



500 Capitol Mall, Suite 1600
Sacramento, California 95814
main 916.447.0700
fax 916.447.4781
www.stoel.com

May 10, 2012

LOREN J. HARLOW
Direct (916) 319-4753
ljharlow@stoel.com

VIA E-MAIL AND U.S. MAIL

<p>Mr. Kenneth Landau, Assistant Executive Officer Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4726; fax: (916) 464-4645 Email: klandau@waterboards.ca.gov</p>	<p>Mr. David Coupe, Senior Staff Counsel State Water Resources Control Board Office of Chief Counsel c/o San Francisco Bay Regional Water Quality Control Board 1515 Clay Street, Suite 1400 Oakland, CA 94612 Phone: (510) 622-2306; fax: (510) 622-2460 Email: dcoupe@waterboards.ca.gov</p>
<p>Mr. Clint Snyder, Senior Engineering Geologist Central Valley Regional Water Quality Control Board 415 Knollcrest Drive, Suite 100 Redding, CA 96002 Phone: (530) 224-3213; fax: (530) 224-4857 Email: csnyder@waterboards.ca.gov</p>	<p>Mr. Patrick Pulupa, Staff. Counsel State Water Resources Control Board Office of Chief Counsel Physical Address: 1001 I Street, Sacramento, CA 95814 Mailing Address: P.O. Box 100, Sacramento, CA 95812 Phone: (916) 341-5189; fax: (916) 341-5199 Email: ppulupa@waterboards.ca.gov</p>

**Re: RECONSIDERATION OF CLEANUP AND ABATEMENT ORDER, R5-2011-0713
EVIDENTIARY SUBMISSION FOR MR. BOB G. DAVIS**

Gentlemen:

Pursuant to the hearing procedure for the above reference matter, on behalf of Mr. Bob G. Davis, we are submitting the following documents for the Board's consideration:

1. MR. BOB G. DAVIS' BRIEF IN SUPPORT OF AFFIRMING CLEANUP AND ABATEMENT ORDER R5-2011-0173;



Mr. Kenneth Landau
Mr. David Coupe
Mr. Clint Snyder
Mr. Patrick Pulupa
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2. MR. BOB G. DAVIS' WITNESS LIST, PROPOSED TESTIMONY AND ESTIMATED TIME INCLUDING EXPERT WITNESS QUALIFICATIONS;
3. MR. BOB G. DAVIS' EVIDENCE LIST;
4. MR. BOB G. DAVIS' DECLARATION; and
5. MR. BOB G. DAVIS' EXHIBITS

If you have any questions, please contact me.

Very truly yours,

Loren J. Harlow

LJH:mrd
Enclosures

cc: Mr. Bob Davis (email and hardcopy)
Mr. Tony Ackernecht (email only)
TBS Petroleum, LLC dba/Antlers Shell
215 Lake Blvd., Suite 405
Redding, CA 96003
Phone: (530) 949-7886
Email: tonyackernecht@gmail.com

Mr. James Arnold, Esq. (email only)
The Arnold Law Practice
3685 Mt Diablo Blvd, Suite 331
Lafayette, CA 94549
Phone: (415) 439-8831; fax (925) 284-1387
Email: jarnold@arnoldlp.com



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Mr. David Coupe
Mr. Clint Snyder
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Mr. Robert Crandall (email only)
rcrandall@waterboards.ca.gov

Mr. Alex Mayer (email only)
amayer@waterboards.ca.gov

Ms. Pamela Creedon (email only)
pcreedon@waterboards.ca.gov

Mr. Brian Newman (email only)
bnewman@waterboards.ca.gov

Mr. Jim Seiler (email only)
jimseiler@suddenlink.net

Mr. Joe Mello (email only)
jmello@waterboards.ca.gov

**MR. BOB G. DAVIS' BRIEF IN
SUPPORT OF AFFIRMING
CLEANUP AND ABATEMENT
ORDER R5-2011-0173**

1 LOREN J. HARLOW (SB #105772)
2 STOEL RIVES LLP
3 500 Capitol Mall, Suite 1600
4 Sacramento, CA 95814
5 Telephone: (916) 447-0700
6 Facsimile: (916) 447-4781

7 Attorneys for Mr. BOB G. DAVIS

8 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY
9 CONTROL BOARD FOR THE CENTRAL VALLEY REGION

10
11 In the Matter of:

12 Reconsideration of Cleanup and Abatement Order R5-
13 2011-0173,

14 TBS Petroleum, LLC, A California Limited Company

15 Antler's Shell/Subway, 20884 Antlers Road, Lakehead,
16 Shasta County

**MR. BOB G. DAVIS' BRIEF IN
SUPPORT OF AFFIRMING
CLEANUP AND ABATEMENT
ORDER R5-2011-0173**

17 **I. INTRODUCTION**

18 The primary issue at hand is whether the California Regional Water Quality Control
19 Board, Central Valley Region (Board) should affirm or rescind the Cleanup and Abatement Order
20 (CAO) issued by the Executive Officer on December 6, 2011 to TBS Petroleum LLC (TBS) or
21 issue a CAO naming both TBS and Mr. Bob G. Davis (Mr. Davis) as responsible parties.

22 The Executive Officer under delegated authority from the Board reviewed all of the
23 evidence including legal arguments and determined that TBS should be the sole entity named on
24 the CAO. Therefore, Mr. Davis requests that Board affirm the CAO issued by the Executive
25 Officer naming solely TBS as the responsible party.

26 **II. FACTUAL BACKGROUND**

27 Mr. Davis is the former owner of Antler's Shell/Subway (Antler' Shell) located at 20884
28 Antler Road, Lakehead, and Shasta County, California. Mr. Davis acquired Antler's Shell from

1 Mr. and Mrs. Olan F. Bailey on January 30, 1990; and subsequently transferred his interest to
2 TBS on January 4, 2005. (See Davis Decl. ¶ 2.)

3 Mr. Davis removed the single walled storage tanks and piping on October 9, 1997. (Id. at
4 ¶3.) On October 10 and 21 soil samples were collected from the tank cavity pursuant to a
5 directive from the Shasta County Environmental Health Department (SCEHD). The laboratory
6 results reported minor quantities of MTBE and other petroleum hydrocarbons. (Id. at ¶ 4, Davis
7 Exhibit A.)

8 On October 22, 1997, Mr. Davis installed two double walled gasoline underground
9 storage tanks, pressurized double walled flex hose connections, dispenser pans and vapor return
10 lines. New concrete aprons surrounding the tank farm and asphalt surrounding the site were also
11 constructed. (Id at ¶ 5.)

12 On December 16, 1997, SCEHD based upon the laboratory soil sample results, no odor or
13 soil staining upon tank removal and the lack of observed water in the tank cavity issued a letter
14 indicating no further action was required. (Id. at ¶7, Davis Exhibit B & C.)

15 On January 30, 2004, laboratory results from the onsite well collected pursuant to
16 requirements of SCEHD, reported no detectable quantities of VOC including MTBE. (Id. at ¶ 8
17 & 9, Davis Exhibit D.)

18 On December 20, 2004, Mr. Davis entered into a Real Estate Purchase Contract including
19 an addendum indicating TBS was purchasing Antler's Shell on an "as-is" and providing
20 indemnity. (Id. at ¶ 14 & 15, Davis Exhibit E & F.)

21 On April 20, 2005, Mr. Davis transferred ownership of Antler's Shell to TBS. (Id at ¶16.)

22 In the spring of 2007, a water line ruptured inundating the tank farm and resulted in water
23 leaving the site property. The water leak continued unabated for over 2.5 months. (Id. at ¶17, 18,
24 19 & 20.)

25 On June 25, 2008, Regional Board staff issued a request for a Preliminary Site
26 Assessment to both TBS and Mr. Davis due to detections in the onsite water well for MTBE and
27 other petroleum hydrocarbons. (Id. at ¶ 21.)

28

1 In January 2009, TBS filed suit against Mr. Davis seeking damages and declaratory relief
2 for breach of contract, private nuisance, trespass, and breach of implied covenant of good faith
3 and fair dealing and contribution. (Id. at ¶ 23.)

4 In March 2009, LACO Associates on behalf of TBS filed a report containing the results of
5 a limited subsurface investigation and a sensitive receptor study. (Cleanup Team Exhibit ¶ 30.)

6 On July 1, 2009, the Shasta Superior Court, after hearing and TBS's failure to file an
7 amended complaint, granted an order of dismissal with prejudice. (Davis Decl. ¶ 23 and Davis
8 Exhibit H & I.) TBS subsequently appealed the Superior Court decision to the Third Appellate
9 District Court.

10 On April 27, 2010, the Board's Executive Officer issued a CWC 13267 order to TBS and
11 Mr. Davis requiring further site investigation at Antler's Shell. (Cleanup Team Exhibit ¶ 39.)

12 On November 23, 2010, the Third Appellate District Court confirmed the Superior Court
13 decision finding that the "as-is" clause of the sales contract bared TBS's claims for contractual
14 and equitable indemnity. (Davis Decl. ¶ 24, Davis Exhibit J.)

15 In January 2011, the SCEHD prepared an Underground Storage Tank Release
16 (LEAK)/Contamination Site Report for Antler's Shell naming Mr. Davis at the request of TBS as
17 the responsible party. (Id. at ¶ 25, Davis Exhibit K.)

18 On December 6, 2011, the Regional Board Executive Officer issued a CAO to TBS
19 requiring investigation and remediation of the groundwater at and surrounding Antler's Shell.
20 (Cleanup Team Exhibit ¶65.)

21 On April 6, 2012, Board Staff provided notice of the hearing procedures for
22 Reconsideration of Cleanup and Abatement Order R5-2011-0173, TBS Petroleum, LLC, A
23 California Limited Company, Antler's Shell/Subway, 20884 Antlers Road, Lakehead, Shasta
24 County with the possible inclusion of Mr. Davis as a responsible party in a revised CAO. (Id. at
25 69)

26 In April 2012, Mr. Davis retained SHN Consulting Engineers & Geologists, Inc. (SHN) to
27 evaluate site conditions, geology, groundwater and contaminant transport to determine the
28 cause of groundwater pollution at Antler's Shell. (Davis Exhibit N.)

