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STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In The Matter Of The Petition Of BARRY ROSS, TRUSTEE OF THE LOUIS ROSS & ALICE ROSS FAMILY TRUST Petitioner,	Petition No. _____ PETITION FOR REVIEW OF CLEANUP AND ABATEMENT ORDER NO. R4-2009-0045 OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION

INTRODUCTION AND SUMMARY

Petitioner Barry Ross, Trustee of the Louis Ross & Alice Ross Family Trust (the "Ross Family Trust"), herein collectively referred to as "Ross," respectfully petitions the California State Water Resources Control Board (the "State Board") to review Cleanup and Abatement Order No. R4-2009-0045 (the "CAO") of the California Regional Water Quality Control Board, Los Angeles Region (the "Regional Board") pursuant to California Water Code Section 13320 and California Code of Regulations, Title 23, section 2050.

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PETITION FOR REVIEW

Pursuant to section 2050 of Title 23 of the Code of Regulations, Ross provides the following information in support of the Petition:

1. CONTACT INFORMATION OF PETITIONER

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Hidden Hills, CA 91302-1119
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2. ACTIONS FOR WHICH PETITIONER SEEKS REVIEW

Ross seeks review of the Regional Board's Cleanup and Abatement Order No. R4-2009-0045 dated May 27, 2009 (the "CAO"). A true and correct copy of the CAO is included as Exhibits A in Ross' Appendix in Support of Petition (the "Appendix," submitted herewith).

3. DATE ON WHICH THE REGIONAL BOARD ACTED

The Regional Board sent a letter enclosing the CAO to Ross by certified mail on May 27, 2009. A true and correct copy of the Regional Board's May 27, 2009 letter enclosing the CAO is included in the Appendix as part of Exhibit A.

4. STATEMENT OF REASONS WHY THE ACTION WAS INAPPROPRIATE OR IMPROPER

The Regional Board's CAO was inappropriate or improper for the following reasons: (1) the Regional Board failed to name U-Haul Co. and California. and Amerco Real Estate Company (collectively "U-Haul") as a responsible party under the CAO based on the separate release of petroleum hydrocarbons at the U-Haul Site for which U-Haul is responsible, and which has commingled with the petroleum hydrocarbons release originating from the Garfield Express

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Site[1]; (2) the Regional Board failed to name Brown and Caldwell, Ross' former consultant, as a responsible party under the CAO with respect to the diesel fuel line breach and associated diesel fuel release referenced in Paragraph 7.g. of the CAO; (3) the Regional Board imposed requirements on Ross for the investigation, cleanup and abatement of certain petroleum hydrocarbons and fuel oxygenates contamination at the U-Haul Site for which Ross is not legally responsible ("Contamination"); and (4) the Regional Board imposed on Ross a time compliance schedule that Ross is financially unable to meet.

5. THE MANNER IN WHICH ROSS IS AGGRIEVED

Ross is aggrieved because the CAO requires Ross to investigate, cleanup and abate certain Contamination at the U-Haul Site for which Ross is not legally responsible and to submit compliance and other technical reports relative to that Contamination. The time compliance schedule imposed by the Regional Board will also cause Ross to incur civil penalties for non-compliance based on compliance deadlines that Ross is financially unable to meet.

6. SPECIFIC ACTION ROSS REQUESTS OF THE STATE BOARD

Ross respectfully requests that the State Board: (1) accept this Petition; (2) direct the Regional Board to name U-Haul as a responsible party under the CAO with respect to the Contamination at the U-Haul Site and in areas of commingling of the plumes originating from the two sites; (3) direct the Regional Board to name Brown and Caldwell with respect to the diesel release referenced in Paragraph 7.g. of the CAO; and (4) direct the Regional Board to extend the deliverable due dates for the RAP, the workplan for the diesel release and the Site Conceptual Model Update (SCMU) by a period of six months for each current deadline.

7. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

[1] U-Haul Co. and California. and Amerco Real Estate Company are the operator and owner, respectively, of a U-Haul rental and self-storage facility located at 11716 Long Beach Boulevard, Lynwood, California (hereinafter, the "U-Haul Site"). The U-Haul Site is located across the street and to the south of the Garfield Express Site that was owned by the Ross Family Trust.

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Ross' Points and Authorities in support of this Petition is set forth below and incorporated herein by reference.

8. STATEMENT THAT THE PETITION WAS SENT TO THE REGIONAL BOARD

A copy of this Petition was sent by Ross to the Executive Officer of the Regional Board via electronic mail and First Class Mail on June 26, 2009. See Appendix, Ex. B.

9. STATEMENT THAT ISSUES WERE RAISED BEFORE THE REGIONAL BOARD

Ross raised the issues which are the subject of this petition in comments dated May 13, 2009 on the draft CAO, which are part of the administrative record before the Regional Board and the Regional Board's files in this matter.

10. COPY OF REQUEST FOR RECORD TO THE REGIONAL BOARD

Ross requests that the Regional Board prepare the record.

11. REQUEST FOR HEARING

Ross reserves the right to request a hearing on this Petition.

DATED: June 26, 2009

Respectfully Submitted

GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP

By: _____
ROGER J. HOLT
JONATHAN B. SOKOL
Attorneys for Barry Ross, Trustee of the Louis Ross and Alice Ross Family Trust

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STATEMENT OF POINTS AND AUTHORITIES

Pursuant to California Water Code section 13320 and California Code of Regulations, Title 23, section 2050(a)(7), Ross submits this Statement of Points and Authorities in support of his Petition for Review. The Petition requests that the State Board direct the Regional Board to amend Cleanup and Abatement Order No. R4-2009-0045 (the "CAO") as follows: (1) naming U-Haul as a responsible party under the CAO with respect to the Contamination at the U-Haul Site and in areas of commingling of the plumes originating from the two sites at issue; (2) naming Brown and Caldwell as a responsible party with respect to the diesel release referenced in Paragraph 7.g. of the CAO; and (3) extending the deliverable for the RAP, the workplan for the diesel release and the Site Conceptual Model Update (SCMU) by a period of six months for each current deadline.

I. BACKGROUND

A. The Garfield Express Site

This Petition arises out of petroleum hydrocarbon impacts discovered on two adjacent commercial properties located in Lynwood, California. Ross owned one of the properties located at 11600-11620 Long Beach Boulevard (hereinafter the "Garfield Express Site"). Amerco Real Estate Company and U-Haul Co. of California (collectively "U-Haul")[1], are the owner and operator, respectively, of the other property located at 11716 Long Beach Boulevard (hereinafter the "U-Haul Site"). The properties are separated by Louis Street. The Garfield Express Site is located to the north of Louis Street. The U-Haul Site is located to the south of Louis Street. See Blaes Site Characterization Report (6/27/01), Fig. 2.[2]

In February of 1978, Louis and Alice Ross acquired the northern portion of the Garfield

[1] U-Haul Company of California and Amerco Real Estate Company are affiliated companies with the same environmental management.

[2] Unless otherwise stated, all references are to documents and technical reports that should be part of the Regional Board's administrative record. Due to the voluminous nature of these documents, Ross has not attached such documents. If requested by the State Board, Ross will supplement this Petition to provide such documents.

Express Site comprising the location of a gas station located at 11600 Long Beach Boulevard. Alice Ross died in 1994. On or about February 14, 1995, Louis Ross transferred lots 749 through 751 (the location of the gas station) to the Ross Family Trust. At that time, Louis Ross was the trustee of the Ross Family Trust. Louis Ross died in February 2004 and Barry Ross, the Petitioner, became the successor trustee of the Ross Family Trust.

From approximately 1980 to 2008, the gas station at the Garfield Express Site was operated by tenants of Louis Ross and later the Ross Family Trust. In 1995, one of the three 10,000 gallon USTs at the site failed its tightness test and was removed. Free product and dissolved phase gasoline constituents were detected in groundwater beneath the site during subsequent investigative activities.

On February 27, 2001, the Regional Board issued Cleanup and Abatement Order No. 01-002 to Louis Ross with respect to the Garfield Express Site. See Appendix, filed herewith, Ex. A, ¶9.g. The Ross Family Trust was not named in this original CAO or any enforceable orders until the present CAO that is the subject of this Petition. Although the Ross Family Trust was not named in any CAO until the one at issue for this Petition, Ross has been voluntarily complying to the best of the financial abilities of the Trust with certain directives of the Regional Board.

B. The U-Haul Site

U-Haul acquired the property located at 11716 Long Beach Boulevard in 1977. U-Haul has operated a vehicle and equipment rental and repair and self-storage business at the property. In 1977, U-Haul reported installing a 10,000 gallon, single-wall fiberglass UST at the site to store gasoline to fuel its rental vehicles. In 1979, U-Haul also reported installing a single-wall 550-gallon waste oil tank at the site to store waste generated from its vehicle maintenance operations. See Regional Water Board May 18, 2006 letter to U-Haul, included as part of Ex. C to Appendix.

In order to comply with its approved Hazardous Materials Management Plan (HMMP) to monitor the USTs, the Los Angeles Department of Public Works (LADPW) required U-Haul to install three soil borings around the tanks that were later completed as monitoring wells. In September 1986, Jirsa Environmental Services drilled three soil borings to a depth of 41 feet below ground surface (bgs). Two of the borings (labeled B-01 and B-02) were located at the

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northeast and southwest corners of the 10,000 gallon gasoline UST; the third boring (labeled B-03) was drilled adjacent to the 550-gallon waste oil tank. The borings were then completed as monitoring wells and relabeled EX-1 to EX-3. See Blaes Site Characterization Report (6/27/01) at p. 7; and Geosyntec Expert Report (November 2008), Fig. 8 (Appendix, Ex. G), showing location of EX-1 and EX-2 beneath the gasoline tank at the U-Haul Site.

Soils samples taken from the borings in 1986 found generally non-detectible levels of TPH. However, the groundwater beneath and around the tanks was never sampled. More importantly, U-Haul has produced no sampling data for the monitoring wells for the tanks from the time they were completed in 1986 through the time the tanks were removed in 1996.

On December 12, 1988, the LADPW sent U-Haul a notice regarding U-Haul's failure to provide groundwater monitoring samples for its USTs as required by its permit for the tanks. See Appendix, Ex. D. On July 13, 1994, the LADPW sent U-Haul another Notice of Non-Compliance for failing to provide groundwater samples from the monitoring wells for its tanks. See Appendix, Ex. D. Rather than submit the required groundwater monitoring data to the LADPW, U-Haul removed its USTs in November 1996.

