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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition for Review of San Francisco Bay Regional Water Quality Control Board Letter Pursuant to Water Code Section 13267 Dated August 15, 2014 Regarding Plaza Cleaners, 121 North McDowell Blvd., Petaluma, Sonoma County

No. _____
PETITION FOR REVIEW

Petitioner Joseph Felix Realty Co. ("JFRCo" or "Petitioner") submits this Petition for Review ("Petition") of a letter directive issued by the San Francisco Bay Regional Water Quality Control Board ("RWQCB") pursuant to Water Code Section 13267 entitled "Approval of Vapor Intrusion Assessment Report, Conditional Approval of Groundwater Characterization Workplan, and Requirement for a Technical Report" dated August 15, 2014 ("13267 Letter")(Attachment A). This Petition is filed pursuant to Section 13320 of the California Water Code and Title 23 of the California Code of Regulations ("CCR"), Section 2050. In accordance with 23 CCR Section 2050.5(d), JFRCo requests that the State Water Resources Control Board ("SWRCB") hold this Petition in abeyance while Petitioner continues to work with the RWQCB to resolve the issues raised in this Petition.

Title 23 CCR Section 2050 (a) requires that any petition for review include certain information, which is set forth below.

(1) Petitioner's name is Joseph Felix Realty Co. and its address is 2000 S. Colorado Blvd., Suite 2-750, Denver, Colorado, 80222. Petitioner's phone number is (303) 407-1707.

1 However, Petitioner requests that all communications and correspondence be directed through its
2 counsel, as identified in the caption of this Petition.

3 (2) The RWQCB action that Petitioner requests be reviewed by the SWRCB is the
4 letter directive issued by the RWQCB pursuant to Water Code Section 13267 with the subject:
5 "Plaza Cleaners, 121 North McDowell Blvd., Petaluma, Sonoma County - Approval of Vapor
6 Intrusion Assessment Report, Conditional Approval of Groundwater Characterization Workplan,
7 and Requirement for a Technical Report." A copy of that document is attached.

8 (3) The 13267 Letter was issued on August 15, 2014.

9 (4) The 13267 Letter conditionally approves the *Workplan for Additional Vertical and*
10 *Lateral Groundwater Characterization, Plaza Dry Cleaners* dated July 24, 2014. There are two
11 conditions: additional soil and groundwater sampling must be conducted near the source area; and
12 deeper groundwater must be sampled between the source area and the proposed sampling
13 locations. It is Petitioner's understanding that the sampling locations are being adjusted to address
14 the RWQCB concerns that led to those conditions being imposed. However, the conditions, as
15 currently written, would appear to require a further round of soil and groundwater sampling
16 regardless of the results of those samples. It would be inappropriate and improper to require a
17 further round of sampling of soil and/or groundwater if the results of the sampling approved by the
18 RWQCB in the 13267 Letter, as adjusted to address RWQCB concerns, do not indicate that such
19 additional samples are necessary.

20 (5) Petitioner would be aggrieved if the RWQCB requires further sampling to comply
21 with the conditions of approval even if the results of the next set of samples indicate that such
22 sampling is unnecessary. Per the terms of a confidential agreement with the property owner,
23 Petitioner contributes funds for the investigation at this site. Petitioner would be aggrieved if it is
24 required to contribute funds to pay for work that is not reasonably necessary to characterize the
25 site for closure. Petitioner would be further aggrieved because such additional sampling would
26 delay closure of the site. Petitioner is hopeful that the RWQCB would not require further
27 sampling if the next set of soil and groundwater samples do not indicate that such sampling is
28 necessary, in which case Petitioner would dismiss this Petition, but the terms of the 13267 Letter

1 suggest that further sampling could be required, regardless of the results of the approved sampling.

2 (6) Petitioner is submitting this Petition as a protective filing and requests that it be
3 held in abeyance by the SWRCB at this time. However, in the event that the dispute is not
4 resolved and the RWQCB requires unnecessary samples be collected, Petitioner will request that
5 the SWRCB set aside the 13267 Letter or direct the RWQCB to do so.

6 (7) Petitioner is submitting this Petition as a protective filing and requests that it be
7 held in abeyance by the SWRCB at this time. However, in the event that the dispute is not
8 resolved, Petitioner will request the SWRCB take up this Petition actively, at which time
9 Petitioner will submit a statement of points and authorities as an amendment to this Petition.

10 (8) A copy of this Petition is being transmitted to the RWQCB and to the other entity
11 that received the 13267 Letter, the current property owner.

12 (9) Petitioner has discussed these issues with the RWQCB and believes that the dispute
13 can be resolved, however, it is not possible to submit a revised workplan and determine whether it
14 can be approved without conditions prior to the expiration of the time allowed for submittal of a
15 petition for review. As such, this Petition is being submitted to protect Petitioner's rights to
16 challenge that 13267 Letter if it becomes necessary.