1 **III. LEGAL BACKGROUND**

2 The Water Code in Section 13304 (a) provides the authority for the Regional Board to
3 name a person as a responsible party in a CAO. Section 13304 (a) states the following:

4 *a) Any person who has discharged or discharges waste into the*
5 *waters of this state in violation of any waste discharge requirement*
6 *or other order or prohibition issued by a regional board or the*
7 *state board, or who has caused or permitted, causes or permits, or*
8 *threatens to cause or permit any waste to be discharged or*
9 *deposited where it is, or probably will be, discharged into the*
10 *waters of the state and creates, or threatens to create, a condition*
11 *of pollution or nuisance, shall upon order of the regional board,*
12 *clean up the waste or abate the effects of the waste, or, in the case*
13 *of threatened pollution or nuisance, take other necessary remedial*
14 *action, including, but not limited to, overseeing cleanup and*
15 *abatement efforts. (Emphasis Added)*

16 **IV. LEGAL ANALYSIS**

17 **A. TBS Is the Responsible Party and Appropriately Named Party Under the**
18 **CAO.**

- 19 1. **TBS is the responsible party who has caused or permitted a waste to**
20 **be discharged pursuant to CWC 13304 and failed to exercise**
21 **reasonable care in management of Antler's Shell.**
- 22 a. ***TBS Caused or Permitted Waste to be discharged into waters of***
23 ***the state.***

24 As noted in the CAO,¹ findings 7, 8, 9 and 10, Mr. Davis removed the underground tanks;
25 the County inspected the site, conducted visual observations, collected soil samples, performed
26 analytical testing and issued a no further action letter.

27 During Mr. Davis's ownership of Antler's Shell, he was required by the SCEHD to install
28 a chlorination system to address bacterial contamination and to analyze for VOC's. Mr. Chuck
Goff, CR, Water Treatment, subsequently chlorinated the well and collected samples for
laboratory analysis for VOC's.² There were no detections of VOC's or MTBE.³

¹ Cleanup Team Exhibit ¶ 65), In accord, Davis Decl. ¶ 4 and 7.

² Davis Decl. at ¶ 8.

³ Id. at ¶ 9, Davis Exhibit D.

1 Mr. Chuck Goff in a letter to the Regional Board dated August 8, 2007, indicated that only
2 after the water leak in early 2007 did the presence of MTBE appear in the onsite water well.⁴

3 Mr. Mike Foget, P. E. of SHN Engineers has evaluated existing data and previously
4 prepared reports to determine the cause of groundwater pollution at the Antlers Shell site. In
5 Mr. Mike Foget, P. E. May 8, 2012 report, he has stated: "It is our opinion that the lack of a
6 proper response by TBS to repair the leak created the groundwater contamination observed at the
7 site."⁵

8 Mr. Foget, P.E. statement is based upon the following:

- 9 • The extended leak created a driving aqueous hydraulic force to mobilize the in-situ
10 residual material that remained in the tank pit causing the contamination observed
11 in the recent site investigation and the supply well.
- 12 • This unabated water leak, combined with the hydraulic cone of influence caused
13 by the supply well's operation, created a recirculating system of water that
14 distorted the long-standing equilibrium conditions that had kept the residual tank
15 pit contamination from mobilizing or impacting any sensitive receptors.
- 16 • The subsurface saturation associated with the water leak extended to beneath an
17 adjacent leach field and subsequently mobilized nitrate in a manner similar to the
18 way the water leak mobilized MTBE. Unlike the tank farm, the leach field is not
19 capped by asphalt or concrete.
- 20 • The spike in nitrate concentrations coincides with the spike in MTBE
21 concentrations and the presence of 1, 2 DCA in groundwater, all of which occurred
22 after the water release in the spring of 2007.

23 The State Board has "consistently taken the position that a landowner, who has knowledge
24 of the activity taking place and has the ability to control the activity, has "permitted" the
25 discharge within the meaning of Section 13304.⁶

26 In April 2005, when TBS acquired Antler's Shell, it was aware of a prior leak from the
27 former single walled underground storage tanks.⁷ In fact, the Addendum to the Real Estate
28

⁴ Cleanup Team Exhibit ¶11.

⁵ Davis Exhibit N, SHN letter dated May 8, 2012 by Mike Foget P.E.

⁶ *In the Matter of San Diego Unified Port District*, WQO 89-12 at pg 6.

1 Purchase Contract provided TBS the opportunity to cancel the sale and receive its deposit back
2 should the Site not pass a Phase I environmental inspection.⁸

3 TBS was aware of the contamination at Antler's Shell when it purchased the property.
4 TBS has had exclusive control of the Site since April 2005 and could have abated the water line
5 leak. TBS is a responsible party and the discharger under CWC 13304 (a) since it permitted the
6 unabated water leak that mobilized pollutants thereby permitting them to be discharged to waters
7 of the state and be detected in the onsite water well.

8 ***b. TBS failed to exercise reasonable care in management of the Site.***

9 The State Board has consistently held that "responsibility rests with one who has
10 possession and control of the property".⁹ The State Board relying on Civil Code Section 1714
11 and *Rowland v. Christian* (1968) 69 C.2d 108, has stated: "a possessor or occupier of land is
12 liable for injuries when he fails to exercise reasonable care in the management of his property".¹⁰
13 Additionally, the State Board has stated: "We have applied to current landowners the obligation
14 to prevent an ongoing discharge caused by the movement of pollutants on their property, even if
15 they had nothing whatever to do with putting it there".¹¹

16 With knowledge of the contamination, TBS permitted a water line leak to go unabated for
17 nearly 3 months.¹² Failure to repair a broken water line and permitting water to flood the tank
18 cavity where the former single lined underground tanks existed is clearly not exercising
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20 _____
(... Continued)

21 ⁷ Davis Exhibit J, *TBS Petroleum, LLC v Bob Davis et. al*, C062818 at page 4. "Based upon
22 the allegations of the complaint, the contamination existed at the time the property was sold.
There are no allegations in the complaint that the plaintiffs were not aware of the contamination
or that the defendants failed to disclose contamination on the property."

23 ⁸ Davis Exhibit F.

24 ⁹ *In the Matter of Arthur Spitzer et al.*, WQO No. 89-8 at pg 14.

25 ¹⁰ *Id* at pg 15.

26 ¹¹ *In the Matter of Wenwest, Inc. et al.*, WQO 92-13 at pg 5.

27 ¹² Davis Declaration ¶ 17, 18, 19 and 20. CleanUp Team Exhibit 11, July 10, 2008 letter from
28 Mr. Chuck Goff stating that a water leak flooded the tank farm for several months.

1 reasonable care in the management of its property. TBS failed to act reasonably and therefore is a
2 responsible party.

3 2. **TBS is the responsible party since it purchased Antler Shell on an**
4 **“AS-IS” basis and assumed all liability for the prior conditions of the**
5 **property.**

6 On 20 December 2004, TBS executed an agreement to purchase the Site on an as is
7 basis.¹³ After the Regional Board issued its preliminary site assessment letter to TBS and
8 Mr. Davis, TBS filed a suit seeking damages and declaratory relief for breach of contract, private
9 nuisance, and trespass, breach of implied covenant of good faith and fair dealing and
10 contribution.¹⁴

11 On July 24, 2009, the Shasta Superior Court dismissed the TBS suit with prejudice.¹⁵
12 Dissatisfied with the Superior Court ruling, TBS subsequently appealed to the Third Appellate
13 District.

14 On 23 November 2010, the Third Appellate District in the case C06218, *TBS*
15 *Petroleum, LLC v. Bob Davis, et al.*,¹⁶ stated at page 4: “The as is clause functions to transfer
16 certain liabilities to the new owner. The claims raised in the present complaint are precisely
17 the type of liabilities that were sold with the property.”

18 The Third Appellate District has clearly confirmed and stated that TBS purchased the
19 property and it assumed responsibility for all actions contemplated by the CAO.
20
21
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23

24 ¹³ Davis Decl. ¶ 14.

25 ¹⁴ Id. at 23.

26 ¹⁵ Ibid, Davis Exhibits H & I.

27 ¹⁶ Davis Exhibit J.
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1 **B. Mr. Davis Is Not a Discharger under CWC 13304**

2 1. **Mr. Davis did not cause or permit any waste to be discharged or**
3 **deposited where it is, or probably will be, discharged into the waters of**
4 **the state.**

5 On December 16, 1997, SCEHD based upon the laboratory soil sample results, no odor or
6 soil staining upon tank removal and the lack of observed water in the tank cavity issued a letter
7 indicating no further action was required.

8 As previously detailed in A.1.a., the unabated water leak was the cause of the discharge of
9 wastes to waters of the state. Any residual levels of petroleum hydrocarbons were essentially
10 immobile (they were in the unsaturated zone and below a new and substantial asphalt and
11 concrete cap).¹⁷

12 The residual petroleum hydrocarbons were immobilized in the soil profile covered by a
13 concrete and asphalt cap; and were not where not likely to discharge to waters of the state. The
14 sole reason for the transport of the residual material was the water leak.

15 As noted in SHN's report, the adjacent "leach field is subject to infiltration from
16 precipitation and, by design, is loaded frequently by the disposal of primary treated effluent.
17 Historically, nitrate concentrations in the supply well were below 10 mg/L for 10 years with no
18 apparent seasonal variation. The spike in nitrate concentrations in the onsite well coincides with
19 the spike in MTBE concentrations and the presence of 1, 2 DCA in groundwater, all of which
20 occurred after the water release in the spring of 2007"¹⁸. It is not mere coincidence that on site
21 well pollution for both nitrate and MTBE occurred after the water leak; it is evidence that the
22 water leak mobilized both nitrates and the residual contaminants.

23 The January 27, 2011 Underground Storage Tank Unauthorized Release Report filed by
24 Mr. Mark Cramer (SCEHD¹⁹ naming Mr. Davis as the responsible party was completed over 13
25 years after the single walled tanks were removed and more than 3 years after TBS's water leak

26 ¹⁷ Davis Exhibit N, SHN Report at page 3.

27 ¹⁸ Id. at page 5.

28 ¹⁹ Cleanup Team Exhibit ¶ 47.

