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LATHAM & WATKINS LLP

February 26, 2010

VIA EMAIL AND U.S. MAIL

State Water Resources Control Board
Office of Chief Counsel
Attn: Jeannette L. Bashaw, Legal Analyst
P.O. Box 100
Sacramento, CA 95812
E-mail: jbashaw@waterboards.ca.gov

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Re: Short-Form Petition of San Diego Regional Water Quality Control Board Cleanup and Abatement Order No. R9-2010-0007, And Request for Abeyance

Dear Ms. Bashaw:

On behalf of our clients, Consolidated Electrical Distributors (“CED”) and Northbrook Properties, Inc. (“NPI”) (jointly “Petitioners”), we submit this short-form petition (“Petition”) to the State Water Resources Control Board (“State Board”) pursuant to the requirements of California Water Code section 13320 and California Code of Regulations, Title 23, sections 2050, 2050.5. This Petition challenges certain aspects of the above-referenced Cleanup and Abatement Order (“CAO”) and requests that the State Board amend the CAO, or direct the San Diego Regional Water Quality Control Board (“Regional Board”) to do so, consistent with the arguments raised in this Petition.

The CAO was issued administratively by the Assistant Executive Officer of the Regional Board staff, rather than through a Regional Board action. Therefore, Petitioners have requested a formal hearing on the CAO before the Regional Board.¹ Because the Petitioners are actively negotiating with the Regional Board to resolve the issues outlined herein, we are filing only this short-form petition, along with a request that the petition be held in abeyance. This Petition is specifically intended to preserve Petitioners’ rights of appeal to the State Board, and we request that the State Board hold the Petition in abeyance, pursuant to California Code of Regulations, Title 23, section 2050.5(d), until notified by Petitioners that this matter cannot be resolved at the Regional Board level. We reserve the right to fully address before the State Board any and all

¹ Indeed, Petitioners question whether the Assistant Executive Officer has the authority to issue the CAO as final without any administrative process or Regional Board approval.

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arguments raised herein, and to address any additional issues that may be presented to the Regional Board during the administrative process for the CAO, if such a process is subsequently held by the Regional Board pursuant to Petitioners' request; or, in the event that the abeyance is lifted, in any future submittals to or hearings before the State Board.²

On February 1, 2010, Petitioners received notice of the adoption of the CAO, which named Petitioners as potentially responsible parties ("PRPs" or "dischargers") and alleged groundwater contamination in the vicinity of a property formerly owned by NPI and leased by CED at 2250 Meyers Street in Escondido, CA (the "Property"). Though Petitioners previously owned and/or conducted operations on the Property, they did not cause or permit the discharges of waste that comprises any of the existing contamination identified in the CAO, and are not properly named as PRPs under California Water Code section 13304. Both NPI and CED are innocent contiguous property owners/tenants. In particular, extensive contamination at an adjacent site, caused solely by a third party, adversely impacted the property that Petitioners formerly owned and/or conducted business upon. Indeed, the Regional Board issued a Cleanup and Abatement Order in 1998 for the contiguous property, and, after some discussion, intentionally decided not to name Petitioners or include the Property in that order or in any of the later addendums to that order.³

CED and NPI petition the State Board to address various actions and inactions of the Regional Board and its staff with respect to the CAO, several of which are described herein. The information contained in this Petition is organized in accordance with the numbered list posted on the State Board's website and set forth in California Code of Regulations, Title 23, section 2050(a)(1)-(9):⁴

1. *Name, address, telephone number and e-mail address (if available) of the petitioner.*

Correspondence should be directed to Kelly Richardson of Latham & Watkins LLP, counsel for Petitioners, at the address, telephone number, and email address identified in this Petition. The Petitioners named in the CAO are NPI, as a former owner of the Property, and CED, as a former tenant at the Property. Petitioners' contact information is as follows:

Consolidated Electrical Distributors
David T. Bradford, Vice President, General Counsel & Secretary
31356 Via Colinas, Suite 106
Westlake Village, CA 91362

² Petitioners specifically reserve their right, *inter alia*, to submit a statement of points and authorities in support of the legal issues raised in this short-form petition, and during the administrative process, and to refer to documents in the administrative record or transcripts of any Regional Board hearing where relevant issues are raised, insofar as the Regional Board grants Petitioners' request for a hearing on the CAO. Cal. Code Regs. tit. 23, §§ 2050(a)(7), (9).

³ San Diego Regional Water Quality Control Board CAO 1998-58.

⁴ http://waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml.

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E-mail: david@cedlaw.com

Northbrook Properties, Inc.
Stephen D. Foulkes, Vice President
P.O. Box 7105
Big Bear Lake, CA 92315
Phone: (909) 866-7802
Fax: (951) 318-1970
E-mail: sfoulkes2@gmail.com

- 2. The action or inaction of the Regional Water Board being petitioned, including a copy of the action being challenged or any refusal to act, if available. If a copy of the regional board action is not available, the petitioner must explain why it is not included.*

Petitioners challenge the action of the Assistant Executive Officer in issuing the CAO as final, and naming Petitioners as PRPs, without any action by, or approval of, the Regional Board. Petitioners further challenge the failure of the Regional Board and its staff to provide Petitioners or the other PRPs with any administrative process or the bases for any of the findings and conclusions contained in the CAO, none of which have been supported with any evidence. Petitioners request that the State Board amend the CAO, or direct the Regional Board to do so, so that Petitioners are removed from the CAO as named responsible parties. Enclosed as Exhibit "A" is a copy of the CAO.

- 3. The date the Regional Water Board acted, refused to act, or was requested to act.*

The Assistant Executive Officer of the Regional Board issued the CAO as final on February 1, 2010.

- 4. A statement of the reasons the action or inaction was inappropriate or improper.*

The Assistant Executive Officer's action in naming Petitioners as PRPs was improper because the Regional Board may not name parties in a CAO unless it has sufficient evidence that such parties are responsible for causing or permitting the contamination of concern that is the subject of the CAO. See Cal. Code Civ. Proc. § 1094.5 (2009) (findings must be supported by "substantial evidence"); Cal. Wat. Code § 13304 (2009) (responsible parties must have caused or permitted unauthorized discharges). Not only has the Regional Board staff completely failed to provide any evidence that Petitioners are responsible for any contamination at the Property, but after lengthy litigation and trial, a San Diego County Superior Court judge found that Petitioners' activities on the Property did not contribute to the contamination that is the subject of the CAO. The Regional Board staff has not provided any evidence refuting the court's findings of fact and conclusions of law.

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In 1993, Petitioners filed suit in San Diego County Superior Court against the contiguous property owners and operators of the businesses that caused releases of chlorinated solvents that migrated to the Property. Those property owners are also named as dischargers in the CAO. The Honorable David B. Moon issued Findings of Fact and Conclusions of Law on March 30, 1999 ("Court Order"), which granted Petitioners indemnity and injunctive and declaratory relief against the former owner of the contiguous Oppper Street property and operator of the business that was the cause of the contamination. Enclosed as Exhibit "B" is a copy of the Court Order. The Court Order expressly determined that Petitioners did not contribute to the presence of chlorinated solvents on the Property, and that all such contamination migrated to the Property from the adjacent Oppper Street property(ies). See Exhibit B at ¶¶ 18, 21-23, 31. A copy of the Court Order was provided to Regional Board staff on January 14, 2010, but the CAO still named Petitioners as PRPs; and, without providing any rationale whatsoever, the CAO concluded that Petitioners caused or permitted the contaminants to be discharged or deposited into the waters of the state, thereby creating or threatening to create a condition of pollution under Water Code section 13304. Because the Regional Board has not provided any evidence supporting this conclusion, and cannot do so, Petitioners are improperly named in the CAO.

Further, as a matter of due process, the issuance of the CAO as final by the Assistant Executive Officers is improper because (i) the CAO was not issued through, or approved by, the Regional Board; (ii) the PRPs were not afforded any administrative process or the opportunity to object to the CAO, before the CAO was issued as final; and (iii) the Regional Board staff failed to provide any evidence supporting the findings and conclusions in the CAO. Pursuant to section 1094.5 of the California Code of Civil Procedure, an administrative agency rendering an adjudicatory decision must support its findings with substantial evidence in the record. See, e.g., Topanga Ass'n. for a Scenic Cmty. v. County of Los Angeles, 11 Cal. 3d 506, 514 (1974). In establishing this principle, Topanga effectively implements a three-step process. First, an administrative agency must develop the "substantial evidence" in the record. Second, the agency must ensure that its findings are supported by that evidence. Finally, the agency's ultimate conclusions must be supported by the findings (and, therefore, the evidence). Id. Regional Board staff ignored the well-established mandate of Topanga, and deprived Petitioners of the opportunity for an evidentiary hearing to protect their due process and other rights. To be clear, there is no administrative record in this case because there has not yet been any administrative process by the Regional Board that allowed participation by Petitioners or the other PRPs.

5. *How the petitioner is aggrieved.*

Petitioners are aggrieved because they were improperly named in the CAO. Although NPI owned the Property, and CED conducted operations on the Property and subleased the Property to another PRP ("Subtenant") who conducted operations on the contiguous Oppper Street property, neither Petitioner caused or permitted

releases of contaminants of concern ("COCs") on the Property; nor did either of the Petitioners utilize any of the COCs as part of their activities on the Property. Further, the Subtenant's activities on the Property were not the cause of the contamination that is the subject of the CAO. None of the contamination can be linked to any of the Petitioners' activities on, or ownership or operation of, the Property. Rather, as concluded in the Court Order, all chlorinated solvents that came to be located at the Property migrated from the contiguous Oppper Street property, which was the source of all such contamination on the Property. See Court Order at ¶¶ 18, 21-23, 31. In sum, there is no evidence that Petitioners caused or permitted contamination on the Property in violation of California Water Code section 13304.

