

1 LATHAM & WATKINS LLP
Paul N. Singarella (SBN 155393)
2 Daniel P. Brunton (SBN 218615)
Mayte Santacruz Benavidez (SBN 259820)
3 650 Town Center Drive, Suite 2000
Costa Mesa, CA 92626-1925
4 Telephone: (714) 540-1235
Facsimile: (714) 755-8290
5 *paul.singarella@lw.com*
daniel.brunton@lw.com
6 *mayte.santacruz.benavidez@lw.com*

7 Attorneys for Petitioner
ROBERT L. VELOZ

8 **BEFORE THE**

9 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

10
11
12 In the Matter of:

13 California Regional Water Quality Control Board,
14 Santa Ana Region's Cleanup and Abatement Order,
No. 90-126

**SECOND PETITION FOR REVIEW
AND REQUEST FOR HEARING**

**REQUEST TO VACATE
ORDER NO. 90-126 AND STOP
ENFORCEMENT AGAINST J.C.
CARTER COMPANY, INC.**

(Cal. Water Code § 13320; 23 Cal.
Code Regs. §§ 2050, 2053)

1 **I. INTRODUCTION**

2 Pursuant to Section 13320 of the California Water Code and Section 2050 of Title 23 of
3 the California Code of Regulations, Mr. Robert L. Veloz ("Petitioner" or "Mr. Veloz"), former
4 majority shareholder and officer of J.C. Carter Company ("Carter"), hereby petitions the State
5 Water Resources Control Board ("State Board") for review of the decision by the Regional
6 Water Quality Control Board, Santa Ana Region ("Regional Board") not to rescind Cleanup and
7 Abatement Order No. 90-126 (the "Order"), which the Regional Board issued in 1990.

8 After an eight-year hiatus of agency activity, the Regional Board recently contacted Mr.
9 Veloz in his retirement to claim that the Order was still in effect and is not being complied with.
10 Carter, the sole party named in the defective Order, played no part in the creation of the
11 contamination present at the subject property, but, rather, is a good Samaritan company that
12 undertook extensive remedial work from 1987 to 2000, including three years after another
13 company took over the subject property in 1997. Mr. Veloz also personally cooperated with the
14 Regional Board, and even undertook a voluntary groundwater cleanup for about a year, but was
15 asked by Regional Board staff to stop in 2000.

16 The Regional Board for many years treated the Order as a dead letter, as it was. Yet,
17 recently, the Regional Board has refused to vacate the Order or amend it to name the actual
18 dischargers. Instead, the Regional Board alleges that Carter is responsible for remedial actions
19 planned in conjunction with a redevelopment plan proposed by Seventeenth Street Realty, the
20 current landowner. Seventeenth Street Realty has asserted to the Regional Board that Mr. Veloz
21 is personally liable to it for cleanup under the Order. And the remedial actions Seventeenth
22 Street Realty proposes clearly were not contemplated by the Order. Despite this, the Regional
23 Board has questioned whether Mr. Veloz even has standing to request rescission of the Order.

24 Mr. Veloz is left with no choice but to petition the State Board for relief or to face the
25 possibility of personal liability for Seventeenth Street Realty's development-driven cleanup. The
26 Order itself is defective and should be rescinded; and even if the Order were valid, Seventeenth
27 Street Realty's proposed remedial actions fall outside of the Order's scope. Accordingly, Mr.
28 Veloz petitions the State Board for relief as further described below and in the accompanying

1 Statement of Points and Authorities

2 **II. INFORMATION REQUIRED BY SECTION 2050**

3 In support of this Petition, Mr. Veloz provides the following information, as required by
4 Title 23, California Code of Regulations, Section 2050:

5 A. Name, Address, Telephone and Email Address of Petitioner

6 Mr. Veloz may be contacted through his counsel of record at: Paul N. Singarella, Latham
7 & Watkins LLP, 650 Town Center Drive, 20th Floor, Costa Mesa, California 92626, (714) 755-
8 8267, paul.singarella@lw.com.

9 B. Regional Board's Specific Action or Inaction for Which Review is Sought

10 Mr. Veloz challenges the Regional Board's failure to vacate the Order and stop
11 enforcement against Carter. A true and correct copy of the Order is attached to the
12 accompanying Statement of Points and Authorities, as Exhibit F.

13 C. Date on Which the Regional Board Acted or Refused to Act

14 The Regional Board refused to act on July 8, 2009 when Regional Board Executive
15 Officer Thibeault wrote to Mr. Veloz's counsel officially declining to rescind the Order. A true
16 and correct copy of that letter is attached hereto as Exhibit 1.

17 This is the second petition Mr. Veloz has filed asking the State Board to order the
18 Regional Board to rescind the Order: Mr. Veloz filed a petition with State Board on June 15,
19 2009 making many of the same arguments this petition makes. On June 22, 2009, the State
20 Board's counsel wrote to Mr. Veloz rejecting the petition allegedly because it was untimely and
21 the Regional Board had not taken final action (either through the board itself or through its
22 Executive Officer). A true and correct copy of that letter is attached hereto as Exhibit 2. On July
23 2, 2008, Mr. Veloz asked the State Board to reconsider its rejection of his petition. A true and
24 correct copy of the request for reconsideration is attached hereto as Exhibit 3. On July 8, 2009,
25 the Regional Board's Executive Officer wrote to Mr. Veloz, copying the State Board's counsel,
26 informing him that the Regional Board was officially rejecting his request to rescind the Order.
27 Exhibit 1. On July 21, 2009, the State Board's counsel wrote to Mr. Veloz's counsel informing
28 him that:

1 [C]onsistent with the 1993 letter from this office and the formal
2 refusal to rescind the CAO issued on July 8, if your client wishes
3 to pursue review by the State Water Board, the only option would
4 be for you to file a petition challenging the refusal to act contained
5 in the July 8 letter from Mr. Thibeault [the Executive Officer].

6 A true and correct copy of the July 21, 2009 letter is attached hereto as Exhibit 4.

7 Mr. Veloz wrote to the Regional Board's Executive Officer on July 30, 2009 asking him
8 to reconsider the Regional Board's July 8 decision not to rescind the Order. A true and correct
9 copy of the July 30, 2009 request for reconsideration is attached hereto as Exhibit 5.

10 D. Statement of Reasons Why the Action or Failure to Act Was Improper

11 The Regional Board's refusal to vacate the Order is contrary to the California Water
12 Code and its implementing regulations; inconsistent with common Water Board practices and the
13 State Board's enforcement policy; and violates the California Administrative Procedures Act,
14 and the equal protection and due process clauses of the United States and California
15 Constitutions, for the following principal reasons, without limitation:

- 16 • The Regional Board staff mistakenly is asserting that the Order covers the Corrective
17 Action Plan ("CAP") prepared in 2008 by Seventeenth Street Realty. But the major
18 elements of the CAP are not even hinted at in the Order, which contains very specific,
19 contingent cleanup provisions that never have been triggered. Specifically, the
20 CAP's focus on Dense Non-Aqueous Phase Liquid ("DNAPL"), gas control, *in situ*
21 groundwater treatment, and Monitored Natural Attenuation places it squarely outside
22 the reach of the 1990 Order. Neither Carter, nor anyone else (including Seventeenth
23 Street Realty), is liable under the Order to implement the CAP.
- 24 • Carter is not a party liable under the California Water Code as it is neither a
25 "discharger," nor a party that permitted waste to be discharged or deposited. The
26 mere passive migration of contamination at the subject property is not enough to
27 render Carter liable, certainly not when Carter was taking active steps to address the
28 contamination, and when the Regional Board was ignoring its legal obligation to
enforce against the true dischargers.

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- Even if Carter bears secondary liability, liability that petitioner disputes, Carter fully has discharged any such liability through the work it funded at the site from 1987 to 2000. In contrast, the dischargers have not paid a cent under Regional Board direction to clean up the site.
- The Order also is defective because it does not reflect any reasonable investigation by the Regional Board into the true dischargers, and fails to name them, even though, over many years starting in 1990, and most recently in 2009, Carter has provided ample evidence to the Regional Board of their releases of the chlorinated solvents that contaminated the property. These failings are amplified by the fact that staff repeatedly told Carter that the agency actively would pursue the dischargers.
- The Order is defective because it does not reflect the several changes in ownership and operation that have occurred at the site since 1997, and has been maintained in its original 1990 form despite the common Water Board practice of rescinding cleanup and abatement orders (“CAOs”) and replacing them with updated versions when such changes in ownership and operation occur.
- The Order is defective because, consistent with Water Board practice, the Order should have been retired long ago, as the Regional Board acknowledged in 1997 that the Order had been complied with, and after submittal of an August 2000 letter requesting the agency to vacate the order and/or amend the Order, Carter never was asked to do any further work at the site. In this regard, the agency is estopped from asking Carter to do any such work almost nine years later, or attempting to hold Carter liable for such work.
- No reasonable person could have anticipated that the defective and anachronistic 1990 Order would spring back to life in August 2008, eleven years after the agency acknowledged Carter’s compliance, and after never responding to Carter’s August 2000 request to retire and/or amend the Order. The Order is being reasserted based on contamination discovered in 2007, independent of the Order, at a part of the property not studied in the 1990s, and involving the potential cleanup of recently

1 discovered DNAPL at this location. As applied in this instance, the Order is void for
2 vagueness, and the Regional Board is estopped from enforcing the Order as proposed.

