



# California Regional Water Quality Control Board Lahontan Region



Linda S. Adams  
Secretary for  
Environmental Protection

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150  
(530) 542-5400 • Fax (530) 544-2271  
www.waterboards.ca.gov/lahontan

Arnold Schwarzenegger  
Governor

December 19, 2008

Sarbjit S. Kang  
Swiss Mart Gas Station  
913 Emerald Bay Road  
South Lake Tahoe, CA 96150

**CERTIFIED MAIL: 7007 3020 0001 0921 1946**

Kang Property, Inc.  
c/o Mr. Sarbjit S. Kang  
61 Chilpancino Parkway  
Pleasant Hill, CA 94523

**CERTIFIED MAIL: 7006 2760 0003 9496 7431**

## **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R6T-2008-0021**

Enclosed please find Administrative Civil Liability Complaint (Complaint) No. R6T-2008-0021 against Kang Property Inc. and Mr. Sarbjit Kang (together "Dischargers") for failure to comply with requirements of Cleanup and Abatement Order No. R6T-2007-0029. The Complaint recommends the California Regional Water Quality Control Board, Lahontan Region (Water Board), impose a civil liability of \$403,900 for these violations.

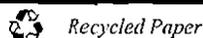
### **Waiver of Hearing**

Pursuant to Water Code section 13323, the Water Board will hold a hearing on the Complaint no later than 90 days after it is served. The Dischargers may elect to waive their right to a hearing before the Water Board and agree to pay the proposed liability. Waiver of the hearing constitutes admission of the validity of the allegations of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$403,900 as set forth in the Complaint. If the Dischargers wish to exercise this option, it must complete the following:

1. **By 5:00 p.m., January 26, 2009**, an authorized agent must sign the enclosed waiver and submit it to the Water Board, along with cashier's checks in the amount of \$194,400 made payable to the "State Water Pollution Cleanup and Abatement Account" and \$209,500 made payable to the "State Waste Discharge Permit Fund";
2. **By January 30, 2009**, the Dischargers must publish the enclosed public notice in the Tahoe Daily Tribune; and
3. **By 5:00 p.m., February 2, 2009**, the Dischargers must submit verification to the Water Board that the enclosed public notice has been published.

Please note that the Dischargers' waiver and agreement to pay the proposed liability constitutes a proposed settlement that will not become final until after a 30-day public comment period, as provided by the State Water Resources Control Board Water

*California Environmental Protection Agency*



Quality Enforcement Policy (version dated February 12, 2002). As described in the enclosed waiver, the Water Board Assistant Executive Officer may withdraw the Complaint, return payment and issue a new complaint should new information be received during the comment period. If no information is received which causes to the Assistant Executive Officer to withdraw the Complaint, the settlement will be brought before the full Water Board for approval at a future meeting. **The settlement will not be effective until approved by the Water Board.**

### **Public Hearing**

Alternatively, if the Dischargers elect to proceed to a public hearing, a hearing is tentatively scheduled to be held at the Water Board meeting on March 11-12, 2009. The meeting is scheduled to convene at a time and location as announced in the Water Board meeting agenda. The agenda will be issued at least ten days before the meeting and will be posted on the Water Board web page at <http://waterboards.ca.gov/lahontan>. At that time, the Regional Board will accept testimony and public comment and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed you will also find a draft of the procedures I am recommending that the Water Board follow in conducting the hearing. Please note that comments on the proposed procedures are **due by January 5, 2009** to the Water Board's advisory attorney, David Coupe.

Please contact State Water Resources Control Board Office of Enforcement Attorney David Boyers at (916) 341-5276 or Ms. Lisa Dernbach at (530) 542-5424 or via e-mail at [ldernbach@waterboards.ca.gov](mailto:ldernbach@waterboards.ca.gov) if you have any questions concerning this matter.



Robert S. Dodds  
Assistant Executive Officer

Enclosures: 1. Complaint No. R6T-2008-0021  
2. Waiver of Public Hearing Form  
3. Public Notice of Waiver  
4. Proposed Draft – Notice of Public Hearing

cc: Harold J. Singer, Executive Officer/Water Board  
David Boyers, Senior Staff Counsel/SWRCB, Enforcement  
David Coupe, Staff Counsel/SWRCB  
Swiss Mart mailing list

LSD/clhT: Swiss Mart Complaint Transmittal Letter  
[Swiss Mart Complaint Transmittal Letter.doc]

MAILING LIST  
SWISS MART GAS STATION

Virginia Huber  
El Dorado County  
Dept. of Environmental  
Management,  
3368 Lake Tahoe Blvd., #303  
South Lake Tahoe, CA 96150

Richard Solbrig  
South Tahoe Public Utility District  
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Danny Lukins  
Lukins Brothers Water Company  
2031 West Way  
South Lake Tahoe, CA 96150

City Manager  
City of South Lake Tahoe  
1901 Airport Road  
South Lake Tahoe, CA 96150

Gabe Litvin  
Stanford Sierra Programs  
P.O. Box 10618  
South Lake Tahoe, CA 96158-3618

Michael Schneeweis  
903 Eloise Ave  
South Lake Tahoe, CA 96150

Pat Baginski  
Tahoe Outdoor Living  
828 Eloise Ave  
South Lake Tahoe, CA 96150

Gallardo & Associates, Inc.  
304 Belle Court  
El Dorado Hills, CA 95762

SWRCB, Div. of Water Quality  
UST Cleanup Fund  
P. O. Box 100  
Sacramento, CA 95812-0100

**ENCLOSURE 1**



# California Regional Water Quality Control Board Lahontan Region



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## STATE OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD LAHONTAN REGION

In the Matter of Sarbjit S. Kang and  
Kang Property, Inc.: Violation of  
Cleanup and Abatement Order (CAO)  
No. R6T-2007-0029, 913 Emerald Bay Road,  
South Lake Tahoe, El Dorado County

) COMPLAINT NO.  
) R6T-2008-0021  
) FOR ADMINISTRATIVE  
) CIVIL LIABILITY

### **SARBJIT S. KANG AND KANG PROPERTY, INCORPORATED, YOU ARE HEREBY GIVEN NOTICE THAT:**

1. You are charged with violating provisions of law and regulations for which the California Regional Water Quality Control Board, Lahontan Region (Water Board) may impose administrative civil liability pursuant to Water Code section 13350, subdivision (a)(1) and Water Code section 13268, subdivision (a)(1) .
2. Unless waived, a hearing on this matter will be held before the Water Board within 90 days following the issuance of this Complaint. Sarbjit S. Kang and Kang Property, Inc., or their representative(s), will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability by the Water Board.
3. At the hearing, the Water Board will consider whether to affirm, reject, or modify (either increase or decrease) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

### **ALLEGATIONS**

4. The Swiss Mart Gas Station ("Facility") is located at 913 Emerald Bay Road in the City of South Lake Tahoe, El Dorado County, as shown in Attachment A of this Complaint.
5. Kang Property, Incorporated, is the property owner of the Facility, on record with El Dorado County. Sarbjit S. Kang is the operator of the underground storage tanks at the Facility, according to El Dorado County Department of Environmental Management. Both Sarbjit S. Kang and Kang Property, Inc. are identified in CAO No. R6T-2007-0029 as the parties responsible for complying with the Order. For the purposes of this Complaint, these two parties will be hereinafter referred to as the "Dischargers."

6. Sarbjit S. Kang and other parties were the subject of CAO No. 6-98-78 issued in 1998 and an amendment issued in 1999 for petroleum releases at the Facility adversely affecting groundwater quality, a municipal well, and two domestic wells in the area. Between 1999 and 2007, Sarbjit S. Kang and the other parties had a sporadic record of compliance with Amended CAO 6-98-78A1. Six Notices of Violation were issued to the responsible parties for failing to continuously operate the remediation system and/or conduct quarterly groundwater monitoring and reporting.
7. Water Board staff collected water samples from residences at 883 and 903 Eloise Avenue on May 24, 2007. The residences are located approximately 500 and 600 feet, respectively, to the north of the Facility and have been adversely impacted by hydrocarbons in the past. The laboratory report showed that the following petroleum constituents were detected in the water sample collected at 883 Eloise Avenue:

Benzene	3.2 micrograms per liter ( $\mu\text{g/L}$ )
Toluene	3.2 $\mu\text{g/L}$
1,2,4-Trimethylbenzene	0.74 $\mu\text{g/L}$
1,3,5-Trimethylbenzene	0.60 $\mu\text{g/L}$