Further, though Petitioners were named in the CAO, they have been denied any administrative process whatsoever. The CAO was unilaterally issued as final by the Assistant Executive Officer, without any Board action or approval, and without any hearing, public notice, public comment period or any other semblance of process. Petitioners are not aware of any administrative record for the CAO other than the Court Order, which Petitioners provided to Regional Board staff. Notwithstanding this lack of process, the CAO purports to require Petitioners to request a hearing and submit all evidence and comments to the Regional Board within 30 days after issuance of the CAO. Indeed, if Petitioners' request for a formal hearing is denied by the Regional Board, they will have been afforded no process at all by which to challenge the unsupported findings and conclusions in the CAO.

Petitioners are also aggrieved by the Regional Board staff's complete failure to provide any evidentiary bases for the CAO, in violation of the Petitioners' due process rights. See Mohilef v. Janovici, 51 Cal. App. 4th 267, 302 (1996) ("[B]ecause the due process clause ensures that an administrative proceeding will be conducted fairly, discovery must be granted if in the particular situation a refusal to do so would so prejudice a party as to deny him due process.") (internal quotations omitted). Because the Regional Board has not released its staff report or any evidentiary basis for the CAO, and Petitioners have not been provided an opportunity to obtain that information in time to meaningfully review the purported evidence in advance of the deadline for the submission of their written comments, Petitioners are unable to address, either in writing or at any hearing that may take place, the manifest evidentiary deficiencies contained in the CAO. This due process violation is compounded by the fact that the CAO contains unsupported findings and conclusions that conflict with the findings and conclusions contained in the Court Order.

The CAO allows PRPs to request an evidentiary hearing before the Regional Board within 30 days of the CAO's issuance, but also requires Petitioners to file any appeal to the State Board within the same 30-day time period, before Petitioners have been afforded any hearing or process at the Regional Board level. Further, it is inconceivable that any hearing could be appropriately conducted by the Regional Board unless Regional Board staff first provides Petitioners and the other PRPs with support for the findings and conclusions made in the CAO, followed by an opportunity to submit rebuttal evidence. For the same reasons, it is impractical if not

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impossible for Petitioners to submit their evidence and written comments now, in a complete evidentiary void. Any Regional Board hearing conducted in the absence of an opportunity for the PRPs to review the Regional Board staff's evidence against them will constitute a denial of due process, and be the practical equivalent of no hearing at all.

6. *The action the petitioner requests the State Water Board to take.*

Petitioners request that the State Board amend the CAO, or direct the Regional Board to do so, so that Petitioners are removed as named responsible parties. In the alternative, Petitioners request that the State Board direct the Regional Board staff to afford the PRPs their constitutionally-protected due process rights by, among other things, providing PRPs with the evidentiary bases for the staff's findings and conclusions in the CAO, and allowing the PRPs a meaningful opportunity to respond to such evidence, including the opportunity to take any necessary discovery. Finally, Petitioners request that the State Board direct the Regional Board to schedule and hold any hearings, and extend all deadlines under the CAO until, after the PRPs have received the staff report and/or supporting evidence, and have had a reasonable amount of time to meaningfully review the information. Accordingly, Petitioners request a stay of the CAO, including all deadlines listed therein, pursuant to California Water Code section 13321. See Exhibit "C" (Declaration of Stephen D. Foulkes, Ph.D.).

7. *A statement of points and authorities for any legal issues raised in the petition, including citations to documents or hearing transcripts that are referred to.*

Petitioners will prepare a comprehensive statement of points and authorities, including legal arguments, and cite to evidence in reports and other documents, if and when it becomes clear that Petitioners' concerns cannot be resolved at the Regional Board level. At that time, Petitioners will request that the abeyance of this Petition be lifted.

8. *A statement that copies of the petition have been sent to the Regional Water Board and to the discharger, if different from the petitioner.*

Copies of the Petition are being mailed to the following people at the Regional Board: David Gibson, Executive Officer; Craig Carlisle, Supervisor, Central San Diego Groundwater Unit and Christian Carrigan, Senior Staff Counsel.

9. *A statement that the issues raised in the petition were presented to the regional board before the regional board acted, or an explanation of why the petitioner could not raise those objections before the regional board.*

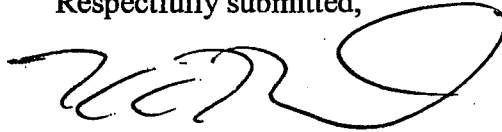
Petitioners were not afforded an opportunity to present the issues raised herein to the Regional Board before the CAO was issued as final. Particularly, there was no public notice of a draft CAO prior its issuance, nor was there any administrative process

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through which Petitioners could have presented their concerns to the Regional Board. Indeed, the CAO was not even issued through a formal Regional Board action. However, Petitioners did provide Regional Board staff with a copy of the Court Order on January 14, 2010. Concurrently with the filing of this Petition, Petitioners have filed a request for a hearing before the Regional Board, and a motion to compel the Regional Board to produce all evidence that they intend to rely upon in support of the CAO.

Please contact me if you have any questions or need additional information.

Respectfully submitted,



Kelly E. Richardson
of LATHAM & WATKINS LLP

cc: Christian Carrigan, Senior Staff Counsel, RWQCB
David Gibson, Executive Officer, RWQCB
Craig Carlisle, Supervisor, Central San Diego Groundwater Unit, RWQCB

EXHIBIT A



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

In reply refer to:
SL209304205: Iberlad

February 1, 2010

Mr. Raymond and Mrs. Valerie
Grimsinger
31663 Palos Verdes Drive
Escondido, CA 92026
Certified Mail—Return Receipt Requested
7009 1410 0002 2347 6958

Mr. Joseph and Mrs. Hope
Hebdon
15459 Roundtree Road
Valley Center, CA 92082
Certified Mail—Return Receipt Requested
7008 1140 0002 4060 7019

Mr. John Niccoli
1425 Hamilton Lane
Escondido, CA 92029
Certified Mail—Return Receipt Requested
7008 1140 0002 4060 7033

Mr. John Billings
3261 Ocean Front Walk
San Diego, CA 92109
Certified Mail—Return Receipt Requested
7008 1140 0002 4060 7057

Mr. Kevin Bove
134 Whisper Way
Boerne, TX 78006-2953
Certified Mail—Return Receipt Requested
7008 1140 0002 4060 7071

Ms. Victoria Hebdon
445 Estrelita Drive
Vista, CA 92084-7833
Certified Mail—Return Receipt Requested
7008 1140 0002 4060 4022

Consolidated Electrical
Distributors, Inc.¹
c/o Mr. David T. Bradford, Esq.
31356 Via Colinas, Suite #106
Westlake Village, CA 91362
Certified Mail—Return Receipt Requested
7008 1140 0002 4060 7002

Northbrook Properties, Inc.
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017
Certified Mail—Return Receipt Requested
7008 1140 0002 4060 7026

American Salvage, Inc.
c/o Mr. William Van Dusen, Esq.
2878 Camino del Rio South, Suite #200
San Diego, CA 92108
Certified Mail—Return Receipt Requested
7008 1140 0002 4060 7040

Mr. Kenneth G. McCord
176 South Shadow Pines Road
Orange, CA 92869-6566
Certified Mail—Return Receipt Requested
7008 1140 0002 4060 7064

Mr. James Robert Dennis
12526 High Bluff Drive, Suite 300
San Diego, CA 92130-2067
Certified Mail—Return Receipt Requested
7008 1140 0002 4060 7088

¹ No known address exists for Consolidated Electrical Distributors, Inc.

February 1, 2010

Dear Responsible Parties for the Former Hebdon Electronics Site:

**SUBJECT: CLEANUP AND ABATEMENT ORDER NO. R9-2010-0007 FOR THE
FORMER HEBDON ELECTRONICS SITE, ESCONDIDO, CALIFORNIA**

Enclosed is Cleanup and Abatement Order No. R9-2010-0007 which supercedes all previous Cleanup and Abatement Orders (CAO's) for this site, including CAO No. 98-58 and Addenda No. 1, 2, and 3. The purpose of issuing a new Order for the Former Hebdon Electronics Facility is to: 1) summarize the extensive regulatory history of this case; 2) clarify the Site definition; 3) revise the list of parties responsible for cleanup and abatement actions under this Order; 4) update the list of contaminants of potential concern (COPCs) to include 1,4-dioxane and metals; and 5) provide updated directives that must be followed in the path to closure.

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) recognizes the tasks that have been accomplished to date by the Responsible Parties in response to directives in CAO No. 98-58 and addenda, including soil excavation in the source zone; groundwater extraction and treatment; groundwater monitoring data collection; and a pilot study for in-situ chemical oxidation. However, these efforts are insufficient to bring this site to closure as significant VOC, SVOC, and metal groundwater contamination persists as explained in Findings 7 and 8 of Order No. R9-2010-0007.

An updated feasibility study and human health risk assessment must be submitted to address the current status of the site with a revised COPC list that includes 1,4-dioxane as one of the contaminants of concern. The previous *Feasibility Study and Screening Human Health Risk Assessment* (dated April 27, 2001) met Directive 4 in CAO No. 98-58 at the time but was based upon the assumption that "no further remedial actions (would) occur" at the site. This assumption has been invalidated by site activities as summarized in the attachment to the Order.

The responsible parties also began monitoring for the contaminant of emerging concern 1,4-dioxane in groundwater in 2002 because this chemical, a probable human carcinogen associated with 1,1,1-TCA, must be included in the site investigation to be in full compliance with Water Code section 13304. CAO No. R9-2010-0007 formalizes this requirement for 1,4-dioxane analysis as CAO No. 98-58 was never amended to reflect this change.

A list of all deliverables required by the new Order and the timetable for completion is provided in the table in Directive 9.

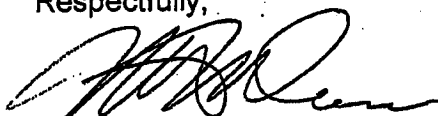
California Environmental Protection Agency

February 1, 2010

Please be advised that this cleanup is regulated under Water Code section 13304 and State Board Resolution No. 92-49. As discussed in past meetings, the San Diego Water Board cannot modify what is required under the law based upon an assertion of limited financial resources on the part of the discharger. Trustees for the Meyers-Opper Trust have notified the San Diego Water Board that Trust funds are dwindling, however, additional responsible parties are being named as allowed under the law and their assets may be recovered for cleanup costs. Also note that indemnification agreements between parties protect private rights but do not exempt property owners from potential liability under Water Code section 13304.