Upon removal of the tanks four years later in 1996, U-Haul's consultant, Blaes Environmental, reported that the 10,000 gallon, fiberglass UST was in good condition. He also reported that the "soil below the gasoline tank, piping, and dispenser did not appear to be stained and did not have a petroleum hydrocarbon odor." See Blaes Underground Storage and Tank Removal Report (1/21/97) at p. 8. However, the data included with Blaes' Underground Storage Tank Removal Report showed the soil beneath the 10,000 gallon UST was impacted by gasoline constituents, including MTBE and BTEX. *Ibid.* Moreover, contrary to what was stated in the Tank Removal Report, the field notes of Blaes recorded that he smelled an odor of gas from soil taken from the tank excavation pit. See Blaes Field Notes, Appendix, Ex. F.

Blaes only did limited soil sampling when it removed the tanks. Blaes also never took samples from the groundwater monitoring wells for the tanks that had been in place since 1986 (EX-1 to EX-3). Following receipt of U-Haul's Tank Removal Report, the LADPW referred the matter to the Regional Board. Upon review of U-Haul's Tank Removal Report, the Regional

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Board found the site was impacted by gasoline constituents released from the U-Haul Site and required U-Haul to conduct further investigation. See December 12, 2000 letter, Appendix. Ex. C. U-Haul's subsequent investigation in 2001 found significant concentrations of gasoline contamination of up to 2000 ppm in the soil at a depth of two feet below the bottom of the gasoline UST and floating gasoline in monitoring well EX-1 beneath the south end of the gasoline UST. See Site Characterization Report (Blaes, 6/27/01). A shallow gas investigation in 2002 also found a massive "hot spot" near the former location of the gasoline UST. See Soil Gas Survey Report, Fig. 4 (Blaes, 7/15/02). On May 18, 2006, the Regional Board sent correspondence to U-Haul stating, "Regional Board staff determined that it was evident that releases of fuel product did occur [at the U-Haul Site] and the fuel release has likely impacted the soil and groundwater beneath the site." However, "Staff also determined that the total mass of the release did not appear to have caused the fee product observed in the monitoring wells onsite." See May 18, 2006 letter, Appendix. Ex. C. To date, despite requests made by Ross, the Regional Board has failed to name U-Haul as a responsible party for the release originating from its property.

C. The U-Haul v. Ross Litigation

In November 2006, U-Haul filed a lawsuit in the United States District Court for the Central District of California, captioned *U-Haul International, Inc. et al. v. Barry Ross, et al.*, Case No. CV 06-06574 (the "Litigation"). U-Haul's complaint in the Litigation sought to hold Ross liable for the cleanup of the U-Haul property based on U-Haul's contention that all of the gasoline contamination detected at the U-Haul Site migrated there from the release at the Garfield Express Site. U-Haul's complaint in the Lawsuit asserted causes of action against Ross based on CERCLA, RCRA, the California Hazardous Substance Account Act, and common law claims for nuisance, trespass and negligence. Ross filed a counterclaims against U-Haul, seeking a determination, among other things, that U-Haul negligently caused of a release of gasoline at its property and at the U-Haul should be responsible to cleanup its own property.

Thus, the central issue raised by this Petition, whether U-Haul should be responsible for some or all of the gasoline contamination detected at the U-Haul Site was litigated between Ross

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and the U-Haul - - the real party in interest to this Petition - - in the Lawsuit. The Lawsuit between the parties proceeded to trial before a jury commencing on January 6, 2009. On January 21, 2009, the jury returned its verdict. Based upon all of the evidence presented at the trial, which include testimony by percipient and expert witnesses called by the parties, the jury found that U-Haul negligently caused or allowed petroleum hydrocarbon contamination to be released at the U-Haul Site. See Amended Judgment, Verdict Form 5 - Equitable Indemnity, p. 8, Appendix, Ex. I.

Following the jury phase of the Lawsuit, Judge Fairbank presided over a bench trial with respect to the federal and equitable claims. Based on the jury's finding that U-Haul caused a release of gasoline at its site, Judge Fairbank declined to grant injunctive relief to U-Haul requiring Ross to remediate the full extent of the petroleum hydrocarbon contamination present at the U-Haul site, stating as follows:

> "... although the weight of the evidence establishes that Ross is responsible for a substantial portion of the petroleum and hazardous substance contamination on the U-Haul Site, the evidence does not establish that Ross is responsible for the full extent of the contamination. To the contrary, there is evidence that U-Haul was responsible for some of the petroleum contamination."

See Memorandum Decision, p. 12, Appendix, Ex. J.

C. <u>The CAO</u>

On May 27, 2009, the Regional Board issued the CAO at issue to Ross. Despite the substantial evidence in the record that U-Haul caused a release of gasoline impacts at its site that contributed to the contamination detected beneath the U-Haul Site, and the findings from the Lawsuit between Ross and U-Haul, the Regional Board failed to name U-Haul as a responsible party. Instead, the CAO requires Ross to remediate all of the petroleum contamination beneath the U-Haul site without any contribution by U-Haul.

The CAO also requires Ross to submit a workplan to delineate soil contamination near the diesel fuel UST and dispenser at the Garfield Express Site based on a release caused in September 2006 by Ross' former consultant, Brown and Caldwell, when Brown and Caldwell breached a diesel line during a hand auger investigation. Despite a request made by Ross, the Regional Board has also failed to name Brown and Caldwell as a responsible party for the diesel release.

As discussed below, the CAO also seeks to impose on Ross an unreasonable compliance

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schedule in light of the financial resources of the Ross Family Trust.

II. THE CAO SHOULD BE AMENDED TO NAME ALL RESPONSIBLE PARTIES AND TO SET NEW COMPLIANCE DEADLINES

A. Standard Of Review

Any aggrieved person may petition the State Board to review an action or failure to act by a Regional Board within 30 days of such action or failure. CAL. WATER CODE § 13320(a). Upon finding that the action of the Regional Board, or the failure of the Regional Board to act, was inappropriate or improper, the State Board may take the appropriate action, direct the Regional Board to take the appropriate action, refer the issue to another state agency with jurisdiction, or any combination of those options. CAL. WATER CODE § 13320(c). The State Board is vested with all the powers of the Regional Board for purposes of taking such actions. CAL. WATER CODE § 13320(c).

In determining whether the Regional Board's action was inappropriate or improper, the State Board may consider the record before the Regional Board and any other relevant evidence which should be considered to effectuate and implement the Water Code's policies. CAL. WATER CODE § 13320(b). Thus, the scope of review is "closer to that of independent review." *In re* Petition of Exxon Co., U.S.A., State Board Order No. WQ 85-7, 1985 WL 20026 (Cal. St. Wat. Res. Bd.), at *6. However, while the State Board can independently review the Regional Board's record, to uphold the Regional Board's challenged action, the State Board must conclude that the action was "based on substantial evidence." *Id.* As shown below, the Regional Board's action in failing to name U-Haul was contrary to the substantial evidence in the record that U-Haul should be named as a responsible party.

B. The Draft CAO Fails to Name All Dischargers For Whom There Is Sufficient Evidence of Responsibility.

It is well-established policy of the State Board that "CAOs should name all dischargers for whom there is sufficient evidence of responsibility as set forth in Water Code section 13304." See Water Quality Enforcement Policy, section IV.C.4, p. 19 (Feb. 19, 2002). See also Order

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WQO 2002-0021, *In the Matter of the Petition of Mehdi Mohammadian*, (". . .consistent with our well-established policy of ensuring that, when there is reasonable evidence of responsibility, multiple parties be named in order to promote cleanup of a demonstrated water quality problem.") "Generally speaking it is appropriate and responsible for a Regional Board to name all parties for which there is reasonable evidence of responsibility, even in cases of disputed responsibility." (SWRCB Order WQ 85-7, *In the Matter of the Petition of Exxon Company, U.S.A. et al.*). Moreover, as stated by the State Board, "a balancing of the equities dictates that, whenever possible, a responsible party should not be left to clean up constituents attributable to a different release for which that party is not responsible." (*Ibid.*)

Applying these well-established policies, U-Haul, the owner and operator of the adjacent U-Haul Site, should also be named as a responsible party under the CAO based on the separate release at the U-Haul Site for which U-Haul is responsible, and which has commingled with the release from the Garfield Express Site. There is substantial evidence to support a finding of responsibility on the part of U-Haul under Water Code section 13304 for a release at its property.

The evidence includes the following:

- A single-walled, 10,000 gallon fiberglass UST (which are notorious for leaking) operated that the U-Haul Site for nearly 20 years.
- Although the Los Angeles Department of Public Works (LADPW) required U-Haul to install two groundwater monitoring wells (labeled EX-1 and EX-2) beneath and around the gasoline UST to detect any releases from the tank, U-Haul has no monitoring records for the wells from the time they were installed in 1986 through the time of removal of the USTs in 1996 (See Figure 3 to Site Characterization Report (Blaes, 6/27/01) showing monitoring well locations. See also LARWQCB May 18, 2006 letter to U-Haul referencing the monitoring wells, included in Ex. D). The lack of monitoring data for the tanks is evidence the SWRCB has directed Regional Boards to consider as a relevant evidence to prove a release on the part of a responsible party. See State Water Resources Control Board Resolution No. 92-49, Policies and Procedures For Investigation and

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Cleanup and Abatement of Discharges Under Water Code Section 13304, Section I.A.6.

- The LADPW sent Notices of Non-Compliance to U-Haul in 1988 and 1994 regarding U-Haul's failure to submit monitoring data for EX-1 and EX-2, and requested that U-Haul provide the data. However, U-Haul refused or failed to respond to the notices and thereafter destroyed the monitoring data (See Notices, Appendix, Ex. D.
- Although U-Haul produced records during trial showing the tanks passed tank tests using a tracer methodology that were performed once a year during 1993 to 1996, the testimony showed the tests were unreliable for several reasons. First, the probes used to collect the tracer material to detect a leak were installed beyond the recommended distance from the bottom of the tanks. Second, the probes were not installed correctly in the back fill material, but were instead installed in the native soil that had a much lower permeability than the back fill material. Lastly, the 550-gallon waste oil tank passed the tests using the same methodology even though it had 10 holes in it when it was removed and had stained soil beneath it. See Testimony of Nancy Bice, Appendix Ex. D.
- Moreover, as recognized by the State Board, leak detection tests, even when correctly performed, are not conclusive evidence that a tank did not leak:

"... we cannot regard leak detection tests as conclusive evidence that a tank does not leak even if they are correctly performed. A leak detection test is only capable of detecting an existing major leak at the time the test is taken. It provides no information on the history of the tank. The test will not detect minor leaks less than approximately 0.05 gallons per hour. Over a year, a leak this size can release up to 438 gallons of gasoline. Additionally, the gasoline pollution could have occurred through spills."

