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9 Attorneys for TBS, LLC

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**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION**

CAO No. R5-2011-0713

**IN RE: CLEANUP AND ABATEMENT  
ORDER R5-2004-0713, ISSUED TO  
TBS PETROLEUM, L.L.C., ANTLERS  
SHELL/SUBWAY, 20884 ANTLER'S  
ROAD, LAKEHEAD, SHASTA  
COUNTY**

**DECLARATION OF  
ANTHONY M. ACKERNECHT**

CAO Issued Dec. 6, 2011  
Hearing Date: June 7-8, 2012

I, Anthony M. Ackernecht, hereby declare:

1. I am the Managing Member of TBS Petroleum, LLC. I have personal knowledge of the following facts and if called as a witness could and would competently testify thereto.
2. I have been employed with Sierra Petroleum, as the General Manager, March, 1984 to April 1987; Ramos Oil Company, as a Sales and Marketing Representative, April 1987 to December 1988; Quaker State Oil and Interstate Oil as a Sales Representative, between December, 1988 and August, 1990; Cross Petroleum, Inc., as Marketing Manager, August 1990 to July, 1996; and TBS Petroleum, LLC, from August 1996 to present. From August 1996 I managed the operations of TBS until November 30, 2011, when all of the assets of the firm were sold, except the real property and improvements for Antlers Shell – Subway. The Antlers Shell – Subway business itself was sold to Fast Break, Inc. I manage the accounts payable, the regulatory compliance matters and related matters for the Antlers Shell - Subway business. The

1 real property and improvements for the Antlers Shell station were leased to Fast Break, Inc. in  
2 December 2011, and I am working with the new owners until May 30, 2012. After that time I  
3 will be working on future business opportunities.  
4

5 3. Over the years, I estimate that TBS has paid \$420,400.00, into the UST Cleanup Fund.  
6

7 4. We did not know MTBE was in the soil in October 1997. I learned later that in  
8 October 1997, MTBE had been found in the soil when the tanks were pulled and replaced by Bob  
9 Davis.

10 5. The first time we found out about the MTBE was in 2007. The property has a drinking  
11 water well that has a filter system because of the natural iron in the water. Shasta County  
12 requires semi-annual testing of these systems, which are on various businesses in Lakehead. We  
13 did our semi-annual sample in 2007 and MTBE showed up in the sample of the water.  
14

15 6. In 2007, after sampling and testing the water from the well, we installed MTBE water  
16 filters as directed by Shasta County Environmental Health. The levels of MTBE have continued  
17 increasing over time.

18 7. Riley Beebe of Beebe Water Systems and Chris Watt from LACO Associates designed  
19 the system for the property to remove the MTBE from the water. Mark Cramer of Shasta County  
20 Environmental Health approved the system. The filter system was already dealing with the iron  
21 content and the acidic pH of the water. We hired a third party to take samples monthly and test  
22 them at a lab for MTBE and other chemicals.  
23

24 8. My knowledge of the contamination problem is what the local staff of the Regional  
25 Water Board in Redding have told me, as well as the information and reports that Chris Watt has  
26 had.

27 9. For the preliminary site inspection, in January, 2009, Chris Watt (LACO Associates)  
28

1  
2 did 8 borings. The Board Staff found a sizable plume of MTBE. The Regional Board staff gave  
3 TBS and Bob Davis a directive.

4 10. TBS has done all of the work required by the Regional Board staff. They started off  
5 with a letter saying they needed to have a preliminary site assessment by a certain date. TBS  
6 went ahead and did the work without money from Davis as he refused to contribute.

7  
8 11. TBS spent \$10,000 to install the MtBE water filtration system. As the owners and  
9 operators of the Shell station, and running the convenience store, and for the Subway sandwich  
10 shop, it was important to us that public health be protected.