8. The concentration of benzene detected in the domestic well at 883 Eloise Avenue exceeds the state primary drinking water standard of 1  $\mu\text{g/L}$ . The property owner of the well was informed of these results in a letter dated June 28, 2007. No hydrocarbons were detected in the water sample taken from 903 Eloise Avenue.
9. On August 13, 2007, the Water Board issued an order to Sarbjit S. Kang to investigate a potential discharge of gasoline to groundwater at the Facility. The order stated that hydrocarbons detected in the domestic well referenced in Finding No. 7 were consistent with a petroleum release occurring after MTBE was phased out of gasoline in California in 2003. The order directed Mr. Kang to collect groundwater samples from all on-site monitoring wells. A technical report containing laboratory results of the water samples was due within 21 days of the date of the order, or by September 3, 2007.
10. On September 27, 2007, the Water Board received a document prepared by CalClean, on behalf of Mr. Kang, containing well sampling results. The document shows that water samples collected from two of the five monitoring wells at the Facility contain high concentrations of petroleum hydrocarbons. Besides benzene, the hydrocarbons included trimethylbenzene, toluene, ethylbenzene, xylenes, and total petroleum hydrocarbons as gasoline. The highest levels of hydrocarbons were detected in a water sample from monitoring well MW-1, taken at 17 feet below ground surface:

Benzene	1,070 $\mu\text{g/L}$
Toluene	12,600 $\mu\text{g/L}$
1,2,4-Trimethylbenzene	3,030 $\mu\text{g/L}$

1,3,5-Trimethylbenzene	751 µg/L
Ethylbenzene	2990 µg/L
Xylenes	15,400 µg/L
Total Petroleum hydrocarbons-gasoline	32,200 µg/L

11. On December 14, 2007, the Water Board Executive Officer issued CAO No. R6T-2007-0029 to Sarbjit S. Kang and Kang Property, Inc. (Attachment B). The Order found that, based on water sample results listed in Findings No. 7 and 10, a new unauthorized release of petroleum hydrocarbons had occurred at the Facility, as indicated by the increase in concentration of volatile organic compounds by two or more orders of magnitude compared to water samples from 2006. The Order noted that lack of MTBE in the water samples suggested that the release occurred after the 2003 phase-out of MTBE in gasoline. The Order also noted that the presence of trimethylbenzene, a highly volatile hydrocarbon that attenuates quickly in the environment, implies the release was relatively recent, given that past monitoring reports to 2001 show that trimethylbenzene was not detected in monitoring wells at the Facility until March 2006.
  
12. CAO No. R6T-2007-0029 required the Dischargers to take the following cleanup actions: (1) provide alternate water supply to the affected domestic well owner; (2) identify and stop the source of the release, (3) conduct groundwater monitoring and submit technical reports, (4) conduct interim remediation to contain plume migration, (5) investigate the extent of the discharge, and (6) propose clean up of contamination in soil and groundwater. Specifically, the CAO provided, in relevant part:
  - “4. Provide Alternate Water Supply for Affected Domestic Wells
    - 4.1. **By December 19, 2007**, the Dischargers must provide an alternate supply of clean water to the occupants at 883 Eloise Avenue in South Lake Tahoe. The Dischargers must notify the Water Board within one working day of providing the alternate water supply and state how it was achieved.
    - 4.2. **By December 28, 2007**, the Dischargers must submit a technical report to the Water Board describing how it intends to comply with section 4.1 of this Order to provide an alternate supply of clean water to the occupants at 883 Eloise Avenue in South Lake Tahoe.
  5. Release Investigation.
    - 5.1. **By December 19, 2007**, submit a letter to the Water Board describing means to investigate the source or cause of petroleum release at the Facility.

- 5.2. **By December 21, 2007**, implement the release investigation. Notify the Water Board within one working day of implementing the investigation.
- 5.3. **By December 24, 2007**, abate any and all releases from the facility.
- 5.4. **By December 27, 2007**, submit a technical report to the Water Board describing the release investigation conducted at the Facility.

## 6. Groundwater Monitoring and Reporting

Groundwater monitoring and reporting required in this Order supersedes that required in CAO No. 6-98-78A1.

- 6.1. **Beginning December 30, 2007 and every three months thereafter**, conduct groundwater sampling at all on-site and off-site monitoring and extraction well locations associated with the Facility: MW-1 to 13, EW-1 to 5. Also collect water samples from all drinking water wells within 1,000 feet of the Facility, subject to permission by the property owners: Lukins No. 3 Well, 883 Eloise Avenue, and 903 Eloise Avenue.
- 6.2. **Beginning February 20, 2008**, and every three months thereafter, submit a technical report to the Water Board describing groundwater monitoring results for the prior quarter.

## 7. Interim Remediation

- 7.1. **By December 31, 2007**, submit a workplan to the Water Board proposing interim remediation to contain the petroleum plume in groundwater from migration. At a minimum, this workplan must propose restarting the groundwater pump and treat system or another equally effective method for containing the petroleum plume in groundwater from migration.
- 7.2. **By January 15, 2008**, implement the interim remediation workplan, as accepted by Water Board staff, for containing plume migration in groundwater. Notify the Water Board within one working day of implementing this action.
- 7.3. **By February 28, 2008**, submit a technical report to the Water Board that describes interim remediation conducted at the site in accordance with the workplan accepted by Board staff. List the start date and time and initial volume or rate of the remediation method.

## 8. Contaminant Investigation

- 8.1. **By February 15, 2008**, submit a workplan to the Water Board that is designed to determine the lateral and vertical extent of petroleum hydrocarbons in soil and groundwater due to the release at the Facility.
- 8.2. **By March 15, 2008**, implement the site investigation workplan, as accepted by Water Board staff, for determining the extent of contamination in soil and groundwater. Notify the Water Board within one working day of implementing the investigation.
- 8.3. **By May 5, 2008**, submit a technical report to the Water Board that describes the soil and groundwater investigation conducted at the site in accordance with the workplan accepted by Board staff.

13. On January 30, 2008, the Water Board Executive Officer issued a Notice of Violation to the Dischargers for violation of CAO No. R6T-2007-0029 (Attachment C). The Notice states that the Dischargers have violated eight directives and have complied with only one directive in the CAO. The Notice informed the Dischargers that continued violation of the CAO would result in enforcement actions against them.
14. On June 9, 2008, the Water Board received the First Quarter 2008 Groundwater Monitoring Report. The Report states that groundwater sampling was conducted on March 5, 2008 at seven of the thirteen monitoring locations listed in CAO No. R6T-2007-0029. Six locations could not be sampled due to snowpiles. The Report states that no detectable levels of petroleum hydrocarbons were found in six monitoring well locations and the domestic well at 883 Eloise Avenue. The Report concludes there was no longer evidence of the prior unauthorized release at the site. No monitoring report was received for fourth quarter 2007.
15. As of November 10, 2008, the Dischargers have violated 13 of 16 CAO directives, as discussed in further detail below:

Directive No. 4.1. – Dischargers did not provide alternate supply of clean water to the occupants at 883 Eloise Avenue until June 9, 2008, **173 days** past the deadline of December 19, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

Directive No. 4.2 – Dischargers did not submit a technical report, as required, until June 9, 2008, **164 days** past the deadline of December 28, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.1. – Dischargers failed to submit a letter proposing to investigate the release until August 15, 2008, **240 days** past the deadline of December 19,

2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.2. – Dischargers failed to implement the release investigation, as required, until August 26, 2008, **249 days** past the deadline of December 21, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No 5.3. – Dischargers failed to abate any and all releases from the Facility until the Enhanced Leak Detection test was completed on August 26, 2008, **246 days** past the deadline of December 24, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

Directive No. 5.4. – Dischargers failed to submit a technical report to the Water Board describing the release investigation conducted at the Facility until September 11, 2008, **259 days** past the deadline of December 24, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.1. – Dischargers failed to implement groundwater monitoring at the site until March 5, 2008, **66 days** past the deadline of December 30, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.2. – Dischargers failed to submit the groundwater monitoring report required pursuant to Directive 6.2, until June 9, 2008, **109 days** past the deadline of February 20, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.2. – Dischargers failed to submit the First Quarter 2008 monitoring report required pursuant to Directive 6.2 until June 9, 2008, **20 days** past the deadline of May 20, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 7.2. – Dischargers failed to implement the interim remediation workplan, as required pursuant to Directive 7.2, until June 9, 2008, **146 days** past the deadline of January 15, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 7.3. – Dischargers failed to submit a technical report describing interim remediation until June 9, 2008, **102 days** past the deadline of February 28, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.1. – Dischargers failed to submit a workplan describing means to investigate the extent of petroleum contamination in soil and groundwater at the

Facility, until August 28, 2008, **195 days** past the deadline of February 15, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.2. – Dischargers failed to implement a site investigation, as required pursuant to Directive 8.2, until October 6, 2008, **205 days** past the deadline of March 15, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.3. – Dischargers failed to submit a technical report describing results of the site investigation until November 10, 2008, **189 days** past the deadline of May 5, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

### **PROPOSED CIVIL LIABILITY**

#### 18. Civil Liability – California Water Code

Any person who violates any cleanup and abatement order shall be liable civilly, and remedies may be proposed. The Water Board may impose civil liability in an amount up to that specified by the Water Code. Section 13350, subdivision (e)(1) states, in part:

“(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge and a cleanup and abatement order is issued...the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.”