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Order No. WQ 87-1, *In the Matter of the Petition of Spencer Rental Service.*[3]

- In 1996, when U-Haul removed the gasoline UST, U-Haul's consultant, Dan Blaes, who oversaw the removal of the tanks, recorded in his notes that he smelled an odor of gas from soil taken from the tank excavation pit. (See Blaes Field Notes, Appendix, Ex. F.)[4] This olfactory evidence of a release was not disclosed in U-Haul's Underground Storage Tank Removal and Closure Report (Blaes, 1/21/97). Not only was this evidence not disclosed, U-Haul's consultant stated as follows in the Report: "The soil below the gasoline tank, piping and dispenser did not appear to be stained and did not have a petroleum hydrocarbon odor." (*Ibid.*)

- Soil samples taken from beneath the location of the gasoline tank found detectable concentrations of gasoline constituents evidencing a release, which caused the Regional Board to require U-Haul to conduct further investigation (*Ibid. see also* December 12, 2000 and May 18, 2006 letters from the LARWQCB to U-Haul, Appendix, Ex. C).

- U-Haul's subsequent investigation in 2001 found significant concentrations of gasoline contamination of up to 2000 ppm in the soil at a depth of two feet below the bottom of the gasoline UST and floating gasoline in monitoring well EX-1 beneath the south end of the gasoline UST. See Site Characterization Report (Blaes, 6/27/01).

- A shallow gas investigation in 2002 also found a massive "hot spot" near the gasoline UST. See Soil Gas Survey Report, Fig. 4 (Blaes, 7/15/02).

- In the recently completed federal court trial before Judge Fairbank in the *U-Haul v. Ross* case, expert testimony was presented on behalf of Ross by Nancy Bice of Geosyntec consultants. Ms. Bice testified that in her opinion there was a significant release of gasoline at the U-Haul Site that contributed to the free product and dissolved phase constituents detected in the groundwater beneath the U-Haul Site and that the free product plumes emanating from each of

[3] Even U-Haul's expert acknowledged during cross-examination in the federal court trial that the gasoline tank could have leaked at a rate of 1.2 gallons per day and still passed the tank tests, which over a 10 year period could have resulted in a release of over 3,600 gallons of free product.

[4] These notes were authenticated and admitted into evidence during the *U-Haul v. Ross* trial.

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the sites have commingled in and around Louise Street. The transcript from Ms. Bice's testimony is incorporated herein by reference and is available if the Board would like to review it. Copies of Ms. Bice's expert reports summarizing her opinions and the basis for her opinions are provided as Exs. G and H to the Appendix.

- Based upon all of the evidence presented at the trial in the *U-Haul v. Ross* case, the jury returned a verdict finding that U-Haul negligently caused or allowed petroleum hydrocarbon pollutants or contamination to be released at the U-Haul Site. See Amended Judgment, Verdict Form 5 - Equitable Indemnity, p. 8, Appendix., Ex. I.;

- Based on the jury's finding that U-Haul caused a release of gasoline at its site, Judge Fairbank declined to grant injunctive relief to U-Haul requiring Ross to remediate the full extent of the petroleum hydrocarbon contamination present at the U-Haul site, stating as follows:

> ". . . although the weight of the evidence establishes that Ross is responsible for a substantial portion of the petroleum and hazardous substance contamination on the U-Haul Site, the evidence does not establish that Ross is responsible for the full extent of the contamination. To the contrary, there is evidence that U-Haul was responsible for some of the petroleum contamination." See Memorandum Decision, p. 12, Appendix, Ex. J.

- Regional Board staff has previously found that U-Haul is responsible for a release of gasoline at the U-Haul Site. See LARWQCB letters to U-Haul dated December 12, 2006, February 27, 2001 and May 18, 2006. (Appendix, Ex. C).

Ross submits that it has shown by credible and reasonable evidence that U-Haul caused or permitted a gasoline release at its site which has contributed to both the free product *and* dissolved phase impacts beneath the U-Haul Site. Accordingly, applying well-established policy of the State Board, the Regional Board should have named U-Haul as a primary responsible party under the CAO with respect to that portion of the CAO that requires assessment, monitoring and cleanup at the U-Haul Site and in the areas involving a commingling of the plumes emanating from each site. Alternatively, and at a minimum, U-Haul should be named in the CAO as a secondary responsible party for the U-Haul Site and the areas of commingling in the event that the Ross Family Trust for financial reasons is unable to comply with the CAO.

Furthermore, the CAO should name as a responsible party Brown and Caldwell, Ross'

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prior consultant, with regard to the diesel fuel line breach referenced in Paragraph 7(g) of the Proposed CAO. It is undisputed that this release was caused by Brown and Caldwell while it was performing a shallow hand-auger investigation for Ross at the Garfield Express Site on September 18, 2006. See Site Conceptual Model Update, §§8.1-8.2 (Brown and Caldwell, 6/15/07). According to State Board well-established policy, the operator causing the discharge should be named the primary responsible party and the owner at the time a secondary responsible party. See Order No. WQ 89-1, *In the Matter of the Petition of Schmidl, et al.* Therefore, with respect to portion of the CAO requiring a workplan for the diesel impacts from the breach, Brown and Caldwell should be named the primary responsible party to complete those activities. Ross should only be named a secondary responsible party for those activities in the event Brown and Caldwell fails in its obligations.

C. Required Actions

1. Remedial Action Plan (RAP)

Based upon the discussion above regarding U-Haul's responsibility for a substantial release on its property, and the commingling of the plumes emanating from each site in and around Louis Street, Ross contends the requirement on the part of Ross to remove free product should be defined as follows:

With respect to the requirement to remove offsite free product, further investigation should be done to delineate as best as possible the areas of commingling between the plumes emanating from the Garfield Express Site and the U-Haul Site. In areas of commingling, Ross and U-Haul should be jointly responsible to remove free product. With respect to the free product in the immediate vicinity of the former location of the USTs on U-Haul's property (i.e., in the area bordered by monitoring wells EX-3, UH-1, EX-2 and EX-1) and any free product encountered to the south of this location (i.e., in the area of UH-3 and UH-2), U-Haul, and not

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Ross, should be responsible to remove free product.[5]

With respect to interim free product removal, which has been ongoing, the parties should be responsible as follows:

Ross should be responsible to remove free product from the following wells: MW-2, MW-3, MW-7, MW-8, MW-9, MW-10, MW-11, MW-12, MW-14, MW-16 and MW-22.

Ross and U-Haul should be jointly responsible to remove free product from the following wells and any other areas of apparent commingling encountered: MW-15, MW-21 and MW-23.

U-Haul should be responsible to remove free product from the following wells: UH-1, EX-1, EX-2 and EX-3.

2. Deliverable Due Dates

The due date for the RAP is October 15, 2009, along with Site Conceptual Model (SCMU) updates due semi-annually commencing on October 15, 2009. Ross is currently not in a financial position to meet these deadlines or to prepare and implement an aggressive and active cleanup plan at the present time. The CAO also requires Ross to submit a workplan for the diesel breach caused by Brown and Caldwell by August 15, 2009. Therefore, Ross requests that the Regional Board be directed to extend these deadlines by six months.[6] Ross supports this request as follows.

The State Board's Water Quality Enforcement Policy states: "It is the policy of the SWRCB that the Boards shall strive to be fair, firm and consistent in taking enforcement actions throughout the State, *while recognizing the individual facts of each case*." Water Quality Enforcement Policy (Feb. 19, 2002) p. 1. (emphasis added.) The Policy also states that "RWQCBs shall comply with SWRCB Resolution No. 92-49, 'Policies And Procedures for

[5] This division of responsibility is also supported by the fact that significant hydrocarbon contamination was discovered at the south part of the U-Haul Site in 1992 (about three years before the reported release at the Garfield Express Site). See discussion in Bice Expert Report at pp. 10-11, Attachment G hereto.

[6] The Draft CAO submitted to Ross for comment proposed a deadline for the RAP and SCMU of July 15, 2009. In response to Ross' request that these deadlines be extended six months, the Regional Board only extended the dates three months. Ross needs an additional six months to hopefully be in a financial condition to comply.

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Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304', in issuing CAOs." Policy, p. 19. Resolution No. 92-49 provides that "Availability of financial resources should be considered in the establishment of reasonable compliance schedules." Resolution No. 92-49, section III.H.1.b. Although dealing with the issue of ability to pay in the context of an ACL, the State Board's Water Quality Enforcement Policy espouses a similar policy: "In most cases, it is in the public interest for the discharger to continue in business and bring operations into compliance." Policy, p. 40.

As a result of the recent *U-Haul v. Ross* trial - - an action that Ross did not initiate - - Ross is currently indebted to its Greenberg Glusker (its attorneys in the Lawsuit and these proceedings) for unpaid legal fees and costs in the amount of $559,380.03. Ross also owes its consultant, Geosyntec, for unpaid consulting and expert witness fees in the amount of $109,523.94. U-Haul also recovered a small monetary judgment in the *U-Haul v. Ross* action against Ross in the amount of $61,546.83. Accordingly, as a result of the trial, the Ross has current unpaid liabilities of $730,450.80.

Commencing in October of 2009, when the deliverables are first due under the current compliance schedule in the CAO, Ross currently will have available to it net monthly income (after payment of required taxes) of $14,308 that could be used to comply with the requirements of the CAO (after the Ross has paid off its unpaid legal and consulting fees from the trial). Accordingly, under the compliance schedules in the CAO, Ross would not be able to comply with the requirements regarding the diesel breach work plan, RAP and the SCMU by the existing deadlines. As set forth in Table 1 to the Geosyntec Expert Report from the Lawsuit (Appendix, Ex.), the RAP required by the CAO is estimated to cost approximately $34,000. In addition, Ross is informed that the initial SCMU will cost approximately $10,000 to $15,000 to prepare, as will a workplan for the diesel breach. Semi-annual monitoring and cleanup progress reports due commencing on October 15, 2009, will cost approximately $20,000 to prepare. Accordingly, by October 15, 2009, the Ross Family Trust would need to pay approximately $74,000 to $84,000, which it simply does not have in available resources at this time given its current liabilities.

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Ross respectfully requests a six (6) month extension on these deadlines to afford it time to attempt to make financial arrangements to meet its obligations under the CAO.