3 E. Manner in Which Petitioner is Aggrieved

4 The State Board has “broadly construed the term ‘aggrieved person’” to include “any
5 person or group who testifies before a Regional Board or raises legitimate issues before the State
6 Water Board concerning Regional Board actions.” *See, e.g., In re Environmental Law Fund,*
7 *Order No. WQ 81-12, at 2-3 (August 20, 1981)* (finding area residents who testified at the
8 Regional Board hearing and alleged potential injury arising from the Regional Board’s approval
9 of waste discharge requirements to be “aggrieved persons”).

10 Mr. Veloz was an officer and principal shareholder of Carter from 1987 to 1997. When
11 Carter was acquired through a Stock Purchase Agreement in 1997, Mr. Veloz took certain
12 contractual obligations. After the change in ownership of the subject property, Mr. Veloz
13 continued handling the matters pertaining to the Order until the Order went dormant for about
14 eight years.

15 On August 8, 2008, the Regional Board informed Mr. Veloz that Carter had not complied
16 with the Regional Board’s May 2000 requests and that the Order was still operative. The
17 August 8, 2008 letter incorrectly identifies Carter as a party responsible for cleanup and
18 abatement actions at the subject property, and does not take into account the years of effort and
19 sum of money expended by Carter and Mr. Veloz. The Order subjects Carter to the risk of
20 penalties and administrative civil liability if the Regional Board believes the Order is not being
21 complied with.

22 Since receipt of the August 8, 2008 letter, Mr. Veloz has engaged in negotiations with
23 Regional Board staff over the legitimacy of its recent actions. To date the Regional Board has
24 declined to vacate the Order or name the actual dischargers that contaminated the subject
25 property. Accordingly, Mr. Veloz, an aggrieved person under Section 13320, seeks the
26 intervention of the State Board.

27 F. Specific Action Requested by Petitioner

28 For the reasons stated in Section D of this Petition and the accompanying Statement of

1 Points and Authorities, Mr. Veloz requests that the State Board provide an evidentiary hearing on
2 the Order, as authorized by Section 2050.6(b) of Title 23 of the California Code of Regulations.
3 A hearing is necessary to present evidence and testimony regarding Carter's alleged liability and
4 the issues raised in the Petition. Mr. Veloz further requests that the State Board recognize the
5 defects in the Order and the improper nature of the Regional Board's recent activity under it, and
6 take all appropriate action, including vacating the Order, removing Carter through an amendment
7 or a replacement, and/or declaring that Carter is not a responsible party under the Water Code.
8 Alternatively, Mr. Veloz requests the State Board to remand the Order to the Regional Board for
9 further proceedings consistent with this Petition and the law.

10 G. Statement of Point And Authorities in Support of Legal Issues in this Petition

11 The Statement of Points and Authorities is attached hereto and incorporated by
12 reference to this Petition. We further address issues raised in the Regional Board's July 8 letter
13 here:

14 1. Mr. Veloz Has Standing To Ask The Regional Board To Rescind The
15 1990 Order And To Challenge The Regional Board's Failure To Do So

16 The Regional Board's July 8, 2009 letter states that "it is unclear whether your client has
17 any standing to request this rescission." It is clear that Mr. Veloz has standing under California
18 law.

19 Standing requirements in California are broad and easy to meet. If a person (such as Mr.
20 Veloz) has an interest in a matter that is greater than the interests of the public at large, that
21 individual has standing. "To have standing, a party must be beneficially interested in the
22 controversy; that is, he or she must have 'some special interest to be served or some particular
23 right to be preserved or protected *over and above the interest held in common with the public at*
24 *large.*' The party must be able to demonstrate that he or she has some such beneficial interest
25 that is concrete and actual, and not conjectural or hypothetical." *County of San Diego v. San*
26 *Diego NORML* (2008) 165 Cal.App.4th 798, 814 (italics in original).

27 Mr. Veloz meets this requirement. Seventeenth Street Realty, the current property owner,
28 has asserted to the Regional Board that Mr. Veloz is personally liable to it for potential liabilities

1 which it alleges arise out of the 1990 Order. While Seventeenth Street Realty has not
2 substantiated this claim, and while we believe it is baseless, even the possibility that Mr. Veloz
3 may have to pay for the cleanup that Seventeenth Street Realty proposes gives Mr. Veloz a keen
4 interest in the 1990 Order – much greater than the public at large.

5 The State Board should consider the equities when evaluating Mr. Veloz’s request and
6 his standing. Entitlement to a writ of mandate, whether traditional or administrative, is “largely
7 controlled by equitable principles.” *Curtin v. Department of Motor Vehicles* (1981) 123
8 Cal.App.3d 481, 485 (stating that equity provides the right to petition for administrative
9 mandamus to an individual whose license was erroneously suspended by the DMV). The
10 equities weigh strongly in Mr. Veloz’s favor.

11 The Regional Board for years accepted the benefits of Mr. Veloz’s work at the site – both
12 in Mr. Veloz’s capacity as an officer of Carter and later in his individual capacity. Between
13 1997 and 2000, Mr. Veloz personally expended significant time, money, and effort to satisfy the
14 Regional Board’s concerns regarding the site, for example:

- 15 • In 1998, Mr. Veloz personally submitted a proposed off-site groundwater
16 investigation to the Regional Board.
- 17 • In March 1999, Mr. Veloz undertook voluntary air sparging/vapor extraction to
18 address groundwater contamination at the site. Twelve extraction wells were
19 installed to facilitate this process. This voluntary program was initially intended
20 to operate for 30 days, but was extended for a full year. The system was shut
21 down in April 2000 at the request of the Regional Board. While this cleanup was
22 not called for by the 1990 Order, it was an effort on Mr. Veloz’s part to satisfy the
23 agency.

24 Then, in 2008, after eight years of silence about the Order, the Regional Board wrote to
25 Mr. Veloz personally, claiming he had not complied with the Regional Board’s requests.

26 It is not fair for the Regional Board to reap the fruits of Mr. Veloz’s cooperation for
27 years, contact him in his retirement about the 1990 Order, and then argue that he lacks standing.
28 The Regional Board’s own activities over the years show that Mr. Veloz’s interest in the Order is
much greater than that of the public at large.

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1 The Regional Boards routinely rescind CAOs and invite the public at large to participate
2 in the proceedings. Mr. Veloz provided two examples to the Regional Board in his request that it
3 reconsider its decision. Exhibit 5. In both cases, the Regional Board invited the public at large
4 to comment on the rescission. Clearly the Regional Boards consider rescission of a cleanup and
5 abatement order to be a matter of broad interest. The Regional Board cannot maintain that the
6 public at large usually has an interest in cleanup and abatement orders sufficient to allow it to
7 participate in the administrative proceedings, but that Mr. Veloz lacks a sufficient interest to
8 participate in administrative proceedings on the rescission of the 1990 Order. Mr. Veloz has a
9 much keener, more personal interest in the 1990 Order than the Regional Boards usually require
10 to participate in administrative proceedings.

11 2. Mr. Veloz Satisfies The "Designated Party" Test

12 The Regional Board has not held formal hearings, so Mr. Veloz was not required to ask
13 the Regional Board to make him a designated party. Nonetheless, he filed a request to be made a
14 designated party. Exhibit 5.

15 The California Code of Regulations allows the Regional Boards to name the parties to
16 administrative proceedings: "The party or parties to an adjudicative proceeding before the Board
17 shall include the person or persons to whom the agency action is directed and any other person
18 whom the Board determines should be designated as a party. The hearing notice may specify a
19 procedure for designation of the parties to a particular adjudicative proceeding." 23 Cal. Code
20 Regs. § 648.1(a). The Regional Board did not specify a procedure to designate parties in the
21 rescission proceedings on the 1990 Order. But the Government Code allows parties to intervene
22 when they meet four conditions:

- 23 • [A motion to intervene] is submitted in writing, with copies served on all parties
24 named in the agency's pleading.
- 25 • The motion is made as early as practicable in advance of the hearing. . . .
- 26 • The motion states facts demonstrating that the applicant's legal rights, duties,
27 privileges, or immunities will be substantially affected by the proceeding or that
28 the applicant qualifies as an intervenor under a statute or regulation.

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- The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

Cal. Gov. Code § 11440.50(b).

Mr. Veloz has complied with these requirements as follows:

- His request was in writing and was copied to Seventeenth Street Realty.
- The request was made as early as practicable. It was only July 8, 2009 that Mr. Veloz received the Regional Board’s letter saying that it believed Mr. Veloz may not have standing.
- The facts recounted above regarding standing show that Mr. Veloz’s rights and duties will be substantially affected by the outcome of the proceedings.
- Mr. Veloz’s participation in the proceedings will not impair the prompt conduct of the proceedings. Quite the contrary, given Mr. Veloz’s paramount interest, it is likely that the proceedings would bog down without Mr. Veloz’s participation.

