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

13 CAO No. R5-2011-0713

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

20 **EVIDENCE LIST OF**  
21 **DESIGNATED PARTY**  
22 **TBS PETROLEUM, LLC**

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

25 Petitioner TBS PETROLEUM, LLC, through its legal counsel, submits this Evidence List  
26 to the Central Valley Regional Water Quality Control Board for Reconsideration of Cleanup and  
27 Abatement Order No. R5-2011-0713, issued December 6, 2011 solely against TBS  
28 PETROLEUM, LLC ("TBS"), as current owner of Antlers Shell/Subway, 20884 Antler's Road,  
Lakehead, Shasta County, California (the "Property").

The following is a List of Evidence that TBS intends to use at the June 7-8 hearing in this matter.

1. April 20, 2012, Letter to TBS Petroleum, LLC from Bridget Freeborn, Underground Storage Tank Cleanup Fund, stating that their letter of February 22, 2012 in which the Fund issued a "Final Staff Decision" rejecting TBS' claim was issued in error. It also states that TBS is ineligible for placement on the priority list because the required documentation and/or information necessary to make an eligibility determination was not submitted. However, there are 2 scenarios in which the TBS claim could be amended to allow for an eligibility review. They are: 1) if the current USTs caused contamination; or 2) if the previous USTs caused

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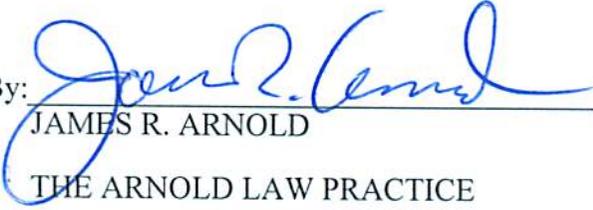
contamination, Bob Davis could apply to the Fund and assign his rights to TBS.

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All evidence on the Evidence List provided by the Clean-up Team, attached hereto as Exhibit "A" and incorporated herein by reference.

Also, all evidence on the Evidence List provided by Designated Party, Bob Davis, by and through his attorney, Loren Harlow, Esq., which is incorporated herein by reference.

Dated: May 10, 2012

By:   
JAMES R. ARNOLD  
THE ARNOLD LAW PRACTICE  
Attorneys for Petitioner  
TBS PETROLEUM, LLC

# **EXHIBIT 1**



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

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## State Water Resources Control Board

April 20, 2012

TBS Petroleum, LLC  
Tony Ackernelcht  
215 Lake Blvd, Pmb 405  
Redding, CA 96003

**UNDERGROUND STORAGE TANK CLEANUP FUND (FUND), STAFF DECISION TO REJECT CLAIM: CLAIM NUMBER 019888; FOR SITE ADDRESS: 20884 ANTLERS RD, LAKEHEAD**

On February 22, 2012, the Fund issued a Final Staff Decision rejecting your claim. That letter was issued in error. Therefore, this Staff Decision supersedes the Final Staff Decision issued February 22, 2012.

After reviewing your claim application and supporting documents submitted to the Fund, we find that your claim is ineligible for placement on the Priority List because the required documentation and/or information necessary to make an eligibility determination was not submitted (Section 2811 of the *Petroleum Underground Storage Tank Cleanup Fund Regulations*).

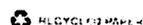
Upon review of the submitted application you seem to have never been the owner, de facto owner or operator of the underground storage tanks (USTs) that are the subject of this claim. According to your claim application, you purchased the subject site in April 2005, and the USTs that are the subject of this claim were removed on October 9, 1997.

Eligible claimants must:

1. Have either owned or operated the subject leaking UST, and
2. Be the responsible party directed by the local regulator to undertake corrective action for the unauthorized release, and
3. Be the party incurring and paying for the costs of cleanup.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)



TBS Exhibit 1

If you disagree with this finding, further documentation is needed to determine eligibility for the Cleanup Fund. If the documentation and information requested below is not submitted within sixty (60) calendar days from the date of this letter, the Staff Decision will then become final and conclusive.

Per our discussion today, there are 2 possible scenarios in which this claim could be amended to allow for an eligibility review. Both scenarios are discussed below, and we have identified the information necessary to continue with the review for each scenario.