If you have any questions, or require additional assistance, please contact Ms. Lynn Berlad of my staff at (858) 268-5363 or lberlad@waterboards.ca.gov.

Respectfully,



Michael P. McCann
Assistant Executive Officer

MPM:jac:clc:lgb

Attachments:

Cleanup and Abatement Order No. R9-2010-0007 with Attachment 1,
Regional Board Enforcement History for the Former Hebdon Electronics Facility

cc via email with attachments:

Mr. S. Foulkes, Trustee, Meyers/Opper Trust
Mr. Cristian M. Carrigan, Esq. State Water Board Office of Enforcement (OE)
Ms. Ann K.B. Carroll, Esq. State Water Board OE
Mr. Kelly E. Richardson, Esq. Latham & Watkins, LLP
Ms. S. Sibel Tekce, Camp, Dresser & McKee Inc.

California Environmental Protection Agency

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

CLEANUP AND ABATEMENT ORDER NO. R9-2010-0007

**AN ORDER DIRECTING RAYMOND GRIMSINGER, VALERIE GRIMSINGER,
JOSEPH HEBDON, VICTORIA HEBDON, JOHN NICCOLI, THOMAS MYERS,
HOPE HEBDON, JOHN BILLINGS, KEVIN BOVE, KENNETH MCCORD,
JAMES DENNIS, CONSOLIDATED ELECTRICAL DISTRIBUTORS,
INC., NORTHBROOK PROPERTIES, INC. AND AMERICAN
SALVAGE, INC. TO CLEANUP AND ABATE THE EFFECTS
OF WASTE AND SUBMIT TECHNICAL REPORTS
PERTAINING TO CORRECTIVE ACTIONS**

AT THE

**FORMER HEBDON ELECTRONICS FACILITY
2250 MEYERS AVENUE, 655 OPPER STREET, 665 OPPER STREET
ESCONDIDO, CALIFORNIA 92069**

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

- 1. Legal and Regulatory Authority.** This Order implements policies and requirements of the Porter-Cologne Water Quality Control Act (Division 7, commencing with Water Code section 13000) including (1) sections 13267 and 13304; (2) all applicable provisions of the Statewide Water Quality Control Plans adopted by the State Water Resources Control Board (State Board) and the *Water Quality Control Plan for the San Diego Basin (Basin Plan)* including beneficial uses, water quality objectives, and implementation plans; (3) State Board policies and Regulations, including Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*), and Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under California Water Code Section 13304*); California Code of Regulations (CCR) Title 23, section 3890 et. seq.; (4) applicable State and federal regulations, standards, and advisories.
- 2. Cleanup and Abatement Order No. R9-2010-0007.** The findings and directives in this Cleanup and Abatement Order (CAO) supersede the directives in CAO No. 98-58 and Addenda 1, 2, and 3 for the Former Hebdon Electronics Facility. CAO No. 98-58 is superseded by this Order as of the date of this Order—February 1, 2010.

3. **Definition of Site.** Three contiguous properties where printed circuit board manufacturing and plating activities (including wastewater treatment and/or chemical storage) from 1971 to 1992 caused or permitted discharges of industrial wastes to waters of the state, comprise the Former Hebdon Electronics Facility (Facility) for purposes of this Order. These three properties are located at 2250 Meyers Street, 655 Opper Street, and 665 Opper Street, Escondido. The corresponding Assessor's Parcel Numbers (listed south to north) are: 228-420-3000; 228-420-1900; and 228-420-2900. The "Site" includes the Facility and the full lateral and vertical extent of the groundwater plume(s) of contamination beyond Facility property boundaries.¹
4. **Regulatory Background.** Attachment One outlines the San Diego Water Board enforcement history for this Site from CAO No. 97-46 (rescinded) through CAO No. 98-58 and addenda, and compliance responses by the Responsible Party leading up to the issuance of CAO No. R9-2010-0007. Preliminary site investigations and source removals initiated between 1992-1995 at one or all of the Facility properties, during the period when the San Diego County Hazardous Materials Management Division (HMMD) was the lead regulatory agency, are not included in this Attachment. The administrative record for this Facility is a matter of public record and may be reviewed for more information upon request to the San Diego Water Board.
5. **Beneficial Uses of Ground Water.** The Site is located in the Escondido Creek Hydrologic Subarea (HSA 904.62) of the Carlsbad Hydrologic Unit (HU 904.00). The Basin Plan designates beneficial uses for waters of the state, and has designated groundwater in the Escondido Creek HSA with beneficial uses for municipal and domestic supply (including current and potential future uses as drinking water), agricultural, and industrial service supply (Basin Plan, Table 2-5).
6. **Water Quality Objectives.** The Basin Plan contains numeric water quality objectives (WQOs) needed to support beneficial uses and establishes implementation policies to achieve those WQOs. The WQOs are derived from primary Maximum Contaminant Levels (MCLs) established by the California Department of Public Health (CDPH) in Title 22 of the California Code of Regulations for the protection of public drinking water supplies.
7. **Unauthorized Discharges of Waste.** Historically, unauthorized discharges of wastes from industrial activities by owners and/or operators at the Facility caused a condition of pollution in the groundwater aquifer that resulted in the San Diego Water Board enforcement action described in CAO No. 98-58. Volatile organic compounds (VOCs), inorganic compounds, and petroleum hydrocarbon contamination were reported in groundwater above their respective MCLs in violation of Water Code section 13304. Remedial efforts to date (see Attachment One) are insufficient, however, to bring the cleanup

¹ In the Matter of Zoecon Corporation, Order No. 86-2 (State Board 1986).

at this Site to closure. According to the most recent groundwater monitoring report² two metals and seven VOC's were detected above their individual MCLs in wells within Facility boundaries: total chromium; nickel; 1,1-DCA; 1,2-DCA; 1,1-DCE; cis-1,2-DCE; 1,1,1-TCA; and vinyl chloride. Hexavalent chromium was also detected in one well above the practical quantitation limit (PQL) of 0.025 mg/L; this most toxic form of chromium does not have an MCL. The contaminant 1,4-dioxane also does not have an MCL but was detected in every Facility well sampled, above its California Department of Public Health (CDPH) Notification Level of 3.0 µg/L. These Facility wastes (summarized in the following table) impair the beneficial uses of groundwater as designated in the Basin Plan and continue to create a condition of pollution in violation of Water Code section 13304.

Detected Contaminant	MCL (µg/L) (unless otherwise stated)	Maximum Concentration at the Site (µg/L)
1,1-DCA	5.0	520
1,2-DCA	0.5	39
1,1-DCE	6.0	930
cis-1,2-DCE	6.0	280
1,1,1-TCA	200	240
1,4-Dioxane	3	2400
Vinyl Chloride	0.5	1.6
TCE	5.0	120
Nickel	.10	0.210
Total Chromium	.05	.15

² Second Quarter Groundwater Monitoring and Remediation Progress Report for the Meyers-Opper Site Escondido California; October 17, 2007, Camp, Dresser, McKee (CDM).

Detected Contaminant	MCL (µg/L) (unless otherwise stated)	Maximum Concentration at the Site (µg/L)
Hexavalent Chromium	0.025	0.032

1. Notification Levels are health-based advisory levels for drinking water ingestion established by CDPH for those chemicals that do not have an MCL.
2. No MCL exists for 1,4-dioxane. The number in the table is the CDPH notification level.
3. No MCL exists for hexavalent chromium. The number in the table is the practical quantitation limit (PQL) from lab analysis. Hexavalent chromium is a known human carcinogen.

8. **Migration of Waste Discharges.** The leading edge of the shallow groundwater plume of 1,4-dioxane is approximately 350 feet from the northern property boundary of 665 Opper Street, according to data collected in 2009.³ 1,4-dioxane was reported in downgradient groundwater samples at a maximum level of 290 µg/L. The sub-surface migration of 1,4-dioxane from the Facility continues to create a condition of pollution in the groundwater aquifer and has the potential to spread further if unabated, due to the high mobility of this contaminant. Levels of trichloroethene (TCE) and tetrachloroethene (PCE) in 2009 were found in downgradient wells at 200 µg/L and 230 µg/L, respectively, which are both above their MCLs of 5.0 µg/L for TCE and 5.0 µg/L for PCE. These VOCs migrating from the Facility exceed WQOs, further degrade groundwater quality, and continue to create a condition of pollution in violation of Water Code section 13304.

9. **History of Ownership and Operations by Property:**

Owners of 2250 MEYERS STREET:	Time Period
CHARLES H. MEYERS CONSTRUCTION	unknown-1970
RCK PROPERTIES INC.	1971-1987
NORTHBROOK PROPERTIES INC.	1987-2001
CORDITA LLC OF ILLINOIS	2001-2003
AMERICAN SALVAGE, INC.	2003-present

³ Down-gradient Plume Characterization Activities-Former Hebdon/Meyers Opper Site in Escondido, CA; March 3, 2009, CDM.

Tenants/Businesses at 2250 MEYERS STREET:

CONSOLIDATED ELECTRICAL DISTRIBUTORS	1971-1987
AEROLITE GLASS MANUFACTURE	1982-1985
HEBDON ELECTRONICS, INC.	1988-1995
USL, INC.	Oct. 1991-Dec 1992

Owners of 655 OPPER STREET:

Time Period

MR. RAYMOND AND MRS. VALERIE GRIMSINGER	1972-2003
KIMMEL FAMILY FOUNDATION	2003-2005
AMERICAN SALVAGE INC.	2005-present

Tenants/Businesses at 655 OPPER STREET:

RAYMOND AND VALERIE GRIMSINGER: RG CIRCUITS	1972-1981
JOSEPH HEBDON, JOHN NICCOLI: RG CIRCUITS	1981-1982
JOSEPH HEBDON, JOHN NICCOLI, VICTORIA HEBDON, THOMAS MYERS: HEBDON ELECTRONICS INC. (HEI)	1982-1991
JOHN BILLINGS, KEVIN BOVE, KENNETH McCORD, JAMES DENNIS: USL, INC. (dba TRUST PRINTED CIRCUITS)	1991-1992

Owners of 665 OPPER STREET:

SAM I. LEWIS AND MARJORIE H. LEWIS	1975-1985
BARON GOLF INC.	1985-1988

JOSEPH HEBDON, HOPE L. HEBDON	April 1988-August 1988
JOSEPH HEBDON, JOHN NICCOLI	August 1988-Dec. 1990
JOSEPH HEBDON, JOHN NICCOLI TRUST	Dec. 1990-1992
OMNI RESOURCES LTD: A Nevada partnership comprised of TEKE INC. (JOHN NICCOLI) and OHANA ENTERPRISES, INC. (JOSEPH L. HEBDON and HOPE L. HEBDON)	1992-1999
AMERICAN SALVAGE INC.	1999-present

Tenants/Businesses at 665 OPPER STREET:

PALOMAR ELECTRONICS	1978-1990
PACIFIC RADIO COMMUNICATIONS	1982-1985
RANGE MASTER	1986-1989
HEBDON ELECTRONICS, INC.	1988-1991
USL/Trust Printed Circuits	1991-1992
U.S. FILTERS	1999-2003

Note: HEI and USL operated across all three Facility properties.

