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6 The City of Watsonville

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8 STATE WATER RESOURCE CONTROL BOARD

9 STATE OF CALIFORNIA

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In the Matter of

City of Watsonville,

Petitioner

For Review of Order to Submit
Information Pursuant to California
Water Code Section 13267 of the
California Regional Water Quality
Control Board, Central Coast Region

PETITION No.

**PETITION FOR REVIEW AND REQUEST
FOR EVIDENTIARY HEARING**

REQUEST FOR STAY AS TO PETITIONER

**REQUEST TO HOLD PETITION AND
REQUEST FOR STAY IN ABEYANCE**

21 Pursuant to California Water Code section 13320 and Title 23 of the California
22 Code of Regulations §§ 2050 *et seq.*, Petitioner The City of Watsonville ("The City" or
23 "Petitioner") hereby petitions the State Water Resources Control Board ("State Board")
24 for review of the Order to Submit Information Pursuant to California Water Code Section
25 13267 ("Order") issued by California Regional Water Quality Control Board, Central Coast
26 Region ("Regional Board") on December 3, 2012.¹

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¹ See Order attached as Exhibit A to Declaration of William D. Wick in Support of Petition
for Review and Request for Evidentiary Hearing, Request for Stay as to Petitioner, and Request to

1 The Order requires the submittal of: (1) a summary of the maintenance history of
2 the sewer collection systems, (2) maps and drawings showing the layout of current and
3 historical sewer collection systems, (3) records of wastewater samples, and (4) an
4 investigation workplan relating to the sewer collection system along Freedom Boulevard
5 and Broadis Street in Watsonville, California in the vicinity of the Don Heim and Son Dry
6 Cleaner property located at 1350 Freedom Boulevard ("the Heim Site"). The Order
7 improperly identifies Petitioner as a suspected discharger based on a hypothetical
8 scenarios rather than facts, omits other named responsible parties, and unnecessarily
9 requires the submittal of technical reports and historical information without any rational
10 basis.

11
12 Petitioner requests a hearing on this matter and a stay of the Order pending this
13 appeal.

14 However, Petitioner asks the State Board to hold the petition and the request for a
15 stay in abeyance so that Petitioner can seek to informally resolve this matter with the
16 Regional Board.

17
18

19 **I. PETITIONER**

20 Petitioner is the City of Watsonville and should be contacted through its legal
21 counsel at the following address:

22 City of Watsonville
23 c/o William D. Wick
24 WACTOR & WICK LLP
25 180 Grand Avenue, Suite 950
26 Oakland CA 94612-3572
27 Telephone: (510) 465-5750
28 Facsimile: (510) 465-5697
 Email: bwick@ww-envlaw.com

Hold Petition in Abeyance ("Wick Decl."), submitted currently herewith,

1 **II. ACTION OF THE REGIONAL BOARD TO BE REVIEWED**

2
3 ----- Petitioner requests that the State Board review the Order, which requires the
4 preparation and submittal of historical information, technical data, and an investigation
5 workplan and improperly identifies Petitioner as a suspected "discharger" with respect to
6 the sewer collection system in the vicinity of the Heim Site. A copy of the Order is
7 attached as Exhibit A.

8 This Petition is a protective filing, and pursuant to 23 Cal. Code Regs.
9 § 2050.5(d),² Petitioner requests that this Petition be held in abeyance by the State
10 Board until further notice.

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12 **III. DATE OF THE REGIONAL BOARD ACTION**

13 The Regional Board issued the Order on December 3, 2012.

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19 _____
20 ² 23 Cal. Code Regs. § 2050(d) provides:

21 (d) A petition may be held in abeyance at the request or with the agreement of
22 the petitioner.

23 (1) A request or agreement to hold a petition in abeyance must be in writing and
24 shall be provided to the state board, the regional board, and the discharger, if not
25 the petitioner.

26 (2) Petitions may be held in abeyance unless the regional board provides
27 reasonable grounds for objection. For petitions challenging the assessment of
28 administrative civil liability or penalties, written agreement from the regional board
is required.

(3) The time limit for formal disposition shall be tolled during the time a petition is
held in abeyance, and shall recommence running when the petition is removed
from abeyance.

1 **IV. STATEMENT OF REASONS WHY THE REGIONAL BOARD'S ACTION WAS**
2 **INAPPROPRIATE OR IMPROPER**

3 **A. Introduction**
4

5 As set forth more fully below, the State Board should review and rescind the Order
6 because:

7
8 (1) the Order improperly identifies Petitioner as a suspected discharger (in
9 requiring Petitioner to submit historical and technical data and conduct an investigation
10 workplan on various sewer collection systems along Freedom Boulevard, Sycamore,
11 Marin, Laurel, Broadis, and Prospects Streets in the vicinity of the Heim Site) where the
12 City was not—and is not—a "discharger";

13
14 (2) the Order failed to name all responsible parties, because it excludes the
15 current and former owners and operators of the dry cleaning operations and the Heim
16 Site³ who were the dischargers of the PCE at issue, and it also excludes "[p]revious
17 business operators or owners of parcels along Freedom Boulevard or Broadis Street⁴ who
18 likely discharged wastes to these subsurface areas;

19 (3) the Order violates California Water Code § 13267(b)(1) by failing to provide
20 Petitioner "with a written explanation with regard to the need for the reports" and fails to
21 "identify the evidence that supports requiring [the City] to provide the reports" to
22
23

24 ³ See Regional Board Cleanup and Abatement Order No. R3-2007-0030 issued on June 1,
25 2007 (as amended on November 26, 2007 to correct typographical errors), attached as Exhibit B,
26 naming Maxine Heim, the Heim Family Trust, Mark Heim, and Jynel Heim as the dischargers at
the Heim Site and specifically not naming the City as a discharger party.