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DATED: September 5, 2014

Respectfully submitted,

COOPER, WHITE & COOPER LLP

By: 
John R. Epperson
Attorneys for Petitioner Joseph Felix Realty Co.

Attachment A



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

August 15, 2014
File No. 49S0022 (KA)

Joseph Felix Realty Co.
Attn: Mr. Stanley Felix
c/o Ms. Margot Zaterman
2000 S Colorado Blvd. Suite 2-75
Denver, CO 80222

McViking II Petaluma, LLC
c/o McNellis Partners, LLC
Attn: Ms. Mary E. (Beth) Walter
419 Waverly Street
Palo Alto, CA 94301

Sent via Email to: Margot@jfrco.com; Beth@McNellis.com

SUBJECT: Plaza Cleaners, 121 North McDowell Blvd., Petaluma, Sonoma County - Approval of Vapor Intrusion Assessment Report, Conditional Approval of Groundwater Characterization Workplan, and Requirement for a Technical Report

Dear Mr. Felix and Ms. Walter:

Regional Water Board staff reviewed the *Summary of Vapor Intrusion Assessment, Plaza Dry Cleaners, 121 North McDowell Boulevard, Petaluma, California*, dated June 13, 2014 (Vapor Intrusion Assessment Report) submitted on behalf of McViking II Petaluma, LLC (McViking) by Enercon Services, Inc. (Enercon). This letter approves the Vapor Intrusion Assessment Report.

Regional Water Board staff also reviewed the *Workplan for Additional Vertical and Lateral Groundwater Characterization, Plaza Dry Cleaners, 121 North McDowell Boulevard, Petaluma, California*, dated July 24, 2014 (Workplan), and submitted on behalf of McViking II Petaluma, LLC by Partner Engineering and Science, Inc. (Partner). We determined that the scope of the Workplan must be amplified to provide information necessary to move this case toward closure. The vertical extent of contamination in soil and groundwater has not been adequately delineated and the contaminant discharge mechanism(s) and contaminant source area(s) are not well defined. This letter conditionally approves the Workplan and requires submittal of a technical report.

This letter is sent to you as former and current leaseholders of the property referenced above (Site). It is Regional Water Board staffs' understanding that Joseph Felix Realty Company previously leased the commercial building where Plaza Dry Cleaners is located, and that McViking II Petaluma, LLC is currently the ground leasee and owner of the Plaza Dry Cleaners building.

JOHN MULLER, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

1515 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

Vapor Intrusion Assessment

Plaza Dry Cleaners is located in a tenant space in a slab-on-grade building adjoining other businesses in the Petaluma Plaza Shopping Center. High concentrations of the dry cleaning solvent perchloroethylene (PCE) and other chlorinated volatile organic compounds (CVOCs) were previously reported in soil, soil gas, and groundwater. This indicated that CVOCs could pose a potential health threat if they were also present in indoor air within one or more of the tenant spaces.

The process of assessing the potential for intrusion of CVOCs into the Plaza Dry Cleaners building began in January 2014, when ENERCON collected soil gas samples at three locations from beneath the floor slab of the dry cleaner. The reported soil gas concentration of PCE in the sample collected near the center of the dry cleaner unit close to the wall of an adjacent tenant space was 1,900 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), slightly below the Regional Water Board's Environmental Screening Level (ESL)¹ of 2,100 $\mu\text{g}/\text{m}^3$ for PCE at commercial facilities. The reported concentration of 3,800 $\mu\text{g}/\text{m}^3$ PCE in a sample collected beneath the former location of the dry cleaning equipment near the rear of the building was nearly twice the commercial ESL for this chemical. PCE breakdown products trichloroethylene and dichloroethylene were also reported in this sample at concentrations below the applicable commercial ESLs for these chemicals.

High concentrations of leak detection compound in the soil gas samples reported by the analytical laboratory indicated that the samples collected were significantly diluted by ambient air. Consequently, the actual concentrations of CVOCs present in sub-slab soil gas were higher than the results reported by the analytical laboratory. This suggested that CVOCs could be present in air within the Dry Cleaners buildings and adjacent tenant spaces of the Petaluma Plaza South Shopping Center at concentrations greater than applicable ESLs.

In May 2014, indoor air samples were collected from Plaza Dry Cleaners and the adjacent tenant spaces in Summa canisters following Department of Toxic Substances Control guidelines.² Reported laboratory analytical results for all CVOCs were below applicable commercial ESLs for these compounds. These results indicate that intrusion of CVOC vapor does not currently pose an elevated health threat to occupants of these tenant spaces. The investigation was successfully completed and I approve the Vapor Intrusion Assessment Report.