**Scenario 1:** This scenario is to be considered if the current tanks caused the contamination. These tanks were installed in 1997 and are still on the property. TBS owns these tanks and is eligible to file a claim against the Fund..

1. The following must be submitted to determine your eligibility for placement on the Priority List: On page 1 of the claim application, you indicated Antler's Shell as your "Doing Business As (DBA)", please provide a copy of the Fictitious Business Name Statement.
2. The Health and Safety Code section 25299.52(b) mandates that the lowest priority class appropriate for any claimant at the time of discovery of the unauthorized release and at the time of application sets the priority class. In this case, you have indicated that your claim is a Priority "C" classification.. Please complete and submit page 15 as it was not included in the packet. Furthermore, claimants requesting Priority Class "C" must not employ more than 500 full time or part time employees. Please submit documentation supporting the number of people you have employed [i.e. Employment Development Department (DE-6)] for the four quarters prior to the submittal of your claim application
3. Please amend and resubmit pages 4, 5, 13, 15, and 17. These pages need to reflect only the claimant's details and information.
4. Claimants are required to have current financial responsibility documents on file with the local regulatory agency. Enclosed is the financial responsibility information for your review. Please submit the original documents to the local regulatory agency and forward a copy to the Fund. Any questions regarding financial responsibility should be directed to Ginny Lagomarsino at (916) 341-5722.
5. You indicated on page 19 of the claim application that legal action has commenced. Please provide the court judgment.
6. All claimants, including any joint claimants, must sign and date the claim application. If you are signing on behalf of a corporation, Limited Liability Company, partnership, trust, or estate, identify your title as it relates to the

claimant and submit documentation proving you have the authority to sign on behalf of the claimant. Please submit an "original signed" Verification and Signature Page.

7. Claimant must provide the following for the purchase of the site:
  1. Purchase Offer
  2. Purchase Agreement (Executed)
  3. Appraisal Report
  4. Escrow Instructions
8. During the review of your claim, the Fund learned that your site was previously owned or a UST or residential tank at your site was previously owned or operated by another person. Claimants must read, complete and sign the enclosed "Certification of Compliance with Health & Safety Code, Section 25299.54, subdivision (h)."
9. Authorization from the Local Agency that the subject tanks (current tanks) are tanks that caused the release.

**Scenario 2:** This scenario is to be considered if the tanks that were removed in 1997 caused the unauthorized release. You have also indicated that you are negotiating a possible Assignment Agreement with Mr. Bob Davis. .

The following must be submitted to determine Mr. Davis' eligibility for placement on the Priority List:

1. A new claim application completed and signed by Mr. Bob Davis.
2. Claimants are required to have current financial responsibility documents on file with the local regulatory agency. Enclosed is the financial responsibility information for your review. Please submit the original documents to the local regulatory agency and forward a copy to the Fund. Any questions regarding financial responsibility should be directed to Ginny Lagomarsino at (916) 324-6581. Please note that a Balance Sheet is not an approved mechanism to show financial responsibility. However, you may use a letter from Chief Financial Officer (see enclosed).
3. Claimants are required to provide documentation that all UST storage fees (for the tanks that are the subject of this claim) due on or after January 1, 1991, imposed by Section 25299.41 of the Health and Safety Code have been paid. If any of the USTs stored fuel oil on or after January 1, 1991, please submit confirmation that all storage fees have been paid to the State Board of Equalization (BOE) for the time period that you owned the tanks. Attach copies of the UST Fee Return Forms filed with the BOE with proof of payment (copy of

canceled checks) for all applicable time periods or provide a copy of the BOE letter documenting that all fees have been paid for the specific time period at this site. For more information regarding this storage fee, visit the BOE's website at [www.boe.ca.gov](http://www.boe.ca.gov) or call 1-800-400-7115. When contacting BOE, please provide name, site address, parcel number (APN), county, tank number, and the dates that you paid storage fees for the subject tanks (BOE request form is provided for your convenience).

4. Priority Class "B" is for small businesses that are independently owned and operated, not dominant in their field of operation, employ 100 or fewer employees (including all affiliates), and have average annual gross receipts of \$14 million or less (including all affiliates) over the three years prior to the date of the claim application.

If you believe you qualify for Priority Class "B", please submit the following documents for review:

- Complete the enclosed forms: "Request for Assignment of Claim to Priority Class B" and "Worksheet for Priority Class B Claimants."