10. **Parties Responsible for the Discharge of Wastes.** Pursuant to the California Water Code, the California Health and Safety Code, and applicable law, the following persons were properly named as dischargers in Cleanup and Abatement Order No. 98-58: Raymond and Valerie Grimsinger; Joseph Hebdon; John Niccoli; Thomas Myers; Victoria Hebdon and John Billings; Kevin Bove; Kenneth McCord; and James Dennis. In addition to the forenamed, this CAO expands the list of Responsible Parties to include the following persons and entities: Hope L. Hebdon; Consolidated Electrical Distributors (CED); Northbrook Properties, Inc. (NPI); and

American Salvage, Inc. CED and NPI are former owners of the 2250 Meyers Street parcel who sub-leased that property to Joseph Hebdon. Mr. Hebdon installed a wastewater (liquid ion exchange) treatment system on 2250 Meyers that caused an unauthorized release of chemical wastes into the waters of the State during the period of CED/NPI successive ownership. Therefore CED and NPI are properly named as additional Responsible Parties in this Order.

Hope L. Hebdon was a co-owner of 665 Opper Street from April 1988-August 1988 as co-principle in the company Omni Resources, Ltd. Omni Resources Ltd. owned 665 Opper Street from 1992-1999. The San Diego Water Board has discretion to hold landowners accountable for discharges which occur or have occurred on the landowner's property based on possession of the land. Therefore Hope L. Hebdon is properly named as an additional Responsible Party.

American Salvage, Inc. (ASI) is the *current* owner of all three Site properties. An Environmental Restriction and Covenant (Covenant) for 2250 Meyers, 655 Opper Street, and 665 Opper Street, Escondido, was recorded on November 25, 2003 between ASI and the previous landowners. This Covenant describes ASI's knowledge of soil and groundwater contamination on the three Site properties at the time of purchase. Yet indemnification agreements among private parties are non-binding on the San Diego Water Board and cannot be used in this case to shield ASI from liability under the Water Code. ASI is therefore properly named as an additional Responsible Party in this Order.

Raymond Grimsinger, Valerie Grimsinger, Joseph Hebdon, Victoria Hebdon, John Niccoli, Hope Hebdon, Thomas Myers, John Billings, Kevin Bove, Kenneth McCord, James Dennis, CED, NPI, and ASI comprise the list of Responsible Parties for the Site as of the date of this Order.

11. **Basis for Cleanup and Abatement Order.** Water Code section 13304 empowers the San Diego Water Board with the authority to enforce cleanup and abatement of waste discharge(s). Specifically, section 13304 requires a person or entity to cleanup waste and/or abate the effects of waste discharge if so ordered by the San Diego Water Board in the event there has been a discharge in violation of waste discharge requirements, or if a person or entity has caused or permitted waste to be discharged or deposited into the waters of the State, thereby creating or threatening to create a condition of pollution. In the case of the Facility, the San Diego Water Board is authorized to order the Responsible Parties (as described in Findings 7 and 8) to cleanup and abate the effects of waste discharge for all contaminants of concern. This includes wastes that were discovered after CAO No. 98-58 was written based

upon new information pertaining to the Site, such as the emerging contaminant and probable human carcinogen 1,4-dioxane.

12. **Basis for Requiring Reports.** Water Code section 13267 provides that the San Diego Water Board may require responsible parties to furnish technical and/or monitoring reports as the San Diego Water Board requires. The burden (costs) of these reports must bear a reasonable relationship to both the need for the information in the reports and also the benefits to be obtained from the reports. In requiring the reports, the San Diego Water Board is obliged to provide a written explanation explaining the need for the reports, and identify evidence that supports requiring the responsible party to provide the reports.
13. **Need for Technical and Monitoring Reports.** Technical reports and Monitoring reports are needed to provide information to the Regional Board regarding (a) the nature and extent of the discharge, (b) the nature and extent of pollution conditions in State waters created by the discharge, (c) the threat to public health posed by the discharge, and (d) appropriate cleanup and abatement measures. The reports will enable the Regional Board to determine the vertical and lateral extent of the discharge, ascertain if the condition of pollution poses a threat to human health in the vicinity of the Site, and provide technical information to determine what cleanup and abatement measures are necessary to bring the Site into compliance with applicable water quality standards. Based on the nature and possible consequences of the discharges (as described in Findings No. 7 and 8, above) the Regional Board's request and Responsible Parties' burden of providing the required reports bears a reasonable relationship to the need for the reports, the costs, and the benefits to be obtained from the reports.
14. **Cost Recovery.** Pursuant to Water Code section 13304, the San Diego Water Board is entitled to, and will seek reimbursement for, all reasonable costs incurred by the San Diego Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
15. **Failure to Comply.** If the Responsible Parties fail to comply with this Order, the Executive Officer may request of the Attorney General to petition the California Superior Court for the issuance of an injunction.
16. **Order Violation.** If the Responsible Parties violate this Order, they may be liable civilly for a monetary amount identified in the Water Code.
17. **State Water Board Policies.** The State Water Board adopted Resolution No. 92-49 the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304*. This Resolution requires that cleanup levels be consistent with State Board Resolution No.68-

16, the *Statement of Policy with Respect to Maintaining High Quality of Waters in California*.

18. **Cleanup Levels.** Resolution No. 92-49 requires that waste be cleaned up to background (zero), or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, CCR section 2550.4. Any alternative cleanup level greater than background must (1) be consistent with the maximum benefit for 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.
19. **California Environmental Quality Act (CEQA) Exemption.** The issuance of this Order is an enforcement action taken by a regulatory agency and is categorically exempt from the provisions of CEQA pursuant to section 15321(a) (2), Chapter 3, Title 14 of the California Code of Regulations. The Order requires submittal of a corrective action plan (CAP) that proposes cleanup activities. The proposed activities under the CAP are not yet known, but implementation of the CAP may result in significant physical impacts to the environment that must be evaluated under CEQA. The appropriate lead agency will address the CEQA requirements prior to implementing any CAP that may have a significant impact on the environment.
20. **Qualified Professionals.** The Responsible Parties' reliance on qualified professionals supports long-term cost effectiveness and proper planning and implementation of cleanup and abatement activities at this site. California Business and Professions Code Sections 6735, 7835 and 7835.1 require that engineering and geologic evaluations be performed by or under the direction of licensed professionals.

IT IS HEREBY ORDERED, pursuant to sections 13267 and 13304 of the Water Code, that the Responsible Parties must comply with the following directives:

1. **Implement the Interim Remedial Action for Persulfate Injection with Additional Monitoring Requirement for Metals.** Implementation of the *Proposed In-Situ Chemical Oxidation (ISCO)-Phase 2 Treatment Program, Former Hebdon/Meyers Oppor Site in Escondido* workplan submitted by the Responsible Parties on May 22, 2009, must begin by **March 1, 2010** according to the conditions described in the San Diego Water Board reply letter of October 13, 2009. Enrollment in the general Waste Discharge Requirement (WDR) No. R9-2008-0081 is required. Since this Phase 2 ISCO treatment has the potential to mobilize metals in groundwater due to displacement from fluid injection and creation of an anaerobic subsurface environment, post-injection groundwater monitoring must also analyze for

metals by the following methods: EPA Method 6010 to analyze for arsenic, lead, copper, chromium, nickel, and thallium based upon site history; bromine analysis to screen for bromate (the most carcinogenic form of bromine) using EPA 321.8 or an acceptable alternative test method. *All analytes from all test methods must be reported.*

2. **Submit a Corrective Action Plan (CAP) within 60 days of completion of the final round of post-injection groundwater monitoring.** The CAP must present and interpret the soil and groundwater results from the Interim Remedial Action in Directive One and discuss the current impacts based on these results. The CAP must include a Feasibility Study to evaluate site remediation and mitigation alternatives. The Feasibility Study must
 - a. evaluate the effectiveness and cost of a minimum of two remedial action alternatives that may be implemented to cleanup the VOC, SVOC, and metals wastes released by the Facility to cleanup levels consistent with Directive 3. One of these alternatives must include an analysis of the feasibility to cleanup all COPCs—including 1,4-dioxane—to background;
 - b. evaluate methods to control the continued off-site migration of Facility contamination;
 - c. propose a time schedule, including interim milestone dates, for completion of each recommended alternative within a reasonable time frame;
 - d. provide the rationale for the method of choice; and
 - e. update the human health risk assessment using current data.

3. **Determination of Cleanup Levels.** The CAP shall evaluate applicable cleanup levels consistent with the following requirements:
 - a. **Groundwater Cleanup Levels.** The Responsible Parties shall cleanup and abate the effects of the discharge in a manner that promotes the attainment of either background water quality or the best water quality that is reasonably attainable if background levels of water quality cannot be restored, considering all the demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. Any alternative cleanup level(s) less stringent than background water quality shall:
 - i. Be consistent with maximum benefit to the people of the state;
 - ii. Not unreasonably affect present and anticipated beneficial use of such water;
 - iii. Not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State Water Board and San Diego Water Board.Alternative cleanup levels less stringent than background water quality that are proposed by the Responsible Parties, are subject to San Diego Water Board review and approval.

