reasons

13 The Regional Board abused its discretion by failing to name Bob Davis ("Davis"), former
14 owner of the property, as a responsible party on the Order. TBS is the current owner of the
15 subject property. As determined by the Regional Board, the release of the primary pollutant of
16 concern, Methyl-tert Butyl Ether ("MtBE") was caused and occurred during Davis's ownership
17 of the property, not TBS's. During TBS's later ownership of the property, TBS has not
18 knowingly exacerbated the impact of the pre-existing MtBE contamination. TBS has requested
19 that this Petition be held in abeyance and reserved the right to supplement the Petition with a
20 more detailed statement of reasons at the appropriate time.

21 5. Manner in Which Petitioner is Aggrieved

22 *See* Paragraph 4 above. Petitioner is aggrieved because the Order imposes obligations
23 solely on TBS even though TBS is not responsible for the contamination upon which the Order is
24 based. Petitioner reserves the right to supplement this Petition to provide a more detailed
25 statement of the manner in which it is aggrieved at the appropriate time.

26 6. Specific Action Requested

27 Petitioner requests that the State Board (a) remove Petitioner TBS as a responsible party,
28 (b) designate Davis as primary responsible party and re-designate TBS as a secondary
responsible party with respect the requirements of the Order, and requirements flowing from the

1 Order with respect to the MtBE contamination at, on, under or migrating from the subject
2 property, or (c) add Davis as a co-responsible party, or, with regard to any of the options above,
3 direct the Regional Board to do the same.

4 7. Statement of Points and Authorities

5 Petitioner has requested that the Petition be held in abeyance and reserves the right to
6 supplement the Petition with a detailed statement of points and authorities at the appropriate time.

7 8. Regional Board Notification

8 A copy of this Petition has been sent to the Regional Board and to Davis, through his
9 counsel.

10 9. Statement Regarding Substantive Issues or Objections

11 The Order was issued without notice or hearing by the Regional Board. On September
12 23, 2011, the Regional Board provided TBS a draft of the Order (“Initial Draft”) and requested
13 comments. A copy of the Initial Draft is attached hereto as Exhibit B. The Initial Draft
14 designated both TBS and Davis as responsible parties. The Regional Board concluded that Davis
15 was “liable for the cleanup due to the fact that Davis owned the site when the unauthorized
16 discharge occurred.” Initial Draft ¶ 13. All of the evidence and site investigation data reviewed
17 by the Regional Board supports that conclusion. (*See generally* Initial Draft, and the *Report of*
18 *Findings: Initial Subsurface Investigation, Antlers Shell Subway*, LACO Associates (March 4,
19 2009), and *Supplemental Information: Initial Subsurface Investigation, Antlers Shell Subway*,
20 LACO Associates (April 27, 2009), both of which were submitted to the Regional Board and
21 provided a basis for the Regional Board’s findings.)²

22 The Final Order does not contradict the Regional Board’s findings in its Initial Order with
23 respect to Davis’s liability. Indeed, TBS is unaware of any new information before the Regional
24 Board that was considered between its Initial Draft and the Final Order. Instead, the Regional
25 Board states that it is exercising its discretion not to name Davis because of court rulings in

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27 ² Davis’s unsubstantiated contention that a water leak exacerbated the conditions caused by
28 Davis’s illegal discharge is contrary to the evidence and refuted by the Regional Board’s own
findings. In the Initial Draft, the Regional Board dismissed that defense, noting that Davis’s
ownership of the site at the time of the discharge rendered Davis liable. Initial Draft ¶ 13.

1 litigation between Davis and TBS. The Regional Board incorrectly states that the courts
2 “allocated 100% of the responsibility for the cleanup to TBS.” Final Order ¶ 6. As noted in
3 TBS’s comment letter to the Regional Board’s November 14, 2011 second draft of the Order
4 (which draft is substantially similar to the Final Order) (“Second Draft”), the court’s ruling held
5 only that as between TBS and Davis, TBS could not seek indemnity or other requested redress
6 from Davis under the terms of the parties’ Purchase and Sale Agreement. The court *did not* hold
7 that Davis had no liability as between Davis and the Regional Board. As further noted in TBS’s
8 comment letter (attached hereto as Exhibit C), the Regional Board’s action effectively provides
9 an indemnity to Davis from TBS where none existed before. The Regional Board does not have
10 authority to rewrite agreements reached between private parties. That is the effect of the Final
11 Order here.

12 On the basis of the preceding, it is TBS’s position that the Regional Board’s decision to
13 refrain from naming Davis as a responsible party was arbitrary, capricious and an abuse of
14 discretion.

15 10. Record and List of Interested Persons.

16 Petitioner has requested that the Petition be held in abeyance and reserves the right to
17 request that the Regional Board prepare the record and a list of persons known to have an interest
18 in the subject matter of the Petition.

19 WHEREFORE, Petitioner requests that this matter be held in abeyance until further
20 notice, and reserves the right to request a hearing to present evidence and authorities that were
21 not available to, or to be considered by, the Regional Board.

22 Respectfully submitted,

23 BARG COFFIN LEWIS & TRAPP, LLP

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25 Dated: January 4, 2012

By:  For

26 JOSHUA A. BLOOM

27 Attorneys for Petitioner TBS Petroleum, LLC



EXHIBIT A



California Regional Water Quality Control Board
Central Valley Region
Katherine Hart, Chair



Matthew Rodriguez
*Secretary for
Environmental Protection*

415 Knollcrest Drive, Suite 100, Redding, California 96002
(530) 224-4845 • FAX (530) 224-4857
<http://www.waterboards.ca.gov/centralvalley>

Edmund G. Brown Jr.
Governor

6 December 2011

Mr. Tony Ackernecht
TBS Petroleum, LLC
4544 Mountain Lakes Blvd.
Redding, CA 96003

**TRANSMITTAL, CLEANUP AND ABATEMENT ORDER R5-2004-0713, ISSUED TO
TBS PETROLEUM, LLC., ANTLERS SHELL/SUBWAY, 20884 ANTLER'S ROAD,
LAKEHEAD, SHASTA COUNTY.**

Enclosed is a signed copy of Cleanup and Abatement Order R5-20011-0713 (hereafter, "Order"). This Order is being issued pursuant to Water Code section 13304 to address discharges of waste and threatened discharges of waste. This Order requires TBS Petroleum, LLC (hereafter, "TBS") to cleanup and abate, forthwith, the effects of wastes discharged or threatened to be discharged to surface water drainage courses or groundwater. Specifically, TBS is directed to:

- **By 1 March 2012**, submit an additional site investigation work plan including an on-site domestic well investigation and evaluation.
- **By 1 June 2012**, implement site investigation work plan.
- **By 1 September 2012**, submit an additional site investigation work plan (if required).
- **By 1 March 2014**, complete all planning/implementing phases of a corrective action plan.

Failure to comply with the enclosed Order may result in further enforcement action pursuant to Water Code section 13350, which may result in civil liabilities of up to five thousand dollars (\$5,000) per day for each violation. In addition, the Board may seek injunctive relief by authorizing the Attorney General to petition the Superior Court for an injunction requiring compliance with the Order. The Court may grant a prohibitory injunction stopping all activities until compliance is achieved.

In order to conserve paper and postage, paper copies of this Order are only being provided to the Discharger. Electronic copies are available on the Central Valley Water Board's website at <http://www.swrcb.ca.gov/rwqcb5/>. Those without internet access can request a copy by contacting Central Valley Water Board staff. If you have any questions, please contact Clint Snyder of my staff at (530) 224-3213 or the letterhead address above.

PAMELA C. CREEDON
Executive Officer

cc: See Attached List

California Environmental Protection Agency



EXHIBIT A

cc: Robert Crandall, AEO, Central Valley Regional Water Quality Control Board, Redding
Patrick Pulupa, State Water Resources Control Board, Sacramento
Brian Newman, Central Valley Water Board, Rancho Cordova
Mark Kramer, Shasta County Department of Environmental Health, Redding
Kim Flanagan, California Department of Health Services, Redding
Josh Bloom, Barg, Coffin, Lewis & Trapp, LLP, San Francisco
Bob and Cheryl Davis, Redding
Loren Harlow, Stoel Rives, LLP, Sacramento
Paul and Irene Costa, Watsonville
Jim Wyatt, Lakehead
Ron Gasik, Lakehead
Jeff Childs, Lakehead
Juana Lewis, Lakehead
Larry McCracken, Lakehead
Ted Pudwill, Lakehead
Dan Huffman, Chatsworth

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

**CLEANUP AND ABATEMENT ORDER R5-2011-0713
FOR
TBS PETROLEUM, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY
CONCERNING
ANTLER'S SHELL/SUBWAY
20884 ANTLERS ROAD, LAKEHEAD, SHASTA COUNTY**

This Order is issued to TBS Petroleum, LLC, a California Limited Liability Company, (hereafter referred to as "TBS" or "Discharger"), based on provisions of Water Code section 13304 and Health and Safety Code section 25296.10, which authorize the Central Valley Regional Water Quality Control Board ("Central Valley Water Board," or "Board") to issue a Cleanup and Abatement Order (the "Order"), and Water Code section 13267, which authorizes the Central Valley Water Board to require the preparation and submittal of technical and monitoring reports.