1 and discovery of MTBE in the ground water. The unauthorized release form was completed at
2 the request of TBS and it was TBS stated that Mr. Davis was the responsible party.²⁰

3 Mr. Davis did not cause or permit the discharge of wastes nor deposit it where it is, or
4 probably will be, discharged into the waters of the state. The concrete and asphalt cap eliminated
5 any transport mechanism for the residual contaminant to reach the ground water. As stated by
6 Mr. Foget, "it is my professional opinion that the discharge of waste was caused by the waterline
7 leak and would have not have occurred absent the leak."²¹

8 **2. Mr. Davis is not strictly liable under CWC Section 13304 (a).**

9 In the Executive Officer's *Statement of Rationale* at page 1, the following statement is
10 made:

11 *"Mr. Davis, as the owner of the property where an unauthorized*
12 *discharge release occurred, is liable to the Board for cleanup of the*
13 *site."*

14 Contrary to the above statement and its implied assertion, CWC Section 13304 (a) is not a
15 strict liability statute. Mr. Davis should not be determined a responsible party without evidence
16 he caused or permitted any waste to be discharged or deposited where it is, or probably will be,
17 discharged into the waters of the state.

18 The Court in *City of Modesto Redevelopment Agency v. Superior Court of San Francisco*
19 13 Cal.Rptr.3d 865 (2004), 119 Cal.App.4th 28 at page 871 in analyzing CWC Section 13304 (a)
20 indicated that: "The Porter-Cologne similarly appears to be harmonious with the common law of
21 nuisance.... Thus, it appears that the Legislature not only did not intend to depart from the law of
22 nuisance, but explicitly relied on it in the Porter-Cologne."

23 The Board's Staff also concurs at page 1 in the *Statement of Rationale* that CWC 13304
24 (a) is based upon the law of nuisance.

25 The Third Appellate District in the case C06218, *TBS Petroleum, LLC v. Bob Davis, et al.*,
26 reached a similar conclusion.²² In its appeal, TBS asserted that its knowledge of the

27 ²⁰ Davis Decl. ¶ 25, Davis Exhibit K.

28 ²¹ Davis Exhibit N, SHN report at page 6.

²² Davis Exhibit J.

(Continued . . .)

1 contamination “in the absence of an express assumption of liability, is irrelevant to the
2 determination of indemnity for pollution occurring during the Seller’s ownership of the property.
3 The Seller is held strictly liable for the act of pollution at the time of sale does not relieve the
4 Seller of that liability. (Emphasis Added.) In fact, the Buyer is also strictly liable for the cost of
5 remediating the contamination based purely on the ownership of the property, even if the
6 Buyer/Owner did not pollute and had no prior knowledge of these assertions.” The Court held
7 that TBS provided no authority for these assertions, but simply states them as fact. “To entertain
8 this interpretation of the contract would be to eviscerate the “as is clause.”²³

9 While the liability for common law nuisance is broad, however, it is not unlimited.²⁴
10 There is no evidence that discharges were occurring during Mr. Davis’s ownership of Antler’s
11 Shell or that he caused or permitted or deposited waste where it is, or probably will be, discharged
12 into the waters of the state. The unauthorized release form was submitted not by Mr. Davis but
13 TBS and it was TBS stated that Mr. Davis was the responsible party.

14 Although gasoline products were detected in the soil during tank replacement by SCEHD,
15 no gasoline products including MTBE were ever detected in groundwater during Mr. Davis’s
16 ownership. As discussed above, the soil and remaining hydrocarbons were encapsulated by the
17 concrete and asphalt cover. The only conclusion that may be drawn from the evidence is that
18 TBS through its failure to abate a water leak for nearly 3 months mobilized MTBE and caused or
19 permitted wastes to be discharged to the water of the state.

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(... Continued)

26 ²³ Id. at page 9.

27 ²⁴ City of Modesto Redevelopment Agency v. Superior Court of San Francisco 13
28 Cal.Rptr.3d 865 (2004), 119 Cal.App.4th 28, page 872.

1 C. Finding Mr. Davis a Responsible Party Does Not Advance or Permit TBS to
2 Recover Remediation Costs from the Underground Storage Tank Fund.

- 3 1. **Mr. Davis does not have a claim assignable to TBS pursuant to State**
4 **Board Orders WQ 99-02-UST and WQ-2000-6-UST.**
5 a. *State Board Orders: Assignment of Rights to Underground Tank*
6 *Fund.*

7 In the Matter of *Lake Publishing Company*, WQ 2000-6-UST, the State Board considered
8 whether an eligible claimant may assign its rights to reimbursement from the Fund. The State
9 Board determined that assignments were permissible provided that a “conjunction of the right to
10 reimbursement and incurrence of eligible costs”²⁵ were determined.

11 The State Board stated in *Lake Publishing Company (Lake)* at page 21 the following:

12 *“In addition to the fundamental precept that the incurrence of costs must be coupled with*
13 *the right to reimbursement, the Board also observes that other provisions governing "on behalf of*
14 *agreements will limit assignments. In Hollis Rodgers, the Board held that "on behalf of*
15 *agreements may not be used to circumvent the priority scheme or to unravel the provisions of a*
16 *release or indemnity. (Hollis Rodgers, supra, pp. 20-21.) Similarly, the Board concludes that*
17 *claimants may not use assignments to circumvent the priority scheme or to unravel the provisions*
18 *of a release or indemnity. A lower priority claimant may not receive an assignment from a higher*
19 *priority claimant, except to the extent permitted for "on behalf of agreements. (See, Id., pp. 18-*
20 *21.) Further, a claimant may not assign the right to reimbursement from the Fund if the assignee*
21 *has previously released or indemnified the claimant-assignor. (See, Id., p. 21.)” (Emphasis Added)*

22 The State Board has clearly indicated that it has the authority to limit assignments.²⁶ The
23 *Lake* holding restricts assignments from a higher priority claimant (Mr. Davis) to lower priority
24 claimant (TBS), except to the extent permitted for “on behalf of agreements” as defined in the
25 Matter of *Hollis Rodgers*, WQ 99-02-UST.

26

27 ²⁵ In the Matter of *Lake Publishing Company*, WQ 2000-6-UST, at page 20.

28 ²⁶ Id. at page 18, footnote 10.

1 In *Hollis Rodgers*, three examples of agreements between responsible parties that would
2 be an impermissible attempt to circumvent the priority scheme and the party would be advancing
3 costs on their own behalf and therefore not be assignable.

4 1. If a judicial action or comparable action (such as arbitration) results in a definitive
5 apportionment of liability, responsible parties cannot use an on behalf of agreement to
6 unravel the apportionment.²⁷

7 2. If a person has previously released another person from liability at a site, the person
8 cannot then incur costs on behalf of the released party.²⁸

9 3. If a person has previously agreed to indemnify another person, then the indemnitor
10 cannot incur costs on behalf of the indemnitee.²⁹

11 **b. TBS purchased Antler's Shell on an "as-is" basis and provided
12 indemnity to Mr. Davis.**

13 In the Addendum to the Real Estate and Purchase Contract executed on December 20,
14 2004, TBS agreed to purchase Antler's Shell on an "as-is" basis and provide indemnity to Mr.
15 Davis.³⁰ The Addendum provides as follows:

16 *6. (c) If Buyer purchases the Property, Buyer purchases the
17 Property, "As Is", and Buyer is relying and relying solely on
18 Buyer's inspection of the Property and Buyer's experts' inspection
19 of the Property.*

20 *11. (b) Buyer's Indemnity Agreement. Except as otherwise
21 expressly provided in the Contract or from Sellers' use of the asset
22 herein, Buyer shall indemnify, hold Sellers and the property of
23 Sellers free and harmless from and tender a defense against all
24 claims, liability, loss, damage or expense resulting from Buyer's
25 ownership of said assets or Buyer's operation of said assets,
26 including any claim, liability, loss or damage arising by the reason
27 of the injury to or death of any persons or persons, or the damage
28 of any property, caused by the Buyer's use of said assets, the
condition of said assets while owned by Buyer, or the sale or
manufacture of any product or products.*

27 *In the Matter of Hollis Rodgers*, WQ 99-02-UST at page 20.

28 *Id.* at page 21.

29 *Ibid.*

30 Davis Exhibit F, page 5 and 8.

1 c. ***The 3rd Appellate District Court affirmed Shasta Superior Court***
2 ***Decision and apportioned 100% liability to TBS.***

3 In *TBS Petroleum, LLC v. Bob Davis et al.*, C062818,³¹ the court determined that the “as
4 is” of the sales contract bared TBS’s claim for contractual and equitable indemnity and affirmed
5 the Superior Court decision. At page 3, the Appellate court in its Factual Background restated the
6 basis of the Superior Court decision where it stated:

7 *“The trial court sustained Davis’s demurrer with leave to amend.*
8 *The court, citing Shapiro v. Hu (1986) 188 Cal.App.3d 324*
9 *(Shapiro), noted the use of the phrase “as is” means a sale of the*
10 *property in: present or existing condition. The use of the phrase*
11 *relieves a seller of real property from liability for defects in the*
12 *condition of the property. The only exception to this rule is when a*
13 *seller, through fraud or misrepresentation, intention conceals*
14 *material defects not otherwise visible to the buyer. (Emphasis*
15 *added.)*

16 The contract for purchase of Antler’s Shell on an as-is basis transferred all liability to
17 TBS.

18 d. ***TBS agreed to indemnify Mr. Davis from its ownership of***
19 ***Antler’s Shell.***

20 The purchase agreement states that TBS shall indemnify, hold Mr. Davis and the property
21 of Mr. Davis free and harmless from and tender a defense against all claims, liability, loss,
22 damage or expense resulting from TBS’s ownership of said assets.³²

23 Since TBS assumed liability for defects in the condition of Antler’s Shell, any claim
24 against Mr. Davis for defects in the condition from his prior ownership and during ownership of
25 Antler’s Shell by TBS would be subject to the indemnity provision.

26 e. ***Mr. Davis’s eligibility for Underground Tank Funds is not***
27 ***assignable to TBS pursuant to Lake.***

28 TBS has been determined by the 3rd Appellate District Court to be solely liable for the
cost of remediation at Antler’s Shell. Additionally, pursuant to the sales agreement TBS has

³¹ Davis Exhibit J.

³² Davis Exhibit F. pg. 8.

1 agreed to indemnify Mr. Davis for its ownership of Antler's Shell. Pursuant to the 1st and 3rd
2 examples listed above in Hollis Rodgers, an assignment of Mr. Davis's claim to TBS in
3 impermissible. See in accord: page 4, State Board, *UST Assignment of Claim Information &*
4 *Guide*.