The limited financial resources of the Ross Family Trust also underscores the need to name all responsible parties in the CAO, including U-Haul and Brown and Caldwell, to ensure that there are sufficient financial resources to address the impacts in the project area encompassed by the Garfield Express Site and the U-Haul Site.

V. CONCLUSION

For the reasons set forth above, in the supporting documents submitted herewith and in the administrative record, Ross respectfully requests that the State Board accept this Petition and direct the Regional Board to amend the CAO to name U-Haul and Brown and Caldwell as responsible parties, and to set new compliance schedules, as requested by Ross.

Ross reserves the right to supplement this Petition.

DATED: June 26, 2009

GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP

By: _____
JONATHAN B. SOKOL

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Attorneys for Petitioners Barry A. Ross, Trustee, and Ross Family Trusts

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In The Matter of the Petition of BARRY ROSS, TRUSTEE, AND ROSS FAMILY TRUST Petitioner,	Petition Number: _____ APPENDIX IN SUPPORT OF THE PETITION FOR REVIEW OF THE LARWQCB ORDER DATED MARCH 4, 2008 AND CORRESPONDING NOTICE OF VIOLATION DATED MARCH 4, 2008

BARRY ROSS, TRUSTEE AND ROSS FAMILY TRUST

APPENDIX IN SUPPORT OF PETITION FOR REVIEW

EXHIBIT	DATE	DESCRIPTION
A	May 27, 2009	California Regional Water Quality Control Board, Los Angeles Region (the "Regional Board") Cleanup and Abatement Order No. R4-2009-0045 Requiring Mr. Barry Ross and the Ross Family Trust To Cleanup and Abate Petroleum Hydrocarbons and Fuel Oxygenates Contamination in Soil and Groundwater Garfield Express (Priority A-1 Site) 11600 South Long Beach Boulevard, Lynwood (UST File No. R-23001)

GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067-4590

B.	June 26, 2009	Letter from Greenberg Glusker to the Regional Board reflecting transmission of the Petition for Review
C	December 12, 2000	Letters from Regional Board to U-Haul
D	December 12, 1998	Letters From Department Of Public Works To U-Haul
E		Transcript of Trial Testimony of Nancy Bice from lawsuit
F		Blaes Field Notes
G	November 2008	Expert Report Prepared by Nancy Bice, Geosyntec
H	November 24, 2008	Goesyntec Rebuttal of Expert Report - Evaluation of Gasoline Contamination Sources, U-Haul Facility #712-28, 11716 South Long Beach, Blvd., Lynwood, CA
I	April 23, 2009	Amended Judgment
J	February 12, 2009	Memorandum of Decision and Findings of Fact and Conclusion of Law After Bench Trail on Equitable Claims and Defenses

DATED: June 26, 2009

Respectfully Submitted

GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP

By: _____
JONATHAN B. SOKOL
Petitioners Barry A. Ross, Trustee, and Ross Family Trusts Attorneys for City of Culver City

GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067-4590

EXHIBIT A

California Regional Water Quality Control Board
Los Angeles Region

Linda A. Adams
Cal/EPA Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: http://www.waterboards.ca.gov/losangeles

Arnold Schwarzenegger
Governor

May 27, 2009

Mr. Barry Ross
The Ross Family Trust
5709 Jed Smith Road,
Hidden Hills, CA 91302

Certified Mail
Return Receipt Requested
Claim No. 7002 0860 0001 0651 2316

CLEANUP AND ABATEMENT ORDER NO. R4-2009-0045 REQUIRING MR. BARRY ROSS AND THE ROSS FAMILY TRUST TO CLEANUP AND ABATE PETROLEUM HYDROCARBONS AND FUEL OXYGENATES CONTAMINATION IN SOIL AND GROUNDWATER
GARFIELD EXPRESS (PRIORITY A-1 SITE)
11600 SOUTH LONG BEACH BOULEVARD, LYNWOOD (UST FILE NO. R-23001)

Dear Mr. Ross:

This Regional Board has determined that the presence of fuel constituents contamination at Garfield Express (the Site) located at 11600 South Long Beach Boulevard, Lynwood, creates or threatens to create a condition of pollution or nuisance in the waters of the State.

Pursuant to section 13304 of the California Water Code, enclosed is the Cleanup and Abatement Order No. R4-2009-0045 (Order) directing you and the Ross Family Trust to clean up and abate soil, soil vapor, and/or groundwater contamination at the Site to the extent that it no longer poses a threat to water quality or human health. This Order is issued under sections 13304 and 13350 of the California Water Code.

The Regional Board may impose civil penalties or seek injunctive relief in accordance with sections 13268, 13350 and 13385 of the California Water Code, if you and the Ross Family Trust fail to comply with the terms and conditions of this Order. The Regional Board may also request the Attorney General to take the appropriate action against the Ross Family Trust, to include injunction and civil monetary remedies, pursuant to appropriate California Water Code sections, including but not limited to sections 13304, 13350 and 13386.

Pursuant to California Water Code section 13320, you may seek review of this Order by filing a petition with the State Water Resources Control Board (State Board). Such a petition must be sent to the State Board, located at P.O. Box 100, 1001 I Street, Sacramento, California 95814, within 30 days of receipt of this Order.

If you have any questions on this Order, please contact Dr. Yi Lu at (213) 576-6695, or Mr. Arman Toumari at (213) 576-6708.

Sincerely,

Tracy J. Egoscue
Executive Officer

Enclosure: 1) Cleanup and Abatement Order R4-2009-0045
2) Site maps (Figures 2, 3, 4, 5)

cc: Ms. Yvonne Shanks, SWRCB, Underground Storage Tank Cleanup Fund
Mr. Tim Smith, LACDPW, Environmental Programs Division, Underground Tanks
Mr. Roger Holt, Greenberg Glusker
Mr. Andrew J. Barnes, Geosyntec Consultants
Mr. Reid Riner, Amerco Real Estate Company
Mr. David Grande-Cassell, Clark Hill PLC
Ms. Lorry Hempe, City of Lynwood

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

CLEANUP AND ABATEMENT ORDER (CAO) NO. R4-2009-0045

REQUIRING MR. BARRY ROSS AS TRUSTEE AND THE ROSS FAMILY TRUST TO INVESTIGATE, CLEANUP, AND ABATE THE EFFECTS OF PETROLEUM HYDROCARBONS, GASOLINE, AND FUEL OXYGENATE CONTAMINATION IN SOIL, SOIL GAS, AND GROUNDWATER AT GARFIELD EXPRESS LOCATED AT 11600 LONG BEACH BOULEVARD IN LYNWOOD

(UST File No. R-23001)

Cleanup and Abatement Order No. R4-2009-0045 requires The Ross Family Trust (hereafter Discharger or Responsible Party), to assess, monitor, and cleanup and abate the effects of petroleum and volatile organic compounds (VOCs) and other contaminants of concern discharged to soil and groundwater at their Garfield Express facility at 11600 Long Beach Boulevard, Lynwood, California. This Order supersedes the CAO No. 01-002 (dated February 27, 2001) previously issued to Mr. Luis Ross. Mr. Luis Ross passed away on February 27, 2004, and Mr. Barry Ross became the successor trustee of the Ross Family Trust.

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) herein finds:

INTRODUCTION

1. The facility, Garfield Express, located at 11600 Long Beach Boulevard in Lynwood (the Site) is an active gasoline service station with three underground storage tanks (USTs). The Site is comprised of the commercial property between Lynwood Road and Louise Street, fronting Long Beach Boulevard. The northern portion of the Site is currently occupied by an active gasoline service station operated by US Royal Oil, Inc. (d.b.a. USA Royal Oil). Other businesses including a coin Laundromat, pet shop and flower shop occupy the remainder of the Site. The Site is located within a designated redevelopment area of the City of Lynwood.

2. The Site is located within the Central Groundwater Basin of the Los Angeles Coastal Plain. Regional Board adopted a Water Quality Control Plan (Basin Plan) for the Los Angeles Region on June 13, 1994. The Basin Plan designates the following beneficial uses for groundwater within the Central Groundwater Basin: municipal and domestic supply, agricultural supply, industrial process supply, and industrial service supply.

3. The lithology beneath the Site consists of inter-bedded sand, silty sand, silt and clay from grade to approximately 30 feet below ground surface (bgs). Groundwater levels have been measured at approximately 21 to 28 feet bgs, and the groundwater flow direction has been generally toward the south.

4. The Site overlies a producing aquifer within the Central Groundwater Basin. The City of Lynwood operates one active municipal supply well (Well No.6) located less than 0.4 miles to the northwest of the site. There are up to eight additional active municipal supply wells within one mile from the site (see attached Site and Receptor Map).

5. Fuel constituents and VOCs have been detected in soil and groundwater beneath the Site and the U-Haul facility about 120 feet south of the Site.

PROPERTY OWNERSHIP INFORMATION

6. The Ross Family Trust owns the Site. Mr. Barry Ross is the sole successor trustee of the Trust. Mr. Barry Ross became the successor trustee of the Trust when his father, Mr. Luis Ross, the original Responsible Party of the Site, passed away on February 27, 2004.