**AND**

- Complete federal tax returns for the claimant and for each affiliate for three calendar years prior to the date of claim application submittal. As proof of gross revenues for the purposes of assignment to Priority Class B, the enclosed chart identifies the federal tax returns, the statement, and schedules that are required to be submitted.

**AND**

- Documentation supporting the number of employees for the claimant, the claimant's business, and any affiliates [ie., Employment Development Department (DE-6) payroll reports] for the four quarters prior to the date of claim application submittal. Claimants must employ 100 or fewer full and part-time employees. Claimants who do not have any employees must submit a letter stating that they and their affiliates do not have any employees. This letter must be signed by the claimant under penalty of perjury and must have the claimant's original ink signature.

The Fund will review these documents to determine eligibility for Priority Class B. A letter will be mailed to you upon final determination.

5. A copy of the first permit Bob Davis obtained to own or operate the USTs issued by the local regulatory agency (air pollution or Air Quality Management District permits are not acceptable).
6. A copy of the operating permit prior to removal and the removal permit.
7. A copy of the Tank Removal Report for tanks listed in claim application.
8. Verification from the Local Agency that the tanks removed in 1997 caused the unauthorized release.

If you have any questions, please contact me at (916) 341-5771.

Sincerely,

Bridget Freeborn  
Claims Review Unit  
Underground Storage Tank Cleanup Fund

Encl.

# **EXHIBIT A**

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

RECONSIDERATION OF THE ISSUANCE OF CLEANUP AND  
ABATEMENT ORDER R5-2011-0713

IN THE MATTER OF

ANTLERS SHELL/SUBWAY STATION, LAKEHEAD, SHASTA COUNTY  
CLEANUP TEAM'S EVIDENCE LIST

1. 4 March 2008 Letter from Mark Cramer (Shasta County Environmental Health Division (SCEHD)) to Central Valley Regional Water Quality Control Board ("Central Valley Water Board" or "Board") informing the Board of positive MTBE results from the Antlers Shell (the "Site") on-site domestic well.
2. 24 March 2008 Fax from Neil Sullivan (SCEHD) to Ron Falkowski (Central Valley Water Board) containing Antlers Shell's current UST operating permit, permit application, and permit conditions.
3. 17 April 2008 Fax from Neil Sullivan (SCEHD) to Ron Falkowski (Central Valley Water Board) containing results of MTBE testing of Antler's Shell domestic well. Analytical results from 8 January 2004, 8 August 2007, 17 September 2007, 4 October 2007, 22 October 2007, 14 January 2008, 10 March 2008, and 24 March 2008 samplings.
4. 24 April 2008 letter from Central Valley Water Board to Tony Achernecht (TBS Petroleum), requesting Preliminary Site Assessment Work Plan to define extent and degree of contamination at the Site and perform a sensitive receptor survey.
5. 16 May 2008 letter from Tony Achernecht (TBS Petroleum), to Central Valley Water Board in response to 24 April 2008 Central Valley Water Board letter. In letter, Mr. Achernecht explains that TBS purchased the station from Mr. Bob Davis in April 2005, and that MTBE was first detected in the on-site well in August 2007. Mr. Achernecht expressed his opinion that the previous owner should be the responsible party, and that the 24 April 2008 Central Valley Water Board letter to TBS Petroleum should be rescinded.
6. 11 June 2008 Fax from Tony Achernecht (TBS Petroleum) to Central Valley Water Board. Fax contained two sheets, an Alliance Title Company Buyers/Borrowers Closing Statement and a copy of a check for \$19,252.72 from Alliance Title Company to TBS Petroleum.
7. 11 June 2008 Fax from Tony Achernecht (TBS Petroleum) to Central Valley Water Board. Fax contained four sheets consisting of a real estate purchase contract between TBS Petroleum and Mr. Bob Davis for the purchase of the Antlers Shell & Subway.
8. Package of information collected during Central Valley Water Board review of SCEHD file on Antlers Shell. Package includes copy of 2003 dated SCEHD Small Water System Inspection Report, copy of 1990 Leach/Septic system permit and applications, SCEHD 2005 Underground Tank Facility File Review and Inspection Report, 1969 Sewage System permit for the neighboring post office property, MTBE analytical results for the Antlers Shell domestic well from samples on 20 May 2008, a 29 September 2007 SCEHD letter to Mr. Bob Davis approving the plans for the proposed UST removal and installation project, copies of the 1997 UST removal application and inspection report, a copy of the 16 December 1997 SCEHD UST Removal letter documenting file closure, and results of soil confirmation samples obtained during removal of the USTs (several of these samples showed detectable concentrations of MTBE). Package also included 1972 DWR