5 **D. The Board Should Affirm the CAO Naming Solely TBS as the Responsible**
6 **Party.**

7 As noted in the Board Staff's *Statement of Rationale*, at page 3, State Board Resolution
8 92-49, provides the Board with broad discretion in naming parties in a CAO. While Mr. Davis
9 does not concur with the *Statement of Rationale* assertion that he is a discharger, Mr. Davis does
10 support affirming the current CAO for the following reasons.

11 **1. TBS is a Discharger under CWC 13304(a).**

12 TBS is the responsible party, as discussed above, who caused or permitted waste to be
13 discharged to waters of the state.

14 **2. TBS assumed all liability for prior and existing conditions at Antler's**
15 **Shell as confirmed by the 3rd District Court of Appeal.**

16 TBS purchased Antler's Shell on an "as is" basis. The owners of TBS are sophisticated
17 individuals who were owners of numerous other gas stations and had other sites in the cleanup
18 fund.³³ TBS knowingly assumed the risk; and is now requesting the Board to undo what appears
19 to be a poor business decision.

20 *In PEOPLE of the State of California and City of San Diego v. Kinder Morgan Energy*
21 *Partners, L.P. et al.* (2008) 569 F.Supp.2d 1073 1081-1082, the Court stated: *Notably, however,*
22 *the Water Boards have neither authority nor jurisdiction to award damages to injured parties,*
23 *and prior State Board Orders emphasize the distinction between Board proceedings and civil*
24 *actions. See, In the Matter or Order WR 85-06, 1985 WL 20031 at 2). St. Wat. Res. Bd. October*
25 *17, 1985) (stating that the Boards are not equivalent to courts of general jurisdiction with*
26 *authority to award damages). Courts have long held that the Water Board's administrative*
27 *authority, while extensive, does not displace the courts own substantial jurisdiction to declare*

28 ³³ Davis Decl. ¶ 11.

1 nuisances and grant damages to injured property owners. People v. City of Los Angeles 160
2 Cal.App.2d 494 (1958) Emphasis Added.

3 The Courts have clearly held that TBS is the responsible party for the actions required in
4 the CAO; and the Board should so similarly recognize TBS's liability.

5 3. **Mr. Davis is not a discharger under CWC 13304 (a).**

6 As discussed in B. 1. and 2 above, Mr. Davis did not cause or permit any waste to be
7 discharged or deposited where it is, or probably will be, discharged into the waters of the state;
8 and therefore should not be included in the CAO.

9 4. **Including Mr. Davis of the CAO will not advance or promote the**
10 **Board's responsibility for protecting water quality.**

11 The CAO, if amended to include Mr. Davis as a responsible party would require
12 Mr. Davis to perform acts to investigate, propose and implement remediation measures and to
13 supply an alternative water supply. Mr. Davis has no right of entry to the Site and has no control
14 over operations of the facility.

15 Failure to comply with any of these requirements subjects Mr. Davis to a potential
16 assessment of \$10,000 per day for each violation. Addition of Mr. Davis will only accomplish
17 further litigation between the parties to enforce the prior court decisions. Mr. Davis does not
18 have the present ability to perform; and as discussed above, based upon TBS's determination of
19 responsibility; access to the leaking tank fund is precluded. TBS has both control and access and
20 has the ability to comply with the CAO.

21 By inclusion of Mr. Davis on the order, it would do what the 3rd Appellate District Court,
22 rejected, when it opined that holding Mr. Davis to liability for prior conditions of Antler's Shell
23 would be to eviscerate the "as is clause" in the purchase agreement.

24 ////

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V. **CONCLUSION**

The Board should affirm Cleanup and Abatement Order R5-2011-0173. TBS has assumed all responsibility for past environmental releases; and by its failure to act has permitted the gasoline pollutants to migrate to groundwater and the onsite domestic well. The assumption of liabilities by TBS has been confirmed by the Third Appellate District. There is no substantial evidence that Mr. Davis is a discharger under CWC section 13304 (a).

DATED: May 10, 2012

STOEL RIVES LLP

By: 
LOREN J. HARLOW
Attorneys for BOB G. DAVIS

**MR. BOB G. DAVIS' WITNESS
LIST, PROPOSED TESTIMONY &
ESTIMATED TIME INCLUDING
EXPERT WITNESS
QUALIFICATIONS**

1 LOREN HARLOW (SB #105772)
2 STOEL RIVES LLP
3 500 Capitol Mall, Suite 1600
4 Sacramento, CA 95814
5 Telephone: (916) 447-0700
6 Facsimile: (916) 447-4781

7 Attorneys for Mr. BOB G. DAVIS

8
9 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY
10 CONTROL BOARD FOR THE CENTRAL VALLEY REGION
11

12 In the Matter of:

13 Reconsideration of Cleanup and Abatement Order R5-
14 2011-0173

15 TBS Petroleum, LLC, A California Limited Company

16 Antler's Shell/Subway, 20884 Antlers Road, Lakehead,
17 Shasta County

**WITNESS LIST, PROPOSED
TESTIMONY, ESTIMATED
TIME AND EXPERT
WITNESS QUALIFICATIONS**

18
19 **Mr. Bob G. Davis**

20 Former Owner of Antler's Shell
21

22 *Testimony:*

23 Mr. Davis will testify to his ownership of Antler's Shell, underground tank removal, sale of
24 Antler's Shell, observed water line rupture and leak, and litigation with TBS.
25

26 *Estimated Time:*

27 5 to 7 Minutes
28

1 **Mr. Mike Foget, PE**
2 Environmental Services Director
3 SHN Consulting Engineers & Geologists, Inc.
4
5 Professional Civil Engineer, registered in CA and OR
6 LEED professional

7 Mr. Foget is a California Professional Civil Engineer registered in California and Oregon.
8 He has 20 years of experience in environmental site assessment and remediation projects and is
9 currently the director of SHN's Environmental Services Division. Following is Mr. Foget's
10 complete resume and qualifications as an expert.

11 *Testimony:*

12 Mr. Foget will testify regarding Cleanup and Abatement Order R5-2100-0713, Site
13 conditions, history, data analysis and conclusions. Mr. Foget will also testify regarding
14 underground tank fund requirements.

15 *Expected time required:*

16 Seven to ten minutes.

17
18
19 DATED: May 10, 2012

20 STOEL RIVES LLP

21
22 By: 
23 LOREN J. HARLOW
24 ATTORNEY FOR BOB G. DAVIS

Distinguishing Qualifications

- LEED Accredited Professional, Green building Certification Institute
- Environmental site assessment & remediation
- Designing SVE, dual-phase extraction, bioventing and biosparging systems
- Designing In Situ Chemical Oxidation (ISCO) programs
- CWEA Innovative Engineering Achievement Award, 2001
- ASCE, North Coast Branch, Project of the Year, 2004

Years of Experience: 20

Years with SHN: 15

Education

M.S., Environmental Engineering; Washington State University, Pullman, WA; 1992

B.S., Environmental Resources Engineering; Humboldt State University, Arcata, CA; 1989

Continuing education through NGWA and ITRC, including low-cost remediation strategies

Continuing education, "Optimizing Injection Strategies for Full-Scale In Situ Reactive Zone Remediation," the 5th International Conference on Remediation of Chlorinated and Recalcitrant Compounds (May 2006)

Michael K. Foget, PE, AP

Environmental Services Director/Senior Environmental Engineer

Relevant Experience

Mr. Foget has more than 20 years of experience in a variety of environmental site assessment (ESA) and remediation projects, including Soil Vapor Extraction (SVE), in situ chemical oxidation (ISCO), bioventing and biosparging systems. He developed SHN's monitored natural attenuation program and was awarded the 2001 Innovative Engineering Achievement Award by the California Water & Environment Association (CWEA) for his work on a Dual Phase Extraction Project for Reliable Equipment Company (former), of Arcata.

Mr. Foget has participated in a variety of ESA and remediation projects, including assessments of physical and biological methods of shoreline cleanup used for the Exxon Valdez oil spill. He has prepared conceptual designs and construction plans and specifications for site remediation projects, specified equipment and materials, and supervised contractor installation of soil and groundwater remediation systems. He has also worked on groundwater recovery systems and monitoring wells, the enhancement of free phase liquid hydrocarbon recovery, RCRA contaminated waste disposal, work plans for remedial investigations, and SVE pilot program testing. In addition, Mr. Foget has experience with biological systems such as intrinsic and passive bioremediation as well as composting contaminated soils ranging from petroleum to pentachlorophenol (PCP). He has also conducted numerous site investigations at UST facilities, bulk plants, and industrial timber mills throughout northern California using Geoprobe® and membrane interface probe (MIP).

Representative Environmental Site Assessment Projects

Northern California Remediation Engineer, ConocoPhillips (Formerly Unocal/Tosco). Project Engineer. For more than 8 years, Mr. Foget and the SHN team provided site investigation, engineering design, and installation and operation and maintenance of remediation systems for various COP/Unocal/Tosco bulk plants, throughout far-northern California and southwestern Oregon, including:

- Dual Phase Extraction Remediation and Groundwater Monitoring Activities, Former Tosco/Unocal Bulk Terminal #0201, Eureka, CA. (098179)
- Remedial Assessment, Sparge System, and Biovent System, Former Tosco/Unocal Bulk Plant #0848, Weaverville, CA.
- Site Investigation and Remediation, Former Tosco/Unocal Bulk Plant #0140, Crescent City, CA.