EVIDENCE OF CONTAMINATION AND BASIS FOR SECTION 13304 ORDER

7. **Waste Releases Discovered During Subsurface Investigations**

a. In March 1997, El Capitan Environmental Services, on behalf of Mr. Luis Ross, submitted a technical report titled "Preliminary Site Assessment Report" to the County of Los Angeles Department of Public Works (CLADPW). According to the report, eight soil borings (B-1 through B-8) were drilled at the Site to a maximum depth of 35 feet bgs. Soil samples from the borings detected up to 18,000 milligrams per kilogram (mg/kg) of total petroleum hydrocarbons as gasoline (TPHg), 210 mg/kg of benzene, 815 mg/kg of toluene, 1,170 mg/kg of xylenes, 180 mg/kg of ethylbenzene, and 2,000 mg/kg of methyl tertiary butyl ether (MTBE). One groundwater grab sample from boring B-1 detected up to 200,000 micrograms per liter (μg/L) of TPHg, 18,000 μg/L of benzene, 44,000 μg/L of toluene, 2,000 μg/L of ethylbenzene, 17,600 μg/L of xylenes, and 10,000 μg/L of MTBE. CLADPW referred regulatory oversight of the Site to this Regional Board on May 20, 1997.

b. Between September and November 2006, Brown & Caldwell conducted additional site assessment at the Site and portion of the U-Haul site. The site assessment included "Rapid Optical Screening Tool" (ROST) survey, forensic analysis of free product, and soil boring and soil samples analyses. The results of these assessments were reported in a Site Assessment Report dated May 7, 2007. Regional Board staff has indicated that the results of these analyses are inconclusive and do not specifically point to a significant release under the U-Haul Site.

c. Free fuel product has been detected in several monitoring wells (MW-1, MW-2, MW-3, MW-5, MW-7, MW-8, MW-9, MW-14, MW-15, MW-23, UH-1, EX-1, EX-2, and EX-3) onsite and offsite (see attached Figure 6). The last monitoring event conducted in September 2008 detected up to 4.95 feet of free product at onsite well MW-8. MW-8 is located near the source area. Free product recovery system was installed at the Site on December 26, 1998 to recover free product from wells MW-2, MW-3 and MW-5. Daily purging of wells that contain free product but were not connected to the product recovery system were conducted at the site from July 25, 2000 until October 16, 2000. Manual purging was reinitiated on January 16, 2001 on a reduced frequency of three times a week.

d. According to the "2008 1st Semi-annual Groundwater Monitoring Report", there are thirty nine groundwater monitoring wells (MW-1 through MW-35, and W&A-MW-1 through W&A-MW-4) onsite and offsite (see attached Figure 2). Quarterly groundwater monitoring started in 1997. Semi-annual groundwater monitoring started in 2005. Historically, free product up to 16.67 feet was present in groundwater monitoring wells onsite. Laboratory analytical results of groundwater samples collected in September 2008 detected TPHg up to 33,000 μg/L, benzene up to 14,000 μg/L, and MTBE up to 12,000 μg/L. These

concentrations were detected at onsite well MW-4. Depth to the groundwater was approximately 23 feet bgs and the groundwater flow was generally toward the south.

e. On April 14, 2006, Regional Board staff required Chevron to submit historical information for the site occupied by Acosta Restaurant located directly south of Garfield Express site. Acosta Restaurant's site had been owned and operated by Union Oil Company of California (Unocal) from 1951 through 1959. Unocal has been acquired by Chevron.

f. In a letter dated April 27, 2006, Chevron indicated to Regional Board staff that Unocal had operated a gasoline service station under a site and facilities lease from 1940 to 1959. Chevron also indicated that Unocal had no involvement with the site since 1959. Regional Board staff does not consider Unocal as a contributing source to the petroleum hydrocarbon contamination beneath Garfield Express at this time.

g. During a site assessment to investigate on-going release at the site on September 18, 2006 by Brown & Caldwell, a diesel fuel line was damaged, and an unknown amount of diesel fuel was released to the environment.

8. **Source Elimination and Remediation Status**

Between 1999 and 2006, a total of 6,767 gallons of free product were removed from the Site. Also, between 2003 and 2004, a soil vapor extraction system operating at the Site removed 24,946 pounds of fuel vapors from the soil at the Site.

9. **Compliance History**

a. Prior to May 1997, the Responsible Party of the Site has been conducting corrective actions under the jurisdiction of County of Los Angeles Department of Public Works (CLADPW).

b. On May 20, 1997, CLADPW referred the regulatory oversight of the Site to the Regional Board.

c. In a letter dated June 2, 1997, Regional Board staff required Mr. Luis Ross to submit a workplan to install groundwater monitoring wells at the Site. Regional Board staff also required Mr. Luis Ross to provide copies of the CLADPW letters dated November 20, 1995 and February 29, 1996, and copies of the tank integrity testing reports, and to provide a summary of actions taken with respect to the tank integrity test failure.

d. In a letter dated August 14, 1998, Regional Board staff required Mr. Luis Ross to manually remove free product on a weekly basis, or via an automatic recovery system.

e. On June 5, 2000, Regional Board staff received a "Remedial Action Plan for Petroleum Hydrocarbon Contamination" dated May 25, 2000. The workplan proposed to implement a soil vapor extraction (SVE) onsite.

f. In a directive dated December 13, 2000, the Executive Officer of this Regional Board (the Executive Officer) approved the use of SVE and Vacuum Enhanced Product Skimming with Biological Action (BIO-VEPS) systems as an interim measure to expedite free product removal and site cleanup at the Site.

g. On February 27, 2001, the Executive Officer issued to Mr. Luis Ross CAO Order No. 01-002. The CAO required Mr. Luis Ross to adequately assess, monitor, report, and cleanup and abate the effects of gasoline pollution, including MTBE and other fuel oxygenates, discharged to soil, soil vapor, and groundwater beneath the Site.

h. On May 2, 2001, J & B Environmental, on behalf of Mr. Luis Ross, submitted the Initial Site Conceptual Model (PSCM) to the Regional Board.

i. In a letter dated August 31, 2001, State UST Fund Advisory and Services (SUSTFA&S), the consultant for Mr. Luis Ross, requested Regional Board to add U-Haul site (a neighboring site south of the Garfield Express site; see Figure 2) to the Order 01-002 as the potential responsible party for investigation and cleanup of soil and groundwater contamination in the vicinity of Garfield Express site.

j. During a meeting with SUSTFA&S on September 24, 2001, Regional Board staff rejected SUSTFA&S' request to add U-Haul site to Order No. 01-002. Regional Board staff determined that soil data obtained from the U-Haul site did not support U-Haul's contribution to the free product observed beneath the U-Haul site or the entire area.

k. On April 22, 2002, the Executive Officer issued a Notice of Violation (NOV) to Mr. Luis Ross for extensive delays in installation of the BIO/VEP system.

l. The BIO/VEP system did not start operation until June 2003, and it has been discontinued since March 2005.

m. Mr. Barry Ross became the successor trustee of the Ross Family Trust when his father, Mr. Luis Ross, passed away on February 27, 2004.

n. During a meeting on October 14, 2005 with Brown & Caldwell, consultant for Mr. Barry Ross, Regional Board staff required that the free product recovery be resumed until a more complete cleanup strategy is employed as part of the pending site development.

o. In a report dated February 1, 2006, Brown & Caldwell evaluated the potential for presence of different sources of free product and a commingled hydrocarbon plumes. Brown & Caldwell requested Regional Board staff to consider the adjacent sites, such as the Acosta Restaurant (the former Chevron station; see Figure 2) and U-Haul site as potential contributors to the contamination at the Site.

p. On February 14, 2006, Brown & Caldwell submitted a workplan to perform monthly free product removal using the existing active skimmers on selected monitoring wells (MW-2, MW-3, MW-7, and MW-8) as an interim measure at the site starting in March 2006.

q. In a directive letter dated May 19, 2006, the Executive Officer approved the workplan dated February 14, 2006, which proposed to implement free product recovery on selected wells at the Site. The Executive Officer also required that additional offsite wells containing free product shall be included in the proposed free product removal program.

r. On June 19, 2006, Mr. Roger Holt, attorney for Mr. Barry Ross, filed a petition (Petition) to the State Water Resources Control Board (State Board) requesting State Board to review of Regional Board's letter dated May 19, 2006. The Petition claimed that data gaps needed to be addressed before cleanup was required to be performed on the adjacent properties.

s. On June 28, 2006, the State Board declined to accept the Petition for review. The Chief Counsel of the State Board stated that the Regional Board's letter dated May 19, 2006 did not constitute a final action and therefore was not subject to petition.

t. In a letter dated June 30, 2006, Brown & Caldwell indicated to Regional Board staff that they would comply with Regional Board staff requirements specified in the May 19, 2006 letter.

u. On August 31, 2006, Brown & Caldwell submitted a workplan to the Regional Board for additional investigation in the area extending between the Site and the U-Haul site.

v. During a meeting on September 7, 2006, with Mr. Barry Ross and Brown & Caldwell, Regional Board staff concurred with the workplan dated August 31, 2006. Regional Board staff also required Mr. Barry Ross to conduct an onsite investigation to assess if any new unauthorized releases have occurred since US Royal, Inc. became the owner and operator of the gasoline station at the Site since 1999.

w. During a meeting on December 5, 2007 with Mr. Barry Ross; Mr. Roger Holt and Mr. Jon Sokol, attorneys for Barry Ross; and GeoSyntec representatives, Regional Board staff requested Mr. Barry Ross to comply with the requirements stated in Order R4-01-002, and reiterated Mr. Barry Ross's responsibility for cleanup of the contamination at the Site and at the U-Haul site.

x. In a letter dated February 12, 2008, Mr. Roger Holt asserted that Order No. R4-01-002 does not apply to Mr. Barry Ross, since Mr. Ross was not initially named in the said Order.

10. **Summary of Findings from Subsurface Investigations**

Based on the facts set forth above, the Executive Officer concludes and determines that:

a. The gasoline constituents described herein which Discharger caused or permitted to be discharged are "wastes" within the definition of the Porter-Cologne Water Quality Control Act (Water Code section 13050).

b. Waters of the State underlie the Site.

c. The wastes are being discharged where it is, or probably will be, discharged to the waters of the State.

d. Such discharge has created or threatens to create a condition of pollution or nuisance.

11. **Summary of Current Conditions Requiring Cleanup and Abatement**

a. To reduce financial burden on the Discharger, this Regional Board staff has allowed a temporary reduction in the groundwater monitoring frequency from quarterly to semi-annually.

b. This Regional Board is the public agency with primary responsibility for protection of ground and surface water quality for all beneficial uses within Los Angeles and Ventura Counties, including the regulation of leaking UST's that threaten water quality.

c. The activities contained in this Order are necessary to abate the effects of gasoline constituents and fuel oxygenates polluting the groundwater underlying the site and migrating offsite within the Central Groundwater Basin.

d. The Discharger is responsible under section 13304 of the California Water Code to perform the activities contained in this Order.

e. Section 13304 of the California Water Code states, in part, that:

"Any person... who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of Regional Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts."

f. Section 13350 of the California Water Code states, in part, that:

"Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a Regional Board or the State Board...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)."

g. When there is a discharge, and a cleanup and abatement order is issued pursuant to section 13304, liability shall be imposed as follows:

Civil liability may be administratively imposed by a Regional Board pursuant to Article 2.5 for a violation of this section in an amount which shall not exceed five thousand dollars ($5,000), but 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.

h. This action is being taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) in accordance with section 15321, title 14, California Code of Regulations.

REQUIRED ACTIONS

IT IS HEREBY ORDERED, pursuant to California Water Code section 13304 that Mr. Barry Ross as Trustee and The Ross Family Trust shall adequately assess, monitor, report, cleanup and abate the effects of gasoline pollution, including MTBE and other fuel oxygenates, discharged to soil, soil gas, and groundwater by taking actions specified as follows:

A. Site Ownership and Operation Information

By **August 15, 2009**, you must provide the following information to this Regional Board.