27 ⁴ The Order acknowledges that Regional Board staff have identified at least four scenarios
28 as to why solvent wastes could be co-located along the sanitary sewer collection system in the
vicinity of the Heim Site, including acts and omissions of previous business operators or owners.
[See Order, ¶ 3 at page 2].

1 establish that the required technical reports “bear a reasonable relationship to the need
2 for the report and the benefits to be obtained from the reports”; and

3

4 (4) the Order is inconsistent with the Regional Board’s prior orders and policy as
5 well as decisions by the State Water Resources Control Board.

6

7 Thus, the Regional Board’s action was not supported by the record and was
8 arbitrary, capricious, and in violation of law and policy.

9

10

B. Background

11

12 The Regional Board states that its oversight of the Heim Site “has produced
13 information that suggests the sewer collection system along Freedom Boulevard and/or
14 Broadis Street may have discharged solvents to the waters of the State.” [Order at p. 1].
15 The Order generally refers to soil gas, soil, and groundwater samples collected by West
16 Environmental, Inc. (“West), the consultant for discharger Maxine Heim. [Id.]

17

18 With regard to Petitioner, the Order states that the Regional Board “suspects that
19 the sewer collection systems have caused the discharge.” [Order at p. 2]. However, the
20 Order provides no evidence that Petitioner actually discharged or actually caused any
21 discharges of any chlorinated solvents. Instead, based on mere speculation, the
22 Regional Board simply concludes: “This Order identifies you as the owner and operator
23 of the sewer collection system and the party responsible for the *suspected* discharge *if*
24 the collection system was not properly maintained and operated.” [Order at page 2
25 (emphasis added)].

26

27

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1 **C. The Regional Board’s Action Was Inappropriate and Improper**

2 **1. The Regional Board Failed to Provide Any Evidence Showing**
3 **the City is the Source of Chlorinated Solvent Discharges, and**
4 **Therefore, The City Was Inappropriately Named as a**
5 **Discharger.**

6 The Order acknowledges that California Water Code § 13267 imposes
7 investigation and reporting liability on “any person who has discharged, dischargers, or is
8 suspected of having discharged or discharging, or who proposes to discharge waste.”
9 [Order at p. 10, ¶ 51]. The plain language of the California Water Code reveals that a
10 “discharger” is only liable for investigating areas to which it discharged. A “discharger” is
11 not liable for investigating or remediating geographically distant or unrelated discharges
12 of others.

13 This legal principle embodied in the Water Code means that the Regional Board
14 cannot require the City to investigate sources of solvent contamination unrelated to its
15 own discharges. However, that is precisely what the Order improperly attempts to do by
16 requiring the City to provide an investigative workplan to determine whether “[s]olvent
17 wastes in shallow groundwater originated at the Heim Site and have migrated away from
18 the Heim Site” or whether “[p]revious business operators or owners of parcels along
19 Freedom Boulevard or Broadis Street could have illegally discharged wastes to the
20 subsurface.” [See Order at p. 2].

21 Furthermore, under California Water Code Section 13267, Regional Boards are
22 required to “provide written explanation with regard to the need for the reports, and
23 *shall identify the evidence that supports requiring that person to provide the reports.*”
24 Cal. Water Code § 13267(b)(emphasis added). The Regional Board failed to include
25 evidence in the Order that establishes a causal connection between the alleged
26 contamination and Petitioner. The Order fails to identify *any* evidence in support of its
27 claim that the City discharged any of the solvent waste that is the subject of the Order,
28

1 basing its liability solely on conclusory statements from Heim's consultant⁵ and the mere
2 fact that the City owns and operates the sewer collection system. [Order at p. 2].

3 Thus, the Order fails to satisfy the predicate for an Order required by California Water
4 Code § 13267(b).

5
6 Even if the Order contained sufficient evidence to support issuance of the Order to
7 the City, the operative facts and applicable legal authority would support designating
8 Petitioner, at most, as a secondary discharger. Although the Order alleges that the City's
9 sewer collection system "may have discharged solvent to waters of the State." [Order at
10 p. 1], Petitioner had nothing to do with PCE or the activity that caused the condition of
11 the pollution. Indeed, the Order recognizes that other parties actively engaged in dry
12 cleaning operations caused the discharge and notes there are alternative sources for the
13 solvent contamination. [Order at p. 1-2]. In fact, the Regional Board identified "at least
14 four scenarios as to why solvent waste could be co-located along the sanitary sewer
15 collection system." [See Order at p. 2].

16
17 **2. The Order Provides No Rational Basis for the Required Work**
18 **and the Schedule.**

19 Water Code § 13267 requires that the "burden, including costs, of [technical or
20 monitoring program] reports shall bear a *reasonable relationship* to the need for the
21 report and the benefits to be obtained from the reports." Here, the Regional Board
22 Order fails to meet this statutory requirement.

23
24 First, the Order asserts that the historical information and workplan are necessary
25 to: (1) "evaluate the extent of the discharges in wastes in groundwater beneath and
26

27 ⁵ Rather than acknowledge that the prior and current owners and operators of the dry
28 cleaning business and the Heim Site, who have already been named dischargers, West concludes
that "solvent releases are from the sanitary sewer main to subsurface soil gas, soil, and
groundwater." [Order at p. 1].

1 potentially migrating from the Heim Site” and (2) “determine the nature and scope of the
2 discharges of waste at and near the [Heim] property that have impacted the beneficial
3 uses of waters of the state.” [Id. at p. 2-3]. Neither rationale relates to alleged sewer
4 impacts; instead, both of the reasons cited relate to the “extent” and “scope” of the
5 identified contamination caused by the Heim dischargers. The required information and
6 investigation pertain to the known contamination emanating from the dry cleaning
7 operations at Heim Site.