3. The Regional Board Should Name International Telephone and Telegraph Corporation (“ITT”) In A New Order

As is further explained in the attached Statement of Points and Authorities, Carter did not even discharge the wastes at issue in the 1990 Order. The Regional Board should issue a new order that names the actual dischargers, including ITT. As we previously informed the Regional Board, ITT owned the site from 1973 to 1983 and discharged the wastes at issue in the Order. The affidavits we provided to the Regional Board in November 2008 explain that ITT manufactured oxygen pumps for military use, and documented ITT’s use of trichloroethylene and tetrachloroethylene as important solvents and degreasing agents. These former employees were present at the site for many years, and were percipient witnesses to how these solvents were used, and released at the site. These solvents, and their breakdown products, are the primary contaminants at the site.

The Regional Board has a continuing obligation to name dischargers: “The policies Regional Water Boards shall apply in overseeing: (a) investigations to determine the nature and horizontal and vertical extent of a discharge and (b) appropriate cleanup and abatement

1 measures. The Regional Water Board shall: . . . Name other dischargers as permitted by law.”
2 23 Cal. Code Regs. § 2907. Here, the State Board should order the Regional Board to follow its
3 regulation and issue a new order that names ITT, and not Carter.

4 4. The Regional Board Should Name The Appropriate Parties In Light of the
5 Jones Day Letter Dated June 8, 2009

6 By letter dated June 8, 2009, the law firm of Jones Day informed the Regional Board of
7 real estate and corporate transactions at the property since 1997 when Carter was sold to Argo-
8 Tech. It is the practice of the Water Boards to maintain CAOs that reflect current property
9 ownership and operation. Now that Jones Day has disclosed this information to the agency,
10 consistent with agency practice, the agency would be expected to re-issue a CAO, or retire the
11 existing one as plainly outdated, incorrect, and anachronistic. While this may require the agency
12 to sort through some business affairs, that is what the Water Boards do, in order to ensure that
13 they are not unfairly targeting the wrong individuals. Not undertaking such re-issuance and/or
14 rescission would underscore disparate and arbitrary treatment of Mr. Veloz.

15 Further to this point, Seventeenth Street Realty improperly is attempting to shoehorn its
16 corrective action plan under the defective Order, in an attempt to saddle Mr. Veloz with the bill.
17 The Order does not address the removal of DNAPL, the control of vapors, or *in situ* groundwater
18 treatment. In contrast, Seventeenth Street Realty’s corrective action plan largely is comprised of
19 these three elements – removal of DNAPL, control of vapors, and *in situ* groundwater treatment.
20 Plainly, it is not attempting to comply with the Order. Rather, it is preparing the site for a zoning
21 change and redevelopment. But, by trying to place its cleanup under the Order, it incorrectly
22 thinks that it can shift these redevelopment costs onto Mr. Veloz.

23 The Regional Board should not be a party to this maneuver – particularly where Mr.
24 Veloz has never discharged anything at the site and voluntarily cooperated with the Regional
25 Board for years. Unfortunately, however, staff have involved themselves in this matter, and,
26 perhaps without intent, are facilitating Seventeenth Street’s attempt to shoehorn a 2008 voluntary
27 corrective action plan into a Order that does not name Seventeenth Street and which does not
28 require any such cleanup. If the agency wishes for the proposed cleanup to be under its

1 jurisdiction, it should issue a new order naming the parties in accordance with its practices and
2 regulations, in which case Carter would not be named. The State Board should order the
3 Regional Board to either rescind the Order or to rescind the Order and issue a new Order naming
4 the correct parties, and not Carter.

5 H. Statement that the Petition Has Been Sent to the Regional Board and Discharger

6 A true and correct copy of this Petition was mailed on August 6, 2009 to the
7 Regional Board, the Dischargers, and other interested parties at the following addresses:

8 Gerard Thibeault
9 Executive Officer
10 California Regional Water Quality Control Board
11 Santa Ana Region
12 3737 Main Street, Suite 500
13 Riverside, California 92501

14 Mr. Travis Engen
15 Chairman and Chief Executive Officer
16 IFT Industries, Inc.
17 4 West red Oak Lane
18 White Plains, New York 10604

19 Mr. Charles Housman,
20 Chairman, President, CEO and CFO
21 Armatron International, Inc.
22 Two Main Street
23 Melrose, Massachusetts 02176

24 Paul Keen
25 Seventeenth Street Realty, LLC
26 671 W. 17th Street
27 Costa Mesa, CA 92627

28 Jon Lovegreen
Tetra Tech, Inc.
17770 Cartwright Road, Suite 500
Irvine, California 92614

I. Statement that the Substantive Issues or Objections Raised in the Petition Were
Raised Before the Regional Board

Mr. Veloz (and/or Carter) raised the issues discussed in this Petition as evidenced by the
ample evidence contained in the record, including but not limited to the documents attached to
the accompanying Statement of Points and Authorities in support of this Petition and the
documents attached to this Petition.

1 Mr. Veloz nonetheless reserves the right to present at the hearing additional evidence in
2 support of his Petition, in accordance with Title 23, California Code of Regulations, Section
3 2050.6(b). This evidence is in addition to that cited and referenced in this Petition and attached
4 to the Statement of Points and Authorities. There was no hearing before the Regional Board on
5 whether Petitioner is liable under Section 13304 of the California Water Code, or on the Order's
6 regulatory and constitutional validity as applied in this instance.

7 J. Reservation of Right to Amend this Petition and the Accompanying Statement of
8 Points and Authorities

9 Petitioner reserves the right to amend this Petition and the accompanying Statement of
10 Points and Authorities. This reservation is appropriate in light of the above-stated information,
11 and particularly in light of the Regional Board's violations of applicable law and of equal
12 protection and due process.

13 **III. CONCLUSION**

14 Because the Petition raises substantial issues that are appropriate for review, Mr. Veloz
15 respectfully requests that the State Board grant this Petition.

16
17 DATED: August 6, 2009

Respectfully Submitted,

LATHAM & WATKINS LLP
Paul N. Singarella
Daniel P. Brunton
Mayte Santacruz Benavidez

20
21 By 
22 Paul N. Singarella
23 Attorneys for Petitioner
24 ROBERT M. VELOZ
25
26
27
28

EXHIBIT 1



California Regional Water Quality Control Board
Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

July 8, 2009

Elizabeth (Betsy) Miller Jennings
Staff Counsel IV
State Water Resources Control Board
1001 I Street, 22nd floor
Sacramento, CA 95814

RE: JULY 2, 2009 LETTER FROM PAUL SINGARELLA, LATHAM & WATKINS,
REQUESTING RESCISSION OF CLEANUP AND ABATEMENT ORDER NO. 90-126; 671
WEST 17TH STREET, COSTA MESA

Dear Ms. Jennings:

Please see my July 8, 2009 letter to Paul Singarella (enclosed), which should render moot the issue of whether the Santa Ana Regional Water Quality Control Board has officially denied Robert Veloz's request to rescind the 1990 Cleanup and Abatement Order issued to J.C. Carter Company, Inc.

Additionally, I have enclosed a letter from Richard J. Grabowski, a representative of the current property owner. As stated in the attached letters, there is some disagreement regarding whether Robert Veloz has any standing to request a rescission of the CAO. It may be appropriate to include the current property owner, Seventeenth Street Realty, LLC, in any future proceedings.

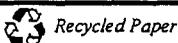
Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosures: 1. July 8, 2009 Letter to Paul Singarella from Gerard Thibeault
2. June 8, 2009 Letter to Rose Scott from Richard Grabowski, Jones Day

cc. David Rice, OCC, SWRCB
Paul N. Singarella, Latham & Watkins LLP
Richard J. Grabowski, Jones Day

California Environmental Protection Agency





California Regional Water Quality Control Board
Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

July 8, 2009

Mr. Paul N. Singarella
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925

**RE: YOUR JULY 2, 2009 LETTER REQUESTING RESCISSION OF CLEANUP AND
ABATEMENT ORDER NO. 90-126; 671 WEST 17TH STREET, COSTA MESA**

Dear Mr. Singarella:

We have received your request for rescission of Cleanup and Abatement Order No. 90-126 (CAO). After due consideration, the Santa Ana Regional Water Control Board (Regional Board) is denying your request.

Your letter correctly states that we had earlier indicated a willingness to consider rescission of the CAO, but that was based on information you provided to us. Upon receipt of additional information from the current property owner, we have now determined that it would be inadvisable to rescind the CAO at this time.

As documented by your submittal, your client's company had ample opportunity to activate its petition on the CAO at the time of adoption and failed to do so. Moreover, as explained in the enclosed letter, it is unclear whether your client actually has any standing to request this rescission. What is clear is that, after years of inaction, the site is currently being remediated. To rescind the CAO now would not only jeopardize the continued remediation of the site, but would unnecessarily entangle the Regional Board in complex business affairs between third parties.

Please do not hesitate to contact me at 951-782-3284 or Kurt Berchtold at 951-782-3286 with any additional questions or concerns related to this matter.

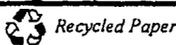
Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosure: June 8, 2009 Letter from Richard J. Grabowski, Jones Day

cc. Regional Board
Betsy Jennings, OCC, SWRCB
David Rice, OCC, SWRCB
Richard J. Grabowski, Jones Day

California Environmental Protection Agency



JONES DAY

3 PARK PLAZA • SUITE 1100 • IRVINE, CALIFORNIA 92614-8505
TELEPHONE: 949-851-3939 • FACSIMILE 949-553-7539

Direct Number: (949) 553-7514
gabowski@jonesday.com

JP767029:sac
631668-605002

June 8, 2009

CRWQCB - REGION 8
RW
KTS b/g

JUN 09 2009

Rose Scott, Engineering Geologist
California Regional Water Quality Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501

Re: SARWQCB Case No. 083000202T - Cleanup and Abatement Order 90-126, former J.C. Carter Company, Inc. Property @ 671 W. 17th Street, Costa Mesa, CA.