Professional Registrations/ Certifications

California Registered Professional
Engineer, Civil; 1995 #C 054123

Oregon Registered Professional
Engineer, Civil; 2002 #71067PE

Leadership in Energy and
Environmental Design, Accredited
Professional, 2009

California Registered Environmental
Assessor I (REA I) #08207, July 19,
2006

OSHA 40-hour Health and Safety
Training; 1988

BATT 8-hour Refinery Health and
Safety Training; 1993

OSHA 8-hour Supervisor Training;
1994

OSHA 8-hour Health and Safety
Training; 2011

Princeton Groundwater, Inc. Certified
Remediation Professional, 38-hour;
March 2006

OES Disaster Service Worker
#SAP10937. exp. 11/30/2012

Qualified SWPPP Developer
(QSD)/Qualified SWPPP
Practitioner (QSP) #00315

- Underground Storage Tank (UST) Removal, Remedial Action, and Ozone Sparge System, Former Tosco/Unocal Bulk Plant #0228, Garberville, CA.
- Tosco/Unocal Bulk Plant #0220, Fort Bragg, CA.
- Site Investigation Activities, Former Tosco/Unocal Bulk Plant #0629, Redding, CA; Former Tosco/Unocal Bulk Plant, Quincy, CA; Tosco Distributing Company Bulk Plant, Chico, CA; Former Tosco/Unocal Bulk Plant #0769, Susanville, CA; Site Investigation Activities, Tosco Distributing Company Bulk Plant #0954 and Terminal #0124, Coos Bay, Oregon.
- Free Product Recovery, Former Tosco Avon Refinery, Martinez, CA.

Representative Environmental Remediation Projects

Indian Island Brownfields Site, Tuluwat Village, Table Bluff Reservation, Wiyot Tribe, Corrective Action, Eureka, CA. Directed preparation of SAP/QAPP and HASP documents for remedial action for a former boat repair and maintenance yard under the U.S. Environmental Protection Agency (EPA) Brownfields remediation grant program. Site is a 1.5-acre parcel of land on the eastern portion of Indian Island located in Humboldt Bay. It is part of a 6-acre shell mound known as the Wiyot Tribe's Tuluwat Village. Between 1870 and 1990, the site was used as a dry dock for boat repair and maintenance. Hazardous materials, consisting of paints, solvents, metals, petroleum products (and various other chemicals used in ship maintenance and repair) are known to have been used on site. Identified additional funding to conduct bench scale ISCO treatability studies for treating PCP and dioxin. Recognizing the cultural sensitivity of the site, worked with the Tribe to train archeologists to conduct a limited source removal of hazardous materials as opposed to training general contractors to work around culturally sensitive sites.

Site Investigation and Remedial Activities, Beaver Lumber Company; Arcata, CA. Project engineer for site investigation and remedial efforts at the site of a former lumber mill that treated lumber with PCP. Mr. Foget identified peroxide as the remedial action, coordinated and supervised the site remedial work. Approximately 8,000 gallons of peroxide solution were injected into the base of the excavation to address contaminants remaining below the groundwater surface. Additionally, 4,000 gallons of peroxide solution were injected into the base of the column footings and former excavation. Groundwater concentrations in the source well had decreased from an average of 1,900 µg/L (1 year pre-injection) to 0.59 µg/L after 18 months. The site received a letter of "No Further Action" from the California Regional Water Quality Control Board (RWQCB).

Publications

- Foget, Michael K., J. Andrews, R. Vogt, and N. Sherman. (June 2001). "Procedures For Composting Pentachlorophenol Contaminated Soils," *Bioremediation of Energetics, Phenolics, and Polycyclic Aromatic Hydrocarbons*. Victor S. Magar, G. Johnson, S.K. Ong, and A. Leeson eds. San Diego: Battelle Press.
- Foget, Michael K., M.E. Lay, B. Brasseur W. L. Lundy. (March 2004). Pentachlorophenol Remediation at a Former California Wood Treating Facility. San Diego: Battelle Press.
- Foget, Michael K., R. Watts, S. H. Kong, and A. L. Teel. (1999). "Hydrogen Peroxide Decomposition in Model Subsurface Systems," *Journal of Hazardous Materials*. Elsevier Press.
- Foget, Michael K., J. L. Largent, R. Rueber, and R. J. Watts. (May 2008). "Study and Application of Stabilized Catalyzed H₂O₂ Propagations at an Automobile-Dismantling Facility," in *remediation of Chlorinated and Recalcitrant Compounds—2008: Proceedings of the Sixth International Conference on Remediation of Chlorinated and Recalcitrant Compounds*. Monterey: Battelle Memorial Institute.

Remedial Activities, Crowley Maritime Corporation, Crescent City, CA. The site is the former Crowley Maritime Oil Terminal. The facility was built in 1951 and included 28 aboveground fuel tanks of various sizes. Mr. Foget prepared the CAP. Selected remedial alternatives included select over-excavation of "hot spot" soils and on-site biological treatment of stockpiled soils. **All stockpiled soils underwent biological treatment through composting.** Mr. Foget designed a compost mix using locally available materials such as wood chips, wood shavings, finished compost, and fish emulsion stimulated existing bacteria in the soils, and degraded the petroleum hydrocarbons at a low capital and operational cost. A total of 6 windrows were constructed, with volume of approximately 4,630 yd³. This process mineralized hydrocarbon compounds through microbially mediated processes of aerobic respiration. **The site received a letter of "No Further Action" from RWQCB.**

California Medical Facility, Northern CA. Sr. Project Engineer for site investigation of soil and groundwater contamination from Aboveground Storage Tanks and Underground Storage Tanks. (407025; 2007-ongoing; Construction N/A)

Multi-Phase Extraction Pilot Test, Ed's Full Service; Garberville, CA. Site has historic free phase hydrocarbons. Mr. Foget identified and supervised the use of a mobile multiphase extraction unit, for a pilot test, as a viable alternative for free product removal.

Remediation and Groundwater Monitoring Activities, Former Unocal Bulk Terminal; Eureka, CA. Site activities included installation and maintenance of stormwater carbon treatment system, 2 biosparge blower units, and new stormwater drainage pipe placed within existing groundwater contamination. Monitoring of site included groundwater monitoring wells and piezometers for hydrocarbons and chlorinated solvents, and free product. Free product recovery occurs in seven monitoring wells. Sensitive receptors included Humboldt Bay, located adjacent to project site. SHN prepared remedial action plan, selected, designed, and supervised installation of multi-phase extraction system. **Awarded ASCE, North Coast Branch, Project of the Year 2004.**

PALCO Sawmill Complex and Community, Phase 2 Investigation; Scotia, CA. SHN performed Phase 2 for PALCO's approximately 7,000-acre sawmill complex and surrounding community in Scotia. Mr. Foget participated in development and oversight of Phase 2 sampling activities. The project site was associated with an old town site that included residences, stores, sawmill, gas station, dry kilns, vehicle maintenance shop, truck shops, carpenter shop, and other mill- maintenance related areas. Information collected and reviewed from the Phase 2 ISI was used to prepare a matrix of potential site use, and potential non-regulated to regulated operation areas relative to future site redevelopment.

Memberships

- American Society of Civil Engineers (ASCE); 1989
- President, ASCE, San Francisco Section, North Coast Branch; 1997
- Water and Environment Federation (WEF); 1996
- National Groundwater Association (NGWA); 1999
- American Water Works Association (AWWA); 2004
- Engineers Without Borders, 2006

Teaching:

- Humboldt State University, Arcata, California, Engineering 492 "Capstone Design Class," Spring 2006.
- Center for Creative Land Recycling. "North Coast Brownfields: Creating Vibrant Communities," Eureka, California, September 2006.

PALCO Former Service Station; Scotia, CA. Project Engineer for Phase 2 investigation. Over 10 soil borings/temporary well points, 8 membrane interface borings, and 3 additional monitoring wells. Submitted samples for in situ chemical oxidation bench scale tests. Performed aquifer testing to determine hydraulic conductivity. Selected in situ chemical oxidation as remedial action.

City of Eureka--Halvorsen Remediation. The 14-acre site is situated adjacent to Humboldt Bay and has been developed since the mid 1800's. SHN assembled all existing site data into a conceptual model of site conditions and provided a range of potential remediation costs. SHN performed this project on a fast-track basis. This site has since been designated an official Brownfields site, referred to as the Old Carson Mill. Mr. Foget participated in oversight of development of project documents including SCP & QAPP and remedial activities. **SHN performed this project on fast track basis and completed it for approximately 15% less than the budget amount.** (930247)

The Conservation Fund, State of California, Bureau of Land Management, and Barri Trust, Barri Ranch Disposal Site ESA and Remedial Action Plan. SHN performed a Phase 1 & 2 ESA of this property in support of a land transfer to the BLM. The site was found to contain a historic disposal area in which refuse from the adjacent Centerville Naval facility was disposed. Mr. Foget was involved with preparing a remedial action plan to remove the hazardous materials and to minimize the potential environmental risk associated with the remainder of the site, and directed remedial activities. **The site received a letter of "No Further Action" from the RWQCB.**

Ozone Sparge Biovent System, ConocoPhillips; Fort Bragg, CA. In 1998, SHN conducted a subsurface investigation at the Former Tosco/Unocal Bulk Plant #0220 in Fort Bragg. The objectives of this investigation were to identify the source area for diesel contamination in the northern portion of the facility, and to conduct feasibility testing on bioventing and biosparging at the facility. As a result of the pilot testing program, a design for bioventing diesel in the vadose zone and ozone sparging gas and diesel in the groundwater has been prepared. SHN's remedial action plan was approved by the regulatory agency and implemented in winter of 2004. SHN used an MIP to confirm site lithology and determine the optimum depth for sparge point placement. Direct push technology was used to install the sparge wells to minimize waste generation and speed the installation process. System start-up occurred in spring 2004.

Ozone Sparging System, Tosco Corporation; Garberville, CA. Project included SVE/air sparging pilot testing. As a result of pilot testing, ozone sparging was selected as cost-effective in situ treatment for MTBE. Designed and installed 18-sparge point ozone sparge system.

Ozone Sparge System, ConocoPhillips; Weaverville, CA. SHN reviewed existing site data and evaluated remedial actions taken at the plant. The existing remediation equipment was a remediation trench equipped with an SVE/AS system (installed by others). SHN conducted a respirometry test in the source area (using the SVE trench) and in adjacent off-site wells. The respirometry testing evaluated bioventing at the site with existing blower equipment, and estimated degradation rates for hydrocarbons. As a result of the testing, SHN converted the system to a bioventing/biosparging mode. SHN also recommended pulsing the air injection into the trench to reduce operational costs and the amount of preferential pathways in the formation. Part of the performance evaluation also identified the adjacent bulk plant as an additional source of dissolved phase hydrocarbons at the facility. SHN recommended operating existing and future remedial systems in an injection vs. extraction mode to limit on-site migration from the adjacent property. As a result, SHN designed and installed a 20-well ozone sparge system.