8
9 Second, the Regional Board provides no specific evidence to support its conclusion
10 that “soil vapor and groundwater wastes have been detected along the City’s sewer
11 collection system.” [Order at p. 2]. Instead, the Regional Board generally refers to its
12 public file on the Heim matter and the Geotracker database for “[m]ore detailed
13 information.” [Id.]. The Regional Board implies that it is the City’s burden to search the
14 public record and Geotracker and then guess which information it relies on to support its
15 findings and conclusion. The Regional Board does not list specific references to
16 documents or provide the City with any details as to where the reference can be found in
17 each document. This “public file” consists of thousands of pages, and it is unfair to
18 require the City to spend countless hours searching for documents and relevant data to
19 support the Regional Board’s findings.

20
21 Third, the Order asserts that “most of the information requested is existing
22 information and the cost associated with producing the information is expected to be
23 minimal.” However, the Regional Board fails to acknowledge that this request requires
24 compilation of historical data of the City’s expansive sewer collection systems over an
25 unspecified time period and encompasses areas spanning six city blocks. It could take
26 the City hundreds of hours to find the relevant information within its archives, if such
27 information exists. Moreover, the Regional Board ignores the fact that the Heim Site and
28 the migrating contamination to the surrounding areas have been under investigation

1 since at least 2007 (see Order at p.1), and thus, technical data have been documented in
2 the Regional Board's public file on the Heim matter and on the State Water Resources
3 Control Board's GeoTracker database. Thus, much of the information requested in the
4 Order is already in the possession or control of the Regional Board.

5
6 Moreover, the Order's requirements that Petitioner submit an investigation
7 workplan, prepare a summary of the maintenance history and a historical overview of its
8 sewer collection system spanning six city blocks, and compile wastewater samples as
9 wells as maps and layouts of its sewer systems, are unduly burdensome.

10 The schedule in the Order for the work required is also unduly burdensome.
11 Petitioner is being required to undertake site characterization and technical work.
12 Resolution 92-49 directs Regional Boards to determine schedules for investigation and
13 cleanup considering "the financial and technical resources available to the dischargers."
14 [Resolution 92-49(iv)(c)]. Petitioner is a municipal government with limited assets and
15 established procedures to obtain funding for certain projects. Therefore, Petitioner
16 requests that it not be required to conduct the requested work, or alternatively, that the
17 State Board stay the enforcement of the Order as to Petitioner.

18
19 **3. The Regional Board's Findings and Conclusions Are**
20 **Unsupported by the Evidence and Inconsistent with Prior**
21 **Decisions and Policy.**

22
23 The Order finds based on mere speculation that the City's sewer collection system
24 may have caused the discharge. [See Order at p. 2]. The Order further muses that "[if]
25 the collection did not cause the discharge, it has affected the distribution of chlorinated
26 solvent wastes along Freedom Boulevard and Broadis Street." [Order at 2].

1 Instead of conducting this critical analysis, or requiring the known dischargers to
2 do so, the Regional Board relies on self-serving data from the Heim consultant as its
3 basis for the Order. The lone reference to any technical data is to Figure 1-2 and Tables
4 34 through 3-6 for location-specific information in West's *March 2012 Soil Vapor*
5 *Characterization Report* that pertained to West's investigation south of Sycamore Street
6 along Freedom Boulevard and along Broadis Street. [See Order at p. 1]. The Regional
7 Board provided no summary of the findings of that data and omitted any verification of
8 its accuracy. The Regional Board provides no analysis of how this information renders
9 the City a discharger of the dry-cleaning solvents originating from the Heim Site, and
10 therefore, provides no rationale for issuance of the Order.

11
12 Moreover, the findings and conclusions the Regional Board extrapolated are
13 inconsistent with the site-specific, technical data for the Heim Site and previous decisions
14 by the Regional Board and State Board.⁶ On June 1, 2007, the Regional Board issued
15 CAO No. 3-2007-0030 to Maxine Heim, Mark Heim, and Jynel Heim, naming them as
16 dischargers for the Heim Site.⁷

17
18 The transmittal letter of the CAO provided an analysis of the Regional Board's
19 basis for not naming the City of Watsonville. As described in the letter, the Regional
20 Board decided not to name the City as a discharger because:

21 (1) the "Central Coast Board, as a policy, generally does not name sewer
22 operators when the facility owner and operator is available to perform cleanup";

23
24
25 ⁶ Petitioner incorporates by reference the arguments in its Opposition to the Heim Petition
26 as well as the aforementioned decisions and memoranda of the Regional Board and State Board,
27 as described in and attached as Exhibit B through H, as though fully set forth herein, in support
28 of this Petition for Review.

⁷ See Exhibit B, attached to Wick Decl.

1 (2) the evidence indicated that the City did not negligently fail to maintain the
2 sewer main;

3
4 (3) soil and ground data suggest a discharge from the dry cleaning building slab
5 and the related sewer later, which is the responsibility of the owner, not the City; and

6
7 (4) the City's ordinances specifically "prohibit discharges of hazardous waste to
8 the sewer (even if it was common practice to do so)."⁸

9
10 On June 28, 2007, Maxine Heim filed a Petition (File Number A-1858) with the
11 State Board challenging CAO No. R3-2007-0030.⁹ On October 3, 2007, the Regional
12 Board submitted a memorandum to the State Board, discussing contentions raised in the
13 petition.¹⁰ On October 5, 2007, the City filed its Opposition to Petition Maxine Heim's
14 Petition for Review.¹¹ On May 22, 2008, the State Board dismissed Petition A-1858,
15 which was accompanied by a memorandum dated May 12, 2008 concerning the State's
16 Board dismissal.¹²

17
18 Petitioner submits that the Regional Board Order should be directed to the known
19 dischargers and not to the City. The Order is also inconsistent with Regional Board's
20 policy that the Regional Board "does not name sewer operators when the facility owner
21 and operator is available to perform cleanup." [See Regional Board Order Cleanup and
22 Abatement Order No. R3-2007-0030 issued on June 1, 2007 at p. 3. ¶ 2].
23

24 ⁸ See June 1, 2007 Regional Board Letter at p. 3, ¶ 2, included as Exhibit B to Wick Decl.