- b. **Soil Cleanup Levels.** The Responsible Parties shall propose a range of site-specific soil cleanup levels based upon a technical evaluation of risks from residual soil contaminants and analytic results from contaminant leachability tests performed on an adequate number of significantly contaminated soil samples collected from the Facility. In addition, if no completed exposure pathway exists but contaminated soils remain in place, an estimate of the volume and distribution of those soils must be made from recent sampling data and an accurate site map and cross-sections to scale must be provided.

Soil cleanup levels shall not result in water quality less than the approved groundwater cleanup level, and shall not pose an unreasonable risk to human health and the environment. Soil cleanup levels proposed by the Responsible Parties are subject to San Diego Water Board review and approval.

4. **Implement a Public Participation Plan prior to Implementing the CAP.** This directive is to comply with Water Code section 13307.5 (Notifications). An updated Fact Sheet must be created and distributed to any location affected by a Site release. A public hearing may be necessary based upon public interest.
5. **Implement the Corrective Action Plan (CAP).** The Responsible Parties shall implement the CAP in accordance with the action schedule approved by the San Diego Water Board. The CAP implementation shall begin no later than **September 30, 2010**.
6. **Completion of Soil and Groundwater Cleanup.** Soil and groundwater cleanup goals shall be achieved no later than **October 1, 2015**.
7. **Implement Corrective Action Evaluation Monitoring.** The Responsible Parties shall conduct verification monitoring of all available wells to evaluate corrective action effectiveness in both shallow and deep aquifers and make adjustments to the implementation of the CAP as necessary. This verification monitoring must start by **October 1, 2015** and be performed on a quarterly basis for a minimum of one year. Reduced "key well" plans for groundwater analyses are not acceptable for this purpose. Of the 30 existing monitoring wells, only 8 were used for the second quarter groundwater monitoring round in 2007; new wells may need to be installed with appropriate screen intervals to fill data gaps as indicated. Soil data must also be collected. The approach must provide sufficient data to demonstrate plume stability and/or mass destruction. Computer modelling may also be employed to support plume trends, provided site-specific input parameters are used. A technical report must be submitted to the San Diego Water Board no later than **December 15, 2016** presenting the results of soil and groundwater confirmation sampling

and certifying that cleanup levels have been achieved. A petition to the San Diego Water Board for site closure is contingent upon this certification.

8. **Recording of a Deed Restriction.** The Responsible Parties shall cause a deed restriction to be recorded within the County of San Diego on the properties located at 2250 Meyers Avenue, 655 Opper Street, and 665 Opper Street, Escondido if verification monitoring shows that pollutant releases to groundwater on any or all of the above-named properties continue to exceed applicable WQO's post-remediation. A copy of the deed, reflecting this restriction, shall be provided to the San Diego Water Board Executive Officer within 60 days of its recording. The purpose of this deed restriction is to limit subsurface activities to prevent any inadvertent future exposures to workers or occupants unaware that contaminated soils and/or groundwater at the Facility may present a potential hazardous exposure risk. Present or future owners of these properties may request that the Executive Officer authorize removal of the deed restriction at such time as they are able to demonstrate, with adequate and verifiable data from the groundwater monitoring program or other means, that the pollutant levels in groundwater have stabilized either below WQO's and/or to background conditions.
9. **Compliance Schedule.** The following is a summary of the due dates for activities described in the preceding directives:

DIRECTIVE	ACTION REQUIRED	DUE DATE
1	Begin Implementation of the Interim Remedial Action (IRA) For Persulfate Injection	March 1, 2010
2	Submit a Corrective Action Plan (CAP)	60 days post-IRA
3	Begin Implementation of Public Participation Plan	Must be completed prior to CAP Implementation
4	Begin Implementation of CAP	September 30, 2010
5	Complete Soil and Groundwater Cleanup	No later than October 1, 2015

6	Begin Implementation of Quarterly Corrective Action Evaluation Monitoring	Begin monitoring No later than October 1, 2015
7	Submit Results of Soil and Groundwater Evaluation and Certification of Achievement Of Cleanup Goals	December 15, 2016
8	Record Deed Restriction	If groundwater data post-remediation continue to exceed WQO's

PROVISIONS

- A. NO POLLUTION, CONTAMINATION, OR NUISANCE:** The storage, handling, treatment, or disposal of soil containing VOC waste or polluted groundwater must not create conditions of pollution, contamination, or nuisance as defined in Water Code section 13050(m). The Responsible Parties must properly manage, treat and dispose of wastes and polluted groundwater in accordance with applicable federal, state, and local regulations.
- B. PERMITS FOR WASTE DISCHARGE:** The discharge of any low-volume, non-hazardous waste or waste constituents which are generated as the result of any cleanup and abatement action or interim remedial actions at this site is prohibited, unless the discharge is permitted under the National Pollution Discharge Elimination System (NPDES) or by issuance of Waste Discharge Requirements (WDRs) by the San Diego Water Board under section 13260 of the Water Code.
- C. OPERATION AND MAINTENANCE:** The Responsible Parties shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with this Order.
- D. CONTRACTOR/CONSULTANT QUALIFICATIONS:** All reports, plans and documents required under this Order shall be prepared under the direction of appropriately qualified professionals. A statement of qualifications and license numbers, if applicable, of the responsible lead professional and all

professionals making significant and/or substantive contributions shall be included in the report submitted by the Responsible Parties. The lead professional performing engineering and geologic evaluations and judgments shall sign and affix their professional geologist or civil engineering registration stamp to all technical reports, plans or documents submitted to the Regional Board.

- E. LABORATORY QUALIFICATIONS:** Unless otherwise permitted by the San Diego Water Board, all analyses shall be conducted at a laboratory certified for such analyses by the California Department of Health Services. The Responsible Parties must use a laboratory capable of producing and providing quality assurance/quality control (QA/QC) records for San Diego Water Board review. The director of the laboratory whose name appears on the certification shall supervise all analytical work in his/her laboratory and shall sign all reports submitted to the San Diego Water Board.
- F. LABORATORY ANALYTICAL REPORTS:** Any report presenting new analytical data is required to include the complete Laboratory Analytical Report(s). The Laboratory Analytical Report(s) must be signed by the laboratory director and contain:
- iv. Complete sample analytical report;
 - v. Complete laboratory quality assurance/quality control (QA/QC) report;
 - vi. Discussion of the sample and QA/QC data; and
 - vii. A transmittal letter that shall indicate whether or not all the analytical work was supervised by the director of the laboratory, and contain the following statement, "All analyses were conducted at a laboratory certified for such analyses by the California Department of Health Services in accordance with current USEPA procedures."
- G. ANALYTICAL METHODS:** Specific methods of analysis must be identified in monitoring program reports. If the Responsible Parties propose to use methods or test procedures other than those included in the most current version of *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846* (U.S. Environmental Protection Agency) or 40 CFR 136, *Guidelines Establishing Test Procedures for the Analysis of Pollutants; Procedures for Detection and Quantification*, the exact methodology must be submitted for review and must be approved by the San Diego Water Board prior to use.
- H. ELECTRONIC REPORTING REQUIREMENTS** - The Electronic Reporting Regulations (Chapter 30, Division 3 of Title 23 & and Division 3 of Title 27, CCR) require electronic submission of any report or data required by a

regulatory agency from a cleanup site after July 1, 2005. All information submitted to the San Diego Water Board in compliance with this Order is required to be submitted electronically via the Internet into the Geotracker database <http://geotracker.waterboards.ca.gov/> (The Geotracker Site ID is **SL209304205**). The electronic data shall be uploaded on or prior to the regulatory due dates set forth in the Order or addenda thereto. To comply with these requirements, the Responsible Parties shall upload to the Geotracker database the following minimum information.

- i. Laboratory Analytical Data - Analytical data (including geochemical data) for all soil, vapor, and water samples in Electronic Data File (EDF) format. Water, soil, and vapor data include analytical results of samples collected from: monitoring wells, boreholes, gas and vapor wells or other collection devices, surface water, groundwater, piezometers, stockpiles, and drinking water wells.
- ii. Locational Data - The latitude and longitude of any permanent monitoring well for which data is reported in EDF format, accurate to within 1 meter and referenced to a minimum of two reference points from the California Spatial Reference System (CSRS-H), if available.
- iii. Monitoring Well Elevation Data - Elevation measurements to the top of groundwater well casings for all groundwater monitoring wells. Drinking water wells included in the report, do not need to have the elevation reported unless they are identified as permanent sampling points.⁴
- iv. Depth-to-Water Data - Monitoring wells need to have the depth-to-water information reported whenever water data is collected, even if water samples are not actually collected during the sampling event. Drinking water wells do not need to have the depth-to-water reported unless the wells are surveyed as permanent sampling points and the measurements can be feasibly made in the well.
- v. Site Map - Site map or maps which display discharge locations⁵ streets bordering the Facility property, and sampling locations for all soil, water and vapor samples. The Site map is a stand-alone document that may be submitted in various electronic formats.⁶

⁴ A permanent sampling point is defined as a point that is sampled for more than a 30-day period.

⁵ Former tank(s), product and vapor piping, dispenser or sump locations, and unauthorized discharge or spill areas.

⁶ Formats include .gif, .jpeg, .jpg, .tiff, .tif, .pdf

- vi. Monitoring Well Screen Intervals - The depth to the top of the screened interval and the length of the screened interval for any permanent monitoring well.
- vii. Boring Logs - Boring logs (in searchable PDF format) prepared by an appropriately licensed professional.
- viii. Electronic Report Submittal Requirements - A complete copy (in searchable PDF format) of all assessment, cleanup, and monitoring reports including the signed transmittal letters, professional certifications, and all data presented in the reports.

The GeoTracker website address is <http://geotracker.waterboards.ca.gov>. Deadlines for electronic submittals coincide with deadlines for paper copy submittals. The GeoTracker Global ID for the Former Hebdon Electronics Facility is: **SL209304205**.