The Executive Officer finds, with respect to the Discharger's acts, or failure to act, the following:

PROPERTY OWNERSHIP

1. From about 1972 to present, several entities have owned the property at 20884 Antlers Road, Lakehead, Shasta County, (APN 083-340-034)(the "Site") and have stored and dispensed petroleum hydrocarbons from an underground storage tanks ("USTs") at the Site. The Site utilizes a transient non-community public supply well, which provides water to the gasoline station, mini mart, and Subway™ sandwich restaurant. The supply well is about 120 feet from the USTs and about 70 feet from the petroleum dispensers. A septic tank and leach lines are about 140 feet from the well. Refer to Attachment A, a part of this Order, for relevant site features.
2. According to Shasta County records, on 5 December 1972, Shell Oil Company completed construction of a two-bay service station at the Site. On 28 December 1983, Shell Oil Company granted Site ownership to Olan F. Bailey and Beverley A. Bailey. Shell Oil Company, Olan F. Bailey, and Beverly A. Bailey are not subject to this Order because current Central Valley Water Board records do not contain evidence of a waste discharge while they owned and operated the Site. Should information be submitted substantiating Shell Oil Company, Olan F. Bailey, and Beverly A. Bailey responsibility for waste discharge, the Central Valley Water Board may revise this Order to include these entities.
3. On 30 January 1990, Olan F. Bailey and Beverly A. Bailey granted Site ownership to Bob G. Davis (hereafter "Davis").
4. On 20 April 2005, Bob G. Davis granted Site ownership to TBS Petroleum, LLC. TBS currently owns and operates the public water supply well and UST system under a permit issued by the Shasta County Environmental Health Department ("SCEHD").

DISCHARGER RESPONSIBILITY

5. TBS is responsible for complying with the obligations set forth in this Order based on the fact that it currently owns and operates the Site.
6. Davis has contended that he should not be named in this Order. The Board is hereby exercising its discretion to refrain from naming Davis in this Order, based on the decisions that have been rendered by the Shasta County Superior Court and the Third Appellate District Court. Both courts were called upon to interpret the terms of the purchase contract for the Site, and both courts concluded that these terms shift the responsibility for the investigation and cleanup of existing pollution from Davis to TBS. While the Board retains the authority to name Davis in this Order, it is also true that the Courts have determined that the contract between Davis and TBS allocated 100% of the responsibility for the cleanup to TBS. It is therefore reasonable for the Board to require TBS, and TBS alone, to fulfill the obligations imposed herein.

BACKGROUND

7. In 1997, SCEHD permitted Davis to operate the on-site well (Water System No. 4500215) and one 6,000-gallon double-walled diesel UST, two single-walled gasoline USTs (one 12,000 gallon and one 8,000 gallon), and one single-walled 6,000 gallon diesel UST. On 9 October 1997, the single-walled USTs and associated piping were removed.
8. On 10 and 21 October 1997, following the UST and piping removal, SCEHD directed Davis to collect soil samples. Two soil samples, collected from the tank cavity at about 11 feet below ground surface, contained Methyl t-butyl ether (MTBE) at 0.033 mg/Kg and 0.085 mg/Kg. Benzene, Toluene, Ethylbenzene, Xylenes, Total Petroleum Hydrocarbons as gasoline (TPHg) and diesel (TPHd) were not detected. SCEHD records indicate no obvious odor or soil discoloration. Two soil samples from four dispenser locations detected Toluene at 0.009 mg/kg and 0.013 mg/Kg, Xylenes at 0.010 mg/Kg, and MTBE at 0.030 mg/Kg. Benzene, Ethylbenzene, TPHg, and TPHd were not detected. Groundwater was not encountered in the tank cavity and a water sample was not collected from the on-site well.
9. On or about 22 October 1997, Davis installed two double-walled gasoline USTs (one 12,000-gallon and one 8,000-gallon) in the former UST cavity. Pressurized double-walled flex hose connects one or more of the five existing petroleum dispensers to the USTs. Dispenser pans are installed and the UST vapor return lines are single-walled pipe.

10. On 16 December 1997, SCEHD issued Davis a no further action required letter ("NFAR") to close the UST removal file. The NFAR states:

"Nothing in this determination shall construe or be construed as a satisfaction or release from liability from any conditions or claims arising as a result of past, current, or future operations at the site. Nothing in this determination is intended or shall be construed to limit the rights of any parties, with respect to claims arising out of or relating to, deposit or disposal at any other location of substances removed from the site. Nothing in this determination is intended or shall be construed to preclude the Shasta County Department of Resource Management, Environmental Health Division or any other agency from taking any other enforcement actions. This letter does not relieve the tank owner and property owner of any responsibilities mandated under the California Health and Safety Code, California Water Code, and Shasta County ordinances if existing, additional, or previously unidentified contamination at the site causes or threatens to cause pollution or nuisance, or is found to pose a threat to public health or water quality."

11. On 14 July 2003, SCEHD inspected the water system and required Davis to install a chlorination system to prevent positive bacteriological samples and to add volatile organic chemicals ("VOCs"), including MTBE, to the sampling schedule. Davis retained CR Water Treatment-Chuck Goff (Certified Water Distribution Operator #16818) to oversee the water system operation. The 8 January 2004 well sampling by CR Water Treatment found the water supply had chloroform at 50 µg/L, bromodichloromethane at 3.2 µg/L, and trihalomethanes at 54 µg/L. Other analyzed VOCs, including MTBE, were below laboratory reporting limits.

12. On 8 August 2007, a water sample from the supply well collected by CR Water Treatment detected 14.9 µg/L of MTBE. Subsequently, CR Water Treatment submitted written notice to whom it may concern stating:

"In early 2007, the Shell station had a water leak over the fuel tanks which flooded the area for several months before it was located and stopped. The subsequent routine MTBE test started showing it's presence in the well water after this (flooding) incident."

13. On 4 March 2008, SCEHD referred lead agency responsibility for the UST case to the Central Valley Water Board. On 25 June 2008, Central Valley Water Board staff jointly requested that TBS and Davis submit a Preliminary Site Assessment Work Plan to determine the extent of pollution and a survey of sensitive receptors affected or threatened by the release.

SITE INVESTIGATION

14. On 17 November 2008, Central Valley Water Board staff approved the *Letter Workplan; Boring Installation Antlers Shell-Subway* ("Work Plan"), which was submitted by LACO Associates. The Work Plan was submitted on behalf of TBS in response to a second staff request dated 25 July 2008 for the Dischargers to investigate petroleum pollution in the on-site domestic well. Davis did not submit a work plan.

15. On 4 March 2009 a *Report of Findings, Initial Subsurface Investigation* was submitted by LACO Associates. The report contained the results of a limited subsurface investigation at the Site, as well as a sensitive receptor survey. Eight direct-push borings were

completed to sample subsurface soil and collect grab samples of groundwater. The tables below summarize soil and groundwater analytical data from the LACO report. Several petroleum constituents were detected in subsurface soil and groundwater including TPHg, Benzene, Toluene, Ethylbenzene, Xylene, MTBE, tertiary-butyl alcohol (TBA), and tertiary-amyl methyl ether (TAME). The maximum concentration of MTBE observed in soil was about 1,900 µg/kg; the maximum concentration of MTBE observed in groundwater was about 49,000 µg/L.

