

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

PROSECUTORIAL STAFF SUMMARY REPORT
(Nathan King)
MEETING DATE: September 12, 2007

ITEM: 8

SUBJECT: **Mr. Donald Medeiros, 154 San Lazaro Avenue, Sunnyvale, Santa Clara County** - Hearing to Consider Imposition of Administrative Civil Liability or Referral to the Attorney General for Late Technical Report

CHRONOLOGY: The Water Board has not previously considered this item.

DISCUSSION: At issue is whether the Board should impose a \$20,000 administrative civil liability on Mr. Medeiros for failure to submit a technical report required in a Water Code Section 13267 letter. This is one of two similar enforcement actions; the other item involves a late report at a nearby property on San Lazaro Avenue.

This is a contested enforcement matter for which staff has separated functions. The Prosecution Team in this matter is: Bruce Wolfe, Dyan Whyte, Stephen Hill, John Wolfenden and Nathan King. The Board's advisory staff in this matter are Dorothy Dickey and Vic Pal who have had no substantive communication with the Prosecution Team on this matter.

The site is located at 154 San Lazaro Avenue in Sunnyvale. The Water Board is conducting an investigation of trichloroethene (TCE) in groundwater in the San Lazaro Avenue area. TCE was detected most recently at 370 ug/L in a groundwater sample collected from a monitoring well immediately downgradient of 154 San Lazaro Avenue in October 2006, while the drinking water standard for TCE is 5 ug/L. This concentration indicates a possible TCE source at the site. This site is within the Santa Clara Valley Groundwater Basin. Groundwater within this basin provides drinking water and is a critical resource supplying about half of the drinking water supply for the County's 1.7 million residents.

As part of our investigation, we sent Mr. Medeiros a letter on May 11, 2005 (Appendix A), requiring him to submit an investigation workplan by June 15, 2005, and an investigation completion report by August 15, 2005. Mr. Medeiros did not respond to this requirement, nor has he responded to previous directives for investigations. Therefore we issued a notice of violation (NOV) letter to him on July 19, 2005. We subsequently issued him an administrative civil liability complaint (Complaint) on July 23, 2007, in the amount of \$20,000 (Appendix B). Where a party fails to submit technical reports under Water Code Section 13267, he is subject to administrative civil liability of up to \$1,000 per day of violation. As of the date of the Complaint, Mr. Medeiros was in violation for 768 days. Mr. Medeiros has not submitted an investigation workplan to date.

Mr. Medeiros' delays in completing the required investigation have hindered the Water Board's ability to determine the source and extent of TCE contamination in the San Lazaro Avenue area. Several other proactive landowners at and around San Lazaro Avenue are currently performing groundwater investigations and cleanup of TCE contamination.

The Complaint was issued for \$20,000 after taking into account the factors required to be considered in the Water Code. The Complaint contains a discussion of these factors as they apply to this case.

Mr. Medeiros did not waive his right to a hearing and wishes to contest the allegations in the Complaint. Therefore, this matter is being brought to the Board for action. The Tentative Order (Appendix C) would impose administrative civil liability of \$20,000 consistent with the Complaint. The Board has several enforcement options. The Board can adopt the Tentative Order, or impose administrative civil liability in an amount it deems appropriate, or decline to impose administrative civil liability, or refer the matter to the Attorney General.

Mr. Medeiros' comments on the Complaint are contained in Appendix D, and the Prosecution Team's response to the comments is contained in Appendix E. Mr. Medeiros summarizes his perspective on investigations in the area since 1988 and states that he has never refused to work with the Water Board. He suggests that the groundwater contamination at the downgradient property, 158 San Lazaro Avenue, should be cleaned up prior to him conducting any investigation on his property.

We are unpersuaded by Mr. Medeiros' comments. He has refused to comply with four workplan requirement letters over the last 20 years. Investigation and cleanup at adjacent sites needs to happen in parallel because (1) it is impractical to cleanup groundwater in a piecemeal fashion, (2) cleanup systems need to address all sources in the vicinity due to commingling and other interactions, and (3) it is unfair to the downgradient responsible party (who has complied with our directives) to allow neighboring properties to ignore our directives.

RECOMMEN-
DATION: Adopt the Tentative Order.

File No.: 43S1025 (NMK)

APPENDICES:

- A - 13267 Letter
- B - Complaint
- C - Tentative Order
- D - Correspondence
- E - Response to Comments
- F - Location Map

APPENDIX A

13267 LETTER



California Regional Water Quality Control Board

San Francisco Bay Region



Alan C. Lloyd, Ph.D.
Agency Secretary

Arnold Schwarzenegger
Governor

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>

MAY 11 2005
Date:
File No: 43S1025 (MS) ✓

Certified Mail
Return Receipt Requested
#7001 2510 0009 2092 3278

Mr. Don Medeiros
Fabtech Mechanical
154 San Lazaro Avenue
Sunnyvale, CA 94086

SUBJECT: Property at 154 San Lazaro Avenue, Sunnyvale, Santa County - Requirement for Technical Reports for Site Investigation

Dear Mr. Medeiros:

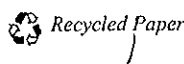
This letter requires that you submit technical reports evaluating whether volatile organic compounds (VOCs) and heavy metals have been released to soil and groundwater at the subject site. As explained below, this information will help Water Board staff to determine the source and extent of groundwater contamination observed on the site and the surrounding area.