Water Well Driller's Report for on-site domestic well, and a 2005 letter from SCEHD to Richard Cottrell approving underground tank upgrade plans at the Antlers Shell. Upgrade consisted of installation of EVR Phase I fill adaptors and spill bucket devices.

9. Package of information collected during Central Valley Water Board review of Shasta County Assessor/Recorder's Office. Package consists of copied grant deeds starting with grant deed from Shell Oil Company to Olan and Beverly Bailey in 1983, then grant deed from the Baileys to Bob Davis in 1990, and finally from Bob and Cheryl Davis to TBS Petroleum in 2005.
10. 25 June 2008 letter from Central Valley Water Board staff to Bob Davis and Tony Ackemecht (TBS Petroleum) requesting Preliminary Site Assessment Work Plan to define extent and degree of contamination at the Site and perform a sensitive receptor survey.
11. 10 July 2008 letter from Chuck Goff of CR Water Treatment addressed to Whom it May Concern. In the letter, Mr. Goff explains that he has been the operator of record for the Antler's Shell water system since the late 1980's. The letter goes on to state that, in early 2007, the Shell station had a water leak over the fuel tanks which flooded the area for several months before it was repaired and that it was after this flooding incident that MTBE started being detected in the well.
12. 16 July 2008 letter from Bob Davis to Central Valley Water Board. In the letter, Mr. Davis claims that the contract he and TBS had to sell the property had TBS assuming all Antlers Shell obligations including environmental issues, and was being sold as is. Letter also describes a spring 2007 water leak. Davis also attached a copy of an Addendum to Real Estate Purchase Contract which contains the "as is" clause, as well as indemnity agreements, etc. Also attached above 10 July 2008 letter from Chuck Goff and results of analytical testing of Antlers Shell domestic well dated 22 January 2004, showing non-detect result for MTBE and other VOCs. Also included November 1997 results of UST system tank and line and leak detector testing by Tanknology-NDE, showing passing results. Also included SCEHD 11-7-97 inspection report for the installation of the new USTs.
13. 24 July 2008 letter from David J. Murray, Esq. to TBS Petroleum expressing his legal opinion on the real estate purchase contract. It is Mr. Murray's opinion that Mr. Davis should be responsible for the pollution. He bases this opinion on the indemnity agreement, that the seller shall indemnify and hold buyer harmless. It is his opinion that the indemnity agreement supersedes or modifies the "as is" clause. Mr. Murray attached a copy of the Real Estate Purchase Contract in question.
14. 25 July 2008 letter from Central Valley Water Board to Bob and Cheryl Davis and Tony Achernect (TBS Petroleum), a second request for Preliminary Site Assessment Work Plan. The letter describes a chronology of events leading to the change from addressing the letter solely to TBS Petroleum to both TBS and the Davis'.
15. 8 August 2008 letter from Tony Achernect (TBS Petroleum) to Karen Clementson (Central Valley Water Board) in response to the 25 July 2008 request for Preliminary Site Assessment Work Plan. In the letter, TBS requests to be released as a responsible party, citing the real estate purchase agreement, David Murray's 24 July 2008 letter, results of confirmation testing during UST replacement, and stating that TBS has not handled MTBE fuel at the Site since purchasing it in 2005.
16. 12 August 2008 letter from Noel Bush (SHN Consulting Engineers) to Mr. Bob Davis. In the letter, Ms. Bush explains that in SHN's experience, the current property owners are usually considered primary responsible parties, unless all parties involved have agreed to other arrangements, but admits that the Central Valley Water Board has the authority to name whomever they deem a responsible party.
17. 12 August 2008 letter from Mr. Bob Davis to Karen Clementson (Central Valley Water Board). In the letter, Mr. Davis again expresses why he should not be considered a responsible party. His

reasoning includes the "as is" purchase contract, the fact that TBS conducted a Phase I ESA prior to purchase the broken water line, TBS delivering the MTBE fuel to the station between 1996 and 2005, and SCEHD's 1997 closure letter in regard to the UST removal/replacement.