Free Product Recovery Trench, Humboldt State University; Arcata, CA. Designed and oversaw installation of free product recovery trench equipped with passive skimmers. Also managed operation and maintenance of **passive skimmers collection system**. Recovery trench was an interim corrective action.

SVE System, Trader Dick's (Former); Eureka, CA. Supervised operation and maintenance of SVE/thermal oxidizer unit at TPHG site. Reduced operation and maintenance costs by 50% by replacing thermox unit with granular activated carbon (GAC) drums. SVE system was converted to operate in bioventing mode after 1 year of operation for treatment of low-level hydrocarbons in vadose zone. **The site recently received "No Further Action."**

SVE/Air Sparge System, Flying J Service Station; Eureka, CA. Supervised operation and maintenance of SVE/air sparge system. Modifications included pulsing air sparging to enhance mixing of groundwater and stripping of volatile organic compounds (VOCs). After 2 years of operation, SHN replaced SVE/catalytic oxidizer with an ozone sparge system and added 3 oxygen diffusion units to **reduce operation and maintenance costs by more than 50%.**

Hazardous Materials Assessment and Remediation, Former Reliable Equipment Site; Arcata, CA. Conducted dual phase vapor extraction feasibility study at site, which included simultaneous extraction of contaminated soil gas and groundwater. Designed and installed extraction test well, subsequently used in the field test. Designed and supervised installation of dual-phased extraction system, a cost-effective method for rapidly remediating both soil and groundwater contaminated with VOC's. Oversaw operation and maintenance of award-winning innovative engineering treatment system. **After 6 months of operation, hydrocarbon concentrations in source area were reduced by up to 90%.**

Remediation Activities, Louisiana-Pacific Corporation Remanufacturing Facility; Cloverdale, CA. Project included pilot testing of SVE, design, specification preparation, construction management, and operation and maintenance of an SVE system and upgradient dewatering trench. SVE design included use of pilot test data in conjunction with HYPER VENTILATE to predict behavior of soil vapors under a vacuum. Site groundwater and soils were impacted with PCP and Stoddard solvent. PCP source was excavated and effected smear zone was treated by lowering the level of groundwater and vapor extracting the exposed smear zone. Extracted vapors were treated with GAC. Prepared permit to operate with Northern Sonoma County Air Pollution District for the SVE system.

Asphalt Cap Design and Construction, Pacific Gas & Electric Corporation, Eureka, CA. The site is located in close proximity to Humboldt Bay and historically housed aboveground Bunker C oil storage tanks and associated pipeline, and a manufactured gas plant. Mr. Fogel prepared the plans and specifications and supervised the construction administration services for an asphalt cap installed at the PG&E yard (former Eureka-1 manufactured gas plant). The asphalt cap was part of an approved

remedial action to limit infiltration of water through soils contaminated with Bunker C oil and minor amounts of VOCs and lighter petroleum hydrocarbon compounds. The project involved removing/renovating an existing substandard drainage system; site grading; installing drop inlets, oil/water separators, and drainage conduits; on-site remediation of runoff; and asphalt concrete paving.

PCP Composting, Louisiana-Pacific Corporation. Developed 5 different formulations to passively treat PCP contaminated soils by composting. Developed compost mix ratios and construction of compost windrows. Windrows were 200 yd³ in size, with average PCP concentrations of 250 mg/kg and a maximum PCP concentration of 1,600 mg/kg. Several pilot cells successfully reduced PCP concentrations below 17 mg/kg within a 6-month period. SHN selected a mix design and treated 10,000 yd³ over 2-year period. **Site soils have received "No Further Action" and have been incorporated as part of the CAP for a woodwaste landfill.**

Remediation Activities, Louisiana-Pacific Corporation Remanufacturing; Chico, CA. Project included design of 80-gpm groundwater treatment facility. Groundwater treatment system was designed to contain PCP, tetrachlorophenol (TCP), ethylbenzene, and xylene from migrating off-site. Groundwater is extracted from 4 wells, and is treated by sedimentation, filtration, and carbon adsorption prior to being reinjected into aquifer down gradient. Lead agency for site is the California Department of Toxic Substance Control (DTSC).

California Department of Forestry Trinidad Fire Station Treatment System. Oversaw weekly site operation and maintenance of groundwater treatment system. Improvements to system included replacement of float switch with load sensing switch in down gradient extraction well to increase drawdown of groundwater, implementing preventative maintenance program which included regular cleaning of filters, conductivity switches, and backflushing of carbon beds. Oversaw implementation of pilot study to enhance in situ bioremediation of hydrocarbon plume. California RWQCB approved recommendation of pilot study using oxygen releasing compound (ORC), and authorized replacement of pump-and-treat system with ORC.

Intrinsic Bioremediation Monitoring Program, COSTCO; Eureka, CA. Established groundwater monitoring program to demonstrate that intrinsic bioremediation was occurring at site. Parameters monitored included dissolved oxygen and oxidation reduction potential. **Monitoring program was part of phased approach, which obtained cost-effective closure for site.**

Bioremediation Project (Confidential Client); Rio Linda, CA. Project involved operation and maintenance of bioremediation system, which included aboveground, fixed-film, 8,000-gallon bioreactor. System was used to treat water pumped from a shallow aquifer beneath the site, effectively removing diesel fuel from groundwater. **To enhance in-situ bioremediation,** treated effluent from bioreactor (rich in nutrients and dissolved oxygen) was discharged upgradient of diesel plume by means of a series of injection wells and an injection trench.

Eductor Well Extraction System Installation, Shell Oil Refinery; Martinez, CA. Participated in installation of eductor well extraction system for hydraulic control of contaminated groundwater. Collected groundwater drawdown data used to evaluate effectiveness of extraction system, performed operation and maintenance on pneumatic skimmers used for free product recovery, and logged boreholes advanced by a bucket auger during construction of extraction wells.

Remediation Activities, Hewlett Packard Company Bowers Facility; Santa Clara, CA. Project involved removal and disposal of aboveground storage tank (AGT) and associated piping, which was identified as Resource, Conservation, and Recovery Act (RCRA) hazardous waste. The most cost-effective means to dispose of material and limit client's disposal liability was to recycle AGT and associated piping while impacted pea gravel and concrete were macro-encapsulated and placed in Class

I landfill as RCRA debris. Other tasks included coordination for SVE pilot test, and evaluation of 2 groundwater treatment systems currently operating at site. Upon examination of historical analytical groundwater data and establishment of groundwater model using FLOWPATH®, it was recommended that 4 of the 6 pumping wells be abandoned and groundwater monitoring schedule be revised. These measures resulted in significant savings to client in monitoring and treatment costs.

TOSCO Avon Refinery; Martinez, CA. Project Engineer for an action plan to provide regulatory compliance for free product liquid hydrocarbon (FPLH) recovery program. Action plan used phased approach starting with negotiations with regulatory agency and finishing with implementation of remedial action plan. Project included planning and coordinating a 2-week pilot test for dual phase extraction (vapor phase and FPLH) for existing FPLH recovery wells. Selection of an internal combustion (IC) engine to perform vapor extraction during pilot test was most cost-effective alternative, which addressed safety issues present at an active refinery.

Interim Remediation Project, Royal Petroleum/Federated Insurance; Sebastopol, CA. Designed, specified equipment, and constructed an automated pneumatic product skimming/pumping system in response to underground gasoline storage tank leaks. System was most cost-effective and expedient alternative to recover free product as an interim remedial measure. With no available utilities on site, a self-contained system was selected, resulting in cost savings for client. **System used bottled nitrogen gas to power pneumatic skimmers and a battery with a solar panel to provide electricity to operate controls.** Free product was recovered in skimmer and pumped to aboveground secondary-contained product collection tank including automatic leak detection and high-level shut-off switch. (Completed 1995; construction N/A)

Groundwater Remedial Design, Prudential Overall Supply; Milpitas, CA. Selected the implementation of passive recovery trench. Site conditions included clay soils with interbedded sand layers to a depth of 20 feet and groundwater contaminated with dense non-aqueous phase liquids (DNAPL's). A trench was located downgradient of the plume, near the property line in order to prevent migration of contaminant off site. Designed and wrote specifications for 22-foot deep, 230-foot groundwater extraction trench. Contaminated groundwater would be captured by extraction trench and conveyed to aboveground treatment system by pneumatic pump.

Polychlorinated Biphenol (PCB) Contamination Soil Remediation Project, Houston Natural Gas Company; AZ. Managed site excavation at 3 different compressor stations along 700-mile pipeline. Reviewed remedial approaches and monitored compliance with applicable federal, state, and local regulations. Supervised crew of 10 subcontractors including a mobile laboratory.

Groundwater Treatment System, Sharps Army Depot; California. Duties included overseeing development of groundwater extraction wells.

Solid Waste Management Representative Projects

Closure and Post-Closure Maintenance Plans, Exxon Benecia Refinery; Benecia, CA. Project involved closure and post closure plans for 2 stockpiles classified as Class III waste management units (WMUs). Each consisted of stockpiled refinery construction debris. Evaluated various closure options and recommended an engineered alternative for each WMU. Tasks included evaluating various capping scenarios and regrading stockpiles. Closure of WMUs was performed in accordance with CCR Title 23, Chapter 154 of Division 3. (Provision 3a [1] i).

Cap Design, PG&E and Southern Pacific Railroad; Union City, CA. Task Manager for PG&E and Southern Pacific Railroad, for cap design for site containing Resource, Conservation, and Recovery Act

(RCRA) waste. Site was historically used to dispose of lead slag from a former steel mill. Modeled various capping scenarios including clay or synthetic liners using the EPA's Hydrologic Evaluation of

Landfill Performance (HELP) model. Performed in situ permeability tests used to confirm effectiveness of native material on which slag was placed as an appropriate liner, which would prevent leachate from impacting groundwater. Also involved with preparing plans and specifications for cap design.

Biosolids Composting Pilot Study, REO Enterprises. Project included compost mixes for dewatered septage (sludge from septic tank haulers). Goal of pilot study was to **demonstrate that septage could be composted by windrows and meet EPA 503 standards.** (095123)

Underground Storage Tank (UST) Representative Projects

UST Removal and Remediation Project, Private Residence; Orinda, CA. Project involved removing three USTs, filing permits, advising client about remedial options, acting as primary regulatory contact, and producing closure reports. Oversaw excavation, sampling, and treatment of 900 yd³ of gasoline impacted soils. Impacted soil was treated by aeration. This on-site remedy minimized costs, avoiding off-site transfer and landfill disposal. Treated material was used on-site during final grading.