BACKGROUND

Groundwater contamination has been observed in the San Lazaro Avenue area and the surrounding area. Several property owners and tenants in this area have conducted site investigations to determine the source and extent of soil and groundwater contamination in the area. Soil and groundwater sampling has been conducted at 158 and 162 San Lazaro Avenue, 150, 170 and 180 North Wolfe Road and 895 Kifer Road. Groundwater sampling conducted at the Pilkington Barnes Hind (PBH) site at 895 Kifer Road indicates that elevated levels of VOCs appear to be migrating onto their site from adjacent areas, including the 150 San Lazaro Avenue site. VOCs ranging from several hundred to several thousands of parts per billion have consistently been detected at the western boundary of the PBH site, and the eastern boundary of the 150 San Lazaro Avenue site. Recent groundwater sampling results at 158 San Lazaro and 162 San Lazaro indicate groundwater in the alley between 158 and 154 San Lazaro is impacted with VOCs. This suggests possible release of VOCs at 150 and 154 San Lazaro.

The potential beneficial uses of groundwater underlying and adjacent to the site include: municipal and domestic supply, industrial service and process supply, and agricultural supply. The shallow aquifer in this area overlies a major aquifer, which is the source of drinking water

Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years



for thousands of residents in Santa Clara County. The contaminants from the shallow aquifer could infiltrate down into the deeper aquifer and contaminate groundwater in the deeper aquifer. In addition, vapors from VOCs in shallow soil and groundwater could migrate upward through the soil column and pose a health hazard to occupants of buildings located at or near the site.

To determine whether this site is a source of VOC groundwater contamination and to determine if there could be any impacts to beneficial uses and human health, soil and groundwater investigation at the 154 San Lazaro Avenue site are necessary.

The Water Board is requiring you to submit reports on soil and groundwater investigations at the site because you are the owner of the property and you have operated a machine shop at your property since 1976.

This is the fourth letter the Water Board has sent to you requiring site investigation and technical reports. The chronological history of the Water Board's requirements during the past 18 years for information and site investigation from you is summarized in the attachment. Additional evidence supporting the issuance of this letter to you as a suspected discharger may be found in the Water Board's public files on this matter.

You are therefore required to submit the following technical reports necessary to determine whether the site has been impacted by the release of VOCs and heavy metals from on-site activities.

1. WORK PLAN FOR SITE INVESTIGATION

COMPLIANCE DATE: June 15, 2005

Submit a work plan acceptable to the Executive Officer to identify and investigate potential areas of VOC and heavy metal release(s). The work plan shall document site chemical handling and storage areas and propose soil and groundwater sampling in the appropriate locations. For comparison, soil and groundwater samples shall be obtained in potential source areas, as well as areas upgradient and downgradient of potential source areas. The work plan shall describe sampling and analytical methods and include a proposed time schedule.

2. REPORT ON RESULTS OF COMPLETED SITE INVESTIGATION WORK PLAN

COMPLIANCE DATE: August 15, 2005

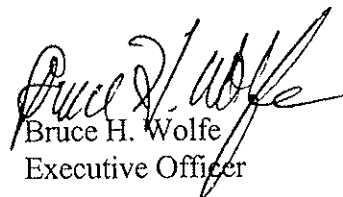
Submit a technical report acceptable to the Executive Officer on the results of the completed site investigation tasks identified in the site investigation work plan. The report shall also include the results of groundwater sampling and analyses.

The site investigation data will be evaluated along with the results of investigation at other sites in the vicinity. Staff will use the resulting data to better define the extent and impacts of groundwater contamination in the area and to determine which additional parties, if any, are responsible for VOC and/or heavy metal groundwater contamination within the area.

This requirement for technical reports is made pursuant to California Water Code Section 13267. Water Code Section 13267 is further explained in the attached fact sheet. Any extension in the above deadlines must be confirmed in writing by Water Board staff.

If you have any questions, please contact Max Shahbazian my staff at (510) 622-4824 [e-mail MShahbazian@WaterBoards.ca.gov].

Sincerely,



Bruce H. Wolfe
Executive Officer

Attachment 1: Chronological History of the Water Board's Requirements for Technical Reports
Attachment 2: Water Code Section 13267 fact sheet
cc with Attachments: Mailing List

ATTACHMENT 1

Chronological History of the Water Board's Requirements for Technical Reports 154 San Lazaro Avenue

August 13, 1987: Water Board made initial requirement for a Technical Report containing a work plan to define the magnitude and extent of groundwater contamination beneath the site.

July 18, 1989: Water Board required a Technical Report containing a work plan to determine the source(s) and the vertical and lateral extent of groundwater pollution beneath the subject site.

February 19, 1998: Water Board required a Technical Report on Site History for the site.

June 30, 1999: Water Board required two Technical Reports evaluating whether solvents have been released to groundwater at the subject site. The types of reports required were 1) a work plan for site investigation, and 2) a report documenting completion of the investigation.

July 27, 1999: Mr. Medeiros provided a brief Site History evaluation in response to the February 19, 1998, requirement.

February 22, 2000: Water Board issued Notice of Violation to Mr. Medeiros for failure to submit Technical Reports.

March 16, 2000: Water Board staff placed a telephone call to Mr. Medeiros at Fabtech/Western Sales office to discuss failure to respond to the Notice of Violation. A message was left with the receptionist but the call was not returned.

November 7, 2000: Water Board staff had a telephone conversation with Mr. Medeiros. Staff reiterated to Mr. Medeiros our need for subsurface investigation at the site, and urged Mr. Medeiros to come into compliance with the requirement.

March 27, 2001: Water Board staff informed Mr. Medeiros that an Administrative Civil Liability complaint might be issued. Mr. Medeiros explained that he had not complied with the requirements for investigation because he was not convinced that contamination existed beneath his property.