- I. **REPORTING OF CHANGED OWNER OR OPERATOR:** The Responsible Parties must notify the San Diego Water Board of any changes in Site occupancy or ownership associated with the properties described in this Order.
- J. **PENALTY OF PERJURY STATEMENT:** All reports must be signed by the Responsible Parties' principal executive officer or their duly authorized representative, and must include a statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge.
- K. **REGULATIONS:** All corrective actions must be in accordance with the provisions of the California Code of Regulations (CCR) Title 23, Chapter 16; the Cleanup and Abatement Policy in the *Water Quality Control Plan for the San Diego Basin (9)*; and State Board Resolution No. 92-49.

NOTIFICATIONS

- A. **COST RECOVERY:** Pursuant to Water Code section 13304(c), the San Diego Water Board is entitled to, and will seek reimbursement for, all reasonable costs actually incurred by the San Diego Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by the Order.
- B. **ENFORCEMENT DISCRETION:** The San Diego Water Board reserves its right to take any enforcement action authorized by law for violations of the terms and conditions of this Order.

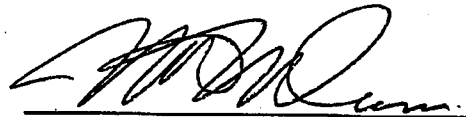
- C. ENFORCEMENT NOTIFICATION:** Failure to comply with the requirements of this Order may subject the Responsible Parties to enforcement action, including but not limited to: imposition of administrative civil liability, pursuant to Water Code sections 13268 and 13350, in an amount not to exceed \$5000 for each day in which the Violation occurs under Water Code sections 13304 or 13350 or referral to the Attorney General for injunctive relief for civil or criminal liability.
- D. REQUESTING EVIDENTIARY HEARING BY THE SAN DIEGO WATER BOARD:** Any person affected by this action of the San Diego Water Board may request an evidentiary hearing before the San Diego Water Board. The San Diego Water Board's Executive Officer may elect to hold an informal hearing or "paper hearing" in lieu of scheduling a hearing before the San Diego Water Board. If you decide to request an evidentiary hearing, send your request to the San Diego Regional Board Executive Officer, Attn: Supervisor, Central San Diego Groundwater Unit, at the address provided on the Order transmittal letter. Please consider the following carefully:
- a. The San Diego Water Board must receive your request within 30 days of the date of this Order.
 - b. Your request must include all comments, technical analysis, documents, reports, and other evidence that you wish to submit for evidentiary hearing; however, please note that the administrative record will include all materials the San Diego Water Board has previously received regarding this Site. You are not required to submit documents that are already in the record.
 - c. The Executive Officer or San Diego Water Board may deny your request for a hearing after reviewing the evidence.
 - d. If you do not request an evidentiary hearing, the State Water Board may prevent you from submitting new evidence in support of a State Water Board petition.
 - e. Your request for an evidentiary hearing, if you submit one, does not stay the effective date of the Order, whether or not a hearing is scheduled.
 - f. A request for a hearing does not extend the 30-day period to file a petition with the State Water Board (see below): however, we suggest that you ask the State Water Board to hold the petition in abeyance while your request for a hearing is pending. (Refer to CCR Title 23 section 2050.5 (d). Additional information regarding the State Water Board petition process is provided below.

February 1, 2010

E. REQUESTING ADMINISTRATIVE REVIEW BY THE STATE BOARD:

Any person affected by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with section 13320 of the Water Code and CCR Title 23 section 2050. The petition must be received by the State Water Board (Office of Chief Counsel, P.O. Box 100, California 95812-0100) within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

Ordered by:



Michael P. McCann
Assistant Executive Officer

Date: February 1, 2010

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

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

ATTACHMENT TO CAO NO. R9-2010-0007

**SUMMARY OF REGIONAL BOARD ENFORCEMENT HISTORY FOR THE
FORMER HEBDON ELECTRONICS FACILITY
2250 MEYERS AVENUE, 655 OPPER STREET, 665 OPPER STREET
ESCONDIDO, CALIFORNIA 92069**

1. On June 12, 1997, this Regional Board issued CLEANUP AND ABATEMENT ORDER NO. 97-46 for FORMER HEBDON ELECTRONICS FACILITY, 655 OPPER STREET, ESCONDIDO, SANDIEGO COUNTY (hereinafter "CAO 97-46") based upon unauthorized discharges of wastes to groundwater from former circuit board manufacture, in violation of Water Code Section 13304. Wastes attributable to operations at the Former Hebdon Facility included: 1,1,1-TCA; TCE and its chemical breakdown products; Methyl Ethyl Ketone (MEK); Acetone; Methylene Chloride; Gasoline (TPH); Lead; Chromium; Chloride; Sulfate; and Total Dissolved Solids.
2. On June 27, 1997, Addendum No. 1 to CAO 97-46 was issued, correcting the address of the referenced property in Directive No. 1.
3. On April 20, 1998, Notice of Violation 98-59 (hereinafter NOV 98-59) was issued for failure to submit a technical report as directed in CAO 97-46.
4. On May 13, 1998, CAO 97-46 and Addendum No. 1 to CAO 97-46 were rescinded and CLEANUP AND ABATEMENT ORDER NO. 98-58 for FORMER HEBDON ELECTRONICS FACILITY, 655 OPPER STREET, ESCONDIDO, SAN DIEGO COUNTY (hereinafter CAO 98-58) was issued. The new CAO named additional parties and set a new compliance schedule, in response to concerns raised in a public hearing.
5. On September 10, 1998, Notice of Violation (NOV) 98-103 was issued for failure to submit a technical report as directed in CAO 98-58.
6. On November 25, 1998, Addendum No. 1 to CAO 98-58 was issued, extending the original compliance dates and rescinding NOV 98-103.
7. On January 15, 1999, the Dischargers submitted a *Groundwater Monitoring Program Workplan* in compliance with Directive No.5 of CAO 98-58.
8. On February 1, 1999, the Dischargers submitted a *Site Investigation Workplan* in compliance with Directive No. 1 of CAO 98-58.

9. On February 11, 1999, Addendum No. 2 to CAO 98-58 was issued, revising analytic requirements for groundwater samples.
10. On April 20, 1999, Notice of Violation 99-29 was issued for failure to submit a technical report as directed in Directive 15 of Addendum No. 1 to CAO 98-58.
11. On April 27, 1999, the Dischargers submitted a quarterly groundwater monitoring report, First Site Monitoring Report, Spring 1999, Meyers-Opper Site, Escondido, CA in response to NOV 99-29.
12. On August 30, 1999, the Dischargers submitted a combined report, *Site Investigation and Second (Quarterly GW) Site Monitoring Report* in compliance with Directive 3 (Soil and Groundwater Investigation Report) and Directive 15 of CAO 98-58.
13. On October 15, 1999, the Dischargers submitted an Interim Removal Action Plan (IRAP) for Clarifier/Solution Separating Sumps in compliance with Directive 16 of CAO 98-58.
14. On June 9, 2000, the Dischargers submitted a Logistics Plan for Interim Removal Action Plan for the Meyers/Opper Site for excavation and removal of contaminated soils in compliance with Directive 16 of CAO 98-58.
15. On September 18, 2000, Addendum No. 3 to CAO 98-58 was issued, setting deadlines for completion of the IRAP and revising the submission deadline for a Feasibility Study as required by Directive No. 4.
16. On March 1, 2001, the Dischargers submitted the Interim Removal Action Report, Former Hebdon Electronics Facility, Escondido, California, in response to Addendum No. 3.
17. On April 27, 2001, the Dischargers submitted a Focused Feasibility Study in compliance with Directive 4 of CAO 98-58 and the new deadline set in Addendum No. 3.
18. On April 8, 2002, the Regional Board (Peter Peuron) reviewed and commented on the December 2001 Groundwater Monitoring Report, Former Hebdon Electronics Facility. Based upon high levels of 1,1,1-TCA contamination reported in MW-1B and MW-28, the Regional Board added the contaminant 1,4-dioxane to the sampling plan, and requested that the Discharger propose corrective measures to address the high VOC levels in groundwater. The CAO was not amended at that time.
19. On August 28, 2002, the Dischargers submitted their Final: June 2002 Groundwater Monitoring Report for the Meyers/Opper Site, Escondido California. The maximum value for 1,4-dioxane was found in MW-10 at 5,600 ug/L while the

maximum for 1,1,1-TCA occurred in MW-28 at 30,000 ug/L . Natural attenuation parameters were analyzed but MNA was determined to be infeasible as a remedial alternative. A pilot study for Enhanced Anaerobic Biodegradation (EAB) was recommended. (Appendix D-1).

20. On June 30, 2003, the Dischargers submitted a Groundwater Remedial Action Plan for the Former Hebdon Electronics Facility to address groundwater impacts from VOCs including TCE, 1,1,1-TCA and 1,4-dioxane. The Regional Board concurred with this limited pump and treat system for four wells in the source zone in a staff letter dated July 9, 2003.
21. On January 18, 2006, the Dischargers submitted a Technical Memorandum to Evaluate Alternative Groundwater Remediation Technologies as the pump and treat system was found to have extracted only 0.22 lbs of total VOCs after operating for 18 months. A pilot study was proposed to test the effectiveness of chemical oxidation for mass destruction, using persulfate injected into downgradient well MW-9 and off-site well MW-25.
22. On April 27, 2006, Notice of Violation No. R9-2006-0060 was issued for failure to file reports electronically in accordance to section 13195, Chapter 3 of the Porter-Cologne Water Quality Control act. The Dischargers outlined steps taken to correct this omission in a response letter to the Regional Board dated June 19, 2006.
23. On February 2, 2007, the Dischargers submitted *Final: 3rd Q 2006 Groundwater Monitoring and Remedial Progress Report, Meyers-Opper Site, Escondido, CA*. This report presented results from the pilot test conducted August 16 and 18, 2006 and requested deletion of the first quarter 2007 GW monitoring program based on relative plume stability.
24. In 2007, the Dischargers submitted three quarterly groundwater (GW) monitoring reports. They further requested reducing the GW monitoring program from quarterly to semi-annually.
25. On November 8, 2007, the Dischargers submitted a letter entitled: *Proposal and Workplan for In-Situ Treatment—Phase 2 Program, Former Hebdon/Meyers Opper Site in Escondido, California*.
26. On March 10, 2008, the Dischargers submitted: *Workplan for In-Situ Groundwater Sampling to delineate the downgradient plume extent of 1,4-dioxane and VOCs the upper zone*. This included plans for new well installation off-site. The Regional Board concurred with this Workplan in a reply letter dated March 26, 2008.
27. On July 2, 2008, the Regional Board sent a letter to the property owner at 2250 Micro Place requesting access to the Mesa Power Systems property for the

purpose of off-site plume investigation. The owner gave his consent in a reply letter dated July 31, 2008.