Any person failing or refusing to furnish technical or monitoring program reports as required of section 13267, is guilty of a misdemeanor and may be liable civilly in accordance with section 13268. Section 13268, subdivision (b)(1) states:

“(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”

- a. The Dischargers violated two requirements under directive No. 4 in CAO No. R6T-2007-0029.

- i. The maximum amount of civil liability for violation of directive No. 4.1 of the CAO under Water Code section 13350, subdivision (e)(1) is \$865,000 for 173 days of violations. This maximum administrative civil liability is based upon:

$$(173 \text{ days of violations of directive No. 4.1}) \times (\$5,000/\text{day of violation}) =$$

**\$865,000**

- ii. The maximum amount of civil liability for violation of directive No. 4.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$164,000 for 164 days of violations. This maximum administrative liability is based upon:

$$(164 \text{ days of violations of directive No. 4.2}) \times (\$1,000/\text{day of violation}) =$$

**\$164,000**

- b. The Dischargers violated four requirements under directive No. 5 in CAO No. R6T-2007-0029.

- i. The maximum amount of civil liability for violation of directive No. 5.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$240,000 for 240 days of violations. This maximum administrative liability is based upon:

$$(240 \text{ days of violations of directive No. 5.1}) \times (\$1,000/\text{day of violation}) =$$

**\$240,000**

- ii. The maximum amount of civil liability for violation of directive No. 5.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$249,000 for 249 days of violations. This maximum administrative civil liability is based upon:

$$(249 \text{ days of violations of directive No. 5.2}) \times (\$1,000/\text{day of violation}) =$$

**\$249,000**

- iii. The maximum amount of civil liability for violation of directive No. 5.3 of the CAO under Water Code section 13350, subdivision (e)(1) is \$1,230,000 for 246 days of violations. This maximum administrative civil liability is based upon:

$$(246 \text{ days of violations of directive No. 5.3}) \times (\$5,000/\text{day of violation}) =$$

**\$1,230,000**

- iv. The maximum amount of civil liability for violation of directive No. 5.4 of the CAO under Water Code section 13268, subdivision (b)(1) is \$259,000

for 259 days of violations. This maximum administrative liability is based upon:

$$(259 \text{ days of violations of directive No. 5.4}) \times (\$1,000/\text{day of violation}) = \mathbf{\$259,000}$$

c. The Dischargers violated two requirements on three occasions under directive No. 6 in CAO No. R6T-2007-0029.

i. The maximum amount of civil liability for violation of directive No. 6.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$66,000 for 66 days of violations. This maximum administrative civil liability is based upon:

$$(66 \text{ days of violations of directive No. 6.1}) \times (\$1,000/\text{day of violation}) = \mathbf{\$66,000}$$

ii. The maximum amount of civil liability for the first violation of directive No. 6.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$109,000 for 109 days of violations. This maximum administrative liability is based upon:

$$(109 \text{ days of violations of directive No. 6.2}) \times (\$1,000/\text{day of violation}) = \mathbf{\$109,000}$$

iii. The maximum amount of civil liability for the second violation of directive No. 6.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$20,000 for 20 days of violations. This maximum administrative liability is based upon:

$$(20 \text{ days of violations of directive No. 6.2}) \times (\$1,000/\text{day of violation}) = \mathbf{\$20,000}$$

d. The Dischargers violated two requirements under directive No. 7 in CAO No. R6T-2007-0029.

i. The maximum amount of civil liability for violations of directive No. 7.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$1246,000 for 146 days of violations. This maximum administrative civil liability is based upon:

$$(146 \text{ days of violations of directive No. 7.2}) \times (\$1,000/\text{day of violation}) = \mathbf{\$146,000}$$

ii. The maximum amount of civil liability for violations of directive No. 7.3 of the CAO under Water Code section 13268, subdivision (b)(1) is \$102,000

for 102 days of violations. This maximum administrative liability is based upon:

$$(102 \text{ days of violations of directive No. 7.3}) \times (\$1,000/\text{day of violation}) = \mathbf{\$102,000}$$

e. The Dischargers violated three requirements under directive No. 8 in CAO No. R6T-2007-0029.

i. The maximum amount of civil liability for violations of directive No. 8.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$195,000 for 195 days of violations. This maximum administrative liability is based upon:

$$(195 \text{ days of violations of directive No. 8.1}) \times (\$1,000/\text{day of violation}) = \mathbf{\$195,000}$$

ii. The maximum amount of civil liability for violations of directive No. 8.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$205,000 for 205 days of violations. This maximum administrative civil liability is based upon:

$$(205 \text{ days of violations of directive No. 8.2}) \times (\$1,000/\text{day of violation}) = \mathbf{\$205,000}$$

iii. The maximum amount of civil liability for violations of directive No. 8.3 of the CAO under Water Code section 13268, subdivision (b)(1) is \$189,000 for 189 days of violations. This maximum administrative liability is based upon:

$$(189 \text{ days of violations of directive No. 8.3}) \times (\$1,000/\text{day of violation}) = \mathbf{\$189,000}$$

The cumulative maximum administrative civil liability for violations of Order Nos. 4 – 8 of CAO No. R6T-2007-0029 is **\$4,039,000**.

#### 19. Factors Affecting the Amount of Civil Liability

Water Code section 13327 requires the Water Board to consider enumerated factors when it determines the amount of civil liability assessed pursuant to Water Code sections 13268 and 13350. The Assistant Executive Officer of the Water Board considered those factors in recommending the amount of the administrative civil liability:

- a. The nature, circumstances, extent, and gravity of the violations;

Violating a CAO, classified as a "formal" enforcement action by the Water Quality Enforcement Policy, is a serious offense. Violating directive No. 4 of CAO No. R6T-2007-0029 prevented the occupants of 883 Eloise Avenue from using and enjoying water from their domestic well. Violating directive No. 5 of the CAO prevented Water Board staff from finding out the source or cause of the petroleum release adversely affecting water quality, as referenced in Allegation No. 10. The Dischargers' violation of directive No. 6 prevented knowledge of the fate and migration of petroleum hydrocarbons detected beneath the Facility for nine months following submittal of the September 27, 2007 groundwater report. Violation of directive No. 7 prevented abatement and containment of hydrocarbons in groundwater beneath the Facility and sooner enjoyment of beneficial uses located in the downgradient flow direction. Finally, the Dischargers' violation of directive No. 8 prevents Water Board staff from knowing if petroleum products that could affect water quality in the future remain in the vadose zone at the Facility. As a result of failing to comply with these five directives, staff has needed to conduct verification well sampling at the Facility and at 883 Eloise Avenue, which diverts resources away from other Water Board work.

- b. Whether discharge is susceptible to cleanup or abatement;

The discharge of petroleum products to groundwater is susceptible to abatement. For a past release at the Facility, the operator arranged for a carbon canister to be plumbed to the domestic well at 883 Eloise Avenue to remove petroleum hydrocarbons from the well water. A pump and treat system exists at the Facility from prior contamination and could have been re-started to contain plume migration from threatening other beneficial uses besides the affected domestic well at 883 Eloise Avenue. In addition, the Dischargers proposed implementing interim remediation by use of portable high vacuum dual-phase extraction equipment. This proposal was conditionally accepted by Water Board staff on January 8, 2008. As of June 9, 2008, when the First Quarter 2008 Monitoring Report was received, the Dischargers had not taken corrective action to abate or contain petroleum hydrocarbons from migration in groundwater.

- c. The degree of toxicity of the discharge;

Groundwater at the site contained gasoline-range petroleum hydrocarbons and known toxic volatile organic carbons, including benzene, toluene, ethylbenzene, xylenes, and trimethylbenzenes. Concentrations of these petroleum constituents in groundwater exceed drinking water standards and public health goals. Levels of benzene in groundwater at the Facility and the domestic well at 883 Eloise Avenue exceed the one-in-a-million risk level for cancer. Since no corrective action was taken by the Dischargers, the fate and migration of the petroleum constituents in groundwater is unknown.

d. Ability to pay;

In addition to the Facility, Kang Property, Incorporated currently owns property zoned for use as service stations at:

- 1140 Emerald Bay Road, South Lake Tahoe, CA (APN 023-181-191 & APN 032-141-3510)
- 7920 Brentwood Boulevard, Brentwood, CA (APN 016-150-025-1)
- 425 Moraga Road, Moraga, CA (APN 256-070-001-1)
- 4480 Chiles Road, Davis, CA (APN 069-070-10-1)
- 4949 County Road 89, Yolo County, CA (APN 052-020-04-1)
- 4300 Watt Avenue, Sacramento, CA (APN 240-0232-058-0)

Kang Property, Incorporated also owns the following property:

- 1122 Emerald Bay Road, South Lake Tahoe, CA (APN 032-141-041 [vacant lot])

Given the assets described above, it appears the Dischargers are able to pay the liability.

e. The effect on the Dischargers' ability to continue its business;

Water Board staff is not aware of any reason that the Dischargers' ability to continue their business would be affected by the proposed liability. The Dischargers own and operate multiple gas stations in California.

f. Any voluntary cleanup efforts undertaken by the violator;