May 9, 2001: Water Board sent Mr. Medeiros a Notice of Intent to File an Administrative Civil Liability complaint for failure to submit technical reports for the subject property.

June 5, 2001: Water Board staff had a meeting with Mr. Medeiros. Staff reiterated to Mr. Medeiros the need for subsurface investigation at the site, and urged Mr. Medeiros to come into compliance with the requirement.

Of these requirements, Mr. Medeiros has only supplied a brief summary of historical operations at the subject site to date.

ATTACHMENT 2
California Environmental Protection Agency
San Francisco Bay Regional Water Quality Control Board
**Fact Sheet – Requirements For Submitting Technical Reports
Under Section 13267 of the California Water Code**

What does it mean when the regional water board requires a technical report?

Section 13267¹ of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged...waste that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires".

This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

Providing the required information in a technical report is not an admission of guilt or responsibility. However, the information provided can be used by the regional water board to clarify whether a given party has responsibility.

Are there limits to what the regional water board can ask for?

Yes. The information required must relate to an actual or suspected discharge of waste, and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The regional water board is required to explain the reasons for its requirement.

What if I can provide the information, but not by the date specified?

A time extension can be given for good cause. Your request should be submitted in writing, giving reasons.

Are there penalties if I don't comply?

Depending on the situation, the regional water board can impose a fine of up to \$1,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information is guilty of a misdemeanor.

Do I have to use a consultant or attorney to comply?

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

What if I disagree with the 13267 requirements and the regional water board staff will not change the requirement and/or date to comply?

You have two options: ask that the regional water board reconsider the requirement, or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details.

If I have more questions, who do I ask?

Requirements for technical reports normally indicate the name, telephone number, and email address of the regional water board staff person involved at the end of the letter.

April, 2005

¹ All code sections referenced herein can be found by going to www.leginfo.ca.gov

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Mr. Ron Staricha (RStaricha@ci.Sunnyvale.ca.us)
City of Sunnyvale
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Sunnyvale, CA 94086

Mr. George Cook (Gcook@valleywater.com)
Santa Clara Valley Water District
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San Jose, CA 95118

APPENDIX B

COMPLAINT

California Regional Water Quality Control Board
San Francisco Bay Region

COMPLAINT NO. R2-2007-0051
FOR
ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF MR. DONALD MEDEIROS
FOR VIOLATIONS OF CALIFORNIA WATER CODE
SECTION 13267
AT 154 SAN LAZARO AVENUE
SUNNYVALE, SANTA CLARA COUNTY

The Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the "Water Board"), hereby gives notice that:

1. Mr. Donald Medeiros (Discharger) has violated provisions of law for which the Water Board may impose civil liability pursuant to California Water Code ("CWC") Sections 13268 (a)(1) and (b)(1) and 13323.
2. The Discharger violated CWC Section 13267 by failing to submit a required technical report as put forth below.
3. Unless waived, a hearing on this complaint will be held before the Water Board on September 12, 2007, at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California. You or your representative will have an opportunity to be heard and contest the allegations in this complaint and the imposition of the civil liability. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date. The deadline to submit all comments and evidence concerning this complaint is August 23, 2007. The Water Board will not consider any comments or evidence not submitted by this deadline.
4. At the hearing, the Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

ALLEGATIONS

5. This complaint is based on the following facts:
 - a. The Discharger is the owner of 154 San Lazaro Avenue. The Discharger has previously operated a glass-to-metal fabricating business called Western Sales Associates and a sheet metal shop called Fabtech Mechanical at 154 San Lazaro Avenue.
 - b. Groundwater beneath 154 San Lazaro Avenue is contaminated by volatile organic solvents, primarily trichloroethene (TCE). Groundwater samples collected at 154 San Lazaro Avenue during April 1998 contained up to 460 micrograms per liter (ug/L) TCE.

Investigation of soil and groundwater beneath the Discharger's property is necessary to determine the source(s) of this contamination.

- c. The Discharger violated CWC Section 13267 by failing to submit a required technical report. The specific violation being enforced in this complaint is the failure to submit a technical report that the Water Board required in a CWC Section 13267 letter to the Discharger dated May 11, 2005. In that letter, the Water Board required a workplan for site investigation, which was due June 15, 2005, and a completion report of the investigation, which was due August 15, 2005. No technical report was submitted. Thus, the Discharger has been in violation for at least 768 days (the period between June 15, 2005, and July 23, 2007).

PROPOSED CIVIL LIABILITY

6. For violating CWC Section 13267, the Water Board may administratively impose civil liability pursuant to CWC Section 13268 (a)(1) and (b)(1) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

7. In determining the amount of civil liability to be assessed to the Discharger, the Water Board must take into consideration the factors described in CWC Section 13327. These factors and considerations are as follows:

a. Nature, Circumstances, Extent and Gravity of the Violation:

The Discharger's failure to submit the required technical reports hinders the Water Board's ability to determine the source and extent of TCE contamination in the San Lazaro Avenue area. Concentrations of TCE in groundwater at 154 San Lazaro Avenue and at downgradient properties indicate a possible additional source in the 154 San Lazaro Avenue area. The delays incurred by not submitting a work plan and conducting the investigation have likely resulted in migration of TCE to downgradient properties where proactive landowners are currently performing groundwater remediation for TCE.