25 ⁹ See Exhibit C, attached to Wick Decl.

26 ¹⁰ See Exhibit D, attached to Wick Decl.

27 ¹¹ See Exhibit E, attached to Wick Decl.

28 ¹² See Exhibits G and H, attached to Wick Decl.

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V. THE MANNER IN WHICH PETITIONER HAS BEEN AGGRIEVED

Petitioner has been aggrieved by the Regional Board's actions because it will be have to incur the burden and expense of investigation and preparing a workplan that the known dischargers should be required to prepare. As a result of being named a suspected discharger in connection with various areas, Petitioner will be forced to incur significant costs of compliance, to bear a heavier burden of regulatory oversight and to suffer other serious economic consequences. Further, by naming Petitioner as a primary discharger and excluding other parties, the entities which actually caused the contamination are off the hook.

VI. REQUEST FOR A STAY OF THE ORDER

Pursuant to California Water Code § 13321 and 23 Cal. Code of Regs. §2053, Petitioner hereby petitions the State Board to stay implementation of the Order as to Petitioner. Water Code section 13321 authorizes the State Board to stay the effect of Regional Board decisions. Title 23, CCR § 2053 requires that a stay shall be granted if a petitioner alleges facts and produces proof of:

- (1) Substantial harm to petitioner or to the public interest if a stay is not granted;
- (2) A lack of substantial harm to other interested persons and to the public if a stay is granted; and,
- (3) Substantial questions of fact or law regarding the disputed action.

23 CCR § 2053 (a).

The State Board's grant of a stay is equivalent to a preliminary injunction. The standard for a preliminary injunction is as follows: In deciding whether to issue a preliminary injunction, a court must weigh two "interrelated" factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or non-issuance of the injunction. *Butt v. California*

1 (1992) 4 Cal. 4th 668, 678 (citation omitted). The trial court's determination must be
2 guided by a "mix" of the potential-merit and interim-harm factors; the greater the
3 plaintiff's showing on one, the less must be shown on the other to support an injunction.
4 *Id.* (citation omitted).

5
6 Here, Petitioner, as detailed below, has satisfied the requirements of both tests.
7 The Regional Board's adoption of the Order was an erroneous action that poses
8 substantial harm to Petitioner and the public interest for the following reasons. First, it
9 requires Petitioner to prepare historical compilations and workplans covering its
10 expansive sewer connection systems, which is unjustified and overbroad, and fails to
11 identify the evidence on which it relies to make the unjustified demands, as required by
12 California Water Code § 13267. Second, the Order incorrectly assumes Petitioner
13 "discharged" chlorinated solvents from some unspecified points along Freedom
14 Boulevard, Sycamore, Marin, Laurel, Broadis and Prospect Streets, which is completely
15 unsubstantiated. Thus, the City has a high likelihood of success on the merits of its
16 appeal and the State Board should grant a stay of the Order.

17
18 **A. Substantial and Irreparable Harm to Petitioner and the Public**
19 **Interest Will Result if the Order is Implemented Without**
20 **Modification.**

21 The public interest and Petitioner will be substantially harmed by requiring
22 Petitioner to implement the Order. A failure to stay the Order pending State Board
23 review would unfairly and illegally burden Petitioner by obligating Petitioner to conduct
24 the extensive and expensive work required under the Order according to its abbreviated
25 schedule that may be vacated upon judicial review. Further, the City may have no
26 means of recovering such costs, since many of the parties having actual legal liability for
27 the discharges have not been properly identified, no longer exist, or appear to be without
28 sufficient financial resources to reimburse it.

1 Furthermore, a stay is proper because there is a lack of substantial harm to other
2 interested persons and the public interest if it is granted. First, while a stay would
3 prevent enforcement of the overly broad Order, the Regional Board could focus on its
4 investigation of additional dischargers (see Order at p. 2) and the known dischargers at
5 the Heim site and in its vicinity, which are the specific areas of concern to the Regional
6 Board. The Regional Board could thereby avoid protracted litigation and move closer to
7 achieving the response actions it seeks much sooner than it can by attempting to require
8 the City to perform such work.

9
10 **B. A Stay of the Order as to The City Will Not Result in Substantial**
11 **Harm to Other Interested Persons or the Public.**

12 There is not likely to be any delay in the performance of the investigations sought
13 by the Regional Board as a result of the requested stay, because: (1) the Regional Board
14 has identified the dischargers of the PCE at the Heim Site, who are the primary
15 dischargers and more appropriately the correct parties to perform the studies sought to
16 be furnished and (2) the Regional Board has been generally aware of the site conditions
17 it now seeks to address given the historic operations and investigations at the Heim Site.
18 Thus, there will be no ongoing environmental harm as a consequence of a stay.
19 Moreover, the public interest is well-served by insuring that only fair and just orders,
20 supported by facts and law, are issued by the Regional Board.

21 **C. The Regional Board's Action Raises Substantial Questions of Law**
22 **on Which Petitioner Is Likely to Prevail.**

23
24 The Petition for Review sets forth the City's arguments regarding the legal
25 questions on which Petitioner is likely to prevail. The Order violates requirements set
26 forth in the Porter-Cologne Water Quality Act and is wholly unsupported by existing law
27 and the factual record. The State Board should therefore stay the Order and prevent the
28 implementation of a decision that is illegal and sets an inappropriate precedent. The

1 record on file with the State Board contains the relevant supporting documents to this
2 Request for Stay of Action, which the City reserves the right to supplement. The City
3 also hereby incorporates all of the facts and arguments set forth in the Petition for
4 Review and the accompanying declaration, including any and all supplemental
5 submissions made by the City or any other party in support of its Petition for Review.
6

7 **VII. STATE BOARD ACTION REQUESTED BY PETITIONER**

8
9 **A. Request to Hold Petition and Request for a Stay in Abeyance**

10 As discussed above, Petitioner requests that the State Board hold this Petition and
11 its request for a stay in abeyance.
12