28. Data from the Hebdon on-site GW monitoring program was not collected in 2008 pending implementation of the March 2008 downgradient workplan.
29. On March 3, 2009, the Dischargers submitted a report entitled *Downgradient Plume Characterization Activities, Former Hebdon/Meyers Oppor site in Escondido*. The report described 1,4-dioxane detections in two shallow zone off-site wells above the CDPH health-based notification level of 3.0 ug/L. (No MCL exists for 1,4-dioxane.)
30. On May 22, 2009, the Dischargers submitted a report entitled *Proposed In-Situ Chemical Oxidation (ISCO) Phase 2 Treatment Program, Former Hebdon/Meyers Oppor Site in Escondido, California*. They proposed revising the Phase 2 injection program by reducing the coverage to 6 wells from an earlier plan (2007) for 17 wells.
31. On July 16, 2009, the Regional Board sent a comment letter to the Dischargers requesting additional technical information and clarification of their March 3, 2009 downgradient characterization results. A response within 30 days was required.
32. On August 10, 2009, the Dischargers submitted a response entitled: *Subject: Regional Board July 16, 2009 Letter Regarding the Report of "Downgradient Plume Characterization Activities—Former Hebdon/Meyers Oppor Site in Escondido*.
33. On October 13, 2009, the Regional Board responded to the May 22, 2009 Phase 2 proposal in a letter entitled: *Comments on Proposed In-Situ Chemical Oxidation (ISCO) Phase 2 Treatment Program*. This letter directed the Dischargers to implement the Phase 2 plan as an interim remedial action (IRA), and also required a Feasibility Study to be submitted after 60 days past completion of the verification monitoring for the IRA.

EXHIBIT B

3/20/99

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SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO
NORTH COUNTY BRANCH

CONSOLIDATED ELECTRICAL
DISTRIBUTORS, INC., et al.,

Plaintiffs,

v.

JOSEPH HEBDON, et al.,

Defendants.

AND RELATED CROSS-ACTIONS.

CASE NO. N 61430
(Consolidated with N 66186)

Judge: HON. DAVID B. MOON

~~Proposed~~ FINDINGS OF FACT
AND CONCLUSIONS OF LAW

DATE: October 8, 1998
TIME: 1:30 P.M.
DEPT: M

DBM

On October 5, 1998, the liability portion of the trial in this matter was commenced in Department M of the above-captioned court. Appearing for plaintiffs was Pamela B. Johnson of the Office of General Counsel of CED and NPI; appearing for the Grimsinger defendants was Doug Simpson of Chapin, Fleming, McNitt, Shea & Carter and Harry McGahey of McGahey & McGahey. Based on the evidence presented to the court by verbal testimony from witnesses, including responses to questions from the court, and writings submitted and entered into evidence, the court hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Raymond and Valerie Grimsinger were the owners of the real property at 655 Opper

1 Street, Escondido, CA at all times relevant to this litigation.

2 2. Northbrook Properties, Inc., or its predecessors-in-interest (NPI), were the owners of the
3 real property at 2250 Meyers, Escondido, CA at all times relevant to this litigation.

4 3. Consolidated Electrical Distributors, Inc. (CED) leased the 2250 Meyers property from
5 NPI at all time relevant to this litigation.

6 4. Raymond Grimsinger operated R.G. Circuits, a printed circuit board manufacturing
7 business, at 655 Opper Street from approximately 1971 to 1981.

8 5. Joseph Hebdon and John Niccoli purchased R.G. Circuits from Raymond Grimsinger in
9 approximately 1981 and continued to operate R.G. Circuits, as Hebdon Electronics, Inc.
10 (HEI), at 655 Opper as a tenant of Raymond and Valerie Grimsinger from 1982 through
11 1991. HEI also operated the printed circuit board manufacturing facility on 665 Opper
12 and 2250 Meyers Avenue.

13 6. In 1991, USL, Inc. acquired the assets of HEI and operated the printed circuit board
14 manufacturing facility on 655 Opper, 665 Opper, and 2250 Meyers until December, 1992.

15 7. Raymond Grimsinger was the only operator on the three properties who used
16 trichloroethene ("TCE").

17 8. All of the operators of the three printed circuit board businesses used chlorinated
18 solvents.

19 9. In the 1970's, Raymond Grimsinger used TCE in trays to clean printed circuit boards in
20 the area of the clarifier. On at least one occasion, the trays splashed, sloshed, and spilled
21 so that TCE ended up on the dirt and gravel ground surface at 655 Opper.

22 10. TCE spilled onto the ground in the area of the clarifier.

23 11. HEI and USL used 1,1,1 trichloroethane ("TCA").

24 12. No TCE or perchloroethylene ("PCE") was ever purchased or used by Hebdon
25 Electronics, Inc. ("HEI") or USL, Inc. ("USL").

26 13. TCA was used to scrub tape residue off of printed circuit boards, either in trays or in a
27

1 detaping machine.

2 14. When the pumps on the detaping machine failed, TCA spilled onto the floor of 655
3 Opper.

4 15. Clogs and back-ups in pumps in the floor drainage system at 655 Opper caused process
5 water to flood the floor of the building.

6 16. TCA used at 655 Opper was released into the soil and groundwater at and around the
7 three properties comprising the site.

8 17. Raymond and Valerie Grimsinger owned the only property of the three properties
9 comprising the site, 655 Opper, 665 Opper, and 2250 Meyers, on which chlorinated
10 solvents were used.

11 18. No chlorinated solvents were used on 2250 Meyers.

12 19. Hazardous substance and hazardous waste contamination was found to exist in the soil
13 and groundwater at, on, under, and about 655 Opper Street, 665 Opper Street, and 2250
14 Meyers Avenue, Escondido, CA (together referred to as "the site").

15 20. The hazardous substance and hazardous waste contamination at the site was comprised of
16 chlorinated solvents, including, but not limited to, trichloroethene (TCE), 1,1,1
17 Trichloroethane (TCA), 1,1-Dichloroethane, 1,1-Dichloroethene, cis-1,2 Dichloroethene,
18 2-Butanone, and Methylene Chloride and metals, including, but not limited to copper and
19 lead.

20 21. The sources of the hazardous substance and hazardous waste contamination that are
21 causing the contamination on the 2250 Meyers property, are primarily the clarifier area
22 located on the 655 Opper property, but also some other outside areas including a spill
23 area at the south side of the 655 Opper property.

24 22. Small surface spills which occurred in the chemical storage berms immediately north of
25 the 2250 Meyers building and on the 655 Opper property led to contamination of the soil
26 underneath the floor of 2250 Meyers with TCA.

1 23. All of the chlorinated solvents which came to be located at 2250 Meyers migrated from
2 the Grimsingers' property, 655 Opper.

3 ~~24. CED and NPI never caused any contamination at the site.~~

4 25. The contamination at 2250 Meyers is above the maximum contaminant levels prescribed
5 by the State of California.

6 26. The plume of contamination spreading northward to MW-9 dates back to the 1970's.

7 27. Degradation products of TCE were found at 2250 Meyers.

8 28. The breakdown products of TCE and other chlorinated solvents came to be located in the
9 monitoring wells of 2250 Meyers due to vapor phase migration from dense non-aqueous
10 phase liquids ("DNAPL's") located at the source of the contamination at 655 Opper.

11 *ABM* 29. ^{There is a strong likelihood that} Migration of chlorinated solvents in fractured granite is occurring and either has or will
12 carry the contamination a considerable distance from the properties.

13 30. So long as the source of contamination on 655 Opper remains in place, chlorinated
14 solvent migration through fractured granite ^{may} will occur, and may occur in the direction of
15 2250 Meyers.

16 31. All chlorinated solvent contamination at 2250 Meyers has as its origin the source of
17 DNAPL's located at 655 Opper or other spills at 655 Opper.

18 32. The source of contamination on 655 Opper is like the hub of a wheel - chlorinated
19 solvents will migrate both laterally and vertically in the groundwater in fractured granite
20 and in soil vapor.

21 33. The Grimsingers caused chlorinated solvent contamination on 655 Opper, allowed their
22 tenants to cause contamination, and when given an opportunity to have the clarifier
23 removed at no cost to them, ^{they declined the offer.} the Grimsingers took no legal action to prevent it.

24 34. Chlorinated solvents have continued to migrate to 2250 Meyers since their initial release
25 in the 1970's and will continue to migrate in the future unless the source of contamination
26 is removed and remediation is commenced on the Grimsingers' property.

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1 ~~35. The Grimsingers and their tenants caused a chlorinated solvent plume that is as severe as~~
2 ~~or more severe than that at the Chatham or Woburn Superfund sites~~

3 36. The Grimsingers could have exercised control over their tenants at 655 Opper to prevent
4 spills and migration of hazardous substances and hazardous wastes, but failed to do so.

5 37. Raymond Grimsinger had special knowledge attributable to his prior operations of R.G.
6 Circuits and control over the source of contamination at 655 Opper.

7 38. The chlorinated solvent plumes generated by the Grimsingers and their tenants are so
8 commingled that it is impossible to distinguish the contaminant plumes created by the
9 Grimsingers and their tenants.

10 39. CED's and NPI's damages were caused by the chlorinated solvents exclusively in the
11 control initially of the Grimsingers and secondarily of their tenants, for whom the
12 Grimsingers are responsible.

13 ~~40. Contamination of 2250 Meyers was not due to any voluntary action or contribution on the~~
14 ~~part of CED and NPI.~~

15 41. San Diego County Health Department sent a letter to NPI, referring to 2250 Meyers, 655
16 Opper and 665 Opper as a three-property site and pursuant to that letter refused to give
17 closure to 2250 Meyers without further investigation and remediation, including 655
18 Opper and 665 Opper.