Soil Analytical Data (mg/kg)
From LACO, Report of Findings, Initial Subsurface Investigation

Sample ID	Depth (Ft)	TPHg	Benzene	Toluene	Ethylbenzene	Total Xylenes	MTBE	TBA	TAME
B1 1/19/09	5	ND	ND	ND	ND	ND	ND	ND	ND
	9	ND	ND	ND	ND	ND	ND	ND	ND
	15	ND	ND	ND	0.011	0.013	0.017	0.012	ND
	19	ND	ND	ND	0.011	0.0091	0.14	0.061	ND
	24	ND	0.015	ND	0.013	0.018	1.2	0.351	0.0073
	28	1.2	0.091	ND	0.1	0.12	1.9	0.421	0.011
B2 1/20/09	5	ND	ND	ND	ND	ND	ND	0.19	ND
	10	ND	ND	ND	ND	ND	0.015	0.11	ND
	14	ND	ND	ND	ND	ND	0.12	0.15	ND
	20	ND	ND	ND	ND	ND	0.33	0.28	ND
B3 1/20/09	26	ND	ND	ND	ND	ND	0.26	0.20	ND
	5	ND	ND	ND	ND	ND	ND	ND	ND
	10	ND	ND	ND	ND	ND	ND	ND	ND
	14	ND	ND	ND	ND	ND	ND	ND	ND
	20	ND	ND	ND	ND	ND	ND	0.0073	ND
B5 1/21/09	26	ND	ND	ND	ND	ND	0.028	0.054	ND
	5	ND	ND	ND	ND	ND	ND	ND	ND
	10	910	ND	ND	5.6	16	ND	ND	ND
	14	ND	ND	ND	ND	ND	ND	ND	ND
	20	ND	ND	ND	0.029	0.12	0.028	0.011	ND
B6 1/22/09	25	2.1	0.017	0.0077	0.11	0.26	0.037	0.017	ND
	5	ND	ND	ND	ND	ND	ND	ND	ND
	10	88	ND	ND	0.11	0.41	ND	ND	ND
	15	1.6	ND	0.043	0.024	0.23	0.027	0.014	ND
B8 1/23/09	20	1.5	ND	0.092	0.033	0.28	0.048	0.020	ND
	5	ND	ND	ND	ND	ND	0.040	ND	ND
	10	ND	ND	ND	ND	ND	0.25	0.59	ND
	14	ND	ND	ND	ND	ND	0.034	0.088	ND
B8 1/23/09	20	ND	ND	ND	ND	ND	ND	0.030	ND

ND = Not detected in sample above laboratory reporting limits

All other oxygenates were non-detect

All samples collected from Soil Boring B4 on 1/21/09 (5, 10, 14, 20, and 25 feet) were non-detect

All samples collected from Soil Boring B7 on 1/22/09 (5, 10, and 15 feet) were non-detect

Groundwater Analytical Data (µg/l)
From LACO, Report of Findings, Initial Subsurface Investigation

Sample ID	Depth (Ft)	TPHg	Benzene	Toluene	Ethyl-benzene	Total Xylenes	MTBE	TBA	TAME
B1 1/19/09	28	10,000	1,700	35	1,100	1,200	14,000	2,100	69
	37-41	1,600	160	ND	21	30	2,900	400	7.9
B2 1/20/09	26	ND	14	ND	ND	ND	4,300	1,600	24
	36-40	ND	ND	ND	ND	ND	49,000	8,200	290
B3 1/20/09	26	120	16	ND	ND	ND	240	270	1.3
	30-34	ND	27	ND	ND	ND	26,000	5,000	140
B4 1/21/09	25	ND	4.3	ND	2.5	3.0	6.3	ND	ND
	29-33	ND	ND	ND	ND	ND	8.9	6.7	ND
B5 * 1/21/09	25	4,800	60	22	140	290	200	69	2.8
	35-38	13,000	680	270	660	2,300	1,200	160	12
B6 1/22/09	25	37,000	240	5,400	1,400	9,300	800	160	ND
	36-40	11,000	260	32	560	950	460	140	6.1
B7 1/22/09	25	330	1.7	1.2	ND	7.3	40	32	ND
	36-40	320	ND	ND	6.7	ND	7.6	42	ND
B8 1/23/09	25	200	33	ND	ND	ND	740	720	3.8
	30-34	ND	ND	ND	ND	ND	14,000	2,800	79

ND = Not detected in sample above laboratory reporting limit

All other oxygenates not detected in any samples with the exception of Ethanol at 9.9 ug/l in Sample B7 at 25 feet.

*The following volatile organic compounds were detected in water samples collected from Soil Boring B5:

25 Feet: Isopropyl benzene (4.4 ug/l), n-Propylbenzene (12 ug/l), 1,3,5-Trimethylbenzene (120 ug/l), n-Butylbenzene (0.98 ug/l), and Napthalene (31 ug/l). All others non-detect.

35-38 Feet: Isopropyl benzene (32 ug/l), n-Propylbenzene (87 ug/l), 1,3,5-Trimethylbenzene (160 ug/l), 1,2,4-Trimethylbenzene (840 ug/l), sec-Butylbenzene (5.5 ug/l), p-Isopropyltoluene (3.1 ug/l), n-Butylbenzene (7.2 ug/l), and Napthalene (140 ug/l). All others non-detect.

16. In conjunction with the site sensitive receptor survey, LACO sampled 7 domestic wells located within 1,000 feet of the site. Six of the seven well samples were non-detect for MTBE, however the sample from APN 830-340-08 contained 0.13 ug/L MTBE. This well was non-operational at the time of sampling.

17. TBS has collected at least 12 water samples confirming the presence of MTBE in the on-site public water supply well since August 2007. The minimum, average, and maximum concentrations MTBE concentrations are 8.32 µg/L, 20.45 µg/L, and 44 µg/L, respectively.

18. On 27 April 2010, Central Valley Water Board issued an *Order to Submit Information Pursuant to California Water Code Section 13267* (the "13267 Order"), jointly to TBS and Davis. The 13267 Order required the submittal of two work plans. The first was a work plan to further mitigate post-treatment pollution from the on-site domestic well. TBS responded to this request. The second workplan was for further site investigation of pollutant flow paths through colluvium and fractured bedrock sufficient to evaluate the on-site domestic well as a pollution conduit, correlate with identified pollution in on and off-site receptor wells, and define pollution extent. Neither party has submitted the second required workplan.

AUTHORITY – LEGAL REQUIREMENTS

19. Water Code section 13304(a) provides that:

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, 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. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the regional board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

20. Water Code section 13304(f) provides that:

Replacement water provided pursuant to subdivision (a) shall meet all applicable federal, state and local drinking water standards and shall have comparable quality to that pumped by the public water system or private well owner prior to the discharge of waste.

21. Water Code section 13267(b)(1) provides that:

In conducting an investigation ... the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

22. Water Code section 13304(c)(1) provides that:

If waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any government agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. . .

23. The State Water Resources Control Board ("State Water Board") has adopted Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* ("Resolution 92-49"). Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. ("Resolution 68-16") Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigation proceed in a progressive sequence. To the extent practical, it directs the Central Valley Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.
24. The Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (hereafter "Basin Plan") designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The designated beneficial uses of the groundwater beneath the Site are domestic, municipal, industrial, and agricultural supply.
25. Chapter IV of the Basin Plan contains the *Policy for Investigation and Cleanup of Contaminated Sites*, which sets forth the Central Valley Water Board's policy for managing contaminated sites. The policy strategy generally outlines a process that includes site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the bases for establishment of soil and groundwater cleanup levels.
26. The State Water Board adopted the *Water Quality Enforcement Policy*, which states in part:
- At a minimum, cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the RWQCB allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the CAO should require the discharger(s) to abate the effects of the discharge. Abatement activities may include the provision of alternate water supplies.
- (Enforcement Policy, p. 19.)
27. The wastes detected at the Site are not naturally occurring, and some are known human carcinogens. These wastes impair or threaten to impair the beneficial uses of the groundwater.

28. The Basin Plan contains a narrative WQO for chemical constituents which requires, in part, that groundwater not contain chemical constituents in concentrations that adversely affect any beneficial use. For groundwaters that are designated MUN, such as the groundwater beneath the Site, the Basin Plan incorporates by reference drinking water maximum contaminant levels ("MCLs") promulgated in the California Code of Regulations, title 22, chapter 15 ("Title 22"). Furthermore, Basin Plan also contains narrative WQOs that apply to groundwater for tastes and odors and for toxicity. The taste and odor WQO requires, in part, that, groundwater not contain substances in concentrations that cause nuisance, adversely affect beneficial uses, or impart undesirable tastes and odors to municipal and domestic water supplies. The toxicity WQO requires, in part, that groundwater be maintained free of toxic substances in concentrations that produce detrimental physiological responses in humans.

29. Chapter IV of the Basin Plan contains the *Policy for Application of Water Quality Objectives*, which provides that "[w]here compliance with narrative objectives is required (i.e., where the objectives are applicable to protect specified beneficial uses), the Central Valley Water Board will, on a case-by-case basis, adopt numerical limitations in orders which will implement the narrative objectives." Testing of petroleum hydrocarbons has identified a number of constituents that are not present in groundwater unaffected by the discharge and that could exceed a narrative WQO. All of these are constituents of concern. The numerical limits for the constituents of concern listed in the following table implement the Basin Plan WQOs.