13 **B. Petition**

14 If it becomes necessary for Petitioner to pursue this appeal, the City will request
15 that the State Board determine that the Regional Board's adoption of the Order was
16 arbitrary and capricious or otherwise inappropriate and improper, and will request that
17 the State Board rescind the Order in its entirety. If the State Board declines to do so,
18 then Petitioner requests that: (1) the State Board designate Petitioner as a secondarily
19 liable party rather than a primarily liable party with respect to the Site, (2) the State
20 Board direct the Regional Board to pursue primary dischargers, and (3) the State Board
21 extend the timeline for submittal of the historical information and workplan.
22

23 **VIII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
24 **ISSUES RAISED IN THE PETITION**

25 For purposes of this protective filing, the Statement of Points and Authorities is
26 subsumed in section IV of the Petition. If Petitioner elects to pursue this appeal, it
27 reserves the right to file a Supplemental Statement of Points and Authorities, including
28 references to the complete administrative record, which is not yet available. Petitioner

1 also reserves the right to supplement its request for a hearing to consider testimony,
2 other evidence and argument.

3

4 **IX. STATEMENT REGARDING SERVICE OF THE PETITION ON THE REGIONAL**
5 **BOARD**

6 A copy of this Petition is being sent to the Regional Board, to the attention of
7 Sheila Soderberg. By copy of this Petition, Petitioner also notifies the Regional Board of
8 Petitioner's request that the State Board hold the Petition in abeyance and presents these
9 substantive issues and objections to the Regional Board.

10

11 **X. STATEMENT REGARDING ISSUE PRESENTED TO THE REGIONAL BOARD**

12 The substantive issues and objections raised in this Petition, as stated above, were
13 raised before the Regional Board.

14

15 **XI. CONCLUSION**

16 For all the foregoing reasons, if Petitioner pursues this appeal, it respectfully
17 requests that the State Board review the Order and grant the relief as set forth above.

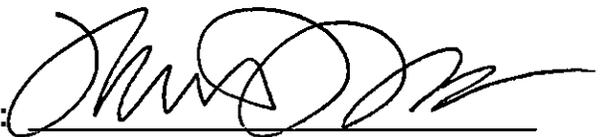
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19 Dated: December 28, 2012

WACTOR & WICK LLP

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By: 

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WILLIAM D. WICK
ANNA L. NGUYEN
Attorneys for Petitioner
The City of Watsonville

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13 City of Watsonville,
14
15 Petitioner
16 For Review of Order to Submit
17 Information Pursuant to California
18 Water Code Section 13267 of the
California Regional Water Quality
Control Board, Central Coast Region

PETITION No.

**DECLARATION OF WILLIAM D. WICK
IN SUPPORT OF PETITION FOR
REVIEW, REQUEST FOR EVIDENTIARY
HEARING, REQUEST FOR STAY AS TO
PETITIONER, AND REQUEST TO HOLD
PETITION IN ABEYANCE**

19 I, William D. Wick, declare:

20 1. I am counsel for the petitioner the City of Watsonville in the above-
21 referenced matter. This declaration is submitted pursuant to Title 23, Cal. Code of
22 Regulations § 2053(a). I make this declaration based upon my personal knowledge, and
23 if called to testify in court on these matters, I could and would testify as follows:

24 2. On December 3, 2012, the Regional Water Quality Control Board, Central
25 Coast Region ("Regional Board") issued an order entitled "Order to Submit Information
26 Pursuant to California Water Code Section 13267" to the City of Watsonville ("the
27 Order"). A true and correct copy of the Order is attached hereto as Exhibit A.

1 3. The Order identifies the City of Watsonville “as the owner and operator of
2 the sewer collection system and the party responsible for the suspected discharge [of
3 chlorinated solvents] if the collection system was not properly maintained and operator.”
4 [Order at p. 2].

5 4. The City of Watsonville does not own or operate any dry cleaning
6 businesses along Freedom Boulevard, Sycamore, Marin, Laurel, Broadis, and Prospects
7 Streets nor has the City engaged in dry cleaning activities that may have caused
8 discharges to waters of the State.

9 5. The Order requires the City of Watsonville as a suspected discharger to
10 submit: (1) a summary of the maintenance history of the sewer collection systems, (2)
11 maps and drawings showing the layout of current and historical sewer collection systems,
12 (3) records of wastewater samples, and (4) an investigation work plan as they relate to
13 the sewer collection system along Freedom Boulevard and Broadis Street in Watsonville,
14 California in the vicinity of the Don Heim and Son dry cleaner property located at 1350
15 Freedom Boulevard (“the Heim Site”). [See Order at p. 3].

16 6. The Order fails to name other responsible parties. Specifically, the Order
17 excluded historic owners and operators of the Heim Site and previous business operators
18 or owners of parcels along Freedom Boulevard or Broadis Street, who are known to have
19 or could have illegally discharged wastes to the subsurface areas surrounding Freedom
20 Boulevard, Sycamore, Marin, Laurel, Broadis, and Prospects Streets.

21 7. As of yet, no cleanup or abatement work has commenced on the
22 surrounding areas of the Heim Site along Freedom Boulevard, Sycamore, Marin, Laurel,
23 Broadis, and Prospects Streets as they relate to solvent contamination. There is no
24 indication that a stay of enforcement of the Order as to the City, upon review of the
25 State Board, will cause substantial harm to the public or any other interested parties.

26 8. Conversely, if the implementation of the Order is not stayed as to the City,
27 the Order places a significant financial burden on the City for investigation, monitoring,
28 and cleanup of solvent contamination related to historic dry cleaning operations at the

1 Heim Site and possibly other areas in which the City was never involved. It also requires
2 the City to submit an investigation work plan, prepare a summary of the maintenance
3 history and a historical overview of its sewer collection system spanning six city blocks,
4 which is unjustified and overbroad, because it fails to identify the evidence on which the
5 Regional Board relies to require the requested technical report and information.