18. 29 August 2008 letter from Joshua A Bloom, Esq. (Barg, Coffin, Lewis and Trapp) to Karen Clementson, Central Valley Water Board. In the letter, Mr. Bloom introduces himself as TBS's legal counsel. Mr. Bloom suggests that TBS be considered a secondary responsible party, if at all. Attached to the letter is a letter from Mr. Bloom to Bob Davis, in which Mr. Bloom alleges that Mr. Davis has breached the purchase contract and that TBS will exercise all rights, and seek all remedies, so long as there is continued breach of the contract. TBS requested that Mr. Davis immediately indicate that he would comply with the indemnity provisions of the Purchase Contract, notify the Board that he would act as the primary responsible party, and take all actions required under applicable law and as directed by the Board. Mr. Bloom requested an extension on the deadline for the Preliminary Site Assessment.
19. 1 September 2008 letter from Mr. Bob Davis to Karen Clementsen (Central Valley Water Board) informing the Board that his attorney is sending a letter to TBS petroleum to demand that they honor the Buy-Sell agreement (the purchase contract). The letter reiterates many of the statements Mr. Davis has made in previous letters to the Board, and included as attachments several documents already submitted for Board review.
20. 4 September 2008 letter from Randall L Harr, Esq. (Harr, Arthofer & Ayres) to Joshua A. Bloom. In the letter, Mr. Harr introduces himself as legal counsel to Bob and Cheryl Davis. In it he refutes the claims in Mr. Bloom's 29 August 2008 letter, and consequently demands that TBS fulfill its contractual obligation to indemnify Mr. Davis.
21. 10 September 2008 letter from Central Valley Water Board to Bob and Cheryl Davis and Tony Ackernecht, granting an extension on the deadline to submit a Preliminary Site Assessment Work Plan.
22. 30 October 2008 *Letter Workplan: Boring Installation*, prepared by LACO Associates on behalf of TBS Petroleum. Workplan proposes advancing eight continuous core soil borings on-site and collecting in-site soil and groundwater samples. The workplan also proposed conducting a sensitive receptor survey.
23. 13 November 2008 email from Lacey Caughey (LACO Associates) to Ron Falkowski (Central Valley Water Board) transmitting an updated map for the workplan which shows the approximate location of the on-site leach field.
24. 17 November 2008 letter from Central Valley Water Board to Bob and Cheryl Davis and Tony Ackernecht (TBS Petroleum). In the letter, Board staff notes that TBS submitted a Preliminary Site Assessment Workplan and Bob and Cheryl Davis did not submit any work plan. The letter conditionally approves TBS's workplan under the following conditions: First, that two additional borings be installed north of the domestic well and the Shell-Subway building. Second, that all samples be analyzed for the five fuel oxygenates, full list 8260, full list 8270, and TPH-D.
25. 26 January 2009 copy of a summons filed by TBS Petroleum in Shasta County Superior Court. In it, the plaintiff TBS Petroleum is suing the defendant, Bob and Cheryl Davis. In the suit, TBS alleges that the Davis' have breached the purchase contract, has created a private nuisance against TBS, have trespassed, and have breached the implied covenant of good faith and fair dealings. TBS seeks declaratory relief and equitable indemnity from the Davis', and contribution from the Davis' under Water Code section 13350.
26. 10 February 2009 letter from SCEHD to Tony Ackernecht, TBS Petroleum, forwarding a Compliance Order for the Antler's Shell Subway water system, as a result of detection of MTBE in

the water source. The compliance order required submittal of a Compliance Report to SCEHD no later than 30 April 2009, and monthly monitoring of treated water and quarterly monitoring of pre-treated water for MTBE.