Constituent	Limits (µg/L)	WQO	Reference
Benzene	0.15	Toxicity	California Public Health Goal (OEHHA)
Toluene	42	Taste and Odor	Federal Register, Vol. 54, No. 97
Ethylbenzene	29	Taste and Odor	Federal Register, Vol. 54, No. 97
Total Xylenes	17	Taste and Odor	Federal Register, Vol. 54, No. 97
Ethylene dichloride	0.4	Toxicity	California Public Health Goal (OEHHA)
	0.5	Chemical Constituents	California Primary MCL
Methyl t-butyl ether	5	Taste and Odor	California Secondary MCL (CDPH)
Tert-Butyl alcohol	12	Toxicity	California Drinking Water Notification Level (CDPH)
Naphthalene	2.9	Toxicity	California Proposition 65 Safe Harbor Drinking Water Level. (OEHHA)
Gasoline	5	Tastes and Odor	McKee & Wolf, Water Quality Criteria, SWRCB, p. 230
OEHHA - Office of Environmental Health Hazard Assessment			

30. The constituents listed in Findings No. 7, and 15 are wastes as defined in Water Code section 13050(d). The groundwater exceeds the WQOs for the constituents listed in Findings Nos. 8 and 11. Exceeding applicable WQOs is indicative of impairment to the beneficial uses of the groundwater, and thereby constitutes pollution as defined in Water Code section 13050(l)(1).

31. The constituents listed in Finding No. 30 are present in groundwater due to the wastes from discharge, are injurious to health or impart objectionable taste and odor when present in drinking water.
32. The Board circulated this document for comment on 23 September and 14 November 2011. Both TBS and Davis responded to each draft by the applicable deadline. The Board has considered all comments received and made revisions based on those comments.

DISCHARGER LIABILITY

33. The California Code of Regulations, title 23, section 2720, defines a responsible party as:

... any person who owns or operates an underground storage tank used for the storage of a hazardous substance... any person who owned or operated the underground storage tank immediately before the discontinuation of its use... any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred, and any person who had or has control over a underground storage tank at the time of or following an unauthorized release of a hazardous substance.

A responsible party has a legal obligation to investigate and remediate contamination. As described in Findings Nos. 4 and 5, TBS is the current owner of the property, and is subject to the directives contained herein. As described in Finding No. 6, the Board is exercising its discretion, in light of the court decisions, not to name Davis to this Order. A condition of pollution or nuisance is present at the Site. The condition of pollution is a priority violation and issuance or adoption of a cleanup and abatement order pursuant to Water Code section 13304 and Health and Safety Code section 25296.10 is appropriate and consistent with policies of the Central Valley Water Board.

34. This Order requires investigation and cleanup of the Site in compliance with the Water Code, the applicable Basin Plan, State Water Board Resolution No. 92-49, and other applicable Central Valley Water Board's plans, policies, and regulations.
35. As described in Findings Nos. 21 and 22, the TBS may be ordered to submit technical and monitoring reports pursuant to Water Code section 13267 because existing data and information about the Site indicate that waste has been discharged, is discharging, or is suspected of discharging, at the property, which is or was owned and/or operated by the Discharger named in this Order. The technical reports required by this Order are necessary to assure compliance with Water Code section 13304 and Health and Safety Code section 25296.10, to adequately investigate and clean up the Site to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.
36. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act ("CEQA")(Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2). The issuance of this Order is also an

action to assure the restoration of the environment and is exempt from the provisions of CEQA in accordance with California Code of Regulations, title 14, sections 15308 and 15330.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, as well as Health and Safety Code section 25296.10, TBS Petroleum, LLC shall abate the effects of waste discharges at, near, or down gradient of the Site as directed below.

1. Investigate the discharges of waste, clean up the waste, and abate the effects of the waste, forthwith, resulting from activities at Antler's Shell/Subway, 20884 Antlers Road, Lakehead, Shasta County, in conformance with State Water Board Resolution No. 92-49 *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* and with the Central Valley Region's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (in particular the Policies and Plans listed within the Control Action Considerations portion of Chapter IV). "Forthwith" means as soon as is reasonably possible. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below.
2. Complete all work and reports in accordance with *Appendix A - Reports, Tri-Regional Recommendations for Preliminary Investigation and Evaluation of Underground Storage Tank Sites*, which can be found at:
http://www.waterboards.ca.gov/centralvalley/water_issues/underground_storage_tanks/
3. Complete all work under all permits required by State, County, and/or Local agencies.
4. TBS is required to submit the following technical reports prepared in accordance with Appendix A - Reports by the listed dates:

Required Report/Task	Due Date
Additional Site Investigation Work Plan including On-site Domestic Well Investigation and Evaluation	1 March 2012
Implement Site Investigation Work Plan	1 June 2012
Additional Site Investigation Report	1 September 2012
Corrective Action Plan (Final)	1 March 2013
- Problem Assessment Report	1 September 2013
- Feasibility Study	1 December 2013
- Final Remediation Plan	1 March 2014
Quarterly Status Reports - Reports due the 1 st day of the second month following the end of the quarter	30 January 2012 - first report due

5. TBS shall submit **Remedial Status Reports**, monthly for the first three months of active implementation and quarterly thereafter. The required Remedial Status Reports are necessary to monitor the effectiveness of the remedial system and its impact on the

subsurface environment. The first monthly Remedial Status Report is due 45 days after system startup, and shall at minimum include background dissolved metals, pH, oxidation-reduction potential (ORP), total dissolved solids (TDS), electron acceptors, iron, manganese, metabolic acids, relevant hydraulic parameters, organic pollutants and their predicted breakdown products in the target volume, predicted behavior both in the target volume and identified surrounding sentry wells, and contingencies for controlling mobilized pollution beyond the target volume. Subsequently, each Remedial Status Report shall also include amendment injections, and the results of all appropriate shallow soil vapor and groundwater sampling. Remedial Status Reports are to be submitted during operation of the remedial system and for a minimum of four quarters following system shutdown.

6. TBS shall submit **Quarterly Monitoring Reports**. All Monitoring Reports shall be submitted by the **30th day of the month following the end of the calendar quarter** in which the samples are collected (i.e., by 30 July and 30 January). Monitoring reports shall include the results of all soil, soil vapor and groundwater samples analyzed to date. Remedial Status Reports and Monitoring Reports should be combined and completed as a single report when both monitoring and remedial system sampling occur during the same quarter.
7. TBS shall continue to provide appropriate, **uninterrupted** replacement water that meets all applicable federal, state, and local drinking water standards to affected parties, in compliance with Water Code section 13304(f and g). Appropriate uninterrupted replacement water may include, but is not limited to, continued maintenance of existing GAC units, and extension of piped potable water services.

GENERAL REQUIREMENTS

1. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, have appropriate reports prepared by, or under the supervision of, a registered professional engineer or geologist and signed by the registered professional. All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or an authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Discharger shall also state if it agrees with any recommendations/proposals and whether it approved implementation of said proposals.
2. Upon startup of any remediation system(s), TBS shall operate the remediation system(s) continuously, except for periodic and required maintenance or unpreventable equipment failure. TBS shall notify the Board within 24 hours of any unscheduled shutdown of the remediation system(s) that lasts longer than 48 hours. This notification shall include the cause of the shutdown and the corrective action taken (or proposed to be taken) to restart the system. Any interruptions in the operation of the remediation system(s), other than for maintenance, emergencies, or equipment failure, without prior approval from Central Valley Water Board staff or

without notifying the Board within the specified time is a violation of this Order. Within 7 working days of a shutdown, the Discharger shall submit a Technical Report containing, at a minimum, but not limited to, the following information:

- times and dates equipment were not working,
 - cause of shutdown,
 - if not already restarted, a time schedule for restarting the equipment, and,
 - a Cleanup Assurance Plan to ensure that similar shutdowns do not reoccur. Proposed Cleanup Assurance Plans are to be completed within 30 days of the system shutdown.
3. TBS shall notify Board staff at least three working days prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection.
 4. TBS shall obtain all local and state permits and access agreements necessary to fulfill the requirements of this Order prior to beginning the work.
 5. Continue any remediation or monitoring activities until such time as the Executive Officer determines that sufficient cleanup has been accomplished to fully comply with this Order and this Order has been either amended or rescinded in writing.
 6. TBS shall optimize remedial systems as needed to improve system efficiency, operating time, and/or waste removal rates, and report on the effectiveness of the optimization in the quarterly reports.
 7. TBS shall maintain a sufficient number of monitoring wells to completely define and encompass the waste plume(s). If groundwater monitoring indicates the waste in groundwater has migrated beyond laterally or vertically defined limits during the quarter, then the quarterly monitoring reports must include a work plan and schedule, with work to begin within thirty days of Regional Water Board staff approval, to define the new plume limits.
 8. TBS shall submit all written reports and analytical results to the Board and electronic copies of all reports and analytical results over the Internet to the State Water Board Geographic Environmental Information Management System database (GeoTracker) at <http://geotracker.swrcb.ca.gov>. Electronic submittals shall comply with GeoTracker standards and procedures as specified on the State Board's web site.
 9. All work and directives referenced in this Order are required regardless of whether or not the UST Cleanup Fund approves the work for reimbursement.