6 9. Attached as Exhibit B to this declaration is a true and correct copy of CAO
7 No. 3-2007-0030 dated June 1, 2007, issued by the Regional Board to Maxine Heim,
8 Mark Heim, and Jynel Heim ("CAO"), naming them as dischargers at the Heim Site.

9 10. The transmittal letter of the CAO provided an analysis of the Regional
10 Board's basis for not naming the City of Watsonville. As described in the letter, the
11 Regional Board decided not to name the City as a "responsible party" because: (1) the
12 "Central Coast Board, as a policy, generally does not name sewer operators when the
13 facility owner and operator is available to perform cleanup;" (2) the evidence indicated
14 that the City did not negligently fail to maintain the sewer main, (3) soil and ground data
15 suggest a discharge from the dry cleaning building slab and the related sewer later,
16 which is the responsibility of the owner, not the City, and (4) the City's ordinances
17 specifically "prohibit discharges of hazardous waste to the sewer (even if it was common
18 practice to do so)." A true and correct copy of the transmittal letter to the CAO is
19 included in Exhibit B to this Declaration.

20 11. Attached as Exhibit C to this declaration is a true and correct copy of a
21 Petition (File Number A-1858) filed by Maxine Heim on June 28, 2007 with the State
22 Board challenging CAO No. R3-2007-0030 because it did not name the City of
23 Watsonville as a responsible party.

24 12. Attached as Exhibit D to this declaration is a true and correct copy of a
25 memorandum that the Regional Board submitted to the State Board On October 3, 2007,
26 discussing contentions raised in the petition.

27
28

1 13. Attached as Exhibit E to this declaration is a true and correct copy of the
2 City of Watsonville's Opposition to Petition Maxine Heim's Petition for Review filed on
3 October 5, 2007.

4 14. Attached as Exhibit F to this declaration is a true and correct copy of
5 Petitioner Maxine Heim's Amendment to Petition for Review No. A-1858 filed on
6 December 13, 2007.

7 15. Attached as Exhibit G to this declaration is a true and correct copy of the
8 State Board's dismissal of Maxine Heim's Petition A-1858 served on May 22, 2008.

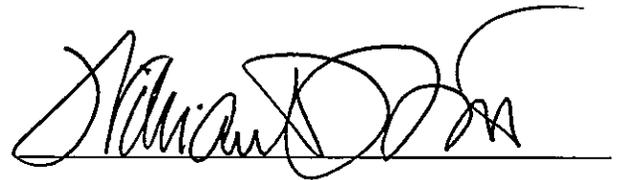
9 16. Attached as Exhibit H to this declaration is a true and correct copy of a
10 memorandum dated May 12, 2008 concerning the State's Board dismissal of Maxine
11 Heim's Petition A-1858.

12

13 I declare under penalty of perjury under the laws of the State of California that
14 the foregoing is true and correct. Executed on the date indicated below, in Oakland,
15 California.

16

17 Dated: December 28, 2012



William D. Wick

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EXHIBIT A



Water Boards



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Coast Regional Water Quality Control Board

December 3, 2012

David A. Koch
Director of Public Works & Utilities
City of Watsonville
250 Main Street
Watsonville, CA 95076

Certified Mail No. 7011 0110 0001 2471 5973

Dear Mr. Koch:

SITE CLEANUP PROGRAM NO. 2030087/SITE DESIGNATION NO. 11-01: SEWER COLLECTION SYSTEM ALONG FREEDOM BOULEVARD AND BROADIS STREET, WATSONVILLE – ORDER TO SUBMIT INFORMATION PURSUANT TO CALIFORNIA WATER CODE SECTION 13267

As you are aware, the Central Coast Regional Water Quality Control Board (Water Board) provides regulatory oversight for the cleanup of solvents in soil vapor, soil, and groundwater at the Don Heim and Son the Dry Cleaner property located at 1350 Freedom Boulevard (Heim Site). Our regulatory oversight of the Heim site has produced information that suggests the sewer collection system along Freedom Boulevard and/or Broadis Street may have discharged solvents to waters of the State. This letter is an Order that requires you to take specific actions per a defined schedule as described below. The Water Board may assess significant monetary penalties for failure to comply with this Order, so please read this Order carefully and contact us at the numbers indicated below if you have questions.

Background:

As part of the investigation of the Heim site, the owner's consultant, West Environmental Inc. (West), collected soil gas, soil, and groundwater samples along the City of Watsonville's (City) sewer collection system located within the public right-of-way. In response to the Water Board's email request for collection system information, the City provided information pertaining to maintenance/repair information for the sewer main serving the Heim Site as well as the City's Sewer Use Ordinances in a letter to the Water Board on April 12, 2007.

Since 2007, West has expanded their area of investigation along the City's sewer collection system multiple blocks south, southeast, and southwest from the Heim Site. West found chlorinated solvents in various media along the City of Watsonville's sewer collection system at elevated concentrations just south of Sycamore Street along Freedom Boulevard and along Broadis Street. Please refer to Figure 1-2 and Tables 3-4 through 3-6 for location-specific information in West's *March 2012 Soil Vapor Characterization Report* available online at http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL0608709416.

West also evaluated soil gas data collected along the sewer collection system and concluded that solvent releases are from the sanitary sewer main to subsurface soil gas, soil, and groundwater.