19 42. The Regional Water Quality Control Board issued a Cleanup and Abatement Order
20 against the Grimsingers and their former tenants, ordering them to investigate and
21 remediate the lateral and vertical extent of the contamination, which includes the
22 contamination at 2250 Meyers.

23 43. The Grimsingers failed to comply with requirements of the San Diego County Health
24 Department and the Cleanup and Abatement Order issued by the Regional Water Quality
25 Control Board.

26 44. 2250 Meyers, CED and NPI will remain vulnerable to enforcement action by the
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1 Regional Water Quality Control Board until the contamination on all three properties is
2 investigated and remediated.

3 45. The Grimsingers refused to allow the removal of the clarifier from 655 Opper when USL
4 requested permission to do so.

5 46. Despite CED's and NPI's requests to the Grimsingers over the past several years to
6 remove the contamination, ~~the Grimsingers have done nothing~~ *have been unanswered*

7 47. CED and NPI have attempted to mitigate their damages.

8 48. The efforts of CED and NPI to investigate and remediate the site and deal with the
9 ~~enforcing agencies has reduced the likelihood that the Grimsingers would have been fined~~ *regulatory*
10 ~~or otherwise punished for failing to comply with enforcing agency directives and orders.~~ *have used reasonable efforts/means*

11 ~~49. CED and NPI have incurred costs plus interest in the amount of \$2,619,799.06 to~~
12 ~~investigate, remediate, and otherwise address the contamination at the site for which the~~
13 ~~Grimsingers are responsible, deal with enforcement agencies with respect to that~~
14 ~~contamination, and take actions to mitigate their damages and protect public health,~~

15 ~~safety, and the environment.~~

16 50. ~~Some~~ *The* contamination at the site ~~may be~~ *is readily* abatable at a reasonable cost.

17 51. ~~Some~~ contamination at the site ~~may not be~~ abatable at a reasonable cost or within a
18 ~~reasonable period of time.~~

19 52. CED and NPI have incurred site investigation and cleanup costs attributable to the
20 contamination at the site for which the Grimsingers are responsible. Such actions have
21 directly benefitted the Grimsingers and their property and relieved them of a portion of
22 ~~the obligations otherwise imposed on them by the enforcing agencies.~~

23 CONCLUSIONS OF LAW

24 1. Raymond Grimsinger, operating as R.G. Circuits, had a duty to handle hazardous
25 substances and hazardous wastes in a manner that would not contaminate 2250 Meyers or
26 the groundwater beneath 2250 Meyers. Raymond Grimsinger breached that duty by
27

1 allowing R.G. Circuits to operate at less than the standard of care for printed circuit board
2 shops and users of hazardous substances and hazardous wastes resulting in the release of
3 hazardous substances and hazardous wastes into the environment where it has degraded
4 and migrated to 2250 Meyers and other properties. Said breach was the actual and
5 proximate cause of damages to CED and NPI.

6 2. Raymond and Valerie Grimsinger have a duty as property owners to refrain from causing
7 migration of contamination onto 2250 Meyers, to keep their tenants from causing
8 migration of contamination onto 2250 Meyers and to take actions necessary to stop the
9 migration of contamination onto 2250 Meyers. The Grimsingers breached those duties by
10 allowing their tenants to operate in a manner which caused releases of chlorinated
11 solvents and other hazardous substances and hazardous wastes into the environment
12 where they could and did migrate to 2250 Meyers. Said breaches were the actual and
13 proximate cause of damages of CED and NPI.

14 3. *The fact the Grimsingers sold their business does not absolve them from discharging their duty*
15 *to properly manage hazardous substances.*
16 Unlike CED and NPI, Raymond Grimsinger was charged with a higher duty of care
17 because of his experience in the printed circuit board industry and the fact that the printed
18 circuit board business, when sold, continued on with his equipment and in his manner of
19 operation.

20 4. The contamination at, on and under 2250 Meyers and emanating from 655 Opper
21 constitutes both a public and a private nuisance for which the Grimsingers are liable to
22 CED and NPI.

23 5. The contamination at, on and under 2250 Meyers and emanating from 655 Opper
24 constitutes a trespass for which the Grimsingers are liable to CED and NPI.

25 6. The Grimsingers are liable to CED and NPI for negligence per se, as they failed to
26 comply with California Health and Safety Code, Sections 25154, 25189.6, California
27 Water Code, Section 13264, and San Diego County Code, Section 64.101. NPI and CED
28 are within the class of persons intended to be protected by these statutes. The

1 Grimsingers breached this duty by failing to maintain their property and operate their
2 facility free from contamination to soil and groundwater, allowing the migration of
3 contamination onto 2250 Meyers and other properties by unlawful discharges of
4 hazardous substances and hazardous wastes, by refusing to allow the removal of the
5 clarifier, and by failing to comply with the requirements of San Diego County Health
6 Services Department.

7 7. CED and NPI are entitled to equitable indemnity as neither entity used ~~any chemicals and~~
8 *BM* ~~specifically did not use~~ any chlorinated solvents at 2250 Meyers or contributed in any
9 way to the chlorinated solvent contamination and on the basis that it was the Grimsingers
10 and their tenants who caused the chlorinated solvent contamination.

11 8. The Grimsingers are jointly and severally liable, with their tenants, for contamination and
12 all damages caused from contamination emanating from the Grimsingers' property.

13 9. CED and NPI are entitled to injunctive and declaratory relief from the Grimsingers.

14 IT IS SO ORDERED.

15 Dated: February __, 1999

16 3/30/99

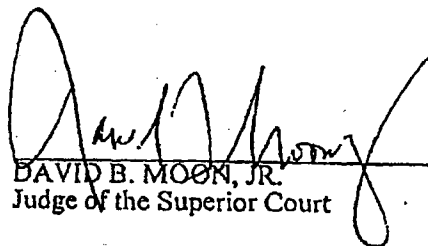
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19 DAVID B. MOON, JR.
20 Judge of the Superior Court
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EXHIBIT C

**Declaration of Stephen D. Foulkes, Ph.D. in Support of Petitioners' Request
for Stay of San Diego Regional Board CAO R9-2010-0007**

I, Stephen D. Foulkes, Ph.D. declare as follows:

1. I am Vice President of Northbrook Properties, Inc. ("NPI") and have held this position for 12 years. I have personal and first-hand knowledge of the facts set forth herein and could and would testify competently thereto if called upon to do so.
2. As Vice President of NPI, I have knowledge of its history as former owner of, and involvement with, the property located at 2250 Meyers Street in Escondido, California, and its tenants on that property. I also have knowledge of the historical activities of the owners and tenants on the contiguous property located at 655 Opper Street, to the extent such activities pertain to and impact the property formerly owned by NPI at 2250 Meyers Street. In my capacity of Vice President of NPI, I have knowledge of the historical and ongoing remediation and monitoring efforts at the 2250 Meyers Street property. Consolidated Electrical Distributors ("CED") (CED and NPI are referred to collectively as "Petitioners") leased the 2250 Meyers Street property from NPI for use as a distribution warehouse for electrical supplies. To the best of my knowledge, no chlorinated solvents, which are the suspected source of the contamination of concern addressed in the San Diego Regional Water Quality Control Board ("Regional Board") Cleanup and Abatement Order No. R9-2010-0007 ("CAO") were ever used by the Petitioners or CED's subtenant on the 2250 Meyers Street property.
3. If a stay of the CAO is not granted, Petitioners will suffer substantial harm. Petitioners have been named in the CAO, which was issued as final by the Assistant Executive Officer without any administrative process at all. Regional Board staff has not provided any evidence supporting the findings in the CAO, including its basis for naming the Petitioners in order, and Petitioners have been denied their due process right to review and respond to the

purported evidentiary basis of the CAO, to take necessary discovery, and to question and cross-examine witnesses, among other things. The CAO should therefore be stayed until Petitioners have had the opportunity to review and contest the evidentiary basis for the CAO, and present its position at an evidentiary hearing before the Regional Board.

4. All available evidence strongly indicates that Petitioners have been incorrectly named in the CAO. Indeed, San Diego County Superior Court Judge David B. Moon issued Findings of Fact and Conclusions of Law on March 30, 1999 ("Court Order") that specifically determined that Petitioners were not responsible for the contamination that is of concern under the CAO, and that such contamination was instead attributable to the operators of a circuit board manufacturing business located on the contiguous Oppen Street property. The Court Order, which contradicts the naming of Petitioners in the CAO and was submitted to the Regional Board by Petitioners, is the only evidence I am aware of that is in the administrative record for the CAO.

5. There will be no substantial harm to other interested persons or the public if a stay is granted. In fact, other interested persons, such as the other named parties in the CAO, members of the Regional Board and the public will benefit if a stay of the CAO is entered, and an evidentiary hearing on the CAO held to facilitate public comment and full disclosure of the evidence underpinning the CAO. Like Petitioners, the other PRPs also were aggrieved by the issuance of the CAO as final without any administrative process or provision of supporting evidence by Regional Board staff.

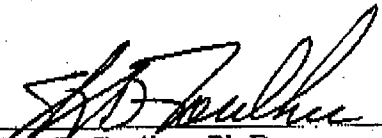
6. Further, I am not aware of any immediate or imminent threat to human health or the environment that would result from a stay of the CAO. There are no ongoing sources of

contamination existing at the site. Further, the Regional Board has been aware of the site conditions for over a decade.

7. There are substantial questions of fact and law surrounding the issuance of the CAO as final by the Assistant Executive Officer. Substantial questions of fact must be resolved for the Regional Board to justify naming Petitioners in the CAO, in light of the contradictory findings and evidence established in the Court Order and through site documents and history. In addition, there are substantial questions of law to be resolved in regards to the process by which the Board staff issued the CAO as final, in the absence of any administrative record, public comment, public hearing, staff report or other evidence supporting the findings and conclusions contained in that order.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 26th day of February, 2010, at Big Bear Lake, California.


Stephen D. Foulkes, Ph.D.