Several downgradient properties have conducted or are currently conducting groundwater remediation for VOCs in the immediate vicinity including: 158 San Lazaro Avenue (formerly Magnetics, Inc.), 895 Kifer Road (formerly Pilkington Barnes Hind) and 932 Kifer Road (Mohawk Laboratories). The former Magnetics, Inc., site has recently removed a source of TCE-contaminated soil and will soon begin groundwater remediation for TCE. Groundwater samples collected as part of this investigation indicate a possible additional up-gradient source towards 154 San Lazaro Avenue. Mohawk Laboratories installed a permeable reactive barrier downgradient of San Lazaro Avenue across Central Expressway to treat VOC contaminated groundwater. The former Pilkington Barnes Hind site downgradient of 154 San Lazaro Avenue ceased remediation of VOC impacted groundwater in 1998 because of evidence that pumping was pulling contaminated groundwater onto its site from an offsite source.

Concentrations of TCE in groundwater in the 154 San Lazaro Avenue area have not decreased substantially since 1998, indicating a source of TCE potentially remains in soil below 154 San Lazaro Avenue. Groundwater samples collected in 1998 at 154 San Lazaro Avenue contained 460 ug/L TCE at 11 feet and 240 ug/L TCE at 22 feet below ground surface. A groundwater sample collected from a monitoring well immediately downgradient of 154 San Lazaro Avenue contained 370 ug/L TCE in October 2006. Further migration of pollutants from 154 San Lazaro Avenue is considered an on-going discharge.

154 San Lazaro Avenue is within the Santa Clara groundwater basin. Groundwater within this basin provides drinking water and is a critical resource supplying water to 14 cities and more than a million people.

b. Susceptibility of the Discharge to Cleanup:

TCE is amenable to soil and groundwater remediation, if the nature and extent of contamination is properly investigated. However, if a source of TCE contaminated soil is not remediated, this contaminated soil could continuously impact the groundwater below the site for decades.

c. Degree of Toxicity of the Discharge:

TCE is toxic and is a probable human carcinogen. The California maximum contaminant level for TCE in drinking water is 5 ug/L. Groundwater samples collected at 154 San Lazaro Avenue contained up to 460 ug/L of TCE.

d. Ability to Pay and Ability to Continue Business:

The Water Board has no evidence concerning the Discharger's ability to pay the proposed liability set forth in this complaint and its effect on his business.

e. Voluntary Cleanup Efforts Undertaken:

The Water Board is not aware of any voluntary soil or groundwater cleanup efforts by the Discharger.

f. Prior History of Violations:

Attachment A, incorporated herein by this reference, contains a chronology of Water Board requirements for the Discharger. The Water Board has required five technical reports from the Discharger by letters dated August 13, 1987, July 18, 1989, February 19, 1998, June 30, 1999, and May 11, 2005. The Discharger has responded only to one of these requirements by submitting a brief summary of historical operations at the site on July 27, 1999. In response, Water Board Staff has issued two notices of violation (NOVs) to the Discharger (February 22, 2000, and July 19, 2005). There has been no

response to the NOVs by the Discharger. No site investigation has been completed to date.

g. Degree of Culpability:

The Discharger has chosen not to comply with the Water Board's most recent requirement to complete a site investigation for 768 days. Historically, the Discharger has not complied with the Water Board's requirements for approximately 20 years. The Discharger is highly culpable based on his noncompliance with Water Board requirement letters during the last 20 years.

h. Economic Savings:

By delaying and not complying with the requirements of the Water Board's letters, the Discharger has realized an economic benefit by not incurring the expense of conducting the investigation, which could have been completed for approximately \$20,000. Interest earned on these amounts, assuming an investment return of 5% per year over a period of 768 violation days, amounts to a cost savings of \$2,165.

j. Other Matters as Justice May Require: The Water Board incurred \$5,000 in staff costs in order to prepare this Complaint and supporting information. This amount is computed based on an hourly rate of \$125 per hour for 40 hours.

8. The maximum civil liability that could be imposed for this matter is \$768,000. Based on the above factors, the Executive Officer proposes that civil liability should be imposed on the Discharger in the amount of twenty thousand dollars (\$20,000) for the violations cited above, which is due as provided below. The \$20,000 includes \$5,000 for the reimbursement of staff costs incurred by Water Board staff in preparing the complaint.

9. This action is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

10. You can waive your right to a hearing by signing and submitting the attached waiver by August 23, 2007, to the Water Board. If waived, this matter will be included on the agenda of a Water Board meeting, but there will be no hearing on the matter, unless 1) Water Board staff receives significant public comment during the comment period, or 2) the Water Board determines that it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of those circumstances, you will have the right to testify at the hearing notwithstanding the waiver. By waiving, you agree to pay the liability within 30 days after the Water Board meeting provided that the Water Board does not hold a hearing.

July 23, 2007
Date

Bruce H. Wolfe
Bruce H. Wolfe
Executive Officer

Attachments:

- A. Chronology of Events
- B. Waiver of Hearing Form

Attachment A
Chronology of Events
154 San Lazaro Avenue

August 13, 1987: The Water Board requires Donald Medeiros (Mr. Medeiros), the owner of 154 San Lazaro Avenue, to submit a technical report containing a work plan to define the extent of contamination beneath the property by September 30, 1987. No technical report was submitted.

July 18, 1989: The Water Board requires Mr. Medeiros to submit a technical report containing a work plan by August 30, 1989. The Water Board explains that this workplan is necessary to determine the source(s) and define the vertical and lateral extent of groundwater pollution beneath the property. No technical report was submitted.

April 3, 1991: A City of Sunnyvale, Fire Prevention Bureau, inspection report addressed to Mr. Medeiros documents several containers of hazardous waste stored at the rear of 154 San Lazaro Avenue without secondary containment. The containers were identified as a drum of "tellus oil," two drums of waste acid, approximately 15 gallons of waste motor oil, and one drum of solvent of unknown composition and origin.