Dear Ms. Scott:

As you are aware, we represent Seventeenth Street Realty LLC (hereinafter "Seventeenth Street"), the current owner of the property located at 671 W. 17th Street, Costa Mesa, CA, (the "Property") formerly owned by J.C. Carter Company, Inc., which is subject to Cleanup and Abatement Order 90-126 (SARWQCB Case No. 083000202T).

At the May 7, 2009 meeting between Seventeenth Street and Regional Water Quality Control Board representatives at your offices in Riverside, CA, Rod Keen agreed to provide you with a letter from Seventeenth Street's counsel outlining the relationship of the former shareholders of J.C. Carter Company, Inc. to Seventeenth Street. As Seventeenth Street's counsel, we write pursuant to that agreement.

A. Seventeenth Street's Origin and Relation to J.C. Carter Company, Inc. and Its Former Shareholders.

In September 1997, Argo-Tech Corporation ("Argo-Tech") acquired all of the stock of J.C. Carter Company, Inc. via a Stock Purchase Agreement between Argo-Tech and the J.C. Carter Company, executed on September 26, 1997 (the "1997 Agreement"). Pursuant to the terms of the 1997 Agreement, all of the equity interests (common stock) of J. C. Carter Company, Inc. were transferred to Argo-Tech. J. C. Carter Company, Inc. was operated as a wholly owned subsidiary of Argo-Tech. Under the 1997 Agreement, the former shareholders of J.C. Carter Company, Inc., including Robert Veloz, Marlene Veloz, Michael Veloz, Katherine Veloz (formerly Canfield), Harry Derbyshire, Edith Derbyshire and Maureen Partch, agreed to indemnify Argo-Tech and any of its affiliates and permitted assignees for certain bargained-for liabilities, including those arising out of Cleanup and Abatement Order 90-126. In October, 2001 the name of the corporate entity, "J. C. Carter Company, Inc." was changed to "Argo-Tech Corporation Costa Mesa". In all respects other than the name, the corporate entity remained unchanged. Its ownership and operations (including ownership of the Property) were not altered in any way.

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Rose Scott, Engineering Geologist
June 8, 2009
Page 2

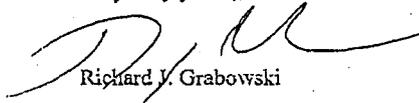
On October 28, 2005, V.G.A.T. Investors, LLC ("VGAT") [Seventeenth Street's parent] acquired AT Holdings Corporation ("AT Holdings"), the parent of Argo-Tech. At that time, VGAT became an affiliate of Argo-Tech pursuant to the terms of the 1997 Agreement.

Seventeenth Street was formed to hold and operate the Property during and after AT Holdings' reorganization prior to VGAT's March 2007 sale of certain AT Holdings entities to Eaton Corporation ("Eaton"). Seventeenth Street acquired the Property via contribution from its then parent, Argo-Tech Corporation Costa Mesa ("ATCM") [formerly J.C. Carter Company, Inc.], a wholly owned subsidiary of Argo-Tech. While the bulk of AT Holdings was sold to Eaton, Argo-Tech's cryogenics division located at the Property, entities and subsidiaries related thereto, and the Property itself, were ultimately retained by VGAT.

In the reorganization, ATCM acquired 100% of the investment units of Seventeenth Street in exchange for contribution of the Property. At that time, Argo-Tech assigned all of its rights arising out of the 1997 Agreement to Seventeenth Street, including all indemnification rights arising out of that agreement.

Subsequent to the execution of the 1997 Agreement, the former shareholders of J.C. Carter Company, Inc. lost all interest and rights in J.C. Carter Company, Inc., retaining nothing except for the obligation to indemnify Argo-Tech and any of its affiliates and permitted assignees pursuant to the 1997 Agreement. Thus, Robert Veloz, Marlene Veloz, Michael Veloz, Katherine Veloz (formerly Canfield), Harry Derbyshire, Edith Derbyshire and Maureen Partch, former shareholders of J.C. Carter Company, Inc., have no standing or authority to act on behalf of J.C. Carter Company, Inc. If you have any questions or comments regarding the aforementioned, please do not hesitate to contact me. Thank you.

Very truly yours,



Richard J. Grabowski

EXHIBIT 2



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Office of Chief Counsel

1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

June 22, 2009

VIA CERTIFIED MAIL AND EMAIL

Paul N. Singarella, Esq.
Marc T. Campopiano, Esq.
Mayte Santacruz Benavidez, Esq.
Latham & Watkins LLP
650 Town Center Drive, Suite 2000
Costa Mesa, CA 92626-1925
paul.singarella@lw.com
marc.campopiano@lw.com
mayte.santacruz.benavidez@lw.com

Dear Messrs. Singarella and Campopiano and Ms. Benavidez:

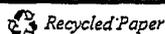
PETITION OF ROBERT L. VELOZ (FAILURE TO VACATE OR AMEND CLEANUP AND ABATEMENT ORDER NO. 90-126 AND STOP ENFORCEMENT AGAINST J.C. CARTER COMPANY, INC., COSTA MESA, ORANGE COUNTY), SANTA ANA WATER BOARD: NO REVIEW OF PETITION

The State Water Resources Control Board (State Water Board) will not accept for review the petition you filed. The basis for the petition is Cleanup and Abatement Order No. 90-126 (CAO), adopted by the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) on October 3, 1990, and an oral discussion with the Assistant Executive Officer of the Santa Ana Water Board, Mr. Kurt V. Berchtold, on May 15, 2009.

The Santa Ana Water Board acted on October 3, 1990. The State Water Board's regulations require that any petition for review be filed "no later than 5:00 p.m. 30 days following the date of the action. . . ." (Cal. Code Regs., tit. 23, § 2050(b).) The petition you submitted on behalf of Robert L. Veloz was received by electronic mail at this office at 4:54 p.m. on June 15, 2009. The petition is therefore not timely. The deadline for filing petitions is jurisdictional and late filing cannot be waived. (Wat. Code, § 13320.) Objection to the CAO should have been filed with the State Water Board by November 3, 1990, to effectively object to the CAO.

The May 15, 2009, discussion between Mr. Berchtold and you contained an informal discussion about the intentions of the Santa Ana Water Board concerning the CAO, and is itself not a final action or separate requirement of the Santa Ana Water Board. Only the Santa Ana Water Board itself or the Executive Officer, acting pursuant to his or her delegated authority, may engage in activities that are reviewable by the State Water Board. In addition, only final actions of the Santa Ana Water Board are subject to review.

California Environmental Protection Agency

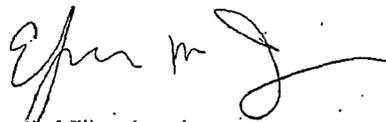


June 22, 2009

Because the discussion was not a final action, the State Water Board will not accept the petition. Should the Santa Ana Water Board take subsequent enforcement action or issue another final order regarding this site, a petition would be appropriate.

If you have any questions about the legal basis for this decision, please call me at (916) 341-5175.

Sincerely,



Elizabeth Miller Jennings
Staff Counsel IV

cc: Mr. Robert L. Veloz [via U.S. Mail only]
757 Riven Rock Road
Santa Barbara, CA 93108

Mr. Travis Engen [via U.S. Mail only]
Chairman and Chief Executive Officer
ITT Industries, Inc.
4 West Red Oak Lane
White Plains, NY 10604

Mr. Charles Housman [via U.S. Mail only]
Chairman, President, CEO and CFO
Armatron International, Inc.
Two Main Street
Melrose, MA 02176

Mr. Paul Keen [via U.S. Mail only]
Seventeenth Street Realty, LLC
671 W. 17th Street
Costa Mesa, CA 92627

Mr. Jon Lovegreen [via U.S. Mail only]
Tetra Tech, Inc.
17770 Cartwright Road, Suite 500
Irvine, CA 92614

Mr. Gerard Thibeault [via email only]
Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339
gthibeault@waterboards.ca.gov

Mr. Kurt Berchtold [via email only]
Assistant Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339
kberchtold@waterboards.ca.gov

David Rice, Esq. [via email only]
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
davidrice@waterboards.ca.gov

Elizabeth Miller Jennings, Esq. [via email only]
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
bjennings@waterboards.ca.gov

EXHIBIT 3

Paul N. Singarella
Direct Dial: 714-755-8168
paul.singarella@lw.com

ATHAM & WATKINS LLP

One Firm

7
YEARS

650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
www.lw.com

FIRM / AFFILIATE OFFICES

Abu Dhabi	Munich
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Moscow	

File No. 026647-0001

July 2, 2009

VIA EMAIL AND U.S. MAIL

Elizabeth Miller Jennings, Esq.
Staff Counsel IV
State Water Resources Control Board
Office of Chief Counsel
1001 I Street, 22nd Floor
Sacramento, California 95814

P.O. Box 100
Sacramento, California 95812-0100

Re: Request for Re-Consideration – Petition of Robert L. Veloz (Failure to Vacate or Amend Cleanup and Abatement Order No. 90-126 and Stop Enforcement Against J.C. Carter Company, Inc., Costa Mesa, Orange County), Santa Ana Regional Water Quality Control Board

Dear Ms. Jennings:

I am in receipt of your letter dated June 22, 2009 in which you state that the State Water Board will not accept review of the above-referenced petition. This letter is to urge you to reconsider this decision as the two bases upon which it is made do not provide a valid basis to refuse review. Although we think your concerns are unwarranted, we have taken steps to address them by re-submitting our formal request for rescission to the Regional Board, by letter dated July 2, 2009 to the Executive Officer. We took that step without waiver of our position that the Regional Board already acted on our formal request. With that said, we would be pleased if this matter could be handled at the Regional Board level.