To date, the Dischargers have only implemented corrective actions at the site when ordered to by the Water Board in CAO No. R6T-2007-0029 and Water Code section 13267 orders.

g. Prior history of violations;

Sarbjit S. Kang has a history of violations in complying with directives for clean up at the Facility and another facility. On October 13, 1999, the Water Board issued Administrative Civil Liability Order No. 6-99-46 to Mr. Kang and other parties in the amount of \$95,000 for non-compliance of Amended CAO 6-98-78A1. \$31,250 of this liability was never paid and is still owed. On the same date, the Water Board issued Administrative Civil Liability Order No. 6-99-47 to Mr. Kang and other parties in the amount of \$59,000 for non-compliance of other directives in Amended CAO 6-98-78A1. \$25,850 of this liability was never paid and is still owed. Civil liabilities in both Orders were assessed at the rate of \$1,000 per day of violation. In addition, on October 13, 1999, the Water Board

issued Administrative Civil Liability Order No. 6-99-50 to Mr. Kang and another party in the amount of \$112,500 for non-compliance of a cleanup and abatement order at another gas station in which Mr. Kang was the operator. The civil liability was assessed in Order No. 6-99-50 at the rate of \$500 per day of violation.

h. Degree of culpability;

Sarbjit S. Kang and Kang Property, Inc. are identified as the "Dischargers" by CAO No. R6T-2007-0029 and, thus, are ultimately responsible for compliance with CAO No. R6T-2007-0029, and applicable state laws and regulations. Despite issuance of a Notice of Violation on January 30, 2008 and repeated contacts between Water Board staff and the Dischargers' consultant, during which violations were discussed, the Dischargers failed to comply with applicable requirements.

i. Economic savings resulting from the violation;

Water Board staff has calculated the Discharger's cost savings associated with violating the CAO. The nature of such cost savings would be "avoided costs" and "delayed costs." Avoided costs include those associated with quarterly monitoring and reporting, conducting interim remediation, and providing replacement drinking water for the residence at 883 Eloise Avenue. Estimated avoided costs are \$37,000. Delayed cost savings would be the potential interest earned on the delayed costs, which given the short violation period addressed by this Complaint would be small and substantially less than the proposed liability.

j. Other matters as justice may require.

Staff Costs

Staff from the State and Regional Boards have spent time responding to the incident and preparing the Administrative Civil Liability Complaint. Estimated staff costs for investigation and complaint preparation are **\$26,823**.

20. Amount of Civil Liability

The Assistant Executive Officer of the Water Board considered the above factors and proposes that administrative civil liability be imposed by the Water Board at a rate of \$500 per day for a total of 419 days of violation of Water Code section 13304 and at a rate of \$100 per day for a total of 1,944 days of violation of Water Code section 13267 for a total amount of **\$403,900**.

**WAIVER OF HEARING**

You may waive the right to a hearing. Waiver of your right to a hearing constitutes acceptance of the assessment of civil liability in the amount set forth within the

Complaint. If you wish to waive your right to a hearing, an authorized person must sign the Waiver of Hearing form prepared for this Complaint, and submit it to the address below.

Lahontan Regional Water Quality Control Board  
Attn: Robert S. Dodds, Assistant Executive Officer  
2501 Lake Tahoe Boulevard  
South Lake Tahoe, CA 96150

Please note that any settlement will not be effective until reasonable opportunity for public participation has been provided pursuant to title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) and the State Water Board's 2002 Enforcement Policy. The Water Board will notify interested persons of any proposed settlement for and will solicit comments on the settlement for a period of thirty (30) days. Any settlement will not become final until after the public comment period.

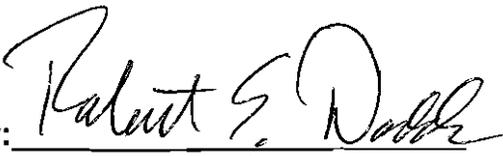
Payment of the liability will be due within 30 days of the settlement becoming final. Payment must be made with a cashier's check or money order made payable as follows:

**\$209,500 to the State Water Resources Control Board, Waste Discharge Permit Fund.**

**\$194,400 to the State Water Resources Control Board, Cleanup and Abatement Account.**

Send your remittance to:

Lahontan Regional Water Quality Control Board  
Attn: Robert S. Dodds, Assistant Executive Officer  
2501 Lake Tahoe Boulevard  
South Lake Tahoe, CA 96150

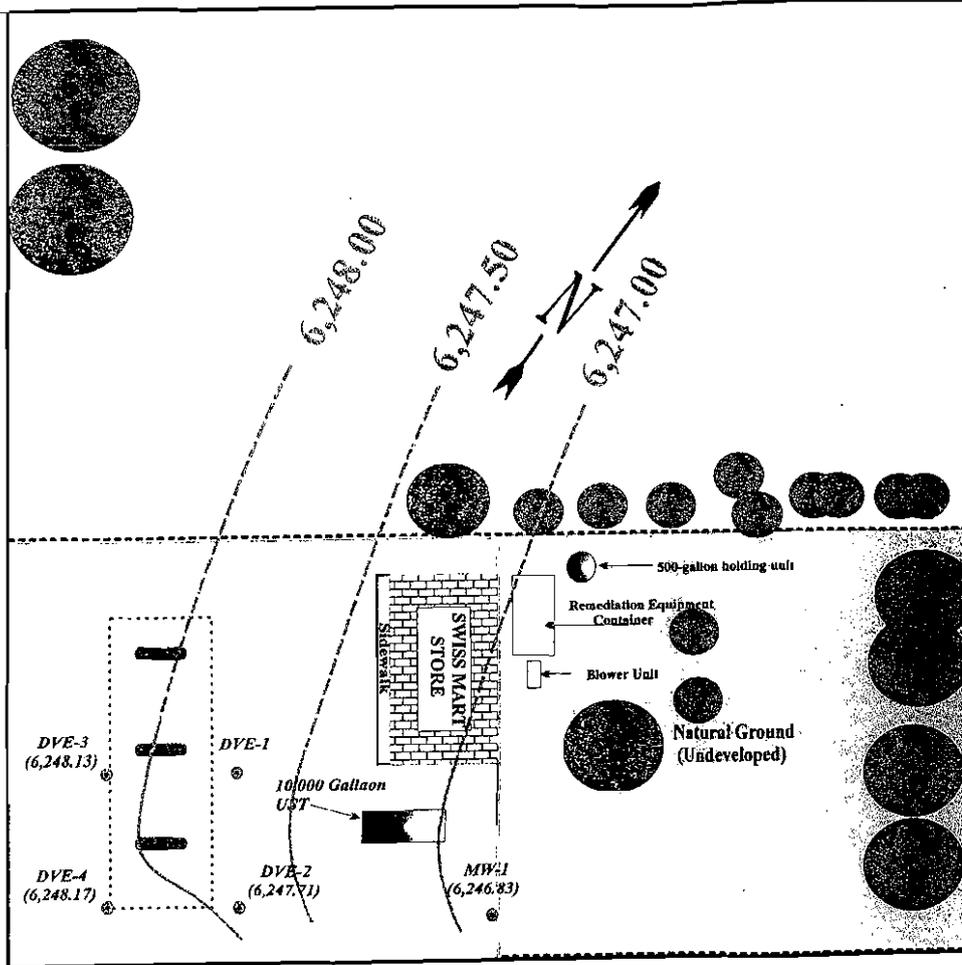
Ordered by:   
Robert S. Dodds  
Assistant Executive Officer

Dated: December 19, 2008

Attachments: A. Site Vicinity Map  
B. Cleanup and Abatement Order No. R6T-2007-0029  
C. January 30, 2008 Notice of Violation

# **ATTACHMENT A**

EMERALD BAY DRIVE



AVENUE

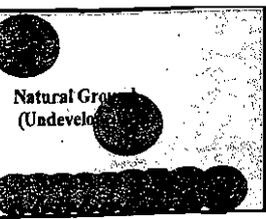
JAMES

Approximate Direction of Groundwater Flow 03/05/08

FIFTH STREET

LLARDO & ASSOCIATES, INC.  
Environmental and Geological Services

GROUNDWATER CONTOUR MAP: SWISS MART SITE  
Project 002.09 South Lake Tahoe Site, (March 5, 2008)



# **ATTACHMENT B**

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION

CLEANUP AND ABATEMENT ORDER NO. R6T-2007-0029

REQUIRING SARBJIT SINGH KANG  
AND KANG PROPERTY, INCORPORATED  
TO CLEAN UP AND ABATE THE EFFECTS OF  
THE DISCHARGE OF PETROLEUM PRODUCTS  
TO THE GROUNDWATERS OF THE LAKE TAHOE HYDROLOGIC UNIT  
AT THE SWISS MART GAS STATION LOCATED AT  
913 EMERALD BAY ROAD IN SOUTH LAKE TAHOE

El Dorado County

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The California Regional Water Quality Control Board, Lahontan Region (Water Board), finds:

1. This is a new Cleanup and Abatement Order issued to Sarbjit Singh Kang and Kang Properties, Incorporated, for new discharges of petroleum products at the Swiss Mart Gas Station having a prior history of contamination and enforcement actions.
  2. The Swiss Mart Gas Station (hereinafter referred to as the Facility) is located at 913 Emerald Bay Road, South Lake Tahoe, El Dorado County (Assessor's Parcel Number 023-181-191).
  2. On November 10, 1998, the Water Board issued Cleanup and Abatement Order No. 6-98-78 (CAO). The Order required Mary Ann Ferguson, Sarbjit Singh Kang, Azad Amiri and Amiri Oil Company to clean up and abate the effects of petroleum products discharged from underground storage tanks and associated piping to the groundwaters of the Lake Tahoe Hydrologic Unit at the Facility. Petroleum products are any oil-based products which can be obtained by distillation and are normally used outside the refining industry. The responsible parties complied with Orders listed in CAO 6-98-78.
  3. On March 23, 1999, the Water Board issued Amended CAO 6-98-78A1 requiring the same responsible parties listed in Finding No. 2 to conduct further actions to clean up and abate the effects of petroleum hydrocarbons from the discharge identified in 1998. Specifically, the Amended CAO required implementation of remedial actions to abate MTBE (methyl tertiary butyl ether) contamination adversely affecting municipal and domestic drinking water wells and threatening other beneficial uses. The Amended CAO directed quarterly monitoring and reporting until remediation has achieved background levels of groundwater quality.
-

4. In 2000, the responsible parties listed in Finding No. 2 began full-scale remediation in the form of dual vapor extraction for soil and groundwater contamination. By 2006, groundwater monitoring reports reflected that petroleum constituents had decreased in concentrations by about 90 percent of those concentrations detected in 1999 and the groundwater plume had reduced in size to being just beneath the Facility.
5. In December 2004, the responsible parties stopped operating the dual vapor extraction system. In July 2005, the responsible parties replaced the dual vapor extraction with an ozone sparge system. The replacement, made with Board staff's acceptance, was done to better enhance cleanup of residual hydrocarbons in the vadose zone beneath the Facility. The ozone system was down for repairs for six months between March and September 2006. It was re-started in September 2006; however, the responsible parties have failed to provide reports on periods of operation and non-operation.
6. Between 1999 and 2007, Mary Ann Ferguson, Sarbjit Singh Kang, Azad Amiri and Amiri Oil Company had a sporadic record of compliance with Amended CAO 6-98-78A1. Six Notices of Violation were issued to the responsible parties for failing to continuously operate the remediation system and/or conduct quarterly groundwater monitoring and reporting. The last groundwater monitoring report received by the Water Board was for the third quarter of 2006. On April 6, 2007, the most recent Notice of Violation was issued to the responsible parties for failure to submit the fourth quarter 2006 and first quarter 2007 monitoring reports.
7. Water Board staff collected water samples from residences at 883 and 903 Eloise Avenue on May 24, 2007. The laboratory report showed that the following petroleum constituents were detected in the water sample collected at 883 Eloise Avenue:

Benzene	3.2 micrograms per liter ( $\mu\text{g/L}$ )
Toluene	3.2 $\mu\text{g/L}$
1,2,4-Trimethylbenzene	0.74 $\mu\text{g/L}$
1,3,5-Trimethylbenzene	0.60 $\mu\text{g/L}$

The concentration of benzene detected in the domestic well exceeds the state primary drinking water standard of 1  $\mu\text{g/L}$ . The property owner of the well was informed of these results in a letter dated June 28, 2007. No hydrocarbons were detected in the water sample taken from 903 Eloise Avenue.

8. On August 13, 2007, the Water Board issued an order to Mr. Sarbjit Singh Kang to investigate a potential discharge of gasoline to groundwater at the Facility. The order stated that hydrocarbons detected in the domestic well referenced in Finding No. 7 were consistent with a petroleum release occurring after MTBE was phased out of gasoline in California in 2003. The order directed Mr. Kang to collect groundwater samples from all on-site monitoring wells. A technical report containing laboratory results of the water samples was due within 21 days of the

date of the order, or by September 3, 2007.

- 9. On September 27, 2007, the Water Board received a document prepared by CalClean, on behalf of Mr. Kang, containing well sampling results. The document shows that water samples collected from two of the five monitoring wells at the Facility contain high concentrations of petroleum hydrocarbons. Besides benzene, the hydrocarbons included trimethylbenzene, toluene, ethylbenzene, xylenes, and total petroleum hydrocarbons as gasoline. The highest levels of hydrocarbons were detected in a water sample from monitoring well MW-1, taken at 17 feet below ground surface:

Benzene	1,070 µg/L
Toluene	12,600 µg/L
1,2,4-Trimethylbenzene	3,030 µg/L
1,3,5-Trimethylbenzene	751 µg/L
Ethylbenzene	2990 µg/L
Xylenes	15,400 µg/L
Total Petroleum hydrocarbons-gasoline	32,200 µg/L

The document was incomplete in that it did not contain items listed in the Water Board's August 13, 2007 order, including a description of sampling techniques, a table of laboratory analytical results for all wells sampled, and the signature or stamp of a California licensed profession engineer or geologist.

- 10. Based on water sample results listed in Findings No. 7 and 9, a new unauthorized release of petroleum hydrocarbons is indicated at the Facility. The indication of a new release is supported by the increase in concentration of volatile organic compounds by two or more orders of magnitude compared to water samples from 2006. The lack of MTBE in the water samples suggests that the release occurred after the 2003 phase-out of MTBE in gasoline. The presence of trimethylbenzene, a highly volatile hydrocarbon that attenuates quickly in the environment, implies the release was relatively recent. A review of past monitoring reports to 2001 shows that trimethylbenzene was not detected in monitoring wells at the Facility until starting in March 2006.
- 11. According to El Dorado County property records, Kang Property, Incorporated became the owner of the Facility on August 6, 2003. The agent for service of process is Mr. Sarbjit S. Kang. As the owner of the facility, Kang Property, Incorporated either knows or should have known of the discharge of waste and has the ability to control it. Consequently, Kang Property, Inc. is properly named as a responsible party subject to this order.
- 12. According to the El Dorado County Department of Environmental Management, Mr. Sarbjit Singh Kang is listed as the operator of the underground storage tanks on the permit issued for the Facility. As the current operator of the underground storage tanks on the permit issued for the Facility, Mr. Sarbjit

Singh Kang either knows or should have known of the discharge of waste and has the ability to control it. Consequently, Mr. Sarbjit Singh Kang is properly named as a responsible party subject to this order.

13. The beneficial uses of groundwater in the area as designated in the 1995 Water Quality Control Plan for the Lahontan Region ("Basin Plan") for the Lahontan Region include municipal and domestic supply, agriculture supply, fresh water replenishment, and industrial service supply.
14. Active and inactive wells near the Facility include: the Lukins Well No. 3, an inactive municipal well located on James Avenue, about 300 feet to the east; active domestic drinking water wells at 903 and 883 Eloise Avenue, located approximately 500 and 600 feet, respectively, to the north; and a currently active Lukins municipal well located on Hazel Drive, less than 2,000 feet to the north of the Facility.
15. The Basin Plan establishes water quality objectives for the protection of beneficial uses. Those objectives include the following Maximum Contaminant Levels (MCLs) and Action Levels (ALs) that have been established by the California Department of Public Health (formerly the California Department of Health Services) as safe levels to protect public drinking water supplies:

Benzene	1 µg/L (MCL)
Toluene	150 µg/L (MCL)
Ethylbenzene	300 µg/L (MCL)
Xylenes	1,750 µg/L (MCL)

The Basin Plan contains the following narrative taste and odor objectives for the Lake Tahoe Hydrologic Unit:

Groundwaters shall not contain taste or odor-producing substances in concentrations that cause nuisance or that adversely affect beneficial uses. For ground water designated as municipal and domestic supply, at a minimum, concentrations shall not exceed adopted secondary maximum contaminant levels specified in... Title 22 of the California Code of Regulations which is incorporated by reference into this plan.