27. 2 March 2009 *Report of Findings: Initial Subsurface Investigation*, prepared by LACO Associates on behalf of TBS Petroleum. Report presents results of eight soil borings and sensitive receptor survey. Significant gasoline pollution detected in soil and groundwater on-site. MTBE, TBA, TAME, TPHg, Benzene, toluene, ethylbenze, and xylene detected in groundwater at maximum concentrations of 49,000, 8,200, 290, 37,000, 1,700, 5,400, 1,400, and 9,300 ug/L, respectively.
28. 20 March 2009 email chain from Tony Achernecht, TBS Petroleum to Karen Clementson (Central Valley Water Board) confirming Board request for supplemental information for Initial Subsurface Investigation.
29. 14 April 2009 letter from John Aveggio, SHN Consulting Engineers, to Ron Falkowski (Central Valley Water Board). In this letter Mr. Aveggio opines that after review of the 2 March 2009 Report of Findings, there appears to have been at least 3 distinct releases at the Site, and that only TBS petroleum should be named in a CAO.
30. 27 April 2009 *Supplemental Information: Initial Subsurface Investigation*, prepared by LACO Associates on behalf of TBS Petroleum. The supplemental information presents a detailed analysis of the apparently anomalous ethanol detections reported during the January 2009 subsurface investigation, a summary and full copy of UST system inspections/upgrades at the site, the results of off-site domestic well sampling conducted March 1 and April 21, 2009, and response to statements made in SHN's 14 April 2009 letter above.
31. 18 May 2009 Compliance Report – Public Drinking Water System, prepared by LACO Associates on behalf of TBS Petroleum. The report was prepared in response to SCEHD's 10 February 2009. The report describes the granular activated carbon filtering system installed to remove MTBE from the on-site domestic well, and states that the long-term solution for achieving compliance is installation of a new, deeper well at the north end of the property.
32. 29 May 2009, letter from Rupert Hansen, ESQ, Cox Wootton, Griffin, Hansen & Poulos, LLP, to Ron Falkowski, Central Valley Water Board. In the letter Mr. Hansen introduces himself as representing Bob and Cheryl Davis. Mr. Hansen requests that TBS Petroleum be named as Primary Responsible Party. The letter presents a copy of a "22 May 2009 Notice of Entry of Amended Order after hearing on demurrer granting defendant's demurrer with leave to Amend." This document was issued by the Shasta County Superior Court in the hearing of TBS Petroleum vs. Bob Davis. In the Order the Superior Court side's with Mr. Davis ruling that the as is clause in the purchase contract was valid and covered the existing environmental issues at the Site.
33. 17 August 2009 Meeting Record of Communication between Bob Davis and Grant Stein (Central Valley Water Board). Mr. Davis made an unannounced visit to the Central Valley Water Board Redding Office requesting to speak with Mr. Stein regarding the Antlers Shell Case. In the meeting Mr. Davis reiterated findings, opinions, and speculation present by his consult John Aveggio and lawyer Rupert Hansen. No new evidence or information was presented.
34. 24 August 2009 hand calculation prepared by Grant Stein Central Valley Water Board. These calculation calculated  $(B+T)/(E+X)$  ratios and MTBE partitioning coefficients based on data from the 2 March 2009 Initial Subsurface Investigation. These calculations were used in the 26 August 2009 meeting with TBS and the April 2010 Technical Memo prepared by Grant Stein.
35. 26 August 2009 Agenda of meeting between TBS Petroleum, LACO Associates and Central Valley Water Board. In the meeting Central Valley Water Board presented the results of preliminary analysis of data from the 2 March 2009 subsurface investigation. This analysis consisted of linear

dispersion models of MTBE fate and transport and mapping of B+T/E+X ratios. In the meeting also discussed, assignment of responsibility (both parties to be named), the ethanol detections during the initial subsurface investigation, and future action at the Site.