1. A Timely Petition On The CAO Was Filed And Dismissed With Leave To Re-File In The Event Of Future Dispute, Such As The Present Dispute.

The first basis upon which you did not accept review is your assertion that the deadline for a petition was November 3, 1990. In other words, you are claiming that, despite the 2008-2009 activity under the CAO which forms the principal basis for the petition, the petition is nineteen years too late.

This is not the case. Setting aside for the moment that the present dispute arises out of the recent actions by the Regional Board starting in August 2008 and culminating with the

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Regional Board's May 2009 decision regarding rescission, your letter incorrectly states that the deadline to challenge the underlying CAO passed in November 1990.

As we discussed on June 25, 2009, a timely petition regarding the 1990 CAO was filed. It was held in abeyance under a procedure that results in dismissal without prejudice. The November 19, 1990 abeyance letter, attached to our June 15, 2009 petition as Exhibit I, states in pertinent part:

"Please note the significance of the phrase 'without prejudice'. If, after the petition is dismissed, an actual dispute arises between you and the Regional Board over the interpretation or enforcement of the underlying order, you may file a new petition with the State Board within 30 days of the date of the dispute. Any issues relevant to that dispute, including but not limited to those raised in this petition, will be considered at that time in the same manner as if the petition were filed for the first time."

As you can see from the above, the deadline to challenge the 1990 CAO did not pass in November 1990. The State Water Board affirmatively kept that deadline open in the event of future disputes, including those described in the above-referenced petition. We described these circumstances to the State Water Board at page 8 of the points and authorities in support of the above-referenced petition. Your June 22 letter overlooks these facts.

2. Mr. Berchtold Was Responding To A Formal Request For Rescission When, On May 15, 2009, He Communicated The Regional Board's Decision To Not Act.

The other basis upon which you did not accept review is a mistaken belief that the Regional Board has not formally decided against rescission. In fact it has. (We state this fact without prejudice to the Regional Board's right to re-consider the matter, as we hope the Executive Officer will do, pursuant to our July 2 resubmission to him.)

This matter relates to a 1990 CAO on which there was no activity between 2000 and 2008, but which came back to life last August, when Regional Board staff informed us it considered the order active, and considered the party named in 1990 to be responsible for a corrective action plan prepared by others in June 2008. In response, we formally requested rescission of the order on the basis that it is anachronistic and, as being applied currently, defective. See our November 24, 2008 letter to the Assistant Executive Officer and others, attached as Exhibit R to the June 15, 2009 petition, and discussed on page 4 of the points and authorities ("We are pleased the agency is considering these options, and formally request that the agency rescind the Order for the reasons discussed on November 3 and those discussed more fully herein."). (On November 3, we had met with Assistant Executive Officer ("AEO") Kurt Berchtold, and staff members Ken Williams and Rose Scott.)

On several occasions after our November 24, 2008 formal rescission request, we were apprised that the agency planned to rescind the order. In mid-May, however, it became apparent that the Regional Board had decided not to act and rescind the order.

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On May 15, 2009, Kurt Berchtold communicated to me the Regional Board's decision. As you know, Mr. Berchtold is the AEO for the Regional Board. As the AEO, Kurt possessed the authority in this instance to communicate to me the Regional Board's position – not his personal position, some unauthorized position, or some interim position. This can be seen from the record.

Most importantly, Mr. Berchtold was responding to a formal request for rescission. He received the formal request in November 2008, and never once indicated that it had not been properly submitted, or that he was without authority to process the request. We are aware of no regulation that prevents an affected person from submitting such a formal request with the AEO. If Mr. Berchtold needed to pass the request by the Executive Officer himself, it was fair for us to assume he would do so. Also, it is well known in the regulated community that Mr. Berchtold has considerable discretion to carry out the business of the Regional Board, given his longstanding tenure and excellent relationship with the Executive Officer.

In addition, on May 6, 2009, Mr. Berchtold e-mailed me when I asked him if I could discuss rescission with David Rice, Esq., counsel for the Regional Board. Mr. Berchtold replied to my request as follows:

“You are free to discuss it with David if you'd like. I have discussed the matter with him but not in great detail, and I have resolved the procedural issue where I needed his input. So I think things are back in our court at this point and we should be able to proceed with the rescission soon.”

Note that Mr. Berchtold refers to rescission as being “back in our court,” and that “we should be able to proceed . . . soon.” Mr. Berchtold's references to “our court” and “we” plainly indicate that he was speaking for the Regional Board. In fact, we did discuss rescission with Mr. Rice but, by that time, the Regional Board had decided to not proceed with rescission. Mr. Rice made this clear when he stated in a voicemail as follows:

“I spoke with my client today and I don't think that we're, at this point, inclined to do anything about CAO. The cleanup is progressing and as far as I understand, the party who is doing the cleanup is fine with the CAO, so I think that we're kind of happy the way things are”

Mr. Rice's references to “my client” and “we” plainly are references to the Regional Board, for which Mr. Rice is authorized to speak. Plainly, counsel for the Regional Board would not be communicating to us his personal position on rescission, some unauthorized position on rescission, or some interim position on rescission. The Regional Board made its decision on rescission, as evidenced by our communications with Messrs. Berchtold and Rice, and that decision was to take no action on our formal request from November, and leave the status quo in place, choosing to stand behind a 1990 CAO which is defective as being presently applied by the agency.

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Your letter indicates that we did not receive a final decision from the Regional Board on rescission. As indicated above, and also in our June 15th petition, including the attachments thereto, we certainly did.

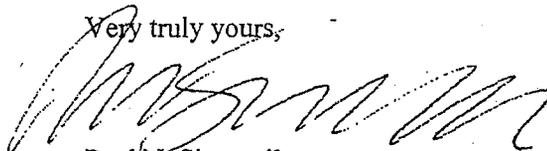
3. There Are No Other Exhaustion Requirements That Are Applicable.

As you indicated during our discussion on June 25, we were not required as a matter of administrative exhaustion to present this matter to the board of the Regional Board. I appreciated your acknowledgement of that fact, especially since there is no procedure in place to petition such a matter from Regional Board staff to the Regional Board. Thus, it is plain that we have satisfied whatever exhaustion requirements there may be in this instance. If you disagree, we certainly look forward to your continued frankness on the matter.

I trust that this letter fully has addressed the bases upon which the petition was not accepted for review. We look forward to the State Water Board's action on the petition.

Should you have any questions or comments whatsoever, please do not hesitate to call me at (714) 755-8168.

Very truly yours,



Paul N. Singarella
of LATHAM & WATKINS LLP

cc: Mr. Robert L. Veloz (via email only)

Mr. Travis Engen (via U.S. Mail only)
Chairman and Chief Executive Officer
ITT Industries, Inc.
4 West Red Oak Lane
White Plains, NY 10604

Mr. Charles Housman (via U.S. Mail only)
Chairman, President, CEO and CFO
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Two Main Street
Melrose, MA 02176

Mr. Paul Keen (via U.S. Mail only)
Seventeenth Street Realty, LLC
671 W. 17th Street
Costa Mesa, CA 92627

LATHAM & WATKINS LLP

Mr. Jon Lovegreen (via U.S. Mail only)
Tetra Tech, Inc.
17770 Cartwright Road, Suite 500
Irvine, CA 92614

Mr. Gerard Thibeault (via email only)
Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339
gthibeault@waterboards.ca.gov

Mr. Kurt Berchtold (via email only)
Assistant Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339
kberchtold@waterboards.ca.gov

David Rice, Esq. (via email only)
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95812-0100
davidrice@waterboards.ca.gov

EXHIBIT 4



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Office of Chief Counsel

1001 I-Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

July 21, 2009

VIA CERTIFIED MAIL AND EMAIL

Paul N. Singarella, Esq.
Marc T. Campopiano, Esq.
Mayte Santacruz Benavidez, Esq.
Latham & Watkins LLP
650 Town Center Drive, Suite 2000
Costa Mesa, CA 92626-1925
paul.singarella@lw.com
marc.campopiano@lw.com
mayte.santacruz.benavidez@lw.com

Dear Messrs. Singarella and Campopiano and Ms. Benavidez:

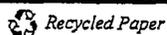
PETITION OF ROBERT L. VELOZ (FAILURE TO VACATE OR AMEND CLEANUP AND ABATEMENT ORDER NO. 90-126 AND STOP ENFORCEMENT AGAINST J.C. CARTER COMPANY, INC., COSTA MESA, ORANGE COUNTY), SANTA ANA WATER BOARD: RESPONSE CONCERNING POSSIBLE REVIEW BY THE STATE WATER BOARD

On June 22, 1990, I wrote a letter to you and other attorneys at your firm, declining to review the petition that you submitted on behalf of Robert L. Veloz. In my letter, I explained that the petition appeared to challenge a cleanup and abatement order that had been adopted in 1990 (CAO), and to challenge certain telephone conversations with a staff member of the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board). In my letter, I explained that it was far too late to challenge a 1990 action, and that verbal communications with a staff member did not constitute an action or failure to act within the meaning of Water Code section 13320.