The following Taste and Odor Thresholds (TOT) are adopted as secondary water quality goals by the United States Environmental Protection Agency or the California Department of Public Health for drinking water. Petroleum concentrations above these levels would violate the taste and odor objective in the Basin Plan:

Toluene	42 µg/L (TOT)
1,3,5-Trimethylbenzene	15 µg/L (TOT)
Ethylbenzene	29 µg/L (TOT)
Xylenes	17 µg/L (TOT)
Total Petroleum Hydrocarbons (Gasoline)	50 µg/L (TOT)

State Action Levels are used to interpret narrative water quality objectives that prohibit toxicity to humans that beneficially use the water resource. The following Action Level (AL) is adopted as secondary water quality goals by the United States Environmental Protection Agency or the California Department of Public Health for drinking water. Petroleum concentrations above this level will violate the narrative objective in the Basin Plan:

1,2,4-Trimethylbenzene 330 µg/L (AL)

16. The concentration of 3.2 µg/L benzene detected in a water sample collected from the domestic well at 883 Eloise Avenue (Finding No. 7), exceeds the water quality objective for groundwater specified in the Basin Plan, as listed in Finding No. 15. In addition, concentrations of benzene, toluene, trimethylbenzene, ethylbenzene, xylenes, and total petroleum hydrocarbons as gasoline detected in groundwater samples taken from monitoring wells on the Facility and referenced in Finding No. 9 exceed water quality objectives for groundwater specified in the Basin Plan. These concentrations adversely affect the groundwater for its beneficial uses, as listed in Finding No. 13.
17. The levels of waste in groundwater at the Facility constitute a pollution as defined in Water Code section 13050, subdivision (l); Pollution means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (a) the waters for beneficial uses; or (b) facilities which serve these beneficial uses.]
18. The discharge of petroleum products to the groundwaters of the Lake Tahoe Hydrologic Unit as described in Finding No. 9 violates a prohibition contained in the Basin Plan. Specifically, the discharge violates and threatens to violate the following discharge prohibition:

"The discharge of waste...as defined in Section 13050(d) of the California Water Code which would violate the water quality objectives of this plan, or otherwise adversely affect the beneficial uses of water designated by this plan, is prohibited."
19. This enforcement action is being taken by this regulatory agency to enforce the provisions of the California Water Code and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et. seq.) in accordance with California Code of Regulations, title 14, section 15321.

### ORDERS

**THEREFORE, IT IS HEREBY ORDERED** that pursuant to Water Code sections 13267 and 13304, Sarbjit Singh Kang and Kang Property, Incorporated (referred to hereafter as the "Dischargers") shall clean up and abate the discharge and threatened discharge of petroleum hydrocarbons to waters of the State, and shall comply with the provisions of this order:

1. Orders listed in Cleanup and Abatement Order No. 6-98-78A1 remain in effect and are not superseded by this enforcement action, with the exception of groundwater monitoring and reporting that follows in Order No. 6.
2. The Dischargers shall conduct the investigation and cleanup tasks listed below by or under the direction of a California registered geologist or civil engineer experienced in the area of groundwater pollution cleanup. All technical documents submitted to the Water Board shall contain the signature and stamp of the registered individual overseeing corrective actions.
3. The Dischargers shall not cause or permit any additional waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State.
4. Provide Alternate Water Supply for Affected Domestic Wells
  - 4.1. **By December 19, 2007**, the Dischargers must provide an alternate supply of clean water to the occupants at 883 Eloise Avenue in South Lake Tahoe. The Dischargers must notify the Water Board within one working day of providing the alternate water supply and state how it was achieved.
  - 4.2. **By December 28, 2007**, the Dischargers must submit a technical report to the Water Board describing how it intends to comply with section 4.1 of this Order to provide an alternate supply of clean water to the occupants at 883 Eloise Avenue in South Lake Tahoe. The proposal must describe how this requirement will be achieved and how it will be maintained until this requirement is rescinded by the Water Board.
  - 4.3. **Within 2 days** of receiving laboratory results for any sampling event that indicates a domestic well contains a petroleum-related waste or wastes at concentrations exceeding state standards, the Dischargers must provide alternate supply of clean water to the property owner of the affected domestic well. The Dischargers must notify the Water Board within one working day of providing the alternate water supply and state how it was achieved.

5. Release Investigation.

- 5.1. **By December 19, 2007**, submit a letter to the Water Board describing means to investigate the source or cause of petroleum release at the Facility. Enclose a map showing all potential source areas, property boundaries, and building footprints at the Facility. State the licensed professional who will be conducting the work.
- 5.2. **By December 21, 2007**, implement the release investigation. Notify the Water Board within one working day of implementing the investigation.
- 5.3. **By December 24, 2007**, abate any and all releases from the facility.
- 5.4. **By December 27, 2007**, submit a technical report to the Water Board describing the release investigation conducted at the Facility. At a minimum, the report must:
  - 5.4.1. Provide a narrative description of work performed and information obtained.
  - 5.4.2. Tabulate all analytical data obtained.
  - 5.4.3. Include site maps showing the location of all sampling points.
  - 5.4.4. Provide an interpretation of the results and a conclusion about the source or cause of the petroleum release.
  - 5.4.5. Provide a discussion about the means and method used to stop the release including, but not limited to:
    - 5.4.5.1. Information about what was fixed, how it was fixed, and who fixed it (provide contractor license number).
    - 5.4.5.2. A figure of the site and identification of the item(s) repaired.
    - 5.4.5.3. Information that verifies all repairs were completed with El Dorado County concurrence.

6. **Groundwater Monitoring and Reporting**

Groundwater monitoring and reporting required in this Order supercedes that required in Cleanup and Abatement Order No. 6-98-78A1.

- 6.1. **Beginning December 30, 2007 and every three months thereafter**, conduct groundwater sampling at all on-site and off-site monitoring and extraction well locations associated with the Facility: MW-1 to 13, EW-1 to 5. Also collect water samples from all drinking water wells within 1,000 feet of the Facility, subject to permission by the property owners: Lukins No. 3 Well, 883 Eloise Avenue, and 903 Eloise Avenue.
- 6.2. **Beginning February 20, 2008**, and every three months thereafter, submit a technical report to the Water Board describing groundwater monitoring results for the prior quarter. The report must contain the following information:

- 6.2.1. Either a table of contents or an attachment list.
- 6.2.2. Laboratory analytical results of water samples for the following constituents: TPH-gasoline using Method 8015 or its equivalent; all volatile and semi-volatile organic compounds using Method 8260 or its equivalent. Detection limits shall be no greater than 0.5 µg/L for volatile organic compounds and 50 µg/L for TPH as gasoline.
- 6.2.3. A narrative description and analysis of all information provided.
- 6.2.4. Potentiometric surface map for groundwater elevations in all monitoring wells. Show the ground water flow direction as an arrow on the map.
- 6.2.5. Calculate horizontal hydraulic gradient.
- 6.2.6. Maps showing the location of all monitoring wells and boundary lines of the dissolved petroleum plume out to 0.5 µg/L for benzene and 50 µg/L TPH for gasoline.
- 6.2.7. Tabulate water analytical results and groundwater elevations for each well over time that includes all data collected since 2002.
- 6.2.8. Description of groundwater elevation trend from previous monitoring event.
- 6.2.9. Discussion of contaminant concentration trend in monitoring wells from previous monitoring event.
- 6.2.10. Discussion of whether the dissolved petroleum plume is migrating, stable or reducing in size and concentration. Describe the basis for all conclusions.
- 6.2.11. Submittal of laboratory analytical data, ground water information, and monitoring well locations in Electronic Data Format to the State Water Resources Control Board Geotracker Database.
- 6.2.12. Identification of corrective actions planned during the next quarterly reporting period.
- 6.2.13. All figures shall be in color.

## 7. Interim Remediation

- 7.1. **By December 31, 2007**, submit a workplan to the Water Board proposing interim remediation to contain the petroleum plume in groundwater from migration. At a minimum, this workplan must propose restarting the groundwater pump and treat system or another equally effective method for containing the petroleum plume in groundwater from migration.
- 7.2. **By January 15, 2008**, implement the interim remediation workplan, as accepted by Water Board staff, for containing plume migration in groundwater. Notify the Water Board within one working day of implementing this action.
- 7.3. **By February 28, 2008**, submit a technical report to the Water Board that describes interim remediation conducted at the site in accordance with the workplan accepted by Board staff. List the start date and time and initial volume or rate of the remediation method. Provide laboratory sheets for all analytical data of samples collected. All figures must be drawn to scale.

## 8. Contaminant Investigation

- 8.1. **By February 15, 2008**, submit a workplan to the Water Board that is designed to determine the lateral and vertical extent of petroleum hydrocarbons in soil and groundwater due to the release at the Facility. The workplan must propose collecting multi-depth samples or propose another suitable method to define the lateral and vertical extent of contamination out to background (non-detect) concentrations. The investigation must be designed in a manner that does not promote the vertical migration of contaminants to lower portions of the aquifer. The Dischargers must propose to sample all potentially affected municipal and domestic, active and inactive wells within 2,000 feet of the Facility, subject to permission from well owner. All maps must be drawn to scale, color coded, show all potential petroleum release source areas, and show proposed sampling locations.
- 8.2. **By March 15, 2008**, implement the site investigation workplan, as accepted by Water Board staff, for determining the extent of contamination in soil and groundwater. Notify the Water Board within one working day of implementing the investigation.
- 8.3. **By May 5, 2008**, submit a technical report to the Water Board that describes the soil and groundwater investigation conducted at the site in accordance with the workplan accepted by Board staff. All figures must be drawn to scale and in color. At a minimum, the report must:
  - 8.3.1. Provide a narrative description of work performed and information obtained.
  - 8.3.2. Include boring logs, monitoring well designs (if constructed), and analytical data.
  - 8.3.3. Include site maps showing the location of all borings and sampling points.
  - 8.3.4. Include an isoconcentration map with boundary lines of benzene in soil and groundwater out to 10 µg/kg and 1 µg/L, respectively, in all directions. Also include an isoconcentration map with boundary lines of TPH-gasoline in soil and groundwater out to 100 µg/kg and 50 µg/L, respectively, in all directions. Question marks shall indicate areas where boundaries are unknown.
  - 8.3.5. Describe the geology beneath the Facility and at off-site sampling locations.