11 12. We then hired LACO Associates (Chris Watt) for \$50,000 to do a preliminary site  
12 investigation, and provide the lab analyses the Regional Board staff wanted. In addition, we  
13 spent another \$30,000 for additional work by LACO Associates, Beebe Water Systems, Sierra  
14 Water, and Basic Labs. The total is \$90,000 so far.

15  
16 13. In addition to the work TBS has been having LACO Associates do, we also pay  
17 approximately \$570.00 for monthly testing of the well water, and for professional maintenance of  
18 the water filtration system.

19 14. There have never been any overflows from filling the fuel tanks at the Antlers Shell  
20 station since I have been there. There have never been any air emissions, either.

21  
22 15. Chris Watt, when he did the <sup>T.A.</sup> 8 borings for the preliminary site assessment, did find  
23 some ethanol. Chris and the Regional Board staff determined that the ethanol was in minimal  
24 amounts.

25  
26 16. I am aware that Bob Davis claims there was a "water leak" that was somehow  
27 involved with the MTBE being found in the well. There is a water line that runs from the well to  
28 the stand where we provide air for tires and water for radiators. Davis has claimed that water

1  
2 puddled by the fuel islands -- but that year we had a more than normal amount of rain and when  
3 he saw the puddling was in March or April during the rains. Grant Stein of the Regional Board  
4 staff said there was a lot of rain and also told us that the supposed puddling was inconclusive.  
5 We never had any factual evidence of any leak from a water pipe. The puddle cleared up after  
6 the rain stopped for periods of time.

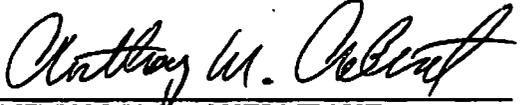
7  
8 17. In my years in this business, I have never seen a problem of the size that we have  
9 been having with the MTBE problem and Bob Davis. My understanding has always been that the  
10 UST Fund is there for station operators because we pay in the fees, and the Fund takes care of  
11 what must be done if there is a leak from the tank systems. My understanding has always been  
12 that that the person who owned or operated the UST at the time a leak occurred has the primary  
13 responsibility as the discharger. This is the standard of practice.

14  
15 18. Before 1997, Bob Davis owned and operated an old tank system. I understand that he  
16 pulled the old tanks and replaced them in 1997. The new tank system has been tight -- and in fact  
17 has tested tight.

18  
19 19. I managed both the Antlers Shell station and the other stations that TBS owned and  
20 operated. We did have leaks, for instance at the Shell station in Corning. The leak was in the  
21 primary piping. We caught it right away because of the leak detection system. We stopped  
22 pumping fuel and we replaced the primary product line (put it in a secondary chase pipe) and  
23 completed the repairs ASAP. We have not had leaks at the Antlers Shell Station.

24 I declare under penalty of perjury under the laws of the State of California that the  
25 foregoing is true and correct. Executed this 10<sup>th</sup> day of May, 2010, at Redding, California.

26  
27 Dated: May 10, 2012

28  
  
ANTHONY M. ACKERNECHT

1 PROOF OF SERVICE

2 I am employed in the County of Contra Costa, State of California. I am over the age of  
3 18 am not a party to the within action. My business address is 3685 Mt. Diablo Boulevard,  
4 Suite 331, Lafayette, California 94549.

5 On May 10, 2012, I served the following document described as:

6 *DECLARATION OF ANTHONY M. ACKERNECHT*

7 on all interested parties in this action by placing a true copy thereof enclosed in sealed  
8 envelopes addressed as stated on the attached service list.

9 [ ] **BY MAIL** – I deposited such envelope in the mail at Lafayette, California. The  
10 envelope was mailed with postage thereon fully prepaid. I am “readily familiar” with the firm’s  
11 practice of collection and processing correspondence for mailing. Under the practice it would  
12 be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at  
13 Lafayette, California in the ordinary course of business.

14 [ X ] **BY PERSONAL SERVICE** – I caused said document to be hand delivered to the  
15 offices of the addressee(s) shown on the attached service list.