July 9, 1996: A Sunnyvale Department of Public Safety, Fire Prevention Bureau, inspection report documents the evidence of oil spills in the rear yard at 154 San Lazaro. This report is signed by Mr. Medeiros.

February 19, 1998: The Water Board requires Mr. Medeiros to submit a technical report on site history by March 20, 1998.

June 30, 1999: Water Board requires Mr. Medeiros to submit technical reports for a site investigations workplan due August 18, 1999, and a report documenting completion of the investigation due November 17, 1999. No technical report was submitted.

July 27, 1999: Mr. Medeiros provides a brief site history evaluation in response to the February 19, 1998, requirement.

February 22, 2000: The Water Board issues a Notice of Violation (NOV) to Mr. Medeiros for failure to submit technical reports required in the June 30, 1999, letter.

March 16, 2000: Water Board staff places a telephone call to Mr. Medeiros to discuss his failure to respond to the NOV. A message was left with the receptionist, but the call was not returned.

November 7, 2000: Water Board staff has a telephone conversation with Mr. Medeiros. Staff reiterated to Mr. Medeiros our need for subsurface investigation at the site, and urged Mr. Medeiros to come into compliance with the requirement.

March 27, 2001: Water Board staff informs Mr. Medeiros that an Administrative Civil Liability (ACL) complaint will be issued. Mr. Medeiros explains that he had not complied with the requirements for investigation because he was not convinced that contamination existed beneath his property. Mr. Medeiros acknowledges receiving the Water Board's June 30, 1999, requirement letter and February 22, 2000, NOV.

May 9, 2001: The Water Board sends Mr. Medeiros a notice of intent to issue an ACL complaint for failure to submit technical reports due August 18, 1999, and November 17, 1999.

May 22, 2001: Mr. Medeiros responds via email to the notice of intent to issue an ACL from the Water Board. Mr. Medeiros believes that the plume originates from adjacent property and he is researching building permits concerning tanks installed at 158 San Lazaro.

June 5, 2001: Water Board staff meets with Mr. Medeiros. Staff reiterated to Mr. Medeiros the need for subsurface investigation at the site, and urged Mr. Medeiros to come into compliance with the requirement.

May 11, 2005: The Water Board requires Mr. Medeiros to submit technical reports for a site investigation workplan and a site investigation completion report. The Water Board explains that the workplan is required since investigations at neighboring sites indicate that contamination appears to be originating at 154 San Lazaro Avenue. The workplan was due June 15, 2005, and the completion report was due August 15, 2005. No technical report was submitted.

July 19, 2005: The Water Board issues a NOV to Mr. Medeiros for failure to submit a technical report for the site investigation required May 11, 2005.

**ATTACHMENT B
WAIVER OF HEARING**

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. Your waiver is due no later than August 23, 2007.

- Waiver of the right to a hearing and agreement to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2007-0051 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.

_____	_____
Name (print)	Signature
_____	_____
Date	Organization



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

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<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING TO CONSIDER ADMINISTRATIVE CIVIL LIABILITY FOR THE MATTER OF MR. DONALD MEDEIROS 154 SAN LAZARO AVENUE, SUNNYVALE SANTA CLARA COUNTY

The San Francisco Bay Regional Water Quality Control Board (Water Board) Executive Officer has issued an administrative civil liability complaint (Complaint) proposing a civil liability of \$20,000 against Mr. Donald Medeiros (Discharger) for violating California Water Code Section 13267 by failing to submit a required technical report. The Water Board will hold a hearing on the Complaint as follows:

Date and Time: September 12, 2007, 9:00 a.m.

Place: Auditorium, 1515 Clay Street, Oakland, CA

No hearing will be held if the Discharger waives his right to a hearing and agrees to pay the proposed civil liability as set forth in the Complaint, provided no significant public comments are received during the public comment period. At the hearing, the Water Board may affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General for judicial enforcement.

Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the Water Board may be found at Title 23 of the California Code of Regulations, § 648 *et seq.* Except as provided in these regulations, Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Water Board.

Any persons objecting to the hearing procedures set forth herein must do so in writing by August 23, 2007, to the contact listed below.

Hearing Participation

The Water Board staff who will be involved in this matter have been separated into two groups. One group consists of the Prosecution Team, who are Nathan King, John Wolfenden, Stephen Hill and Bruce Wolfe. They have had (and will have had) no communication with Water Board members on this matter outside of the public hearing.

Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years

A separate group of staff will advise the Water Board on this matter. That group (the "Advisory Staff") consists of Dorothy Dickey and Vic Pal, who have had no contact with the Prosecution Team on this matter.

Participants at the hearing are either designated as "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses. Designated parties are subject to cross-examination. Interested persons may present non-evidentiary policy statements, and are not subject to cross-examination. Interested persons may not cross-examine parties, but may be asked to respond to clarifying questions.

The following participants are hereby designated as parties at the hearing:

Prosecution Team
Mr. Donald Medeiros

To ensure that all participants have an opportunity to participate in the hearing, the Prosecution Team will recommend that the Chair of the Water Board establish the following time limits at the hearing:

- 20 minutes each for the Prosecution Team and the Discharger to testify, present evidence, and cross examine witnesses,
- 3 minutes for interested persons to make statements to the Water Board.