If, for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may

request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as the situation is recognized and no later than the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer. Extension requests not approved in writing by the Executive Officer with reference to this Order are denied.

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of an Administrative Civil Liability of up to \$10,000 per violation per day pursuant to the Water Code sections 13268, 13350 and/or 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

This Order is effective upon the date of signature.



PAMELA C. CREEDON, Executive Officer

12-6-2011

DATE

EXHIBIT B

DRAFT

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER R5-2011-XXXX
FOR
TBS PETROLEUM, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY,
BOB G. DAVIS
CONCERNING
ANTLER'S SHELL/SUBWAY
20884 ANTLERS ROAD, LAKEHEAD, SHASTA COUNTY

This Order is issued to TBS Petroleum, LLC., a California Limited Liability Company, and Bob G. Davis (hereafter collectively referred to as "Dischargers"), based on provisions of Water Code section 13304 and Health and Safety Code section 25296.10, which authorize the Central Valley Regional Water Quality Control Board ("Central Valley Water Board," or "Board") to issue a Cleanup and Abatement Order (the "Order"), and Water Code section 13267, which authorizes the Central Valley Water Board to require the preparation and submittal of technical and monitoring reports.

The Executive Officer finds, with respect to the Dischargers' acts, or failure to act, the following:

PROPERTY OWNERSHIP

1. From about 1972 to present, several entities have owned the property at 20884 Antlers Road, Lakehead, Shasta County, (APN 083-340-034)(the "Site") and have stored and dispensed petroleum hydrocarbons from an underground storage tanks ("USTs") at the Site. The Site utilizes a transient non-community public supply well, which provides water to the gasoline station, mini mart, and Subway™ sandwich restaurant. The supply well is about 120 feet from the USTs and about 70 feet from the petroleum dispensers. A septic tank and leach lines are about 140 feet from the well. Refer to Attachment A, a part of this Order, for relevant site features.
2. According to Shasta County records, on 5 December 1972, Shell Oil Company completed construction of a two-bay service station at the Site. On 28 December 1983, Shell Oil Company granted Site ownership to Olan F. Bailey and Beverley A. Bailey. Shell Oil Company, Olan F. Bailey, and Beverly A. Bailey are not subject to this Order because current Central Valley Water Board records do not contain evidence of a waste discharge while they owned and operated the Site. Should information be submitted substantiating Shell Oil Company, Olan F. Bailey, and Beverly A. Bailey responsibility for waste discharge, the Central Valley Water Board may revise this Order to include these entities.
3. On 30 January 1990, Olan F. Bailey and Beverly A. Bailey granted Site ownership to Bob G. Davis (hereafter "Davis").

EXHIBIT B

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LAKEHEAD, SHASTA COUNTY

4. On 20 April 2005, Bob G. Davis granted Site ownership to TBS Petroleum, LLC., a California Limited Liability Company (hereafter "TBS"). TBS currently owns and operates the public water supply well and UST system under a permit issued by the Shasta County Environmental Health Department ("SCEHD").

DISCHARGER RESPONSIBILITY

5. TBS is held primarily responsible for compliance with the obligations set forth in this Order based on the fact that it currently owns and operates the Site.
6. Davis has contended that he should be held secondarily responsible for compliance with the obligations set forth in this Order. However, secondary liability is inappropriate for the following reasons:
 - a. Water Code section 13304 authorizes the Central Valley Water Board to issue a Cleanup and Abatement Order to any person *who caused or permitted, causes or permits, or threatens to cause or permit, the discharge of waste where it is, or probably will be, discharged into the water of the State and creates, or threatens to create, a condition of pollution or nuisance.*
 - b. The State Water Board, in *In re: Prudential Insurance Company of America* (Order No. WQ 87-6), stated that two of the "specific and unique facts" that allow a Regional Water Board to name a party as secondarily liable are "the [Discharger] did not in any way initiate or contribute to the actual discharge or waste" and "the site investigation and cleanup are proceeding well." Here, evidence in the Board's files indicates that the unauthorized releases occurred when Davis owned the Site, and the Board has concluded that the Site investigation and cleanup are not progressing in a timely manner.
 - c. State Water Board precedential Orders finding secondary liability (the responsibility to act if the primarily-named party fails to do so) *In the Matter of the Petition of U.S. Department of Agriculture, Forest Service* (Order No. WQ 86-18) *In the Matter of the Petition of Valco Park, LTD* (Order No. WQ 86-18), *In the Matter of the Petition of Prudential Insurance Company of America* (Order No. WQ 87-6), *In the Matter of the Petition of William Schmidl* (Order No. WQ 89-1), *In the Matter of the Petition of Arthur Spitzer, et al.* (Order No. WQ 89-8), *In the Matter of the Petition of San Diego Unified Port District* (Order No. WQ 89-12), *In the Matter of the Petition of San Diego Unified Port District* (Order No. WQ 90-3), *In the Matter of the Petitions of Wenwest, Inc., et al.* (Order No. 92-13) almost exclusively assign secondary responsibility only to *current* property owners or long-term lessors, and assign primary responsibility to the tenants who are satisfactorily proceeding with cleanup operations. Secondary responsibility is not appropriate for an individual who actually discharged the

contamination that has led to the water-quality impacts and where the cleanup is not progressing in a timely manner.

- d. Davis asks that the Board "consider the equities" in his plea for secondary liability. However, the footnote that is cited in support of the equitable claim also comments that the two factors that should receive consideration include, "(1) whether or not the party initiated or contributed to the discharge; and (2) whether those parties who created or contributed to the discharge are proceeding with cleanup." (*In the Matter of the Petitions of Aluminum Company of America*, WQO 93-9). Davis initiated the discharge, as he owned the Site and operated the UST system at the time of the initial discharges, and the cleanup is not proceeding.

BACKGROUND

7. In 1997, SCEHD permitted Davis to operate the on-site well (Water System No. 4500215) and one 6,000-gallon double-walled diesel UST, two single-walled gasoline USTs (one 12,000 gallon and one 8,000 gallon), and one single-walled 6,000 gallon diesel UST. On 9 October 1997, the single-walled USTs and associated piping were removed.
8. On 10 and 21 October 1997, following the UST and piping removal, SCEHD directed Davis to collect soil samples. Two soil samples, collected from the tank cavity at about 11 feet below ground surface, contained Methyl t-butyl ether (MTBE) at 0.033 mg/Kg and 0.085 mg/Kg. Benzene, Toluene, Ethylbenzene, Xylenes. Total Petroleum Hydrocarbons as gasoline (TPHg) and diesel (TPHd) were not detected. SCEHD records indicate no obvious odor or soil discoloration. Two soil samples from four dispenser locations detected Toluene at 0.009 mg/kg and 0.013 mg/Kg, Xylenes at 0.010 mg/Kg, and MTBE at 0.030 mg/Kg. Benzene, Ethylbenzene, TPHg, and TPHd were not detected. Groundwater was not encountered in the tank cavity and a water sample was not collected from the on-site well.
9. On or about 22 October 1997, Davis installed two double-walled gasoline USTs (one 12,000-gallon and one 8,000-gallon) in the former UST cavity. Pressurized double-walled flex hose connects one or more of the five existing petroleum dispensers to the USTs. Dispenser pans are installed and the UST vapor return lines are single-walled pipe.
10. On 16 December 1997, SCEHD issued Davis a no further action required letter ("NFAR") to close the UST removal file. The NFAR states;

"Nothing in this determination shall construe or be construed as a satisfaction or release from liability from any conditions or claims arising as a result of past, current, or future operations at the site. Nothing in this determination is intended or shall be construed to limit the rights of any parties, with respect to claims arising out of or relating to, deposit or disposal at any other location of substances removed from the site. Nothing in this

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determination is intended or shall be construed to preclude the Shasta County Department of Resource Management, Environmental Health Division or any other agency from taking any other enforcement actions. This letter does not relieve the tank owner and property owner of any responsibilities mandated under the California Health and Safety Code, California Water Code, and Shasta County ordinances if existing, additional, or previously unidentified contamination at the site causes or threatens to cause pollution or nuisance, or is found to pose a threat to public health or water quality."