Conditional Approval of Workplan

Soil, soil gas, and groundwater characterization activities have been conducted at the Site since September 2007. Our review of the data indicates that soil, soil gas, and groundwater to a depth of approximately 20 feet below ground surface (bgs) have been extensively sampled, though the location(s) where CVOCs were discharged has yet to be clearly identified. Several soil borings have penetrated to depths of 30 to 35 feet bgs, but none of these were near potential contaminant source area(s), and none of the borings were completed as monitoring wells. Consequently, the vertical extent of contamination is not delineated and the location(s) where contaminated soil is serving as a source of groundwater contamination has not been documented. The absence of

¹ See San Francisco Bay Regional Water Board webpage:

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.shtml

² See DTSC webpage: http://www.dtsc.ca.gov/AssessingRisk/upload/Final_VIG_Oct_2011.pdf

adequate soil and groundwater data below 20 feet bgs, particularly in potential source area(s), constitutes a significant data gap and an impediment to case closure.

The Workplan proposes to address this data gap by collecting grab groundwater samples from four locations about 350 to 700 feet downgradient of the Site. Samples will be analyzed for CVOCs using EPA Method 8260B. This work is intended to move the Site toward closure by helping to delineate the contaminant plume in groundwater downgradient of the Site. The proposed groundwater sampling does not address potential deeper contamination in the area where the contaminants were potentially discharged.

The scope of work proposed in the Workplan is a necessary step in the site characterization process, but is not sufficiently comprehensive to adequately characterize deeper soil and groundwater. Deeper soil and groundwater sampling near the potential contaminant source area(s) and deeper groundwater sampling between the source area(s) and the four proposed sampling locations is required. Following initial grab groundwater sampling to generally delineate potential contamination in deeper groundwater, additional monitoring wells may need to be installed to provide repeatable groundwater sampling results.

I hereby approve the July 2014 workplan subject to the following conditions:

1. Additional deep soil and groundwater sampling must be conducted near the potential contaminant source area(s); and
2. Deeper groundwater must be sampled at several locations between the potential source area(s) and the four sampling locations proposed in the Workplan.

Requirement for a Technical Report

You are required to submit a technical report by December 11, 2014, that provides the results of implementation of the workplan as conditionally approved. This work is required to characterize the vertical extent of contamination at the Site and define contaminant source area(s). This report must include a table showing contaminant concentrations and a map showing sampling locations and corresponding contaminant concentrations. The report must also include a revised site conceptual model, updated cross-sections, a discussion of contaminant distribution in soil and groundwater, and recommendations for additional work, as appropriate.

This requirement for a report is made pursuant to Water Code Section 13267, which allows the Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. The attachment provides additional information about Section 13267 requirements. Any extension in the above deadline must be confirmed in writing by Regional Water Board staff.

Please reference File Number 49S0022 on all correspondence and reports. Please upload all reports and other information to the GeoTracker website (<http://geotracker.waterboards.ca.gov/>), and provide both a hard copy and an electronic copy of all reports to facilitate staff review. Any extension of the above deadline must be confirmed in writing by Regional Water Board staff.

If you have any questions, please contact Kent Aue of my staff at (510) 622-2446 or email: KAue@waterboards.ca.gov.

Sincerely,



Digitally signed by Stephen Hill
Date: 2014.08.15 08:05:09
-07'00'

Bruce H. Wolfe
Executive Officer

Attachment: Water Code Section 13267 Fact Sheet

Copy via email w/attachment:

McNellis Partners, LLC
Attn: Mr. Mike Powers
Email: Mike@McNellis.com

The Novak Property, LLC
Attn: Mr. Jeffrey Novak
Email: JeffreyNovakgc@comcast.net

Partner Engineering and Science
Attn: Mr. Arthur Morrill
Email: AMorrill@partneresi.com

PES Environmental
Attn: Mr. Keith O'Brien
Email: KOBrien@pesenv.com



San Francisco Bay Regional Water Quality Control Board

**Fact Sheet – Requirements for Submitting Technical Reports
under Section 13267 of the California Water Code**

What does it mean when the Regional Water Board requires a technical report?

Section 13267¹ of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

The requirement for a technical report is a tool the Regional Water Board uses to investigate water quality issues or problems. The information provided can be used by the Regional Water Board to clarify whether a given party has responsibility.

Are there limits to what the Regional Water Board can ask for?

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The Regional Water Board is required to explain the reasons for its request.

What if I can provide the information, but not by the date specified?

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

Are there penalties if I don't comply?

Depending on the situation, the Regional Water Board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

Do I have to use a consultant or attorney to comply?

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

What if I disagree with the 13267 requirements and the Regional Water Board staff will not change the requirement and/or date to comply?

You may ask that the Regional Water Board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the Regional Water Board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

If I have more questions, whom do I ask?

Requirements for technical reports include the name, telephone number, and email address of the Regional Water Board staff contact.

Revised January 2014

¹ All code sections referenced herein can be found by going to www.leginfo.ca.gov.