- 8.3.6. List the depth of first encountered groundwater at all points sampled. State whether perched zones were encountered and the basis for this finding. Describe whether or not the contaminants are following preferential pathways and the basis for that conclusion.
- 8.3.7. If the full extent of contamination in soil or groundwater is not defined out to background levels, provide a workplan proposing a supplemental investigation.

9. Corrective Action Plan (CAP)

**By June 10, 2008**, submit a CAP to the Water Board to abate impacts to soil and groundwater from discharges at the Facility. The CAP shall describe at least three cost-effective remediation technologies to restore groundwater to State of California primary or secondary Maximum Contaminant Levels for drinking water. Include the following information:

- 9.1. Summarize the extent of soil and groundwater contamination caused from releases at the Facility.
- 9.2. Provide a map showing the boundary of soil contamination out to 100 µg/kg for total petroleum hydrocarbons. Question marks shall be used to indicate unknown boundaries.
- 9.3. Provide a map showing the boundary of groundwater contamination out to 50 µg/L for total petroleum hydrocarbons. Question marks shall be used to indicate unknown boundaries.
- 9.4. Describe the geology beneath the Facility and at all off-site areas requiring remediation. Include geologic cross-sections to show the depth to the water table and the lateral and vertical extent of petroleum hydrocarbons.
- 9.5. Describe necessary equipment, materials and methods, implementation schedule, and permits required to implement each of the three technologies.
- 9.6. Estimate the cleanup time to achieve drinking water standards for each of the three technologies and the basis for the estimation.
- 9.7. State the recommended remediation technology to implement at the site for abating soil and groundwater contamination. Describe an estimate time frame for designing, permitting, constructing, and initial operation of the recommended technology.
- 9.8. All figures shall be in color.

Failure to comply with the terms or conditions of this Order will result in additional enforcement action that may include the imposition of administrative civil liability pursuant to sections 13268 and 13350 of the Water Code or referral to the Attorney General of the State of California for such legal action as he may deem appropriate.

Ordered by: Harold J. Singer  
HAROLD J. SINGER  
EXECUTIVE OFFICER

Dated: Dec 14, 2007

# **ATTACHMENT C**



California Regional Water Quality Control Board  
Lahontan Region



Linda S. Adams  
Secretary for  
Environmental Protection

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150  
(530) 542-5400 • Fax (530) 544-2271  
www.waterboards.ca.gov/lahontan

Arnold Schwarzenegger  
Governor

JAN 30 2008

Sarbjit Singh Kang  
Swiss Mart Gas Station  
913 Emerald Bay Road  
South Lake Tahoe, CA 96150

Certified Mail: 7006 2760 0003 9496 9909

Kang Property, Incorporated  
Attn: Sarbjit S. Kang  
61 Chilpancingo Parkway #201  
Pleasant Hill, CA 94523

Certified Mail: 7006 2760 0003 9496 9763

**NOTICE OF VIOLATION OF CLEANUP AND ABATEMENT ORDER NO. R6T-2007-0029, SWISS MART GAS STATION, 913 EMERALD BAY ROAD, SOUTH LAKE TAHOE, EL DORADO COUNTY**

This notice of violation informs you that you are in violation of directives in Cleanup and Abatement Order (CAO) No. R6T-2007-0029 for the Swiss Mart Gas Station in South Lake Tahoe. The CAO, issued on December 14, 2007, requires the above-listed parties to conduct corrective actions and reporting for contamination from petroleum releases. To date, you have violated eight directives and have complied with only one directive in CAO No. R6T-2007-0029.

**Violations**

Sarbjit S. Kang and Kang Property, Incorporated have failed to comply with the following directives in CAO R6T-2007-0029:

1. Provide Alternate Water Supply for Affected Domestic Wells
  - a) By December 19, 2007, you must submit a letter proposing to provide an alternate supply of clean water to the occupants at 883 Eloise Avenue in South Lake Tahoe.
  - b) By December 28, 2007, you must provide an alternate supply of clean water to the occupants of the affected domestic well at 883 Eloise Avenue in South Lake Tahoe.
2. Release Investigation
  - a) By December 19, 2007, submit a letter to the Water Board describing means to investigate the source or cause of petroleum release at the Facility.
  - b) By December 21, 2007, implement the release investigation in coordination with the El Dorado County Environmental Management Department.

California Environmental Protection Agency

- c) By December 24, 2007, submit a technical report to the Water Board describing the release investigation conducted at the Facility.
- d) By December 27, 2007, if the release has not been stopped before this time, you must take all necessary measures to do so by this date.

3. Groundwater Monitoring and Reporting

- a) Beginning December 30, 2007 and every three months thereafter, conduct groundwater sampling at all on-site and off-site monitoring and extraction well locations associated with the site. Also, collect water samples from all drinking water wells within 1,000 feet of the Facility: Lukins No. 3 Well, 883 Eloise Avenue, and 903 Eloise Avenue.

4. Interim Remediation

- a) By December 31, 2007, submit a workplan proposing interim remediation to contain the petroleum plume in groundwater from migration.
- b) Within 30 days of the date of the Order, implement the interim remediation workplan, as accepted by Water Board staff, for containing plume migration in groundwater.

Although the Water Board received a December 31, 2007 workplan to implement interim groundwater remediation, and Water Board staff conditionally accepted it, the workplan has yet to be implemented. Therefore, you are in violation of paragraph 4(b) of CAO No. R6T-2007-0029, the second deadline for interim remediation.

The workplan, submitted by Geoenviro Services, proposed to conduct high vacuum dual-phase extraction to contain contaminated groundwater migration. I understand that you are awaiting permits from various agencies before implementing the interim action. Please be aware that if you are unable to implement the proposed interim action, you must conduct a different action that can be implemented immediately. For example, you could conduct your proposed action of groundwater extraction but transport contaminated water for treatment to a licensed facility. Continuing to wait to implement interim remediation in violation of CAO No. R6T-2007-0029 may result in additional administrative and/or judicial enforcement action.

**Enforcement**

Based upon your non-compliance status with eight directives in the CAO, I have requested assistance from the Attorney General's office to file an injunction with El Dorado County Superior Court. The Attorney General's Office, on behalf of the Lahontan Water Board, will request that the court compel you to immediately implement the required corrective actions in the CAO.

In addition, be aware that the Water Board may administratively impose civil liability for violations of CAO R6T-2007-0029. According to Water Code section 13350, the Water Board may impose a civil liability up to \$5,000 per day of non-compliance. You are urged to immediately come into compliance with requirements in CAO R6T-2007-0029 to reduce your exposure to future civil liability.

Finally, by copy of this notice of violation, I am notifying State Water Resources Control Board (State Board) staff with the Underground Storage Tank Cleanup Fund of your non-compliance status with CAO R6T-2007-0029. Your status will likely adversely affect State Board staff's ability to offer you reimbursement and a Letter of Commitment from the Cleanup Fund unless you take immediate steps to comply with CAO R6T-2007-0029.

I hope to hear from you or your agent in the near future. You may contact Lisa Dernbach at (530) 542-5424 if you have any questions or comments concerning this matter.



HAROLD J. SINGER  
EXECUTIVE OFFICER

cc: El Dorado County, Dept. of Environmental Management, Virginia Huber  
South Tahoe Public Utility District, Richard Solbrig  
Lukins Brothers Water Company, Danny Lukins  
State Water Board, Office of Chief Counsel, David Coupe  
State Water Board, Division of Financial Assistance, UST Cleanup Fund  
City of South Lake Tahoe, David Jinkens  
SAA Programs, Gabe Litvin  
Michael Schneeweis  
Tahoe Outdoor Living, Pat Baginski

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**ENCLOSURE 2**

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Kang Property, Inc. and Mr. Sarbjit Kang (hereinafter "Dischargers") in connection with Administrative Civil Liability Complaint No. R6-2008-0021 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

**(OPTION 1: Check here if the Dischargers waive the hearing requirement and will pay the liability.)**

- a. I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board.
- b. I certify that the Dischargers will remit payment for the civil liability imposed in the total amount of **four hundred three thousand nine hundred dollars (\$403,900)** by checks that reference "ACL Complaint No. R6-2008-0021" made payable in the amount of **\$209,500** to the "State Water Resources Waste Discharge Permit Fund" and in the amount of **\$194,400** to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Regional Water Board by **February 9, 2009** or this matter will be placed on the Regional Water Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Dischargers having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Dischargers to further enforcement, including additional civil liability.