11. On 14 July 2003, SCEHD inspected the water system and required Davis to install a chlorination system to prevent positive bacteriological samples and to add volatile organic chemicals ("VOCs"), including MTBE, to the sampling schedule. Davis retained CR Water Treatment-Chuck Goff (Certified Water Distribution Operator #16818) to oversee the water system operation. The 8 January 2004 well sampling by CR Water Treatment found the water supply had chloroform at 50 µg/L, bromodichloromethane at 3.2 µg/L, and trihalomethanes at 54 µg/L. Other analyzed VOCs, including MTBE, were below laboratory reporting limits.

12. On 8 August 2007, a water sample from the supply well collected by CR Water Treatment detected 14.9 µg/L of MTBE. Subsequently, CR Water Treatment submitted written notice through Davis stating;

"In early 2007, the Shell station had a water leak over the fuel tanks which flooded the area for several months before it was located and stopped. The subsequent routine MTBE test started showing it's presence in the well water after this (flooding) incident."

13. Davis contends that an underground leak is the primary contributor to the spread of MTBE in groundwater. TBS disputes the underground water leak and indicates that the Site received substantial rainfall in early 2007. According to California Department of Water Resources, between October 2006 and July 2007, a total of 40.44 inches of rain was reported at the Shasta Dam (USBR) station, which is about 10 miles from the Site. Regardless of whether any leak exacerbated pollution found in groundwater at the Site, Davis is liable for the cleanup due to the fact that Davis owned the site when the unauthorized discharge occurred.

14. On 4 March 2008, SCEHD referred lead agency responsibility for the UST case to the Central Valley Water Board. On 25 June 2008, Central Valley Water Board staff jointly requested that TBS and Davis submit a Preliminary Site Assessment Work Plan to determine the extent of pollution and a survey of sensitive receptors affected or threatened by the release.

SITE INVESTIGATION

15. On 17 November 2008, Central Valley Water Board staff approved the *Letter Workplan; Boring Installation Antlers Shell-Subway* ("Work Plan"), which was submitted by LACO Associates. The Work Plan was submitted on behalf of TBS in response to a second staff request dated 25 July 2008 for the Dischargers to

investigate petroleum pollution in the on-site domestic well. Davis did not submit a work plan.

16. On 4 March 2009 a *Report of Findings, Initial Subsurface Investigation* was submitted by LACO Associates. The report contained the results of a limited subsurface investigation at the Site, as well as a sensitive receptor survey. Eight direct-push borings were completed to sample subsurface soil and collect grab samples of groundwater. The tables below summarize soil and groundwater analytical data from the LACO report. Several petroleum constituents were detected in subsurface soil and groundwater including TPHg, Benzene, Toluene, Ethylbenzene, Xylene, MTBE, tertiary-butyl alcohol (TBA), and tertiary-amyl methyl ether (TAME). The maximum concentration of MTBE observed in soil was about 1,900 µg/kg; the maximum concentration of MTBE observed in groundwater was about 49,000 µg/L.

Soil Analytical Data
From LACO, Report of Findings, Initial Subsurface Investigation

Sample ID	Depth (Ft)	TPHg	Benzene	Toluene	Ethylbenzene	Total Xylenes	MTBE	TBA	TAME
B1 1/19/09	5	ND	ND	ND	ND	ND	ND	ND	ND
	9	ND	ND	ND	ND	ND	ND	ND	ND
	15	ND	ND	ND	0.011	0.013	0.017	0.012	ND
	19	ND	ND	ND	0.011	0.0091	0.14	0.061	ND
	24	ND	0.015	ND	0.013	0.018	1.2	0.351	0.0073
	28	1.2	0.091	ND	0.1	0.12	1.9	0.421	0.011
B2 1/20/09	5	ND	ND	ND	ND	ND	ND	0.19	ND
	10	ND	ND	ND	ND	ND	0.015	0.11	ND
	14	ND	ND	ND	ND	ND	0.12	0.15	ND
	20	ND	ND	ND	ND	ND	0.33	0.28	ND
	26	ND	ND	ND	ND	ND	0.26	0.20	ND
B3 1/20/09	5	ND	ND	ND	ND	ND	ND	ND	ND
	10	ND	ND	ND	ND	ND	ND	ND	ND
	14	ND	ND	ND	ND	ND	ND	ND	ND
	20	ND	ND	ND	ND	ND	ND	0.0073	ND
	26	ND	ND	ND	ND	ND	0.028	0.054	ND
B5 1/21/09	5	ND	ND	ND	ND	ND	ND	ND	ND
	10	910	ND	ND	5.6	16	ND	ND	ND
	14	ND	ND	ND	ND	ND	ND	ND	ND
	20	ND	ND	ND	0.029	0.12	0.028	0.011	ND
	25	2.1	0.017	0.0077	0.11	0.26	0.037	0.017	ND
B6 1/22/09	5	ND	ND	ND	ND	ND	ND	ND	ND
	10	88	ND	ND	0.11	0.41	ND	ND	ND
	15	1.6	ND	0.043	0.024	0.23	0.027	0.014	ND
	20	1.5	ND	0.092	0.033	0.28	0.048	0.020	ND
B8 1/23/09	5	ND	ND	ND	ND	ND	0.040	ND	ND
	10	ND	ND	ND	ND	ND	0.25	0.59	ND

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Sample ID	Depth (Ft)	TPHg	Benzene	Toluene	Ethyl-benzene	Total Xylenes	MTBE	TBA	TAME
	14	ND	ND	ND	ND	ND	0.034	0.088	ND
	20	ND	ND	ND	ND	ND	ND	0.030	ND

ND = Not detected in sample above laboratory reporting limits
 All other oxygenates were non-detect
 All samples collected from Soil Boring B4 on 1/21/09 (5, 10, 14, 20, and 25 feet) were non-detect
 All samples collected from Soil Boring B7 on 1/22/09 (5, 10, and 15 feet) were non-detect

**Groundwater Analytical Data
 From LACO, Report of Findings, Initial Subsurface Investigation**

Sample ID	Depth (Ft)	TPHg	Benzene	Toluene	Ethyl-benzene	Total Xylenes	MTBE	TBA	TAME
B1	28	10,000	1,700	35	1,100	1,200	14,000	2,100	69
1/19/09	37-41	1,600	160	ND	21	30	2,900	400	7.9
B2	26	ND	14	ND	ND	ND	4,300	1,600	24
1/20/09	36-40	ND	ND	ND	ND	ND	49,000	8,200	290
B3	26	120	16	ND	ND	ND	240	270	1.3
1/20/09	30-34	ND	27	ND	ND	ND	26,000	5,000	140
B4	25	ND	4.3	ND	2.5	3.0	6.3	ND	ND
1/21/09	29-33	ND	ND	ND	ND	ND	8.9	6.7	ND
B5 *	25	4,800	60	22	140	290	200	69	2.8
1/21/09	35-38	13,000	680	270	660	2,300	1,200	160	12
B6	25	37,000	240	5,400	1,400	9,300	800	160	ND
1/22/09	36-40	11,000	260	32	560	950	460	140	6.1
B7	25	330	1.7	1.2	ND	7.3	40	32	ND
1/22/09	36-40	320	ND	ND	6.7	ND	7.6	42	ND
B8	25	200	33	ND	ND	ND	740	720	3.8
1/23/09	30-34	ND	ND	ND	ND	ND	14,000	2,800	79

ND = Not detected in sample above laboratory reporting limit

All other oxygenates not detected in any samples with the exception of Ethanol at 9.9 ug/l in Sample B7 at 25 feet.

***The following volatile organic compounds were detected in water samples collected from Soil Boring B5:**

25 Feet: Isopropyl benzene (4.4 ug/l), n-Propylbenzene (12 ug/l), 1,3,5-Trimethylbenzene (120 ug/l), n-Butylbenzene (0.98 ug/l), and Napthalene (31 ug/l). All others non-detect.

35-38 Feet: Isopropyl benzene (32 ug/l), n-Propylbenzene (87 ug/l), 1,3,5-Trimethylbenzene (160 ug/l), 1,2,4-Trimethylbenzene (840 ug/l), sec-Butylbenzene (5.5 ug/l), p-Isopropyltoluene (3.1 ug/l), n-Butylbenzene (7.2 ug/l), and Napthalene (140 ug/l). All others non-detect.

17. In conjunction with the site sensitive receptor survey, LACO sampled 7 domestic wells located within 1,000 of the site. Six of the seven well samples were non-detect for MTBE, however the sample from APN 830-340-08 contained 0.13 ug/L MTBE. This well was non-operational at the time of sampling.

18. TBS has collected at least 12 water samples confirming the presence of MTBE in the on-site public water supply well since August 2007. The minimum, average,

and maximum concentrations MTBE concentrations are 8.32 µg/L, 20.45 µg/L, and 44 µg/L, respectively.