Written Comment and Evidence Deadline

The deadline to submit all comments and evidence to be offered at the hearing is **5 p.m. on August 23, 2007**. Persons shall submit **fourteen (14) copies** to Nathan King at 1515 Clay Street, Suite 1400, Oakland, CA 94612.

Questions

Questions concerning this matter may be addressed to prosecutorial staff Nathan King at 510-622-3966 or nking@waterboards.ca.gov.

Evidentiary Documents and File

The Complaint and related documents are on file, and may be inspected or copied at the Water Board's offices during weekdays between 8:00 a.m. and 5:00 p.m. The Complaint is also available on the Water Board's website at www.waterboards.ca.gov/sanfranciscobay.

July 23, 2007
DATED

Bruce H. Wolfe
for Bruce H. Wolfe, Executive Officer

APPENDIX C
TENTATIVE ORDER

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

ORDER IMPOSING ADMINISTRATIVE CIVIL LIABILITY FOR:

Mr. Donald Medeiros
154 San Lazaro Avenue
Sunnyvale
Santa Clara County

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Water Board) finds, with respect to Donald Medeiros (hereinafter the Discharger), that:

1. The Discharger owns the property at 154 San Lazaro Avenue in Sunnyvale. Groundwater beneath 154 San Lazaro Avenue is contaminated by volatile organic solvents, primarily trichloroethene (TCE). Groundwater samples collected at 154 San Lazaro Avenue during April 1998 contained up to 460 micrograms per liter (ug/L) TCE. Investigation of soil and groundwater beneath the Discharger's property is necessary to determine the source(s) and extent of this contamination.
2. The Discharger violated California Water Code (CWC) Section 13267 by failing to submit a required technical report. The specific violation being enforced is the failure to submit a technical report that the Water Board required in a CWC Section 13267 letter to the Discharger dated May 11, 2005. In that letter, the Water Board required a workplan for site investigation, which was due June 15, 2005, and a completion report of the investigation, which was due August 15, 2005. No technical report was submitted. Thus, as of the date of the Complaint described below, the Discharger has been in violation for 768 days (the period between June 15, 2005, and July 23, 2007).
3. For violating CWC Section 13267, the Water Board may administratively impose civil liability pursuant to CWC Section 13268 (a)(1) and (b)(1) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
4. On July 23, 2007, the Executive Officer issued Administrative Civil Liability Complaint No. R2-2007-0051 (Complaint) to Discharger proposing a \$20,000 administrative civil liability for the violations of the CWC Section 13267. The \$20,000 is based on the circumstances of the violation and the factors to be considered in accordance with CWC Section 13327. The maximum allowed amount of civil liability that can be imposed for the Discharger's violation is \$768,000 (\$1,000 per day of violation).
5. The Water Board, after considering the evidence and hearing all testimony, determined the Discharger is subject to civil liabilities for violating CWC Section 13267 as alleged in

the Complaint. In determining the amount of civil liability, the Water Board considered the factors set forth in CWC Section 13327.

6. A \$20,000 administrative civil liability is appropriate based on the determinations in Finding No. 5.
7. This action is an Order to enforce the laws and regulations administered by the Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.
8. The Discharger may petition the State Board to review this action. The State Board must receive the petition within 30 days of the date this Order was adopted by the Water Board. The petition will be limited to raising only the substantive issues or objections that were raised before the Water Board at the public hearing or in a timely submitted written correspondence delivered to the Water Board.

IT IS HEREBY ORDERED that Mr. Donald Medeiros is civilly liable for the violation of CWC Section 13267 for failing to submit a required technical report and shall pay the administrative civil liability in the amount of \$20,000. The liability shall be paid to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Order.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on _____.

Bruce H. Wolfe
Executive Officer

APPENDIX D
CORRESPONDENCE

August 23, 2007

California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Attn: Nathan King, P.G.

Dear Mr. King,

The following is a summary of activity of 150 and 158 San Lazaro Avenue, Sunnyvale, CA.

We began working with Barnes Hind in appx 1988. I believe we were working with Barnes Hind's General Manager, but I can't recall his name. We had 4 meetings with their manager concerning boring test wells. In addition we had a gas analysis survey but they did not have confidence in the results.

Barnes Hind was concerned about readings on their property of 4,300 ppb to 6,900 ppb on the west side of their property. They requested our permission to initiate exploratory wells B26 - B29. The readings were most significant on B-28 and B-26 at appx 1,100 ppb. I do not recall ever seeing 15,000 ppb at B-26. What they showed me was closer to 1,500, as I recall.

In our conversation at that time with Barnes Hind, they decided to look elsewhere for the plume source. We recognized B-26 as a hot spot, but not significant; 15,000 ppb would be alarming and should have called for immediate retesting as this is what Barnes-Hind was looking for.

I first learned of the 15,000 ppb number in a letter of Feb, 2001; that's 13 years after the test was made. From the data I have collected, I believe the responsible engineering company was Kennedy/Jenks/Chilton in 1988/1989. I located the company and requested a copy of the report dated 1988. A lady investigated, then informed me the report was so old it was stored in archives - I believe in San Francisco. She did not have access to it.

From our notes, we believe it was June, 2001 when I learned installation of 2 ea 4,000 gal. storage tanks were approved at 158 San Lazaro Ave with a Sunnyvale building permit. We learned Magnetics, Inc. had the equivalent of a Printed circuit board plating shop. I believe they were attempting to develop a manufacturing process for building high-volume magnetic recording heads - essentially a state-of-the-art process. Magnetic Corp was then traced back to Pennsylvania. I found that the tanks were for use and storage

of Ferric Chloride; one for new and one for spent chemical. However, in one of these conversations, it was learned that Trichloroethene (TCE) was used. Your staff learned some of the information explained in this paragraph and I contributed anything I learned. I cannot recall which of us first learned these key points - there were several back and forth conversations between the Water Quality Board and myself.