36. 17 November 2009 letter from John Aveggio, SHN Engineers to Grant Stein (Central Valley Water Board). In the letter Mr. Aveggio discusses the spring 2007 broken water line/leak, and speculates on its impact to the Site. It is Mr. Aveggio's opinion that this leak mobilized MTBE that was previously immobile in the tank pit.
37. 18 December 2009 fax from Tony Ackernecht, TBS Petroleum to Grant Stein (Central Valley Water Board). The fax contained 5 pages, which were the most recent results of analytical testing of the on-site domestic well.
38. 9 February 2010 package of information sent by Mark Cramer (SCEHD) to Grant Stein (Central Valley Water Board) at the request of Central Valley Water Board. This information package contains all of the analytical results of MTBE testing on Antler's Shell domestic well submitted by TBS to SCEHD to date.
39. 27 April 2010 *Order to Submit Information Pursuant to California Water Code 13267*, from Central Valley Water Board to TBS Petroleum and Bob and Cheryl Davis. The Order requests a workplan to further mitigate post-treatment pollution from the on-site domestic well, and a workplan for further investigation of pollutant flow paths sufficient to evaluate on-site well as a pollutant conduit, correlate with identified pollution in off-site receptor wells, and define pollution extent. The letter also contained an attachment which was a 27 April 2010 technical memorandum from Grant Stein (Central Valley Water Board) to Eric Rapport (Central Valley Water Board). The memorandum presented a detailed case file review by staff, and presented technical analysis of available data, including linear dispersion modeling, BTEX ratio mapping, and MTBE distribution mapping. Staff concluded that pollution at the Site potentially threatened off-site receptors and recommended that additional investigation be conducted at the Site.
40. 4 May 2010 fax from Chris Watt (LACO Associates) to Central Valley Water Board. Contains a copy of the 18 May 2009 Compliance Report – Public Drinking Water System, prepared by LACO Associates on behalf of TBS Petroleum. This document was submitted to satisfy the requirement in the 27 April 2010 Order, which requested workplan to further mitigate post-treatment pollution.
41. 4 May 2010 Certified Mail receipts confirming that copies of the 27 April 2010 Order to Submit Information were received by the intended recipients.
42. 6 May 2010 Telephone Record of Communication between Grant Stein (Central Valley Water Board) and Mark Cramer (SCEHD). In the phone call staff discussed the treatment system for the Antlers Shell water system. Mark explained that SCEHD provides regulatory oversight of the operation of the water system and the domestic septic system. Mark stated that past breakthroughs of MTBE had occurred in the system, but that was prior to installation of a new more advanced system, described in the 18 May 2009 Compliance Report by LACO.
43. 19 May 2010, *MTBE Release Timing and Responsible Party Position Letter*, prepared by Chris Watt (LACO Associates) on behalf of TBS Petroleum. In the letter, Mr. Watt presents information that TBS did not knowingly exacerbate the conditions at the Site, and summarizes the positive actions taken by TBS to address the MTBE release. The letter also presented a copy of 1 March 2005 Limited Environmental Site Assessment, prepared by ADR Environmental for TBS Petroleum, prior to the purchase of the Antlers Shell Station. In the ESA, ADR found no areas of potential environmental concern associated with the subject property.