19. On 27 April 2010, Central Valley Water Board issued an *Order to Submit Information Pursuant to California Water Code Section 13267* (the "13267 Order"), jointly to TBS and Davis. The 13267 Order required the submittal of two work plans. The first was a work plan to further mitigate post-treatment pollution from the on-site domestic well. TBS responded to this request. The second workplan was for further site investigation of pollutant flow paths through colluvium and fractured bedrock sufficient to evaluate the on-site domestic well as a pollution conduit, correlate with identified pollution in on and off-site receptor wells, and define pollution extent. Neither party has submitted the second required workplan.

AUTHORITY – LEGAL REQUIREMENTS

20. Water Code section 13304(a) provides that:

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, 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. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the regional board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

21. Water Code section 13304(f) provides that:

Replacement water provided pursuant to subdivision (a) shall meet all applicable federal, state and local drinking water standards and shall have comparable quality to that pumped by the public water system or private well owner prior to the discharge of waste

22. Water Code section 13267(b)(1) provides that:

In conducting an investigation ... the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its

region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

23. Water Code section 13304(c)(1) provides that:

If waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any government agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. . .

24. The State Water Resources Control Board ("State Water Board") has adopted Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* ("Resolution 92-49"). Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. ("Resolution 68-16") Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigation proceed in a progressive sequence. To the extent practical, it directs the Central Valley Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

25. The Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (hereafter "Basin Plan") designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The designated beneficial uses of the groundwater beneath the Site are domestic, municipal, industrial, and agricultural supply.
26. Chapter IV of the Basin Plan contains the *Policy for Investigation and Cleanup of Contaminated Sites*, which sets forth the Central Valley Water Board's policy for managing contaminated sites. The policy strategy generally outlines a process that includes site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the bases for establishment of soil and groundwater cleanup levels.
27. The State Water Board adopted the *Water Quality Enforcement Policy*, which states in part:
- At a minimum, cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the RWQCB allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the CAO should require the discharger(s) to abate the effects of the discharge. Abatement activities may include the provision of alternate water supplies.*
(*Enforcement Policy, p. 19.*)
28. The wastes detected at the Site are not naturally occurring, and some are known human carcinogens. These wastes impair or threaten to impair the beneficial uses of the groundwater.
29. The Basin Plan contains a narrative WQO for chemical constituents which requires, in part, that groundwater not contain chemical constituents in concentrations that adversely affect any beneficial use. For groundwaters that are designated MUN, such as the groundwater beneath the Site, the Basin Plan incorporates by reference drinking water maximum contaminant levels ("MCLs") promulgated in the California Code of Regulations, title 22, chapter 15 ("Title 22"). Furthermore, Basin Plan also contains narrative WQOs that apply to groundwater for tastes and odors and for toxicity. The taste and odor WQO requires, in part, that groundwater not contain substances in concentrations that cause nuisance, adversely affect beneficial uses, or impart undesirable tastes and odors to municipal and domestic water supplies. The toxicity WQO requires, in part, that groundwater be maintained free of toxic substances in concentrations that produce detrimental physiological responses in humans.

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 ANTLERS SHELL/SUBWAY
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30. Chapter IV of the Basin Plan contains the *Policy for Application of Water Quality Objectives*, which provides that “[w]here compliance with narrative objectives is required (i.e., where the objectives are applicable to protect specified beneficial uses), the Central Valley Water Board will, on a case-by-case basis, adopt numerical limitations in orders which will implement the narrative objectives.”

Testing of petroleum hydrocarbons has identified a number of constituents that are not present in groundwater unaffected by the discharge and that could exceed a narrative WQO. All of these are constituents of concern. The numerical limits for the constituents of concern listed in the following table implement the Basin Plan WQOs.

Constituent	Limits (µg/L)	WQO	Reference
Benzene	0.15	Toxicity	California Public Health Goal (OEHHA)
Toluene	42	Taste and Odor	Federal Register, Vol. 54, No. 97
Ethylbenzene	29	Taste and Odor	Federal Register, Vol. 54, No. 97
Total Xylenes	17	Taste and Odor	Federal Register, Vol. 54, No. 97
Ethylene dichloride	0.4	Toxicity	California Public Health Goal (OEHHA)
	0.5	Chemical Constituents	California Primary MCL
Methyl t-butyl ether	5	Taste and Odor	California Secondary MCL (CDPH)
Tert-Butyl alcohol	12	Toxicity	California Drinking Water Notification Level (CDPH)
Naphthalene	2.9	Toxicity	California Proposition 65 Safe Harbor Drinking Water Level. (OEHHA)
Gasoline	5	Tastes and Odor	McKee & Wolf, Water Quality Criteria, SWRCB, p. 230
OEHHA - Office of Environmental Health Hazard Assessment			

31. The constituents listed in Findings No. 7, and 15 are wastes as defined in Water Code section 13050(d). The groundwater exceeds the WQOs for the constituents listed in Findings Nos. 8 and 11. Exceeding applicable WQOs is indicative of impairment to the beneficial uses of the groundwater, and thereby constitutes pollution as defined in Water Code section 13050(l)(1).

32. The constituents listed in Finding No. 30 are present in groundwater due to the wastes from discharge, are injurious to health or impart objectionable taste and odor when present in drinking water.

DISCHARGER LIABILITY

33. As described in Findings Nos. 3-6 and 13, the Dischargers are subject to an order pursuant to Water Code section 13304 because the Dischargers have caused or permitted, or threatened to cause or permit, waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and have created, or threatened to create, a condition of pollution or nuisance. The condition of pollution is a priority violation and issuance or adoption of a cleanup and abatement order pursuant to Water Code section 13304 and Health and Safety

Code section 25296.10 is appropriate and consistent with policies of the Central Valley Water Board.

34. This Order requires investigation and cleanup of the Site in compliance with the Water Code, the applicable Basin Plan, State Water Board Resolution No. 92-49, and other applicable Central Valley Water Board's plans, policies, and regulations.
35. As described in Findings Nos. 3-6 and 13, the Dischargers may be ordered to submit technical and monitoring reports pursuant to Water Code section 13267 because existing data and information about the Site indicate that waste has been discharged, is discharging, or is suspected of discharging, at the property, which is or was owned and/or operated by the Dischargers named in this Order. The technical reports required by this Order are necessary to assure compliance with Water Code section 13304 and Health and Safety Code section 25296.10, to adequately investigate and clean up the Site to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.
36. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act ("CEQA") (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2). The issuance of this Order is also an action to assure the restoration of the environment and is exempt from the provisions of CEQA in accordance with California Code of Regulations, title 14, sections 15308 and 15330.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, as well as Health and Safety Code section 25296.10, TBS Petroleum, LLC and Mr. Bob G. Davis shall abate the effects of waste discharges at, near, or down gradient of the Site as directed below.

1. Investigate the discharges of waste, clean up the waste, and abate the effects of the waste, forthwith, resulting from activities at Antler's Shell/Subway, 20884 Antlers Road, Lakehead, Shasta County, in conformance with State Water Board Resolution No. 92-49 *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* and with the Central Valley Region's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (in particular the Policies and Plans listed within the Control Action Considerations portion of Chapter IV). "Forthwith" means as soon as is reasonably possible. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below.
2. Complete all work and reports in accordance with *Appendix A - Reports, Tri-Regional Recommendations for Preliminary Investigation and Evaluation of Underground Storage Tank Sites*, which can be found at:

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http://www.waterboards.ca.gov/centralvalley/water_issues/underground_storage_tanks/

3. Complete all work under all permits required by State, County, and/or Local agencies.
4. The Dischargers are required to submit the following technical reports prepared in accordance with Appendix A - Reports by the listed dates:

Required Report/Task	Due No Later Than:
Additional Site Investigation Work Plan including On-site Domestic Well Investigation and Evaluation	1 December 2011
Implement Site Investigation Work Plan	1 March 2012
Additional Site Investigation Report	1 June 2012
Corrective Action Plan (Final)	1 December 2012
- Problem Assessment Report	1 June 2012
- Feasibility Study	1 September 2012
- Final Remediation Plan	1 December 2012
Complete Installation and Startup of Approved Remediation System	1 June 2013
Quarterly Status Reports - Reports due the 1 st day of the second month following the end of the quarter	30 January 2012 - first report due

5. The Dischargers shall submit **Remedial Status Reports**, monthly for the first three months of active implementation and quarterly thereafter. The required Remedial Status Reports are necessary to monitor the effectiveness of the remedial system and its impact on the subsurface environment. The first monthly Remedial Status Report is due 45 days after system startup, and shall at minimum include background dissolved metals, pH, oxidation-reduction potential (ORP), total dissolved solids (TDS), electron acceptors, iron, manganese, metabolic acids, relevant hydraulic parameters, organic pollutants and their predicted breakdown products in the target volume, predicted behavior both in the target volume and identified surrounding sentry wells, and contingencies for controlling mobilized pollution beyond the target volume. Subsequently, each Remedial Status Report shall also include amendment injections, and the results of all appropriate shallow soil vapor and groundwater sampling. Remedial Status Reports are to be submitted during operation of the remedial system and for a minimum of four quarters following system shutdown.
6. The Dischargers shall submit **Quarterly Monitoring Reports**. All Monitoring Reports shall be submitted **by the 30th day of the month following the end of the calendar quarter** in which the samples are collected (i.e., by 30 July and 30 January). Monitoring reports shall include the results of all soil, soil vapor and

groundwater samples analyzed to date. Remedial Status Reports and Monitoring Reports should be combined and completed as a single report when both monitoring and remedial system sampling occur during the same quarter.