In reference to the June 7, 2001 letter summarizing a meeting between Mr. Alden, a lawyer representing 158 San Lazaro Ave, Mr. Halligan, me and your staff, there was little discussion of hydrology, as I recall. I questioned the position that we were the prime source of pollution with numbers significantly less than 15,000 ppb about 100 feet away. Our number at that time was about 1,100.

Your staff's position was that, since we were up-gradient to B-26 (15,000 ppb), everything obviously flows from South to North (toward the bay). I inquired that, though true in a macroscopic sense, couldn't a plume spread omni-directionally for 100-foot radius as the water table rose and fell?

I had drafted a chart to display the test wells that had been drilled and wanted to discuss how I thought the major pollution was between the buildings of 158 and 160 San Lazaro. I also asked if there would be any influence by a creek running 300 yards West of us. I felt that the meeting was becoming confrontational and stopped.

Mutual activity concerning joint investigation as advocated by Mr. Alden waned as Magnetics Corp began to accept responsibility. Mr. Mike Reily of Spang, the parent company, assured me that Spang would accept full responsibility and make certain the contamination was completely resolved. They had begun coordination with an engineering firm. Mike assured me they would provide a best effort and I felt confident in taking Mike Reily at his word. It is astounding that it has taken this long to complete the project. I can't believe 5 years have passed.

As a neighbor, I have observed stages of work; including soil removal and testing, and I have heard about the neutralization by adding chemicals performed inside the building. I had begun a plan with Dewey Halligan and John Travis of 150 and 160 San Lazaro Ave, respectively, to approach your office to determine how we should proceed. In essence, what now?

I had begun to initiate a plan about 7-10 days prior to receipt of your July letter. Spang's effort was coming to a close. We now understand that an updated report on 158 San Lazaro is to be submitted this week, the results of which may have great bearing on our next move. Our thinking is that this report is probably what we needed to know our status and move forward. The neighbors were all in agreement.

Please understand I have never refused to work with you. I have made an attempt to become involved, but it seems we have been talking past each other these past several years.

Sincerely,

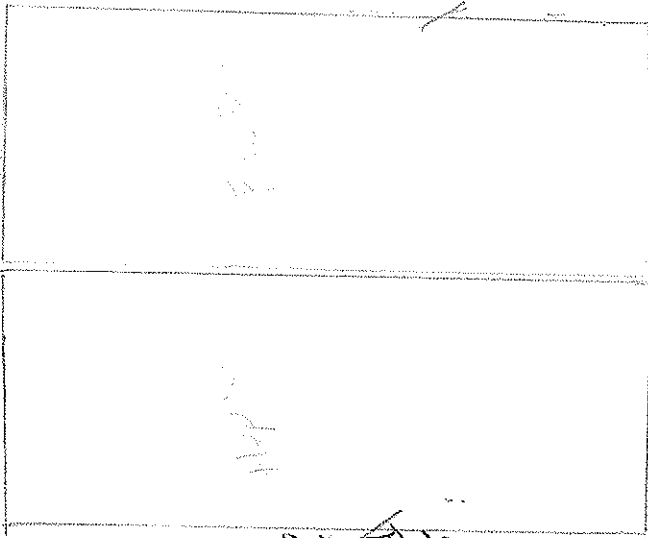
Don Medeiros

Also I have attached my penciled draft which I have used over the years to account for test well readings. The only changes are the green and black color codes indicating Spang and Hepco's recent test wells.

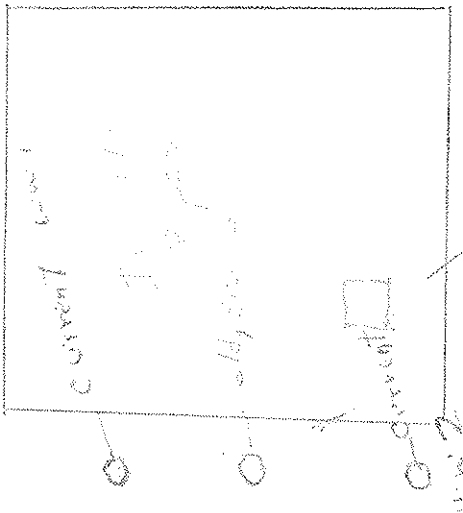
San Lazaro Ave

150

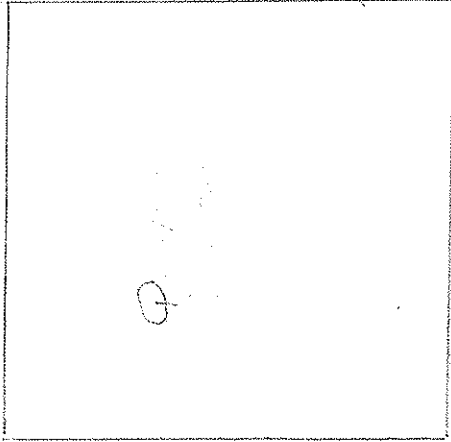
154



158



160



Penoll = 1985-89
Red = 1998-7
Green = current
Black = 2 Tests by
Heppo 2006

HP-1 100 x 200
HP-2 105 x 205
HP-3 110 x 210

HP-4 1100

HP-5 15,000

HP-1 310 x 210

HP-2 460 x 240

HP-3 420 x 370

HP-4 670 x 480

HP-5 330 x 500

B-18
ND

B-1
4,300

BHW-3
3,500 / 6,900

B-2
1,300

B-2 x
1,200

Barnes - Hind Property Line

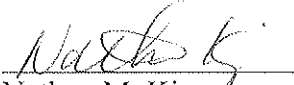
APPENDIX E
RESPONSE TO COMMENTS

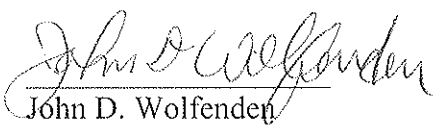
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION


RESPONSE TO COMMENTS

TO: Bruce H. Wolfe
Executive Officer

Date: August 30, 2007
File No. 43S1025 (NMK)

FROM: 
Nathan M. King
Engineering Geologist

CONCUR: 
John D. Wolfenden
Section Leader
Toxics Cleanup Division


Stephen A. Hill
Division Chief
Toxics Cleanup Division

SUBJECT: Response to Comments for Mr. Donald Medeiros, Administrative Civil Liability Complaint, 154 San Lazaro Avenue, Sunnyvale, Santa Clara County

This document provides the response to comments received for the Administrative Civil Liability Complaint No. R2-2007-0051 (Complaint) sent to Mr. Medeiros on July 23, 2007, concerning the subject site. This Complaint was sent to Mr. Medeiros for failure to comply with a May 11, 2005, Water Board letter requiring a workplan and site investigation. On August 23, 2007, we received comments on the Complaint from Mr. Medeiros.

1) Comment: Mr. Medeiros states he has never refused to work with the Water Board.

Response: As documented in the Complaint, Mr. Medeiros has refused to comply with four workplan requirement letters from the Water Board over the last 20 years.

2) Comment: Mr. Medeiros questions the results of a groundwater investigation that occurred during March 1989. He states that he did not remember concentrations of trichloroethene (TCE) in groundwater samples collected from a boring on 154 San Lazaro Avenue and on the adjacent property as being very significant. Mr. Medeiros does not recall seeing concentrations of 15,000 ppb TCE in groundwater samples collected at B-26; he remembers the most significant result at 1,100 ppb TCE.

Response: Water Board staff sent a letter to Mr. Medeiros on July 18, 1989, requiring a workplan to conduct a site investigation. In this letter, Water Board staff clearly state that 15,000 ppb TCE was detected in groundwater samples collected immediately downgradient from 154 San Lazaro Avenue as part of a previous investigation. Water Board staff considered the concentrations of TCE in groundwater to be significant, hence the issuance of the July 18, 1989, letter directing Mr. Medeiros to submit a workplan.

3) Comment: Mr. Medeiros states that during a meeting previously held at the Water Board in Oakland in 2001, he questioned whether 158 San Lazaro Avenue was the primary source of groundwater pollution, not 154 San Lazaro Avenue. Mr. Medeiros states that Water Board staff's position was that groundwater flowed to the north towards the San Francisco Bay; from 154 San Lazaro Avenue towards 158 San Lazaro Avenue. Mr. Medeiros speculated that the contaminated groundwater could spread upgradient to 154 San Lazaro Avenue from 158 San Lazaro Avenue due to the rise and fall of the groundwater table.

Response: In 2001, a source of TCE was discovered at 158 San Lazaro Avenue, which is located directly downgradient from 154 San Lazaro Avenue to the north. Since this discovery, Mr. Medeiros has continued to refuse to comply with Water Board requirements. As explained to Mr. Medeiros in meetings, phone conversations, and letters, there still appears to be a possible source of groundwater contamination below 154 San Lazaro Avenue as documented by groundwater samples collected between 154 and 158 San Lazaro Avenue. Groundwater TCE contamination must be characterized below both 154 and 158 San Lazaro Avenue prior to developing and implementing a practical remediation strategy. Investigation and cleanup at adjacent sites needs to happen in parallel because it is impractical to cleanup groundwater in a piecemeal fashion, and cleanup systems need to address all sources in the vicinity due to commingling and other interactions. Additionally, if Mr. Medeiros does not characterize the contamination below 154 San Lazaro Avenue, it is unfair to the downgradient responsible parties that are complying with Water Board directives.

4) Comment: Mr. Medeiros states that he has observed the investigation and remediation that is occurring at 158 San Lazaro Avenue and it is his understanding that results from these activities will be made available. Mr. Medeiros concludes that these results are needed before any investigation should be conducted at 154 San Lazaro Avenue.

Response: Water Board staff has been very clear over the past 20 years why a groundwater investigation is warranted at 154 San Lazaro Avenue. Mr. Medeiros has been given ample opportunity to seek clarification or to comply with Water Board staff's requirements, but has chosen not to comply. Mr. Medeiros has incorrectly assumed that contamination at the adjacent 158 San Lazaro Avenue site excuses him from complying with Water Board requirements. See also our response to comment #3.

5) Comment: Mr. Medeiros states that he was assured by the downgradient responsible party [for 158 San Lazaro Avenue] that it would take full responsibility for the groundwater contamination.

Response: The downgradient responsible party is taking responsibility for contamination it caused, and likewise Mr. Medeiros must comply with Water Board requirements for him to conduct an investigation to determine if his property is a source of groundwater contamination. We are unaware of any assurances made by the downgradient responsible party along the lines that Mr. Medeiros claims, and in fact the downgradient responsible party has indicated a reluctance to conduct off-site investigation while other parcels are refusing to respond to Board directives.

APPENDIX F
LOCATION MAP



Site Location Map
154 San Lazaro Avenue
Sunnyvale, Santa Clara County

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