16 [ ] **VIA FACSIMILE** – I faxed said document, to the office(s) of the addressee(s) on the  
17 attached service list, and the transmission was reported as complete and without error.

18 [ X ] **BY ELECTRONIC TRANSMISSION** – I transmitted a PDF version of this document  
19 by electronic mail to the party(s) identified on the attached service list using the e-mail  
20 address(es) indicated.

21 [ ] **BY OVERNIGHT DELIVERY** - I deposited such envelope for collection and  
22 delivery by Federal Express with delivery fees paid or provided for in accordance with ordinary  
23 business practices. I am “readily familiar” with the firm’s practice of collection and processing  
24 packages for overnight delivery by Federal Express. They are deposited with a facility  
25 regularly maintained by Federal Express for receipt on the same day in the ordinary course of  
26 business.

27 [ X ] (State) I declare under penalty of perjury under the laws of the State of  
28 California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this  
Court at whose direction the service was made.

Executed on May 10, 2012, at Lafayette, California.

  
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Nanci J. Lenoci

SERVICE LIST

ADVISORY TEAM:	CLEANUP TEAM:
<p>Mr. Kenneth Landau, Assistant Executive Officer Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670</p> <p>Phone: 916-464-4726 Fax: 916-464-4645 Email: <a href="mailto:klandau@waterboards.ca.gov">klandau@waterboards.ca.gov</a></p>	<p>Mr. Clint Snyder, Senior Engineering Geologist Central Valley Regional Water Quality Control Board 415 Knollcrest Drive, Suite 100 Redding, Ca 96002</p> <p>Phone: 530-224-3213 Fax: 530-224-4857 Email: <a href="mailto:csnyder@waterboards.ca.gov">csnyder@waterboards.ca.gov</a></p>
<p>David P. Coupe, Esq., Senior Staff Counsel State Water Resources Control Board Office of Chief Counsel C/O San Francisco Bay Regional Water Quality Control Board 1515 Clay Street, Suite 1400 Oakland, CA 94612</p> <p>Phone: 510-622-2306 Fax: 510-622-2460 Email: <a href="mailto:dcoupe@waterboards.ca.gov">dcoupe@waterboards.ca.gov</a></p>	<p>Patrick E. Pulupa, Esq., Staff Counsel State Water Resources Control Board Office of Chief Counsel P.O. Box 100 Sacramento, CA 95812</p> <p>Street address: 1001 I Street Sacramento, CA 95814</p> <p>Phone: 916-341-5189 Fax: 916-341-5199 Email: <a href="mailto:ppulupa@waterboards.ca.gov">ppulupa@waterboards.ca.gov</a></p>

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24 Court at whose direction the service was made.

25 Executed on May 10, 2012, at Lafayette, California.

26   
27 Nanci J. Lenoci

SERVICE LIST

<b>DESIGNATED PARTY: BOB DAVIS</b>	<b>DESIGNATED PARTY: CLEANUP TEAM</b>
Mr. Bob Davis c/o Loren J. Harlow, Esq. Stoel Rives, LLP 500 Capitol Mall, Suite 1600 Sacramento, CA 95814  Phone: 916-447-0700 Fax: 559-227-3600 Email: <a href="mailto:ljharlow@stoel.com">ljharlow@stoel.com</a>	Mr. Grant Stein Engineering Geologist Central Valley Water Board 415 Knollcrest Drive Redding, CA 96002  Phone: 530-224-4788 Fax: 530-224-4857 Email: <a href="mailto:erapport@waterboards.ca.gov">erapport@waterboards.ca.gov</a>
	Ms. Pamela Creedon Executive Officer Central Valley Region, RWQCB 11020 Sun Center Drive, #200 Rancho Cordova , CA 95670-6114  Phone: 916-464-4615 Fax: 916-464-4645 Email: <a href="mailto:pcreedon@waterboards.ca.gov">pcreedon@waterboards.ca.gov</a>
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