JEFFREY S. YOUNG, CHAIR | KENNETH A. HARRIS JR., INTERIM ACTING EXECUTIVE OFFICER

895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401 | www.waterboards.ca.gov/centralcoast

Water Board staff has identified at least four scenarios as to why solvent wastes could be co-located along the sanitary sewer collection system, several blocks away from the Heim Site, including:

1. Solvent wastes in shallow groundwater originated at the Heim Site and have now migrated away from the Heim Site using the sewer collection system as a conduit to further down-gradient locations (i.e., wastes in shallow groundwater have followed the more porous pipe backfill material instead of moving through less porous native soil or fill materials).
2. Solvent wastes penetrated the sewer pipe or backfill material as a gas and either the pipe and/or the backfill material acted as a conduit for wastes to be transported and deposited elsewhere.
3. Previous business operators or owners of parcels along Freedom Boulevard or Broadis Street could have illegally discharged wastes to the subsurface.
4. Dissolved or pure product solvent wastes have penetrated the sewer lines through breaks, cracks, pipe joints, or other faulty connections.

Based on the information specified above, the Central Coast Water Board suspects that the sewer collection system may have caused the discharge. If the collection system did not cause the discharge, it has affected the distribution of chlorinated solvent wastes along Freedom Boulevard and Broadis Street.

This Order identifies you as the owner and operator of the sewer collection system and the party responsible for the suspected discharge if the collection system was not properly maintained and operated.

Section 13267(b)(1) of the California Water Code section) states, in part: "In conducting an investigation, the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

The historical information and work plan required by the Central Coast Water Board is needed in order to evaluate the extent of discharges of wastes in groundwater beneath and potentially migrating from the Heim Site. You are required to submit this report because soil vapor and groundwater wastes have been detected along the City's sewer collection system. More detailed information is available in the Central Coast Water Board's public file on this matter and on the State Water Resources Control Board's (State Board) GeoTracker database.

The burdens, including costs, of these reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. Most of the information requested is existing information and the cost associated with producing the information is expected to be minimal. The workplan and associated investigation are necessary to determine the nature and

scope of the discharges of waste at and near the property that have impacted the beneficial uses of waters of the state.

The issuance of this Order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This Order requires a review of technical and/or monitoring reports and work plans. The proposed activities under the work plans are not yet known. It is unlikely that implementation of the work plans associated with this Order could result in anything more than minor physical changes to the environment. If the implementation may result in significant impacts on the environment, the appropriate lead agency will address the CEQA requirements prior to implementing any work plan.

Any person affected by this action of the Central Coast Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with section 13320 of the California Water Code and Title 23, California code of Regulations, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions are available at the State Water Board website http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml. It can also be provided upon request.

REQUIRED ACTIONS

THEREFORE, IT IS HEREBY ORDERED that the City of Watsonville, pursuant to section 13267(b) of the California Water Code, is required to submit the following by February 15, 2013:

1. A summary of the maintenance history, including video logs, of the collection system along Freedom Boulevard, Sycamore, Marin, Laurel, Broadis, and Prospect Streets in the vicinity of the Heim Site.
2. Any maps or drawings showing the layout of current and historical sewer collection system along Freedom Boulevard, Sycamore, Marin, Laurel, Broadis, and Prospect Streets in the vicinity of the Heim Site.
3. Any record of wastewater samples collected from manholes along Freedom Boulevard, Sycamore, Marin, Laurel, Broadis, and Prospect Streets in the vicinity of the Heim Site and analyzed for volatile organic compounds.
4. An investigation workplan that will evaluate if the sewer collection system backfill material is acting as a migration pathway or if the sewer collection system itself is the source of the elevated solvents detected in soil gas and groundwater samples collected along Freedom Boulevard and Broadis Streets. The workplan shall also include an evaluation if shallow groundwater could be surcharging or entering into the sewer lines or entering the backfill material.

The above items shall be submitted to:

1. Central Coast Water Board (centralcoast@waterboards.ca.gov)
Attention: Sheila Soderberg
2. Santa Cruz County, Environmental Health (scott.carson@co.santa-cruz.ca.us)

Attention: Scott Carson

The Central Coast Water Board, under the authority given by California Water Code section 13267, subdivision (b)(1), requires you to include a perjury statement in all reports submitted under the 13267 Order. The perjury statement shall be signed by a senior authorized representative (not by a consultant). The perjury statement shall be in the following format:

"I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The State Water Board adopted regulations (Chapter 30, Division 3 of Title 23 & Division 3 of Title 27, California Code of Regulation) requiring the electronic submittal of information (ESI) for all site cleanup programs, starting January 1, 2005. Currently, all of the information on electronic submittals and GeoTracker contacts can be found at http://www.waterboards.ca.gov/ust/electronic_submittal

To comply with the above referenced regulation, you are required to upload all technical reports, by the due dates specified in the Central Coast Water Board letters and orders issued to you. Please submit your information to the Heim site in GeoTracker.

This Order is made pursuant to the provisions of Section 13267 of the California Water Code. Pursuant to Section 13268 of the California Water Code, a violation of a an order made pursuant to California Water Code Section 13267 may subject you to monetary civil liability of up to \$1,000 per day.

If you have any questions or would like to meet with Central Coast Water Board staff to discuss the requirements noted in this letter, please contact Ms. Sheila Soderberg at (805) 549-3592 or Mr. John Robertson at (805) 542-4630.

SO ORDERED.

Michael Thomas

Digitally signed by Michael Thomas
DN: cn=Michael Thomas, o=Central Coast Regional Water Quality
Control Board, ou=Region 3, email=mthomas@waterboards.ca.gov,
c=US
Date: 2012.12.03 09:41:58 -08'00'

Michael Thomas
Assistant Executive Officer

cc:

Mr. Jan Greben/Ms. Maxine Heim, c/o Greben & Associates, Jan@GrebenLaw.com
Ms. Frances McChesney, Office of Chief Counsel, fmccchesney@waterboards.ca.gov
Mr. Peter Krasnoff, WEST, peterk@westenvironmental.com
Mr. Scott Carson, County of Santa Cruz, scott.carson@co.santa-cruz.ca.us