1. Ownership and Operation Responsibility for the Site:

    a. Specify the ownership(s) of the real property on which the station or facility is located from 1962 to the present. Provide a copy of all documents which provide evidence of such ownership(s). Provide name, address, and phone number of the property owner and lessees.

    b. Specify the ownership(s) of the underground storage tanks and associated piping which have been used to store MTBE or gasoline at the station or facility from 1962 to the present. Provide a copy of all documents which provide evidence of such ownership(s).

    c. Specify what parties have operated the station or facility from 1962 to the present. Provide a copy of all documents which provide evidence of what parties operated the station or facility.

    d. Does this station or facility operate or has it previously operated pursuant to a franchise agreement? If so provide a copy of all such agreements in effect to the present.

    e. Provide a list of any stations or facilities which have any of the following characteristics (a) the station or facility has been owned and/or operated by your business or agency at any time to the present, (b) during the period of your ownership or operation the station or facility has stored and/or dispensed gasoline.

    f. What records do you keep concerning the source and chemical composition of gasoline shipments received by your station or facility? Provide a copy of all such records from 1962 to the present.

2. MTBE Management and Storage:

    a. Provide a complete history of storage of MTBE containing gasoline at your station or facility from 1980 to the present.

    b. Provide a list of all suppliers and/or refiners of gasoline including the time period that managed and/or stored at your station or facility.

c. Describe the procedures utilized at your station or facility for storage, handling, use, and disposal of gasoline, chemicals and waste materials, including petroleum-based hydrocarbons, and aromatic hydrocarbons.

d. Provide a copy of all documents concerning potential effects of MTBE discharge to the environment, its impacts on surface waters, and the impacts of MTBE on groundwater resources utilized as drinking water supplies.

3. Tanks and Associated Piping Records:

a. Identify all current and former underground gasoline storage tanks used to store and/or manage gasoline at your station or facility from 1962 to the present.

b. Provide for each underground gasoline storage tank and associated piping, the location(s), capacity, materials of construction, and date(s) of installation and, if applicable, removal.

c. Provide a copy of all records concerning maintenance including repairs of the underground storage tanks and associated piping which have been used to manage and/or store gasoline at your station or facility to the present.

4. Testing and Release Detection:

a. Tank Integrity Testing: Provide a copy of all records concerning tank integrity testing of the underground storage tanks and associated piping which have been used to manage and/or store gasoline at your station or facility to the present.

b. Tank Integrity Testing: Submit a tabular summary indicating all tank and/or piping tightness tests completed to the present, including the type of test performed, the sensitivity of the tests performed, any failed or inconclusive tightness tests, the results of any retest, and any subsurface investigation work completed in response to any failed or inconclusive tank and/or pipeline integrity testing.

c. Leak Detection System: Provide a detailed description of the leak detection systems for the underground storage tanks and associated piping used to manage and/or store gasoline at your station or facility to the present. Include a description of the training of employees operating those systems during that time period. Provide a copy of all documents related to these leak detection systems, including any documents used for training station or facility personnel.

d. Provide a copy of all documents related to any releases to soil or groundwater of gasoline from the underground storage tanks and associated piping at your station or facility to the present.

B. Semi-annual Groundwater Sampling and Monitoring Reports

Semi-annual gauging, sampling, and progress reports detailing all activities implemented and results obtained during the previous period, as required by this Order, shall be submitted within 15 days after the period ends according to the following schedule. Your first report under this CAO is due by **October 15, 2009.**

Reporting Period	Report Due Date
January – June	July 15th
July – December	January15th

Monitoring frequency may be adjusted as needed. With written justification, Discharger may request a change in the frequency of monitoring or reporting for the Executive Officer's approval. These reports must contain, at a minimum, the following information:

- A separate summary table containing current concentrations.
- A summary table containing all historical data per each well with groundwater depth (or elevation) and well screen intervals.
- A regional map depicting site vicinity business and street, etc.
- A site plot plan depicting site location, tank and associated system locations, all well locations and groundwater elevations (contour) with flow gradient and direction.
- An isoconcentration map for TPH(g), benzene, MTBE, and TBA, respectively.
- A hydrograph superimposing on concentration over time at the most impacted well for TPH(g), benzene and MTBE, and TBA (or at any other wells as warranted).
- A summary of activities completed during the reporting period and a final compilation of the activity modifications proposed for the next reporting period. All workplan modifications must be approved by the Executive Officer, in advance.

Groundwater samples must be analyzed by Cal-LUFT GC/FID or Cal-LUFT GC/MS Method for total petroleum hydrocarbons as gasoline (TPH_G), total petroleum hydrocarbons as diesel (TPH_D); and by EPA Method 8260B for BTEX, and fuel oxygenate compounds including methyl tertiary butyl ether (MTBE), di-isopropyl ether (DIPE), ethyl tertiary butyl ether (ETBE), tertiary amyl methyl ether (TAME), and tertiary butyl alcohol (TBA). Ethanol is also required and shall be analyzed by either method above. The analytical detection limits must conform to the Regional Board General Laboratory Testing Requirements (9/06) http://www.waterboards.ca.gov/losangeles/publications_forms/forms/ust/lab_forms/labreq9-06.pdf). All respective analytical methods must be certified by the California Environmental Laboratory Accreditation Program (ELAP). All analytical data must be reported by a California-certified laboratory.

C. Remedial Action Plan (RAP)

1. The free product removal system shall be expanded to remove offsite free product. An aggressive and active free product removal system conforming to the requirements of California Code of Regulations, title 23, section 2655 shall be implemented. The RAP is due **October 15, 2009**. The free product removal shall cover the entire area and shall include the following monitoring wells:

   MW-2, MW-3, MW-7, MW-8, MW-9, MW-10, MW-11, MW-12, MW-14, MW-15, MW-16, MW-21, MW-22, MW-23, UH-1, EX-2, EX-3.

   Should free product be encountered in any monitoring well other than specified above, your free product removal plan must be expanded to include such well(s).

2. An aggressive and active cleanup plan to remediate the impacted soil and groundwater at the Site must be submitted. The RAP is due **October 15, 2009**.

3. Field observations indicated that diesel releases from the breached fuel line has impacted the soil and/or fill materials around the breached fuel line, and beneath the dispensers 1 and 2. However, the extent of the impacted soil has not been fully defined. Accordingly, by **August 15, 2009,** a workplan to delineate soil contamination near the diesel fuel UST and diesel fuel dispenser island area. This activity must be followed by a remedial action plan to remediate the impacted soil must be submitted.

D. Semi-annual Cleanup Progress Reports

1. To ensure that on-site and off-site cleanup is completed in a timely manner, semi-annual reports of cleanup progress will be required during the remaining assessment and cleanup phases of the project. Semi-annual progress reports will be due by the 15th day following the semi-annual period with the next progress report due **October 15, 2008.** Reports shall include at a minimum: 1) a discussion of all completed activities and on-going work activities during the reporting period; 2) a discussion of proposed work activities for the next reporting period; 3) an updated time schedule for completion of all work activities needed to complete the project; and 4) the results of any soil and/or groundwater monitoring completed during the reporting period.

2. Semi-annual cleanup progress reports must include, at a minimum, the amount of extracted groundwater, contaminant mass, and/or fuel hydrocarbons; volume of extracted free product; analytical test results from influent, intermediate, and final treated effluent; influent flow rate; influent concentrations; the location of discharge; number of days of system operation during the reporting period; system maintenance competed during the reporting period; an evaluation of the effectiveness of containment of groundwater flow to the site; and any modifications and/or changes needed to the soil and groundwater recovery and/or treatment system. These reporting requirements may be modified based upon the final cleanup plan approved by the Executive Officer.

E. SITE CONCEPTUAL MODEL UPDATES (SCMUs)

Submit site conceptual model updates on a semi-annual basis with the same schedule as for the groundwater monitoring reports in accordance with Guidelines for Investigation and Cleanup of MTBE and Other Ether-Based Oxygenates - Appendix C.

F. DELIVERABLES

Requirements	Deliverables Due Dates
Cleanup Progress Reports	October 15, 2009 (semi-annually due by July 15th thereafter)
Site Conceptual Model Updates and Quarterly groundwater monitoring reports	October 15, 2009 (Semi-annually due by July 15th thereafter)
Ownership Information (onsite and offsite)	August 15, 2009
Remedial Action Plan for Free Product Removal/Soil & Groundwater Cleanup	October 15, 2009
Workplan for Delineation of Diesel Release	August 15, 2009

G. Impairment of Drinking Water Wells

The Regional Board reserves the right to require Mr. Barry Ross and the Ross Family Trust to develop and implement a plan that will mitigate impaired resources of groundwater and/or compensate purveyors for costs of replacing impaired water supplies if the findings demonstrate that contamination from this Site has caused or threatens to cause impairment of water supply wells.

H. STANDARD PROVISIONS

1. Abandonment of any groundwater well at the site must be reported to and approved by the Executive Officer in advance. Any groundwater well removed must be replaced within a reasonable time at a location approved by the Executive Officer. With written justification, the Executive Officer may approve the abandonment of groundwater wells without replacement. When a well is removed, all work shall be completed in accordance with California Monitoring Well Standards, Bulletin 74-90, Part III, sections 16-19. Permits for well abandonment and installation must be obtained from the Los Angeles County Department of Health Services, Water and Sewage Program, prior to conducting such work.

2. Regional Board's authorized representative shall be allowed:

   a. Entry upon premises where a regulated facility or activity is located, conducted, or where records are kept, under the conditions of this Order;

   b. Access to copy any records that are kept under the conditions of this Order;

   c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and

   d. To photograph, sample, and monitor for the purpose of assuring compliance with this Order, or as otherwise authorized by the California Water Code.

3. This Order is not intended to permit Discharger to cease any work required by any other Order issued by Regional Board, nor shall it be used as a reason to stop or redirect any investigation or remediation programs ordered by this Board or any other agency.
4. This Order does not exempt Discharger from compliance with any other laws, regulations, or ordinances which may be applicable, nor does it legalize these waste treatment and disposal facilities, and it leaves unaffected any further restraints on those facilities which may be contained in other statues or required by other agencies.

5. Discharger shall provide Regional Board advance notice of any planned physical alterations to the facility or planned changes in the facility's activities that may affect compliance with this Order.

6. Discharger shall provide to Regional Board a thirty-day advance notice of any planned change in name, ownership, or control of the site and any of the facilities on the site; 'provide notice to any succeeding owner or operator of this Order by letter; and forward a copy of such notification to Regional Board.