**(OPTION 2: Check here if the Dischargers waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines.)**

I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I intend to request a hearing in the future. By checking this box, the Dischargers request that the Regional Water Board delay the hearing and/or hearing deadlines so that the Dischargers may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

# **ENCLOSURE 3**

**NOTICE OF WAIVER OF PUBLIC HEARING**

**California Regional Water Quality Control Board, Lahontan Region  
Issuance of Administrative Civil Liability (ACL) Order  
Against  
Kang Property Incorporated and Mr. Sarbjit Kang  
Swiss Mart Gasoline Service Station  
South Lake Tahoe, California**

On December 19, 2008 the California Regional Water Quality Control Board, Lahontan Region (Water Board) issued Complaint No. R6T-2008-0021 to Kang Property Inc. and Mr. Sarbjit Kang (Dischargers) in the amount of \$403,900 for alleged violations of Cleanup and Abatement Order No. R6T-2007-0029. The Dischargers have elected to waive their right to a public hearing in this matter. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$403,900 as set forth in the Complaint. The Water Board will consider accepting the Discharger's waiver at its March 11-12, 2009 meeting.

Written comments regarding the allegations contained in Complaint No. R6T-2008-0021, and/or acceptance of the waiver, will be accepted through Monday February 6, 2009.

The Water Board's March 11-12, 2009 meeting will be held at a time and location as announced in the Water Board meeting agenda. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Water Board's web page at <http://waterboards.ca.gov/lahontan/>. Oral comments for this item may be made during the meeting upon receipt of a request to speak slip. For more information regarding this matter, please call Ms. Lisa Dernbach at (530) 542-5424.

Robert S. Dodds  
Assistant Executive Officer

[Swiss Mart Notice of Waiver-for publication.doc]

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## **ENCLOSURE 4**

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California Regional Water Quality Control Board, Lahontan Region

**[PROPOSED DRAFT] HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R6T-2008-0021  
ISSUED TO**

**KANG PROPERTY INC., AND  
MR. SARBJIT KANG**

**SWISS MART GASOLINE SERVICE STATION  
913 EMERALD BAY ROAD  
SOUTH LAKE TAHOE  
EL DORADO COUNTY**

**SCHEDULED FOR MARCH 11-12, 2009**

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO  
COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED  
HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR  
TESTIMONY.

**Background**

The Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13323 against Kang Property, Inc. and Mr. Sarbjit Kang ("Dischargers") alleging that they have violated Water Code Sections 13304 and 13267 by failing to comply with provisions of Cleanup and Abatement Order No. R6T-2007-0029. The Complaint proposes that administrative civil liability in the amount of \$403,900 be imposed as authorized by Water Code Sections 13350 and 13268. A hearing is currently scheduled to be held before the Regional Board during its March 11-12, 2009 meeting.

**Purpose of Hearing**

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Regional Board will consider whether to adopt an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on March 11-12, 2009 will commence at a time and location as announced in the Regional Board meeting agenda. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at <http://www.waterboards.ca.gov/lahontan/>.

## Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This proposed draft version of the hearing procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the Regional Board's Advisory Team. A copy of the general procedures governing adjudicatory hearings before the Regional Board may be found at Title 23 of the California Code of Regulations, Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

**THIS AND THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY TEAM NO LATER THAN JANUARY 5, 2009 OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.**

## Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Regional Board Prosecution Team
- (2) Kang Property, Inc. and Mr. Sarbjit Kang, referred to as the "Dischargers"

## Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5 p.m. on January 12, 2009 to Harold Singer, Regional Board Executive Officer, at the address provided below. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the

person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on January 23, 2009. The parties will be notified by 5 p.m. on February 6, 2009 in writing whether the request has been granted or denied.

### **Primary Contacts**

#### **Advisory Team:**

Harold Singer, Executive Officer, California Regional Water Quality Control Board, Lahontan Region, 2501 Lake Tahoe Blvd. South Lake Tahoe, CA 96150, Tel. # (530) 542-5400, [HSinger@waterboards.ca.gov](mailto:HSinger@waterboards.ca.gov).

David Coupe, Staff Counsel, State Water Resources Control Board, Office of Chief Counsel, 1001 I Street, Sacramento, CA 95814, Tel. # (916) 327-4439, [DCoupe@Waterboards.ca.gov](mailto:DCoupe@Waterboards.ca.gov).

#### **Prosecution Team:**

Robert Dodds, Assistant Executive Officer, California Regional Water Quality Control Board, Lahontan Region, 2501 Lake Tahoe Blvd. South Lake Tahoe, CA 96150, Tel. # (530) 542-5410, [RDodds@waterboards.ca.gov](mailto:RDodds@waterboards.ca.gov).

David Boyers, Senior Staff Counsel, State Water Resources Control Board, Office of Enforcement, 1001 I Street, Sacramento, CA 95814, Tel. # (916) 341-5276, [DBoyers@waterboards.ca.gov](mailto:DBoyers@waterboards.ca.gov).

Chuck Curtis, (Supervising Water Resources Control Engineer), California Regional Water Quality Control Board, Lahontan Region, 2501 Lake Tahoe Blvd. South Lake Tahoe, CA 96150, Tel. # (530) 542-5460, [CCurtis@waterboards.ca.gov](mailto:CCurtis@waterboards.ca.gov).

Lisa Dernbach, (Senior Engineering Geologist, Specialist), California Regional Water Quality Control Board, Lahontan Region, 2501 Lake Tahoe Blvd. South Lake Tahoe, CA 96150, Tel. # (530) 542-5424, [LDernbach@waterboards.ca.gov](mailto:LDernbach@waterboards.ca.gov).

Scott Ferguson, (Senior Water Resources Control Engineer), California Regional Water Quality Control Board, Lahontan Region, 2501 Lake Tahoe Blvd. South Lake Tahoe, CA 96150, Tel. # (530) 542-5432, [SFerguson@waterboards.ca.gov](mailto:SFerguson@waterboards.ca.gov).

#### **Dischargers:**

Kang Property, Inc.  
c/o Mr. Sarbjit Kang  
61 Chilpancino Parkway  
Pleasant Hill, CA 94523

Mr. Sarbjit Kang  
Swiss Mart Gas Station  
913 Emerald Bay Road  
South Lake Tahoe, CA 96150

### **Separation of Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (Prosecution Team) have been separated from those who will provide advice to the Regional Board (Advisory Team). Members of the Advisory Team are: Harold Singer, Executive Officer and David Coupe, Staff Counsel. Members of the Prosecution Team are: Robert Dodds, Assistant Executive Officer, David Boyers, Senior Staff Counsel, Chuck Curtis, (Supervising Engineer), Lisa Dernbach, (Senior Engineering Geologist), and Scott Ferguson, (Senior Engineer). Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

### **Ex Parte Communications**

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Regional Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

### **Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined **30** minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team no later than ten days after all of the evidence has been submitted. Additional time may be provided at the discretion of the Advisory

Team (prior to the hearing) or the Regional Board Chair (at the hearing) upon a showing that additional time is necessary.

### **Evidence, Exhibits and Policy Statements**

The following information must be submitted in advance of the hearing:

1. All written evidence and exhibits that the Designated Party would like the Regional Board to consider. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

The Prosecution Team shall submit (15) hard copies and one electronic copy of the information to Harold Singer, Regional Board Executive Officer no later than 5 p.m. on February 6, 2009.

The remaining designated parties shall submit (15) hard copies and one electronic copy of the information to Harold Singer, Regional Board Executive Officer no later than 5 p.m. on February 20, 2009.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but no later than 10 days prior to the hearing. Interested persons do not need to submit written comments in order to speak at the hearing. In accordance with Title 23, California Code of Regulations, Section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Regional Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

### **Request for Pre-hearing Conference**

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

### **Evidentiary Objections**

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection by 5 p.m. on February 27, 2009 to the Advisory Team with a copy to all other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

### **Evidentiary Documents and File**

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Board office at 2501 Lake Tahoe Boulevard, South Lake Tahoe. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Board Chair.

### **Questions**

Questions concerning this proceeding may be addressed to David Coupe, Staff Counsel at (916) 327-4439.

### **IMPORTANT DEADLINES**

(Note: the Regional Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the discharger waives that requirement.)

December 19, 2008	Prosecution Team issues ACL Complaint to Dischargers and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice
January 5, 2009	Objections due on proposed Hearing Procedure
January 7, 2009	Advisory Team issues Hearing Procedure
January 12, 2009	Deadline for submission of request for designated party status.

January 23, 2009	Deadline for opposition to request for designated party status.
January 26, 2009	Dischargers' deadline for waiving right to hearing.
February 6, 2009	Prosecution Team's deadline for submission of evidence, testimony and witness lists.
February 6, 2009	Advisory Team issues decision on requests for designated party status, if any.
February 20, 2009	Remaining Designated Parties' Deadline for submission of evidence, testimony and witness lists.
February 20, 2009	All Designated Parties' deadline for submission of request for pre-hearing conference.
February 27, 2009	All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
March 11-12, 2009	Hearing

\_\_\_\_\_  
Harold J. Singer  
Executive Officer

DATE: \_\_\_\_\_

[Swiss Mart – Hearing Procedures DRAFT.doc]