Mr. Pat Hoban, Weber, Hayes & Associates, pat@weber-hayes.com
Ms. Katie DiSimone, Central Coast Water Board, kdisimone@waterboards.ca.gov
Ms. Sharon Squire, WEST, Sharon@westenvironmental.com
Mr. Jim Crowley, City of Watsonville, jim.crowley@cityofwatsonville.org
Ms. Sheila Soderberg, Central Coast Water Board, ssoderberg@waterboards.ca.gov
Mr. Noah Golden-Krasner, Attorney General, noah.goldenkrasner@doj.ca.gov
Mr. Todd Thompson, Site Designation Committee, State Board, tthompson@waterboards.ca.gov

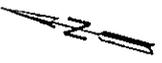
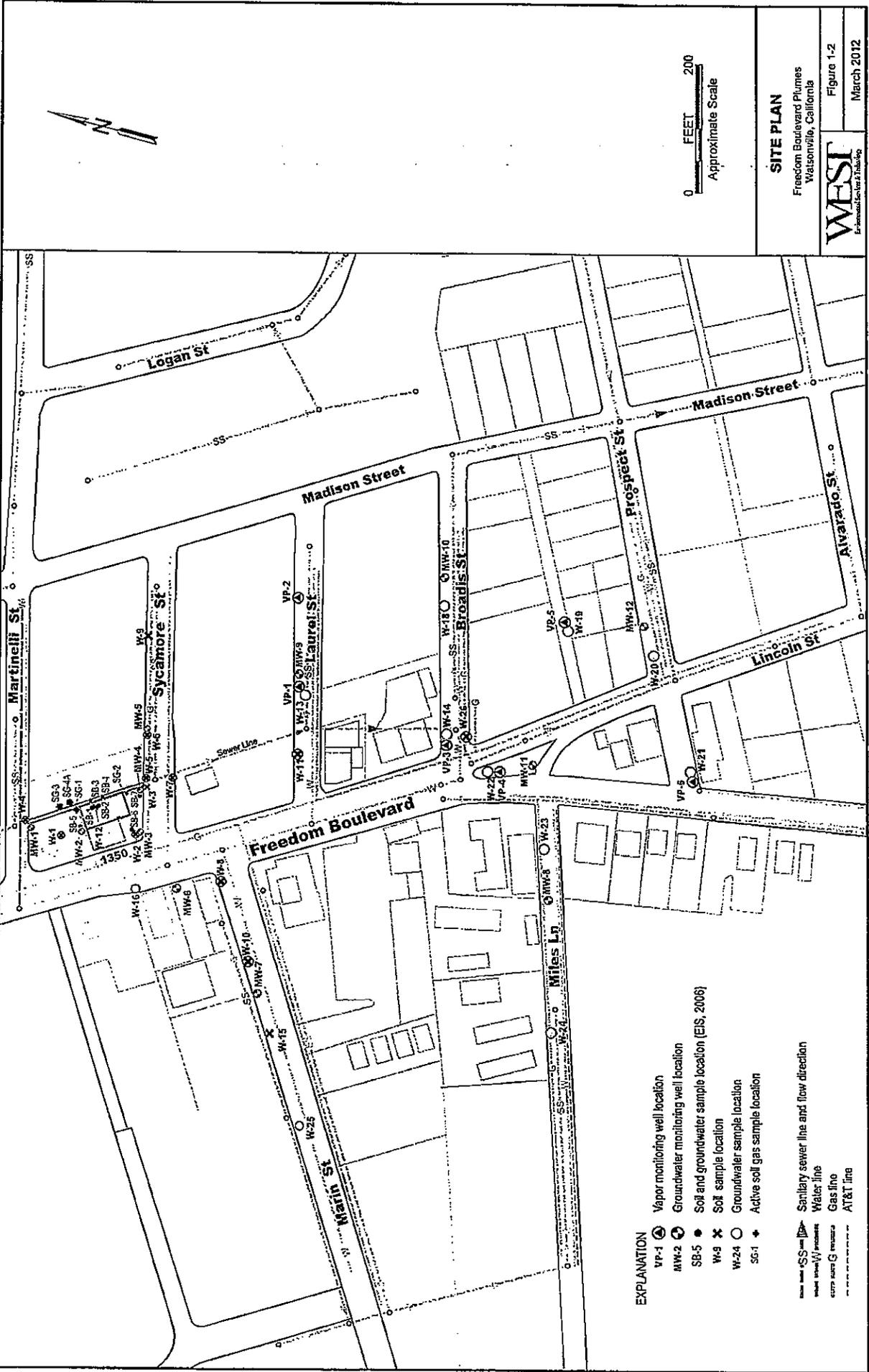
Mr. Mark Heim
Don Heim & Son the Dry Cleaner
1350 Freedom Boulevard
Watsonville, CA 95076

Mr. Evan Gadsby & Ms. Rochelle Gadsby
8 Laurel Street, Suite A
Watsonville, CA 95076

Ms. Monique Sage
21 Brennan Street, No. 16
Aptos, CA 95003-2738

Mr. William Burgstrom
Freedom Associates, LLC
120-D Bernardo Lane
Watsonville, CA 95076

S:\Shared\Site Cleanup Program\REGULATED SITES\Santa Cruz Co\Watsonville\1350 Freedom - Don Heim and Son Dry Cleaners\Other_Sites\Fridays_19267.doc



SITE PLAN
 Freedom Boulevard Plumes
 Watsonville, California

Figure 1-2
 March 2012



- EXPLANATION**
- VP-1 (circle with triangle) Vapor monitoring well location
 - MW-2 (circle with dot) Groundwater monitoring well location
 - SB-5 (circle with cross) Soil and groundwater sample location (EIS, 2006)
 - W-9 (circle with X) Soil sample location
 - W-24 (circle with dot) Groundwater sample location
 - SG-1 (circle with plus) Active soil gas sample location
 - SS (dashed line with arrow) Sanitary sewer line and flow direction
 - W (dashed line) Water line
 - G (dashed line with G) Gas line
 - AT&T (dashed line with T) AT&T line