7. The discharge of wastes or hazardous substances that degrade water quality or adversely affect beneficial uses of water of the State is prohibited.

8. Further migration of wastes or hazardous substances through subsurface transport to waters of the State is prohibited.

9. The storage, handing, treatment or disposal of contaminated soil and/or polluted groundwater shall not create a condition of nuisance as defined in California Water Code section 13050(m).

10. Discharger shall maintain in good working order and operate as efficiently as possible any control or remediation system(s) installed to achieve compliance with the requirements of this Order.

11. All investigations must be conducted by, or under the direct supervision of a California Registered Geologist, Certified Engineering Geologist, or Registered Civil Engineer with the appropriate experience.

12. All analytical data must be reported by a California certified laboratory as shown on the enclosed Leaking Underground Storage Tanks Program-Updated Laboratory Testing Requirements dated June 22, 2000 (See Attachment No.5).

13. This Order in no way limits the authority of Regional Board, as contained in the California Water Code, to require additional investigation and cleanup pertinent to this project. It is the intent of Regional Board to issue Waste Discharge Requirements or other orders pursuant to sections 13260, 13304, and 13350 of the California Water Code when appropriate to facilitate this cleanup and abatement activity. Additionally, continued monitoring of the groundwater quality beneath this facility after the completion of this cleanup and abatement activity may be required. This Order may be revised by the Executive Officer as additional information becomes available.

14. For good cause shown, the Executive Officer may grant an extension of time as to the deadlines provided herein. Such requests, however, must be made in writing and submitted prior to the deadline.

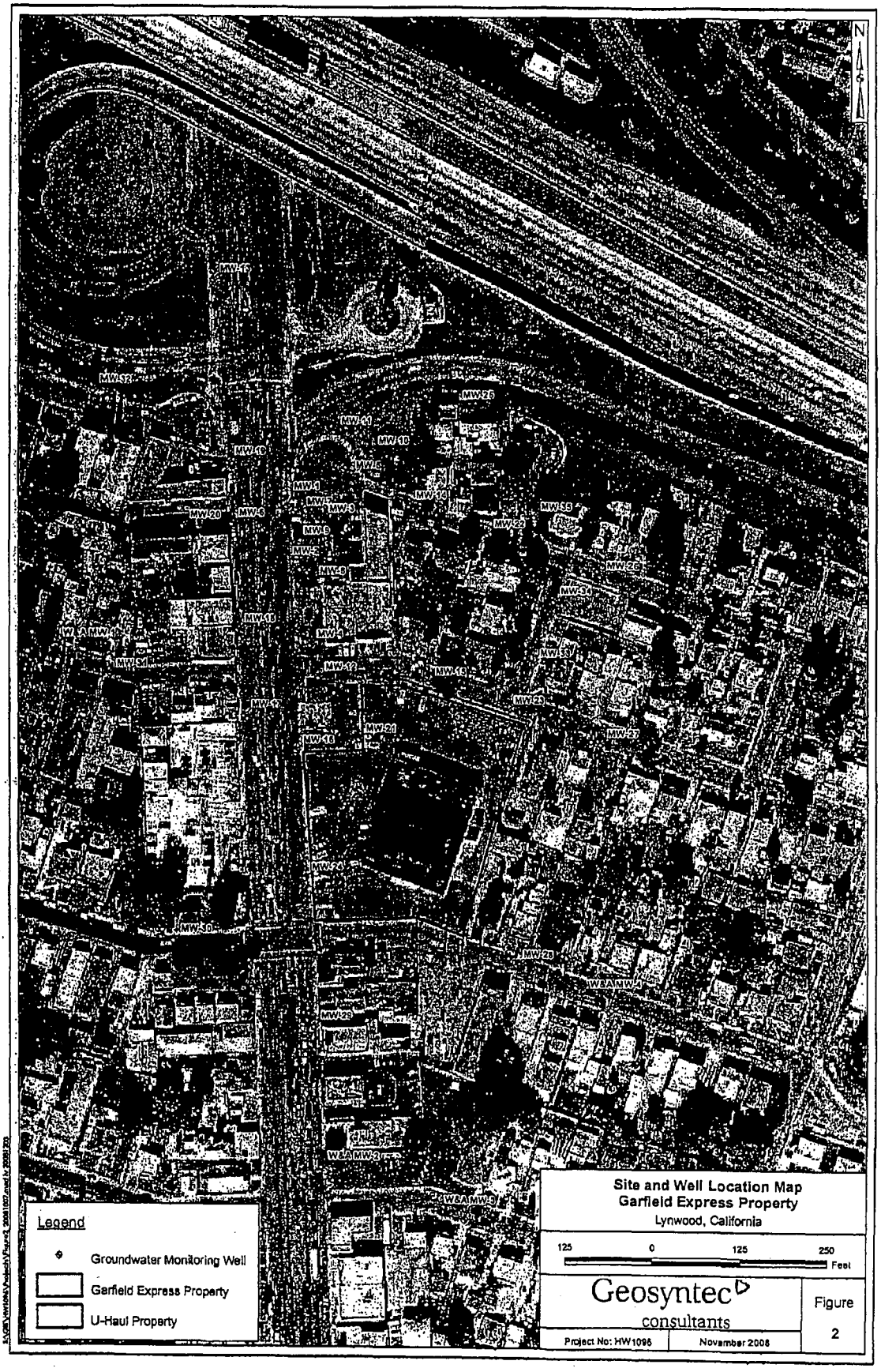
15. None of the obligations imposed by this Order on Mr. Barry Ross and The Ross Family Trust are intended to constitute a debt, damage claim, penalty or other civil action which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of California intended to protect the public health, safety, welfare and environment.

16. Failure to comply with the terms and conditions of this Order may result in the imposition of civil liability, either administratively by Regional Board or judicially by the Superior Court, in accordance with section 13350 et seq. of the California Water Code and/or referral to the Attorney General of the State of California for such legal action as he or she may deem appropriate.

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

Ordered by: _____ Date: May 27, 2009

Tracy J. Egoscue
Executive Officer



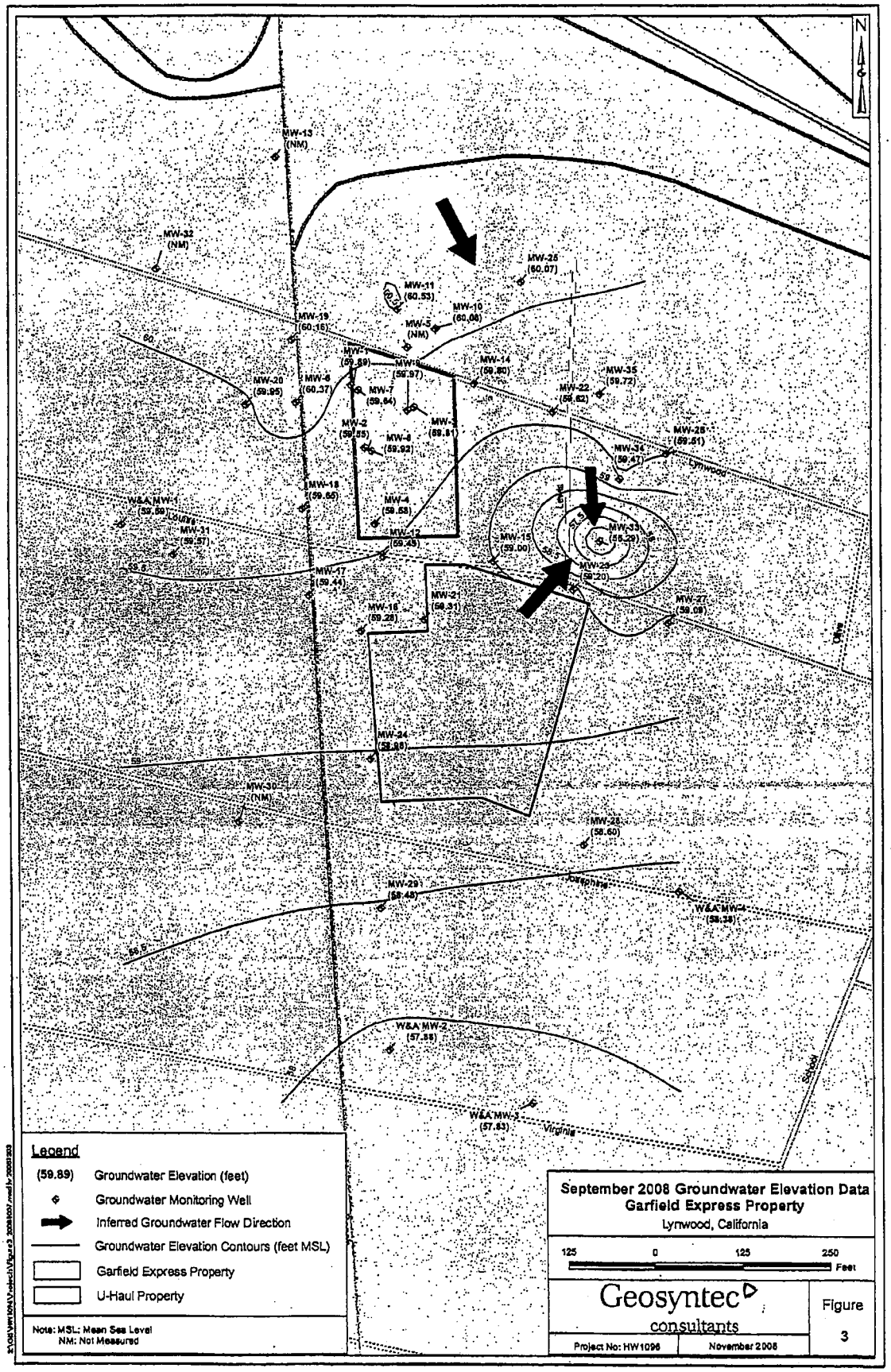
Site and Well Location Map
Garfield Express Property
Lynwood, California