In subsequent communications from you and from the Santa Ana Water Board, I have learned that J.C. Carter challenged the original CAO, that the petition was filed in abeyance, and that the petition was ultimately dismissed in 1993. I do not believe that this office has any of the correspondence from that petition in its files. The letter dismissing the petition, following the form used 16 years ago, stated that if an actual dispute were to arise later between J.C. Carter and the Santa Ana Water Board, J.C. Carter could file a new petition. I also learned that you represent Robert L. Veloz rather than J.C. Carter, and that there may be some issue regarding your firm's legal ability to represent that company – I am not aware that you have stated that is your client. Finally, I learned that the Executive Officer of the Santa Ana Water Board sent you a letter on July 8, 2009, denying your request for rescission of the CAO.

In light of the above, it appears that, consistent with the 1993 letter from this office and the formal refusal to rescind the CAO issued on July 8, if your client wishes to pursue review by the State Water Board, the only option would be for you to file a petition challenging the refusal to act.

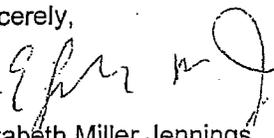
California Environmental Protection Agency



July 21, 2009

contained in the July 8 letter from Mr. Thibeault. Any petition must comply with the statutory and regulatory requirements for filing a water quality petition.

Sincerely,


Elizabeth Miller Jennings
Staff Counsel IV

cc: **[via U.S. Mail and email]**
Richard J. Grabowski, Esq.
Jones Day
3 Park Plaza, Suite 1100
Irvine, CA 92614-2592
rgrabowski@jonesday.com

[via U.S. Mail only]
Mr. Robert L. Veloz
757 Riven Rock Road
Santa Barbara, CA 93108

[via U.S. Mail only]
Mr. Travis Engen
Chairman and Chief Executive Officer
ITT Industries, Inc.
4 West Red Oak Lane
White Plains, NY 10604

[via U.S. Mail only]
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Two Main Street
Melrose, MA 02176

[via U.S. Mail only]
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Seventeenth Street Realty, LLC
671 W. 17th Street
Costa Mesa, CA 92627

[via U.S. Mail only]
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17770 Cartwright Road, Suite 500
Irvine, CA 92614

Mr. Gerard Thibeault **[via email only]**
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Assistant Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339
kberchtold@waterboards.ca.gov

David Rice, Esq. **[via email only]**
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
davidrice@waterboards.ca.gov

Elizabeth Miller Jennings, Esq. **[via email only]**
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
bjennings@waterboards.ca.gov

EXHIBIT 5

Paul N. Singarella
Direct: (714) 755-8168
paul.singarella@lw.com

650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Abu Dhabi	Munich
Barcelona	New Jersey
Brussels	New York
Chicago	Orange County
Doha	Paris
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Milan	Washington, D.C.
Moscow	

July 30, 2009

VIA EMAIL

Gerard J. Thibeault, Executive Officer
California Regional Water Quality Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, California 92501-3348

File No. 026647-0003

Re: **Request for Reconsideration – Rescission of Cleanup and Abatement Order No. 90-126 Issued in 1990 for the Property Located at 671 West 17th Street in Costa Mesa; Request to Cure Defective Order**

Dear Mr. Thibeault:

I appreciated the opportunity to speak with you earlier today. We received your letter of July 8, 2009 declining to rescind Cleanup and Abatement Order No. 90-126 (the "1990 Order"). We ask that the Santa Ana Regional Water Quality Control Board ("Regional Board") reconsider that decision, rescind the 1990 Order, and, if the agency desires, issue a new order naming the actual dischargers and responsible parties. We believe that doing so would correct the injustice of the present circumstances, as well as comply with the law.

1. **Mr. Veloz Has Standing To Ask The Regional Board To Rescind The 1990 Order And To Challenge The Regional Board's Failure To Do So.**

Your July 8, 2009 letter states that "it is unclear whether your client has any standing to request this rescission." We think it is clear that Mr. Veloz has standing.

Standing requirements in California are broad and easy to meet. If a person (such as Mr. Veloz) has an interest in a matter that is greater than the interests of the public at large, that individual has standing. "To have standing, a party must be beneficially interested in the controversy; that is, he or she must have 'some special interest to be served or some particular right to be preserved or protected *over and above the interest held in common with the public at large.*' The party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical." *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 814 (italics in original).

Mr. Veloz meets this requirement. Seventeenth Street Realty, the current property owner, has asserted to the Regional Board that Mr. Veloz is personally liable to it for potential liabilities

LATHAM & WATKINS LLP

which it alleges arise out of the 1990 Order. While Seventeenth Street Realty has not substantiated this claim, and while we believe it is baseless, even the possibility that Mr. Veloz may have to pay for the cleanup that Seventeenth Street Realty proposes gives Mr. Veloz a keen interest in the 1990 Order – much greater than the public at large.

The Regional Board should consider the equities when evaluating Mr. Veloz's request and his standing. Entitlement to a writ of mandate, whether traditional or administrative, is "largely controlled by equitable principles." *Curtin v. Department of Motor Vehicles* (1981) 123 Cal.App.3d 481, 485 (stating that equity provides the right to petition for administrative mandamus to an individual whose license was erroneously suspended by the DMV). The equities weigh strongly in Mr. Veloz's favor.

The Regional Board for years accepted the benefits of Mr. Veloz's work at the site – both in Mr. Veloz's capacity as an officer of J.C. Carter Company, Inc. ("Carter") and later in his individual capacity. Between 1997 and 2000, Mr. Veloz personally expended significant time, money, and effort to satisfy the Regional Board's concerns regarding the site, for example:

- In 1998, Mr. Veloz personally submitted a proposed off-site groundwater investigation to the Regional Board.
- In March 1999, Mr. Veloz undertook voluntary air sparging/vapor extraction to address groundwater contamination at the site. Twelve extraction wells were installed to facilitate this process. This voluntary program was initially intended to operate for 30 days, but was extended for a full year. The system was shut down in April 2000 at the request of the Regional Board. While this cleanup was not called for by the 1990 Order, it was an effort on Mr. Veloz's part to satisfy the agency.

Then, in 2008, after eight years of silence about the 1990 Order, the Regional Board wrote to Mr. Veloz personally, claiming he had not complied with the Regional Board's requests.

It is not fair for the Regional Board to reap the fruits of Mr. Veloz's cooperation for years, contact him in his retirement about the 1990 Order, and then argue that he lacks standing. The Regional Board's own activities over the years show that Mr. Veloz's interest in the 1990 Order is much greater than that of the public at large.

Finally, on standing, the Regional Boards routinely rescind CAOs. I have enclosed two samples: one by the Central Valley Regional Board and another from the San Diego Regional Board. In both cases, the Regional Board invited the public at large to comment on the rescission. Clearly the Regional Boards consider rescission of a cleanup and abatement order to be a matter of broad interest. The Regional Board cannot maintain that the public at large usually has an interest in cleanup and abatement orders sufficient to allow it to participate in the administrative proceedings, but that Mr. Veloz lacks a sufficient interest to participate in administrative proceedings on the rescission of the 1990 Order. Mr. Veloz has a much keener,

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more personal interest in the 1990 Order than the Regional Boards usually require to participate in administrative proceedings.

2. Mr. Veloz Satisfies The "Designated Party" Test, To the Extent The Regional Board Is Basing Its Assessment On That.

If the Regional Board denied Mr. Veloz's request because he is not a "designated party," any such decision would be in error since the Regional Board has not held formal hearings, but we ask that Mr. Veloz be named a designated party.

The California Code of Regulations allows the Regional Boards to name the parties to administrative proceedings: "The party or parties to an adjudicative proceeding before the Board shall include the person or persons to whom the agency action is directed and any other person whom the Board determines should be designated as a party. The hearing notice may specify a procedure for designation of the parties to a particular adjudicative proceeding." 23 Cal. Code Regs. § 648.1(a). The Regional Board has not specified a procedure to designate parties in the rescission proceedings on the 1990 Order. But the Government Code allows parties to intervene when they meet four conditions:

- [A motion to intervene] is submitted in writing, with copies served on all parties named in the agency's pleading.
- The motion is made as early as practicable in advance of the hearing. . . .
- The motion states facts demonstrating that the applicant's legal rights, duties, privileges, or immunities will be substantially affected by the proceeding or that the applicant qualifies as an intervenor under a statute or regulation.
- The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

Cal. Gov. Code § 11440.50(b).

At this stage in the proceedings, without Regional Board staff having set hearings before the full Board, Mr. Veloz has complied with these requirements to the extent he can:

- This request is in writing and we are copying Seventeenth Street Realty. Please let us know if you believe other parties should be given this request.
- This request is made as early as practicable. It was only July 8, 2009 that we received your letter saying you believed Mr. Veloz may not have standing.
- The facts recounted above regarding standing show that Mr. Veloz's rights and duties will be substantially affected by the outcome of these proceedings.