7. The Dischargers shall continue to provide appropriate, **uninterrupted** replacement water that meets all applicable federal, state, and local drinking water standards to affected parties, in compliance with Water Code section 13304(f and g). Appropriate uninterrupted replacement water may include, but is not limited to, continued maintenance of existing GAC units, and extension of piped potable water services.

GENERAL REQUIREMENTS

1. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, have appropriate reports prepared by, or under the supervision of, a registered professional engineer or geologist and signed by the registered professional. All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or an authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Dischargers shall also state if they agree with any recommendations/proposals and whether they approved implementation of said proposals.
2. Upon startup of any remediation system(s), operate the remediation system(s) continuously, except for periodic and required maintenance or unpreventable equipment failure. The Dischargers shall notify the Water Board within 24 hours of any unscheduled shutdown of the remediation system(s) that lasts longer than 48 hours. This notification shall include the cause of the shutdown and the corrective action taken (or proposed to be taken) to restart the system. Any interruptions in the operation of the remediation system(s), other than for maintenance, emergencies, or equipment failure, without prior approval from Regional Water Board staff or without notifying the Regional Water Board within the specified time is a violation of this Order. Within 7 working days of a shutdown, the Dischargers shall submit a Technical Report containing at a minimum, but not limited to the following information:
 - times and dates equipment were not working,
 - cause of shutdown,
 - if not already restarted, a time schedule for restarting the equipment, and,
 - a Cleanup Assurance Plan to ensure that similar shutdowns do not reoccur. Proposed Cleanup Assurance Plans are to be completed within 30 days of the system shutdown.

3. Notify Board staff at least three working days prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection.
4. Obtain all local and state permits and access agreements necessary to fulfill the requirements of this Order prior to beginning the work.
5. Continue any remediation or monitoring activities until such time as the Executive Officer determines that sufficient cleanup has been accomplished to fully comply with this Order and this Order has been either amended or rescinded in writing.
6. Optimize remedial systems as needed to improve system efficiency, operating time, and/or waste removal rates, and report on the effectiveness of the optimization in the quarterly reports.
7. Maintain a sufficient number of monitoring wells to completely define and encompass the waste plume(s). If groundwater monitoring indicates the waste in groundwater has migrated beyond laterally or vertically defined limits during the quarter, then the quarterly monitoring reports must include a work plan and schedule, with work to begin within thirty days of Regional Water Board staff approval, to define the new plume limits.
8. Submit all written reports and analytical results to the Regional Water Board and electronic copies of all reports and analytical results over the Internet to the State Water Board Geographic Environmental Information Management System database (GeoTracker) at <http://geotracker.swrcb.ca.gov>. Electronic submittals shall comply with GeoTracker standards and procedures as specified on the State Board's web site.
9. All work and directives referenced in this Order are required regardless of whether or not the UST Cleanup Fund approves the work for reimbursement.

If, for any reason, the Dischargers are unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Dischargers may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as the situation is recognized and no later than the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer. Extension requests not approved in writing by the Executive Officer with reference to this Order are denied.

If, in the opinion of the Executive Officer, the Dischargers fail to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability.

DRAFT

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TBS PETROLEUM LLC, MR. BOB G. DAVIS
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LAKEHEAD, SHASTA COUNTY

-15-

Failure to comply with this Order may result in the assessment of an Administrative Civil Liability of up to \$10,000 per violation per day pursuant to the Water Code sections 13268, 13350 and/or 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality
or will be provided upon request.

This Order is effective upon the date of signature.

Original signed by

PAMELA C. CREEDON
Executive Officer

(Date)

EXHIBIT C

BARG COFFIN LEWIS & TRAPP LLP

ATTORNEYS

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November 21, 2011

***By Email and
First Class U.S. Mail***

Clint E. Snyder, P.G.
Senior Engineering Geologist
Chief, Geological Unit
California Regional Water Quality Control Board
California Central Valley – Redding Office
415 Knollcrest Drive, Suite 100
Redding, CA 96002
CSnyder@waterboards.ca.gov

***Re: Draft Cleanup and Abatement Order R5-2011-XXXX, TBS Petroleum
LLC, Concerning Antler's Shell/Subway, 20884 Antler's Road,
Lakehead, Shasta County***

Dear Mr. Snyder:

This letter is sent on behalf of TBS Petroleum LLC ("TBS") in response to the above-referenced draft Cleanup and Abatement Order (CAO) provided to TBS on November 14, 2011. TBS strongly disagrees with the Regional Board's decision to refrain from naming Bob Davis ("Davis") as a primary responsible party in the Order. The Board's September 23, 2011 draft CAO named Davis as a primary responsible party. That decision was appropriate, and should be reinstated.

It is uncontroverted, based the Board's findings and supporting data, that Davis, and not TBS, "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. . . ." Cal. Water Code § 13304(a). Further, Mr. Davis, and not TBS, "had . . . control over an underground storage tank at the time of or following an unauthorized release of a hazardous substance." Cal. Code Regs. Tit. 23, § 2720.

EXHIBIT C

Notwithstanding the Board's findings, it proposes to exercise "its discretion to refrain from naming" Davis in the Order. The Board cites to the results of litigation between TBS and Davis as justification for its proposed action. Specifically, the Board states that the courts "concluded that these terms shift the responsibility for the investigation and cleanup of existing pollution from Davis to TBS." In fact, the courts responded to TBS's claims that, as between TBS and Davis, Davis was required to indemnify TBS for any losses resulting from the contamination caused by Davis. The courts ruled that the "as-is" clause in the purchase and sale agreement between the parties precluded TBS's indemnity action (as well as other claims, including nuisance, trespass, and Water Code 13350 contribution). Therefore, TBS was limited in actions *it* could bring against Davis.

However, TBS's action against Davis, and the court ruling, are wholly irrelevant to any action as between the Board and Davis.¹ There is nothing in the courts' rulings, or under applicable law, that prevents the Board from naming Davis as a responsible party. To the contrary, a decision by the Board not to name Davis would be an abuse of discretion.

Davis is of course free to attempt to seek recovery from TBS of Davis's costs if he so chooses, but that is solely a matter between Davis and TBS. It has nothing to do with the Board. In fact, the Board's proposed action is effectively providing an indemnity to Davis from TBS that otherwise does not exist, nor was sanctioned by the court. Under express terms of their purchase and sale agreement, TBS has no obligation to indemnify Davis for losses or liabilities that arise as a result of Davis's use of the property. In essence, the Board is creating and granting Davis an indemnity that he could not otherwise receive.

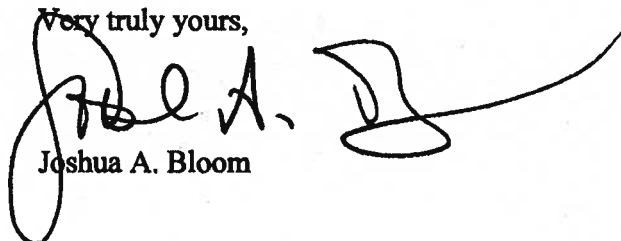
Davis is the sole cause of the conditions at issue. The Board's only basis for naming TBS as a responsible party is TBS's current ownership of property that Davis contaminated. The court rulings affect only TBS's ability to seek damages from Davis, and nothing more. It is improper for the Board to remove Davis from the Order on the basis of those rulings. For the Board to exercise "its discretion to refrain from naming" Davis in the Order would be arbitrary, capricious and abuse of discretion. TBS's requests that the final Order include Davis as a primary responsible party.

¹ TBS's position would be the same if TBS prevailed in the litigation. The consequences of that result would have been solely between the parties, and would have had no effect on the Board's decision whether to name Davis a responsible party, one way or another.

Clint E. Snyder, P.G.
November 21, 2011
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Please contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "J.A. Bloom", with a long horizontal flourish extending to the right.

Joshua A. Bloom

JAB/jf

cc: Tony Ackernecht