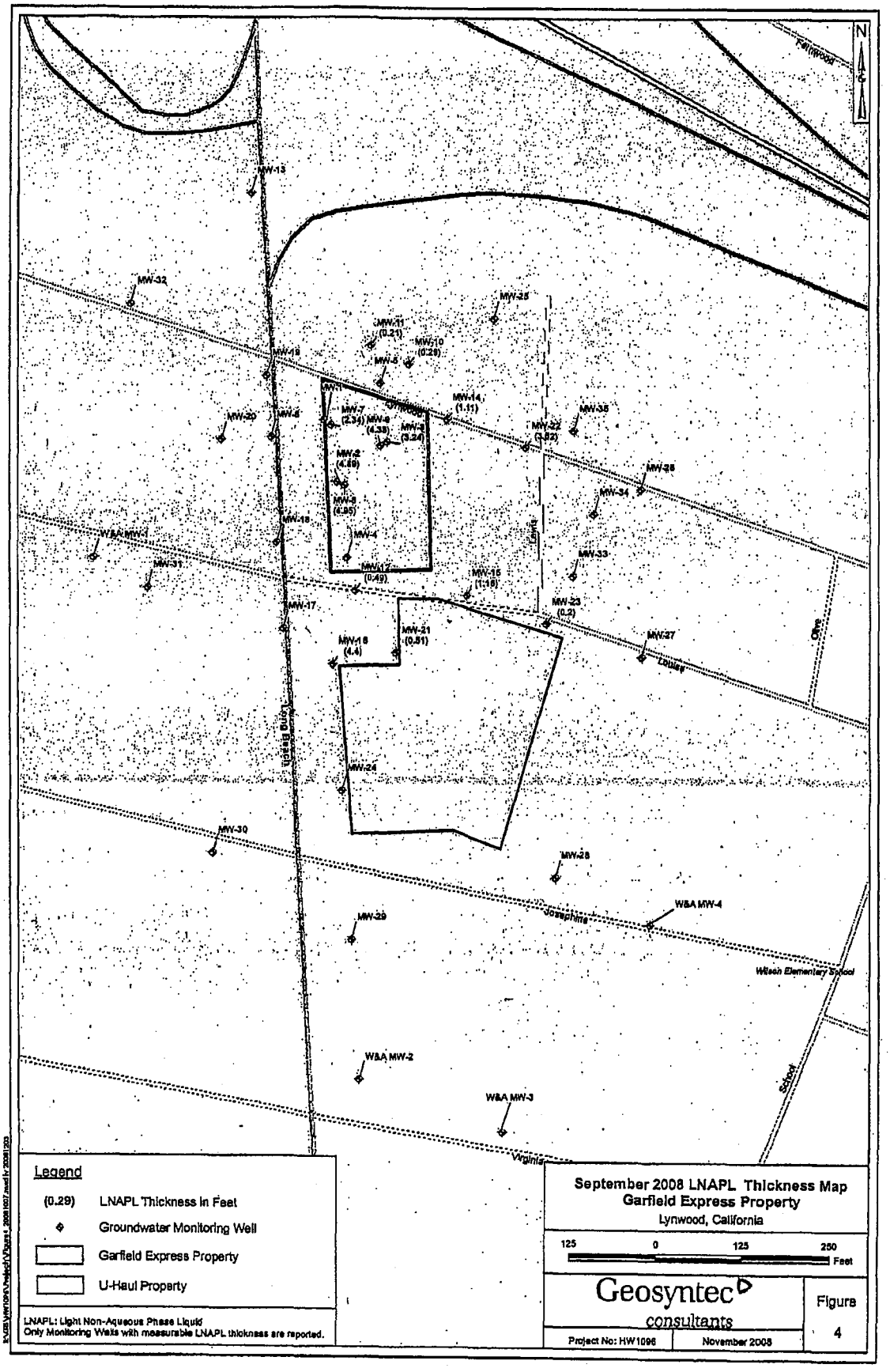
125 0 125 250 Feet

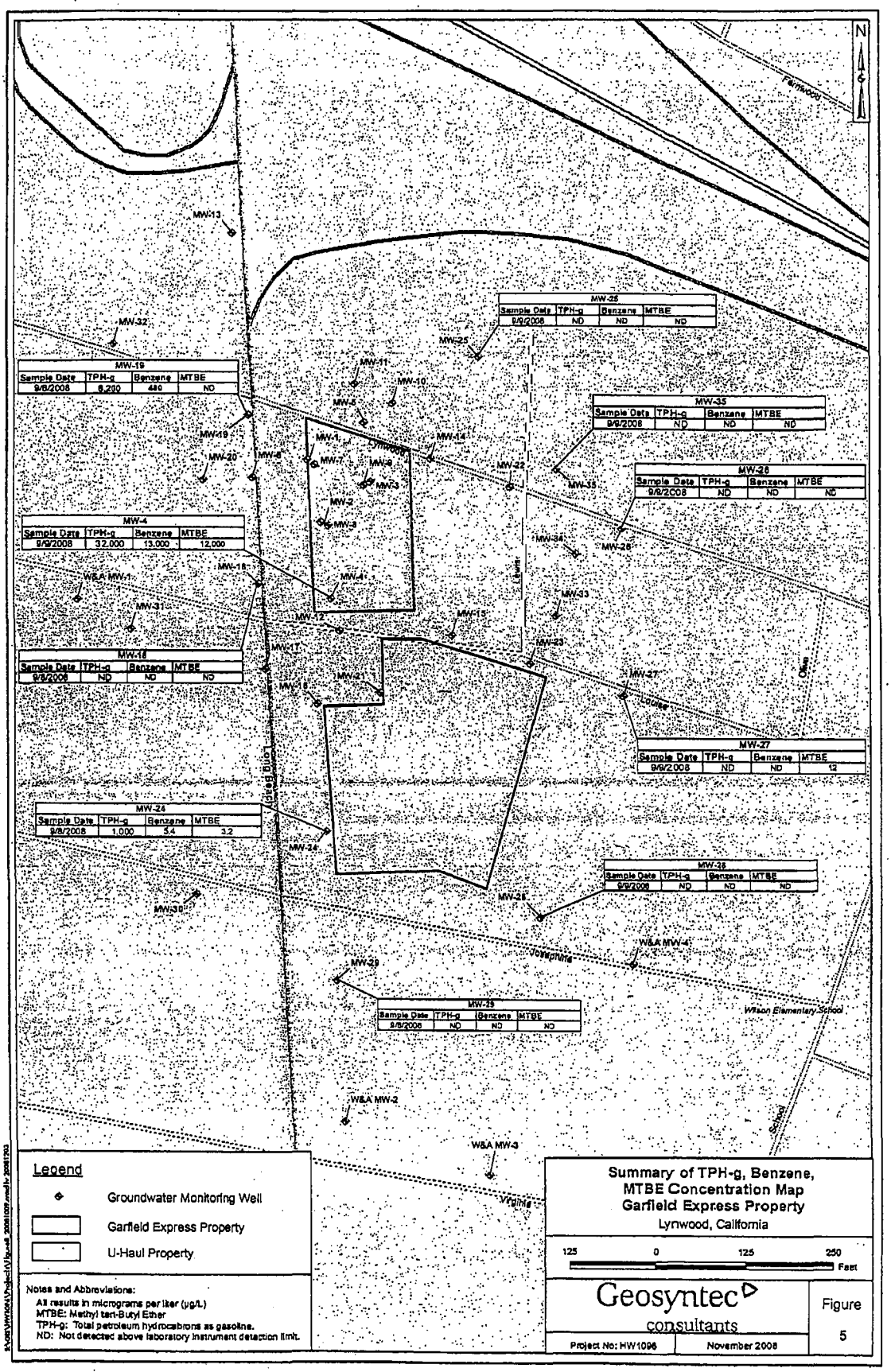
Geosyntec consultants

Project No: HW1096 | November 2008

Figure 2


N
MW-13 (NM)
MW-32 (NM)
MW-26 (60.07)
MW-11 (60.53)
MW-10 (60.08)
MW-19 (60.16)
MW-5 (NM)
MW-14 (59.80)
MW-35 (59.72)
MW-20 (59.95)
MW-6 (60.37)
MW-7 (59.64)
MW-22 (59.62)
MW-2 (59.55)
MW-3 (59.51)
MW-9 (59.93)
MW-25 (59.51)
MW-34 (59.47)
Lynwood
MW-18 (59.65)
W&A MW-1 (59.59)
Louisa
MW-31 (59.57)
MW-4 (59.53)
MW-12 (59.45)
MW-15 (59.00)
MW-33 (58.29)
MW-29 (58.20)
MW-17 (59.44)
MW-16 (59.28)
MW-21 (59.31)
MW-27 (59.08)
Dale
MW-24 (58.88)
MW-30 (NM)
MW-28 (58.60)
MW-23 (58.48)
Delphine
W&A MW-4 (58.38)
W&A MW-2 (57.88)
W&A MW-3 (57.83)
Virginia
Sutton
Legend
(59.89) Groundwater Elevation (feet)
Groundwater Monitoring Well
Inferred Groundwater Flow Direction
Groundwater Elevation Contours (feet MSL)
Garfield Express Property
U-Haul Property
Note: MSL: Mean Sea Level
NM: Not Measured
September 2008 Groundwater Elevation Data
Garfield Express Property
Lynwood, California
125 0 125 250
Feet
Geosyntec consultants
Project No: HW1096
November 2008
Figure
3


N
Fallwood
MW-13
MW-32
MW-25
MW-11 (0.21)
MW-10 (0.29)
MW-19
MW-5
MW-14 (1.11)
MW-35
MW-20
MW-6
MW-7 (2.34)
MW-9 (4.33)
MW-1 (3.24)
MW-22 (3.82)
MW-2 (4.59)
MW-26
MW-34
MW-3 (4.85)
MW-18
W&A MW-1
MW-4
Lynda
MW-31
MW-12 (0.49)
MW-15 (1.16)
MW-33
MW-17
MW-23 (0.2)
MW-21 (0.51)
MW-16 (4.4)
MW-27
Louise
Ogle
Garfield Blvd
MW-24
MW-30
MW-28
W&A MW-4
Josephine
MW-29
Wilson Elementary School
W&A MW-2
W&A MW-3
School
Virginia
Legend
(0.29) LNAPL Thickness in Feet
Groundwater Monitoring Well
Garfield Express Property
U-Haul Property
LNAPL: Light Non-Aqueous Phase Liquid
Only Monitoring Wells with measurable LNAPL thickness are reported.
September 2008 LNAPL Thickness Map
Garfield Express Property
Lynwood, California
125 0 125 250
Feet
Geosyntec consultants
Figure
4
Project No: HW1096
November 2008



Legend

- Groundwater Monitoring Well
- Garfield Express Property
- U-Haul Property

Notes and Abbreviations:
All results in micrograms per liter (µg/L)
MTBE: Methyl tert-Butyl Ether
TPH-g: Total petroleum hydrocarbons as gasoline.
ND: Not detected above laboratory instrument detection limit.

Summary of TPH-g, Benzene, MTBE Concentration Map
Garfield Express Property
Lynwood, California

125 0 125 250 Feet

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Figure 5