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- Mr. Veloz's participation in the proceedings will not impair the prompt conduct of the proceedings. Quite the contrary, given Mr. Veloz's paramount interest, it is likely that the proceedings would bog down without Mr. Veloz's participation.

We believe Mr. Veloz has no duty to request being named as a party to these proceedings; in any event, this request is adequate to make Mr. Veloz a party. If the Regional Board intends to adopt a different procedure for the designation of parties, we ask you to inform us promptly so we can comply with it as well.

3. The Regional Board Should Name International Telephone and Telegraph Corporation ("ITT") In A New Order.

As we previously explained, Carter did not even discharge the wastes at issue in the 1990 Order. The Regional Board should issue a new order that names the actual dischargers, including International Telephone and Telegraph Corporation ("ITT"). As we previously informed the agency, ITT owned the site from 1973 to 1983 and discharged the wastes at issue in the Order. The affidavits we provided to the Regional Board in November 2008 explain that ITT manufactured oxygen pumps for military use, and documented ITT's use of trichloroethylene and tetrachloroethylene as important solvents and degreasing agents. These former employees were present at the site for many years, and were percipient witnesses to how these solvents were used, and released at the site. These solvents, and their breakdown products, are the primary contaminants at the site.

The Regional Board has a continuing obligation to name dischargers: "The policies Regional Water Boards shall apply in overseeing: (a) investigations to determine the nature and horizontal and vertical extent of a discharge and (b) appropriate cleanup and abatement measures. The Regional Water Board shall: . . . Name other dischargers as permitted by law." 23 Cal. Code Regs. § 2907. Here, the Regional Board should follow its regulation and issue a new order that names ITT, and not Carter.

4. The Regional Board Should Name The Appropriate Parties In Light of the Jones Day Letter Dated June 8, 2009.

By letter dated June 8, 2009, the law firm of Jones Day informed the Regional Board of real estate and corporate transactions at the property since 1997 when Carter was sold to Argo-Tech. It is the practice of the Water Boards to maintain CAOs that reflect current property ownership and operation. Now that Jones Day has disclosed this information to the agency, consistent with agency practice, the agency would be expected to re-issue a CAO, or retire the existing one as plainly outdated, incorrect, and anachronistic. While this may require the agency to sort through some business affairs, our understanding is that that is what the Water Boards do, in order to ensure that they are not unfairly targeting the wrong individuals. Not undertaking such re-issuance and/or rescission would underscore disparate and arbitrary treatment of Mr. Veloz.

Further to this point, Seventeenth Street Realty improperly is attempting to shoehorn its corrective action plan under the defective 1990 Order, in an attempt to saddle Mr. Veloz with the

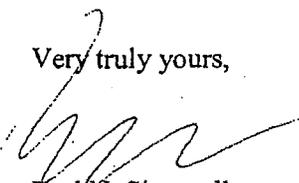
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bill. The 1990 Order does not address the removal of dense non-aqueous phase liquid ("DNAPL"), the control of vapors, or *in situ* groundwater treatment. In contrast, Seventeenth Street Realty's corrective action plan largely is comprised of these three elements – removal of DNAPL, control of vapors, and *in situ* groundwater treatment. Plainly, it is not attempting to comply with the Order. Rather, it is preparing the site for a zoning change and redevelopment. But, by trying to place its cleanup under the 1990 Order, it incorrectly thinks that it can shift these redevelopment costs onto Mr. Veloz.

The Regional Board should not be a party to this maneuver – particularly where Mr. Veloz has never discharged anything at the site and voluntarily cooperated with the Regional Board for years. Unfortunately, however, staff have involved themselves in this matter, and, perhaps without intent, are facilitating Seventeenth Street's attempt to shoehorn a 2008 voluntary corrective action plan into a 1990 Order that does not name Seventeenth Street and which does not require any such cleanup. If the agency wishes for the proposed cleanup to be under its jurisdiction, it should issue a new order naming the parties in accordance with its practices and regulations, in which case Carter would not be named.

We ask you to reconsider your July 8, 2009 letter in light of the above, rescind the 1990 Order, and, if the agency desires, issue a new order that does not name Carter. Should you have any questions, or should you wish to discuss this matter, please do not hesitate to contact me at (714) 755-8168.

Very truly yours,



Paul N. Singarella
of LATHAM & WATKINS LLP

cc: David Rice, Esq., w/o enclosures
Richard Grabowski, Esq., w/o enclosures

Enclosures

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114

PUBLIC HEARING

concerning

RESCISSION OF CLEANUP AND ABATEMENT ORDER NO. 96-259

FOR

AEROJET-GENERAL CORPORATION

SACRAMENTO COUNTY

The Aerojet-General Corporation owns and operates a rocket testing and manufacturing facility located 17 miles east of downtown Sacramento and partially in the City of Rancho Cordova. Past operations caused pollution of the groundwater beneath, and downgradient from, the facility.

The Central Valley Regional Water Quality Control Board (Regional Water Board) adopted Cleanup and Abatement Order (CAO) No. 96-259 on 25 October 1996 directing the directing the submittal of an outline and list of submittals, with a time schedule, for Executive Officer approval, which would provide for the development of an engineering evaluation and cost analysis (EE/CA) for the treatment of perchlorate at Groundwater Extraction and Treatment (GET) E and F facilities and the implementation of such perchlorate treatment thereafter. Aerojet has completed all requirements of CAO No. 96-259. The Tentative Regional Water Board Order proposes to rescind CAO No. 96-259.

A public hearing concerning this matter will be held during the Regional Board meeting which is scheduled for:

DATE: 25 January 2008
TIME: 8:30 a.m.
PLACE: Regional Water Board Room
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Persons wishing to comment on this noticed hearing item must submit evidence, if any, or comments in writing to the Regional Board no later than noon on **18 January 2008**. Written evidence or comments submitted after noon on **18 January 2008** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

All interested persons may speak at the Board meeting, and are expected to orally summarize their written submittals. Oral testimony will be limited in time by the Board Chair.

An objection by a party, either in writing or at the time of the hearing, to the decision to hold a hearing not allowing cross-examination and rebuttal testimony by designated parties shall be resolved by the Board Chair before going ahead under the proposed procedures. Failure to make a timely objection to the use of the

NOTICE OF PUBLIC HEARING
AEROJET-GENERAL CORPORATOIN
SACRAMENTO COUNTY

-2-

proposed hearing procedure before those procedures are used will constitute consent to those procedures.

Anyone having questions on Tentative Order should contact Alexander MacDonald at (916) 464-4625. Interested parties may download the proposed Order and related documents from the Regional Board's Internet website at <http://www.waterboards.ca.gov/centralvalley/tentative/>. Copies of these documents can also be obtained by contacting or visiting the Regional Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114 weekdays between 8:00 a.m. and 5:00 p.m.

The procedures governing Regional Water Board meetings may be found at Title 23, California Code of Regulations, Section 647 et seq. and are available upon request. Hearings before the Regional Water Board are not conducted pursuant to Government Code section 11500 et seq. The procedures may be obtained by accessing http://www.waterboards.ca.gov/water_laws/. Information on meeting and hearing procedures is also available on the Regional Board's website at http://www.waterboards.ca.gov/centralvalley/board_meetings/mtgprocd.html or by contacting any one of the Board's offices. Questions regarding such procedures should be directed to Ms. Kiran Lanfranchi-Rizzardi at (916) 464-4839.

The hearing facilities will be accessible to persons with disabilities. Individuals requiring special accommodations are requested to contact Ms. Kiran Lanfranchi-Rizzardi at (916) 464-4839 at least 5 working days prior to the meeting. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

Please bring the above information to the attention of anyone you know who would be interested in this matter.

Original signed by:

JACK E. DEL CONTE
Assistant Executive Officer

2 January 2008



California Regional Water Quality Control Board San Diego Region

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

R.F.

September 5, 2008

In reply refer to:
NWU:20-0549.05:mmills

Var Stevens
Multiple Concrete Enterprises, Inc.
2231 N. Rulon White Blvd.
Ogden, Utah 84404

CIWQS:
Regulatory Measure ID: 302319
Place No. 632837

Michael Lubanko
Milan Lubanko
LUBCO, Inc.
45011 Vuelta Grande
Temecula, CA 92590

Tabatha Lubanko
Keri Lubanko
45011 Vuelta Grande
Temecula, CA 92590

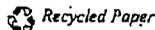
To: Abovementioned Parties:

SUBJECT: Rescission of Cleanup and Abatement Order No. R9-2005-0278

The California Regional Water Quality Control Board, San Diego Region (Regional Board) has determined that Jim McGee of Multiple Concrete Enterprises, Inc., Michael and Milan Lubanko of LUBCO, Inc. and Tabatha and Keri Lubanko (Dischargers) have fully complied with the directives established in Cleanup and Abatement Order No. R9-2005-0278 (CAO). This determination was based on a Regional Board staff inspection of the site conducted on February 17, 2006 and the *Cleanup and Abatement Report for Order No. R9-2005-0278*, dated August 5, 2006 and prepared by Jeff W. Kidd Biological Consulting.

The purpose of this letter is to begin the rescission process for the CAO. It is our intention to rescind the Order after a 30-day comment period is established to allow the Regional Board to receive comments from interested parties. A copy of the public notice is attached. If no substantive comments are received, the CAO will be rescinded after 30 days.