Crystal Creek Conservation Camp Remedial Activities, California RESD; Shasta County, CA. Oversaw overexcavation of approximately 150 yd³ of hydrocarbon impacted soils from two former 1,000-gallon USTs, and a 250-gallon waste oil tank. Collected sidewall and soil stockpile samples. Overexcavated soils were temporarily stockpiled on-site then treated off-site prior to disposal. Oversaw backfilling and abandonment of groundwater monitoring wells. (595028; 1997)

Alder Conservation Camp Site Investigation Activities; California Department of Forestry. Field program included installation and sampling of ten temporary well points. Dissolved oxygen and redox information was collected in the field and used to determine the last four well point locations. (095253)

Alameda County General Services Agency UST Removal; San Leandro, CA. Project involved applying for permits, working with regulatory agencies, supervising subcontractors during tank removal, and generating closure reports for all tanks.

South Y Center UST Remediation Project; South Lake Tahoe, CA. During installation of storm water interceptor, an unknown tank containing diesel fuel was uncovered. Within two working days, Mr. Fogel obtained permits, arranged for removal of 750 gallons of fuel, and closure of the tank. Oversaw excavation and sampling of 700 yd³ of diesel impacted soil, researched disposal options for contaminated soil, and selected recycling at local asphalt plant. This resulted in cost savings over landfill disposal of diesel impacted soils.

Remedial Investigation/Feasibility Study Representative Projects

Site Investigation and Remediation, Clandestine Methamphetamine Laboratory, Fireman's Fund; Swains Flat (rural Humboldt County), CA. Project involved working with local law enforcement to research and develop a sampling protocol for indicators of methamphetamine production and locating a disposal facility for contaminated soils.

Site Investigation Activities, Tosco Distribution Company Bulk Plant; Crescent City, CA. Project involved overexcavation of two source areas, replacement of existing oil/water separator and placement of ORC into the excavation, site investigation using Geoprobe® and installation of additional monitoring wells. Sensitive receptors include a creek that is a tributary to the South Fork of the wild and scenic Eel River. Prepared a CAP recommending ozone sparging.

Site Investigation and Interim Corrective Action, Tosco Distribution Company Bulk Plant; Fort Bragg, CA. Work included development of an interim CAP, which included additional site investigation to locate source areas using an MIP.

Site Investigation and Remedial Action, Tosco Distribution Company Bulk Terminal; Garberville, CA. Tasks included overexcavation of source area to place new UST's. Soils were taken to soil desorption facility. Identification of off-site plume using Geoprobe/Hydropunch equipment.

Remedial Investigation/Feasibility Study, Royal Petroleum/Federated Insurance; Sebastopol, CA. Performed vapor extraction and groundwater pumping tests, and evaluated data from tests using models HYPER VENTILATE® and FLOWPATH®. Provided client contact and interacted with state, county, and local regulatory agencies. Recommended a remedial option, which included source removal by groundwater pumping with granulated activated carbon (GAC) treatment and vapor extraction with thermal oxidation of extracted vapors. Also contributed to the remedial investigation and feasibility reports.

Remedial Investigation/Feasibility Study, Praxair (Formerly Known as Linde Gas Company); South San Francisco, CA. Project involved managing source removal of approximately 5,000 gallons of acetone impacted groundwater (acetone concentrations were as high as 25%) at an active acetylene gas distribution facility. Coordinated and performed soil gas survey, researched discharge requirements for acetone with local publicly-owned treatment works (POTW), and initiated bench scale testing to correlate groundwater acetone concentrations to flash point. Data were used to develop treatment goals that minimize groundwater treatment, yet permit discharge to local POTW. Recommended air stripping of groundwater to reduce acetone concentrations to meet POTW's discharge guidelines.

Environmental Assessment and Bioremediation Study; Prince William Sound, AK. Study involved directing group of 6 scientists and engineers in the field to assess the impact of crude oil on the shoreline and study the effects of bioremediation techniques used during Exxon Valdez oil spill. Mapped the extent of oil contamination, collected site-specific information, prioritized sites to be remediated, and recommended shoreline cleanup methods.

Remedial Investigation of PCB-Contaminated Transformers, Kadina AFB; Okinawa, Japan. Supervised sampling crew to conduct remedial investigation of PCB-contaminated transformers, coordinated efforts with U.S. Air Force and Army Corps of Engineers to de-energize and sample over 400 electrical transformers located in residential area of base, and prepared remediation investigation report.

Remedial Investigation of PCB-Contaminated Soil, Houston Natural Gas Company; California, Arizona, and New Mexico. Project involved developing and implementing work plan to investigate extent of soil and groundwater contamination at compressor stations along 700-mile natural gas pipeline. Tasks included surface soil sampling and logging/sampling boreholes advanced by hollow stem augers.

UST Site Soil Gas Survey; Eureka, CA. Soil gas survey was used to identify extent of hydrocarbon contamination in vadose zone and groundwater. Results from survey were then used to efficiently locate soil borings and groundwater monitoring wells and quantify the extent of the hydrocarbon plume.

Bioremediation Pilot Study, Kotzebue AFB; Kotzebue, AK. Project included evaluation of data from pilot study for bioremediation of diesel impacted soils. Also assisted in coordinating mobilization of field sampling effort.

Remedial Investigation, Hamilton AFB; Novato, CA. Project involved providing subsurface soil and groundwater sampling for investigation, and inventory of hazardous materials at landfill. Also performed soil sampling using split spoon sampler through hollow stem auger.

Sustainable Remediation Projects

Mr. Foget has more than 20 years of experience in a variety of environmental, sustainable, and remediation projects, including bioventing, biosparging systems, composting, and phytoremediation. Mr. Foget has participated in a variety of sustainable remediation projects, including assessments of biological methods of shoreline cleanup used for the Exxon Valdez oil spill. In addition, Mr. Foget has experience with biological systems such as intrinsic and passive bioremediation as well as composting contaminated soils ranging from petroleum to pentachlorophenol (PCP).

Weyerhaeuser Containerboard Packaging Division Mill, North Bend, OR. Project Manager for a feasibility study for the treatment of landfill leachate at the closed Weyerhaeuser Containerboard Packaging Division Mill located in North Bend, Oregon. The goal of the study was to assess the feasibility and relative merits of various options for a passive wetland treatment and discharge system for the treatment of landfill leachate at the Weyerhaeuser Mill. Three alternatives were proposed. Results of the treatment wetland analysis indicated that the lined treatment wetland alternatives provided the greatest treatment capabilities. A preliminary cost estimate for the construction and operation and maintenance of a lined treatment wetland system was provided. Mr. Foget oversaw the design of the wetland leachate treatment system.

Former Unocal Eureka Bulk Plant Phyto Remediation. Worked with site owner to assist in the development, permitting, and plant selection, and is currently conducting operation maintenance of a 500-acre phyto remediation system. The phyto remediation system is treating a petroleum hydrocarbon plume, and after one year of operation it was able to replace a mechanical dual phase extraction system, and an associated biovent system for a combined reduction of 30hp in pumps and blowers.

Remedial Activities, Forest Products, Crowley Maritime Corporation, Crescent City, CA. The former Crowley Maritime Oil Terminal was built in 1951, and its tank farm included 28 aboveground fuel tanks (with a capacity of 7.6 million gallons) and pipelines a mile long. Mr. Foget prepared the Corrective Action Plan, in which 400 cubic yards of "hot spot" materials were excavated and 1,300 cubic yards of contaminated soils underwent on-site **biological remediation**. Mr. Foget designed a compost mix using locally available materials such as wood chips, wood shavings, finished compost, and fish emulsion to stimulate existing bacteria in the soils that degrade the petroleum hydrocarbons. This environmentally sustainable process saved the client approximately \$1.5 million. The site received a letter of "No Further Action" from RWQCB.

Free Product Recovery Trench, Humboldt State University; Arcata, CA. Designed and oversaw installation of free product recovery trench equipped with passive skimmers. Also managed operation and maintenance of **passive skimmers collection system**. Recovery trench was an interim corrective action.

PCP Composting, Louisiana-Pacific Corporation. Developed 5 different formulations to passively treat PCP contaminated soils by composting. Developed compost mix ratios and construction of compost windrows. Windrows were 200 yd³ in size, with average PCP concentrations of 250 mg/kg and a maximum PCP concentration of 1,600 mg/kg. Several pilot cells successfully reduced PCP concentrations below 17 mg/kg within a 6-month period. SHN selected a mix design and treated 10,000 yd³ over 2-year period. Site soils have received "No Further Action" and have been incorporated as part of the CAP for a woodwaste landfill.

Intrinsic Bioremediation Monitoring Program, COSTCO; Eureka, CA. Established groundwater monitoring program to demonstrate that intrinsic bioremediation was occurring at site. Parameters monitored included dissolved oxygen and oxidation reduction potential. **Monitoring program was part of phased approach, which obtained cost-effective closure for site.**

Bioremediation Project (Confidential Client); Rio Linda, CA. Project involved operation and maintenance of bioremediation system, which included aboveground, fixed-film, 8,000-gallon bioreactor. System was used to treat water pumped from a shallow aquifer beneath the site, effectively removing diesel fuel from groundwater. **To enhance in-situ bioremediation**, treated effluent from bioreactor (rich in nutrients and dissolved oxygen) was discharged upgradient of diesel plume by means of a series of injection wells and an injection trench.

Interim Remediation Project, Royal Petroleum/Federated Insurance; Sebastopol, CA. Designed, specified equipment, and constructed an automated pneumatic product skimming/pumping system in response to underground gasoline storage tank leaks. System was most cost-effective and expedient alternative to recover free product as an interim remedial measure. With no available utilities on site, a self-contained system was selected, resulting in cost savings for client. **System used bottled nitrogen gas to power pneumatic skimmers and a battery with a solar panel to provide electricity to operate controls.** Free product was recovered in skimmer and pumped to aboveground secondary-contained product collection tank including automatic leak detection and high-level shut-off switch.