California Environmental Protection Agency



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Lubanko Property
CAO R9-2005-0278

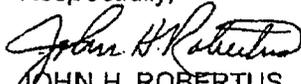
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September 5, 2008

Cleanup and Abatement Order No. R9-2005-0278 was issued for the discharge of concrete slurry waste from an unpermitted surface impoundment located at 45011 Vuelta Grande Road in Temecula, CA to De Luz Creek and its tributaries.

If you have any questions or need additional information, please contact Mariah Mills at (858) 627-3977 or mmills@waterboards.ca.gov.

Respectfully,


JOHN H. ROBERTUS
Executive Officer

JHR:dbjs:mkm.

cc (via email only):

A. David Mongan, Esq., Kennedy & Souza, APC, David.Mongan@kenlawfirm.com

Jeff W. Kidd, Jeff W. Kidd Biological Consulting, Buteo6@earthlink.net

Robert Smith, US Army Corps of Engineers Regulatory Division, San Diego Field Office, Robert.R.Smith@usace.army.mil

Robin D. Lewis, California Department of Fish and Game Office of Spill Prevention and Response, rlewis@ospr.dfg.ca.gov

Warden Brady Hill, California Department of Fish and Game, bhill@dfg.ca.gov

Chi Vargas, Caltrans District 11, chi_vargas@dot.ca.gov

Wayne Hoy, County of Riverside Bureau of Investigation, whoy@rivcoda.org

Ted Ryan, County of Riverside Bureau of Investigation, tryan@rivcoda.org

Edward Slater, County of San Diego, Department of Environmental Health, Edward.Slater@sdcounty.ca.gov

Brett Farlow, Riverside County Code Enforcement, bfarlow@rctlma.org

California Environmental Protection Agency

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California Regional Water Quality Control Board, San Diego Region

September 5, 2008

NOTICE OF Pending Rescission

of

*CLEANUP AND ABATEMENT ORDER NO. R9-2005-0278
Issued to Jim McGee of Multiple Concrete Enterprises, Inc.,
Michael and Milan Lubanko of LUBCO, Inc. and
Tabatha and Keri Lubanko*

The California Regional Water Quality Control Board, San Diego Region (Regional Board) is providing this 30-day notice public notification of its intent to rescind Cleanup and Abatement Order No. R9-2005-0278 (CAO) issued to Jim McGee of Multiple Concrete Enterprises, Inc., Michael and Milan Lubanko of LUBCO, Inc. and Tabatha and Keri Lubanko. The CAO was issued for the discharge of concrete slurry waste from an unpermitted surface impoundment located at 45011 Vuelta Grande Road in Temecula, CA to De Luz Creek and its tributaries.

Provided no significant issues arise during the public notification period, the Regional Board will rescind the CAO on October 6, 2008.

For more information regarding this matter please contact Mariah Mills at (858) 627-3977 or mmills@waterboards.ca.gov, or visit the Regional Board's web site at www.waterboards.ca.gov/sandiego.

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1 LATHAM & WATKINS LLP
Paul N. Singarella (SBN 155393)
2 Daniel. P. Brunton (SBN 218615)
Mayte Santacruz Benavidez (SBN 259820)
3 650 Town Center Drive, Suite 2000
Costa Mesa, CA 92626-1925
4 Telephone: (714) 540-1235
Facsimile: (714) 755-8290
5 *paul.singarella@lw.com*
daniel.brunton@lw.com
6 *mayte.santacruz.benavidez@lw.com*

7 Attorneys for Petitioner
ROBERT L. VELOZ

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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of:

California Regional Water Quality Control Board,
Santa Ana Region's Cleanup and Abatement Order,
No. 90-126

**STATEMENT OF POINTS AND
AUTHORITIES IN SUPPORT OF
SECOND PETITION FOR REVIEW
AND REQUEST FOR HEARING**

(Cal. Water Code § 13320; 23 Cal.
Code Regs. §§ 2050, 2053)

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I. SUMMARY STATEMENT.

This Petition pertains to a defective, nineteen-year-old cleanup and abatement order (the "Order"), being asserted by the Santa Ana Regional Water Quality Control Board ("Regional Board"), after an eight-year hiatus of agency activity, against the J.C. Carter Company, Inc. ("Carter"), a company that was not in existence prior to 1986 and which played no part in the creation of the contamination present at the subject property. Carter, the sole party named in the defective Order, is a good Samaritan company that undertook extensive remedial work from 1987 to 2000, including three years after another company took over the subject property in 1997. Carter even undertook a voluntary groundwater cleanup for about a year, but was asked by Regional Board staff to stop in 2000.

The Regional Board for many years treated the Order as a dead letter, as it was. Yet, recently, the Regional Board has refused to vacate the Order, as it should, and, instead, alleged, under the Order, that Carter is responsible for remedial actions at the Property to be conducted for a third-party's redevelopment plan. The Regional Board's position is not tenable for many reasons, requiring a prior shareholder and officer of Carter, petitioner Robert L. Veloz, to seek the intervention of the State Water Resources Control Board (the "State Board").

Defects in the Order and in the Regional Board's handling of this matter include the following principal points:

- The Regional Board staff mistakenly is asserting that the Order covers the Corrective Action Plan ("CAP") prepared in 2008 by a third-party developer. But the major elements of the CAP are not even hinted at in the Order, which contains very specific, contingent cleanup provisions that never have been triggered. Specifically, the CAP's focus on Dense Non-Aqueous Phase Liquid, gas control, *in situ* groundwater treatment, and Monitored Natural Attenuation places it squarely outside the reach of the 1990 Order. Neither Carter, nor anyone else (including the third-party developer), is liable under the Order to implement the CAP.
- Carter is not a party liable under the California Water Code as it is neither a

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“discharger,” nor a party that permitted waste to be discharged or deposited. The mere passive migration of contamination at the subject property is not enough to render Carter liable, certainly not when Carter took active steps to address the contamination, and when the Regional Board was ignoring its legal obligation to enforce against the dischargers that contaminated the site.

- Even if, assuming arguendo, that Carter bears secondary liability, which petitioner disputes, Carter fully has satisfied any such liability through the work it funded at the site from 1987 to 2000. In contrast, the companies that contaminated the site have not paid a cent under Regional Board direction to clean up the site.
- The Order also is defective because it does not reflect any reasonable investigation by the Regional Board into the true dischargers, and fails to name them, even though, over many years starting in 1990, and most recently in 2009, Carter has provided ample evidence to the Regional Board of their releases of the chlorinated solvents that contaminated the site. These failings are amplified by the fact that staff repeatedly told Carter that the agency actively would pursue the dischargers.
- The Order is defective because it does not reflect the several changes in ownership and operation that have occurred at the site since 1997, and has been maintained in its original 1990 form despite the common Water Board practice of rescinding cleanup and abatement orders (“CAOs”) and replacing them with updated versions when such changes in ownership and operation occur.
- The Order is defective because, consistent with Water Board practice, the Order should have been retired long ago, as the Regional Board acknowledged in 1997 that the Order had been complied with, and, after submittal of an August 2000 letter requesting the agency to vacate the order and/or amend the Order, Carter never was asked to do any further work at the site. In this regard, the agency is estopped from asking Carter to do any such work almost nine years later, or attempting to hold Carter liable for such work.
- No reasonable person could have anticipated that the defective and anachronistic

1 1990 Order would spring back to life in July 2008, eleven years after the agency
2 acknowledged Carter's compliance, and after never responding to Veloz's August
3 2000 request to retire and/or amend the Order. The Order is being reasserted based
4 on contamination discovered by third parties in 2007, independent of the Order, at a
5 part of the property not studied in the 1990s, and involving the potential cleanup of
6 recently discovered Dense Non-Aqueous Phase Liquid at this location. As applied in
7 this instance, the Order is void for vagueness, and the agency is estopped from
8 enforcing the Order as proposed.

9 The Order and the Regional Board's recent activity violate the California Water Code
10 and its implementing regulations; are inconsistent with a number of common Water Board CAO
11 practices and the State Board's enforcement policy; and violate the California Administrative
12 Procedures Act, and the equal protection and due process clauses of the United States and
13 California Constitutions. Mr. Veloz respectfully requests that the State Board recognize the
14 defects in the Order and the improper nature of the Regional Board's recent activity under it, and
15 take all appropriate action, including vacating the Order, removing Carter through an amendment
16 or a replacement, and/or declaring that Carter is not a responsible party under the Water Code.

17 **II. BACKGROUND.**

18 The subject site is located at 671 West Seventeenth Street in the City of Costa Mesa, in
19 an area underlain by brackish groundwater, without nearby water supply wells. The site is
20 located in an abandoned oil field and has been the site of industrial activity for several decades.
21 The site plainly has been a very low priority for the Regional Board and was activated in 2008
22 only at the urging of Seventeenth Street Realty LLC, a company with a plan to convert this
23 industrial site through a mixed use development, including multi-family residential. Seventeenth
24 Street Realty hopes to recover the costs of cleanup from Mr. Veloz, on the basis of a contract Mr.
25 Veloz entered in 1997 with Argo-Tech Corporation, the immediate successor to Carter. Until
26 July 2008, Mr. Veloz never had heard of Seventeenth Street Realty. Mr. Veloz retired in 1997
27 after he sold his interest in Carter to Argo-Tech.
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