Environmental Assessment and Bioremediation Study; Prince William Sound, AK. Study involved directing group of 6 scientists and engineers in the field to assess the impact of crude oil on the shoreline and **study the effects of bioremediation techniques used during Exxon Valdez oil spill.** Mapped the extent of oil contamination, collected site-specific information, prioritized sites to be remediated, and recommended shoreline cleanup methods.

Bioremediation Pilot Study, Kotzebue AFB; Kotzebue, AK. Project included evaluation of data from pilot study for **bioremediation of diesel impacted soils.** Also assisted in coordinating mobilization of field sampling effort.

Industrial Hygiene Projects

Mr. Foget has managed numerous industrial hygiene projects ranging from indoor air quality in an industrial setting to development of an IIPP and safety programs for treatment at a Superfund site.

Hazardous Materials Investigation, and Remediation Design and Implementation; California DGS-RESD; California Dept of Forestry; Various Sites. Project Engineer for an assessment of soil and groundwater conditions, to collect various data, and to characterize the extent of contamination at various CDF sites.

Hazardous Materials Investigation, and Remediation Design and Implementation; California DGS-RESD; California Correction Center; Susanville, CA. Project Engineer for further definition of the extent of the hydrocarbon contamination in the vicinity of the former tanks and to determine whether groundwater has been impacted.

Environmental Services Consultants for the Superior Courts of California ERM-SHN Team, Northern California. As part of the ERM-SHN team, served as Project Manager for health & safety plan reviews and provided QA/QC review of Phase 2 Geoprobe environmental assessments conducted by SHN at the Yreka courthouse annex and the Redding courthouse annex.

Proposed Community Services District and Subdivision, Town of Scotia Program EIR, Scotia CA. Project Manager for mill and town CEQA compliance activities. SHN assisted with CEQA compliance including preparation of an EIR, evaluation of the town's utilities, feasibility of merging with a neighboring community, formation of a CSD, flood hazards, drainage and storm water compliance, site safety plans, and air and noise monitoring. Additional work included overseeing preparation of SWPPP, SPCC, and Cal-ERP documents

St. Joseph Hospital, Mold and Air Sampling, Eureka, CA. Project Manager for industrial hygiene sampling for airborne dust and viable and non-viable mold for the \$140-million hospital expansion project. Studies were conducted at the request of the renovation contractor and hospital staff.

Humboldt Bay Repowering Project Compliance Air Monitoring. QA/QC Reviewer for area and personal exposure assessments for respirable crystalline silica and respirable dust for employees engaged in paint grinding activities at the PG&E construction site, as well as for respirable hexavalent chromium for workers conducting Tungsten Inert Gas (TIG) welding activities.

Table Bluff Reservation, Wiyot Tribe, Indian Island Brownfields Site, Corrective Action; Eureka, CA. Directed preparation of SAP/QAPP and HASP documents for remedial action for a former boat repair and maintenance yard under the U.S. Environmental Protection Agency (EPA) Brownfields remediation grant program. Site is a 1.5-acre parcel of land on the eastern portion of Indian Island located in Humboldt Bay. It is part of a 6-acre shell mound known as the Wiyot Tribe's Tuluwat Village. Between 1870 and 1990, the site was used as a dry dock for boat repair and maintenance. Hazardous materials, consisting of paints, solvents, metals, petroleum products (and various other chemicals used in ship maintenance and repair) are known to have been used on site.

PALCO Former Service Station; Scotia, CA. Project Engineer for Phase 2 investigation. Over 10 soil borings/temporary well points, 8 membrane interface borings, and 3 additional monitoring wells. Submitted samples for in situ chemical oxidation bench scale tests. Performed aquifer testing to determine hydraulic conductivity. Project included indoor air quality testing for volatile organic compounds (VOC). Selected in-situ chemical oxidation as remedial action.

Halvorsen Remediation, City of Eureka. Environmental Engineer for remediation of this 14-acre site is situated adjacent to Humboldt Bay and has been developed since the mid 1800s. Assembled all existing site data into a conceptual model of site conditions and provided a range of potential remediation costs. Performed this project on a fast-track basis. This site has since been designated an official Brownfields site, referred to as the Old Carson Mill. Mr. Foget participated in oversight of development of project documents including SCP and QAPP and remedial activities. Health and safety during remedial activities included personal air monitoring on field staff. **SHN performed this project on fast track basis and completed it for approximately 15% less than the budget amount.**

Old Carson Mill Brownfield Cleanup, Eureka, CA. Project Manager for HASP prep for contractor.

Free Product Recovery Trench, Humboldt State University; Arcata, CA. Designed and oversaw installation of free product recovery trench equipped with passive skimmers. Also managed operation and maintenance of passive skimmers collection system. Recovery trench was an interim corrective action.

Safety and Health Program Management, Iron Mountain Mine, Shasta County, CA. Project Manager for the development and review of their Health and Safety & Injury and Illness Prevention Plans. Conducted walk-through health and safety audit, provided assistance in conforming to OSHA inspection requirements, and updated an activity hazard analysis. Conducted exposure assessment to characterize calcium oxide exposure to workers conducting baghouse maintenance activities.

Air Sampling, OSHA Compliance Assistance, California Redwood Company, Korb, CA. Provided Project Management for industrial hygiene in situ monitoring with OSHA compliance to characterize total dust exposure to workers at a sawmill. Developed air sampling protocol, made recommendations, and submitted a report of findings.

Coleman National Fish Hatchery, US Fish and Wildlife. Project Manager for Formaldehyde Air Sampling project. Two sampling efforts were performed using air pumps, sample tubes and passive

monitors. Evaluated personal protective equipment and use. Provided suggestions for how to minimize worker exposure.

**MR. BOB G. DAVIS' EVIDENCE
LIST**

1 LOREN J. HARLOW (SB #105772)
2 STOEL RIVES LLP
3 500 Capitol Mall, Suite 1600
4 Sacramento, CA 95814
5 Telephone: (916) 447-0700
6 Facsimile: (916) 447-4781

7 Attorneys for Mr. BOB G. DAVIS

8 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY
9 CONTROL BOARD FOR THE CENTRAL VALLEY REGION

10
11 In the Matter of:

12 Reconsideration of Cleanup and Abatement Order R5-
13 2011-0173,

14 TBS Petroleum, LLC, A California Limited Company

15 Antler's Shell/Subway, 20884 Antlers Road, Lakehead,
16 Shasta County

MR. BOB G. DAVIS'
EVIDENCE LIST

17 **EVIDENCE LIST**

- 18 1. Declaration of Mr. Bob Davis.
- 19 2. **Exhibit A:** Laboratory results performed by Basic Laboratory on soil samples collected on
20 October 10.1997 during tank replacement.
- 21 3. **Exhibit B:** Laboratory results performed by American Scientific Laboratories LLC on soil
22 samples collected on October 21.1997 during tank replacement.
- 23 4. **Exhibit C:** Copy of SCEHD's No Further Action Letter issued to Antler's Shell on
24 December 16, 1997.
- 25 5. **Exhibit D:** Water sample results performed by Sequoia Analytical for the water supply and
26 submitted to SCEHD on January 30, 2004.
- 27 6. **Exhibit E:** Real Estate Purchase and Sale Agreement for Antler Shell dated December 20,
28 2004.

- 1 7. **Exhibit F:** Addendum to the Real Estate Purchase Contract and Receipt for Deposit dated
2 December 20, 2004.
- 3 8. **Exhibit G:** A map illustration depicting the location of the burst pipeline in relation to the
4 tank farm and direction of water flow.
- 5 9. **Exhibit H:** Notice of Entry and Amended Order after Hearing on Demurrer and Granting
6 Defendants Leave to Amend.
- 7 10. **Exhibit I:** Order Granting Motion to Dismiss with Prejudice and Entry of Judgment of
8 Dismissal.
- 9 11. **Exhibit J:** Order by the Third Appellate District barring TBS's claims for contractual and
10 equitable indemnity as a result of the "as is" provision in the sales agreement.
- 11 12. **Exhibit K:** Underground Storage Tank Unauthorized Release (leak)/Contamination Site
12 report prepared the SCEHD.
- 13 13. **Exhibit L:** State Board Order, WQ 99-02-UST *In the Matter of Hollis Rodgers*.
- 14 14. **Exhibit M:** State Board Order, WQ 2000-6-UST, *In the Matter of Lake Publishing*
15 *Company*.
- 16 15. **Exhibit N:** SHN report dated May xx, 2012 prepared by Mr. Mike Foget, PE.
- 17 16. **Exhibit O:** SHN report dated April 14, 2009 prepared by Mr. John Aveggio, PE.
- 18 17. **Exhibit P:** SHN report dated November 17, 2009 prepared by Mr. John Aveggio, PE.
- 19 18. **Exhibit Q:** SHN report dated April 20, 2011 without attachments prepared by Mr. John
20 Aveggio, PE.
- 21 19. **Exhibit R:** SCEHD laboratory records for Antler's Shell onsite well.

EVIDENCE BY REFERENCE

- 24 1. California Water Code.
- 25 2. Cleanup Team Evidence List.
- 26 3. *In the Matter of San Diego Unified Port District*, WQO 89-12 at pg 6.
- 27 4. *In the Matter of Arthur Spitzer et al.*, WQO No. 89-8.
- 28 5. *In the Matter of Wenwest, Inc. et al.*, WQO 92-13 at pg 5.

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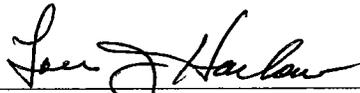
6. *City of Modesto Redevelopment Agency v. Superior Court of San Francisco* 13 Cal.Rptr.3d 865 (2004), 119 Cal.App.4th 28, page 872.
7. "Transmittal of Final Draft Guidelines for Investigation and Cleanup of MTBE and Other Oxygenates," State Water Resources Control Board (SWRCB, 2000).
8. UST Assignment of Claim, Information & Guide, State Water Resources Control Board

EVIDENCE BY OFFICIAL NOTICE

1. "Lead Scavengers Compendium: Overview of Properties, Occurrence, and Remedial Technologies," U.S. Environmental Protection Agency (EPA 2006).
2. "Recommendation for States, Tribes and EPA Regions to Investigate and Clean Up Lead Scavengers when Present at Leaking Underground Storage Tank (LUST) Sites" (EPA 2010).

DATED: May 10, 2012

STOEL RIVES LLP

By: 
LOREN J. HARLOW
Attorneys for Mr. BOB G. DAVIS