44. 21 May 2010, letter from Joshua Bloom, on behalf of TBS Petroleum, to Jeannette Bashaw (State Water Board) requesting that the State Board Review the 27 April 2010 Order to Submit Information and temporarily hold this matter in abeyance.
45. 27 May 2010, email from Rupert Hansen, on behalf of Bob Davis, to Eric Rapport (Central Valley Water Board) transmitting an electronic copy of a petition to review the 27 April 2010 Order and temporarily hold this matter in abeyance to the State Water Board.
46. 15 December 2010, Meeting Record of Communication between Tony Ackernect, Chris Watt, Robert Crandal and Grant Stein. Tony Ackernect requested a meeting with Central Valley Water Board staff and assistant executive officer to discuss the state of the Antlers Shell case. Mr. Crandall stated that Central Valley Water Board would begin drafting a Draft Clean-up and Abatement Order naming both TBS Petroleum and Mr. Bob Davis as responsible parties. Mr. Ackernect requested that TBS be named as a secondary responsible party. Mr. Crandall stated that the Central Valley Water Board would not assign percentages of responsibility for the pollution and that both parties would be named as Primary Responsible Parties. Mr. Crandall further stated that ideally TBS and Mr. Davis would cooperate and work together to mitigate the pollution, as Mr. Davis is an eligible fund claimant. In such a scenario Mr. Ackernect offered to act as the front man and bear the costs of the investigation/remediation until reimbursement through the Fund. Mr. Crandall stated that such a scenario would be undertaken solely between TBS and Davis and the Central Valley Water Board could not/would not be involved.
47. 27 January 2011 Underground Storage Tank Unauthorized Release Report, filed by Mark Cramer (SCEHD). Responsible Party listed as Bob Davis. Discovery date was 8 August 2007, the day that MTBE was discovered in the onsite domestic well.
48. 21 March 2011 Underground Storage Tank Unauthorized Release Report issued by Mark Cramer (SCEHD). In this report, Mr. Cramer lists TBS Petroleum and Bob Davis as responsible parties. All other information from the previous 27 January 2011 release report remains unchanged.
49. 28 March 2011 letter from Mr. Bob Davis to Mr. Robert Crandall (Central Valley Water Board) explaining that he made three offers to work with TBS Petroleum to initiate clean-up and enter into the UST clean-up fund. He alleges that in all three of his attempts he was rebuffed by TBS, and that only now, after potential issuance of a Clean-up and Abatement Order, and the Superior Court rulings, is TBS willing to work with him. He states that he is not willing to enter into another agreement with TBS as they did not honor the first agreement/purchase contract.
50. 20 April 2011 *Submittal of Additional Information*, prepared by John Aveggio (SHN) on behalf of Bob Davis. The submittal discusses claims presented in the past by Mr. Davis and his associates, including his attempts to work with TBS to enter the UST cleanup fund, the spring 2007 water line leak, detection of ethanol in groundwater, and the court rulings. The submittal also presents hard copies of the three offers that Mr. Davis made to TBS to work jointly to resolve the situation.
51. 17 May 2011 email from Tony Ackernect to Grant Stein (Central Valley Water Board), forwarding an email from Lisa Labrado (UST CUF) to Jim Seiler (TBS Petroleum) explaining TBS's eligibility to the claim. Lisa states that since the release appeared to originate from the former tanks and they were removed prior to acquisition to TBS that only Davis would be eligible to file a claim for the release. She goes on to reiterate that these are only a couple of the eligibility scenarios and she doesn't have enough information to make an eligibility determination.
52. 31 May 2011 email from Tony Ackernect to Robert Crandall (Central Valley Water Board). In the email, Tony states that TBS is interested in finding a way to work with Bob Davis to clean up the MTBE at the Site. He proposes a course of action in which Mr. Davis enters the UST CUF and TBS carries out the clean-up/investigation, and Mr. Davis reimburses TBS through the CUF. Mr. Ackernect states that the court ruling has nothing to do with liability as a responsible party and that

the court ruling only means that TBS cannot seek indemnification from Mr. Davis for the cleanup work.

53. 1 June 2011 letter from Bob Davis to Robert Crandall (Central Valley Water Board). In the letter, Mr. Davis states that a UV disinfection system was not installed by him, it was installed in 2009 after he sold the station. He also states that Cheryl Davis should not be listed on any Board Orders, as he purchased the property as a single man, and married Cheryl after acquiring the property.
54. 1 June 2011 letter from Bob Davis to Robert Crandall (Central Valley Water Board). In this letter regarding a 6-1-2011 meeting with Mr. Crandall, Mr. Davis reiterates the same statements he has made since the beginning of the case, including, the as-is sale of the property, the court rulings in his favor, TBS delivery of fuel to the Site, the spring 2007 water leak, detection of ethanol in groundwater, his offers to work with TBS to jointly resolve the issue. Attached several documents to the letter, but most of these documents were previously contained in case file and described above. Two new documents were submitted:
  - a. A 24 July 2009 Shasta County Superior Court Order Granting Motion to Dismiss Action With Prejudice and For Entry of Judgment of Dismissal. This Order dismisses with prejudice the suit by TBS against Davis, and enters judgment in favor of Mr. Davis.
  - b. The second new document was a copy of a 23 November 2010 Third District Court of Appeal decision which affirms the 24 July 2009 judgment by Shasta County Superior Court.
55. 15 June 2011 letter from Loren Harlow, Esq. (Stoel Rives LLP) to Robert Crandall (Central Valley Water Board). In this letter, Mr. Harlow introduces himself as representing Mr. Bob Davis in this matter. Mr. Harlow states that TBS should be named as the sole primary responsible party. The letter contains a brief history of the Site and reiterates many of Mr. Davis' previous arguments. No new information is presented.
56. 26 August 2011 fax from Tony Ackernecht to Grant Stein (Central Valley Water Board). The fax contained the analytical results of September, November, December 2010, January, February, April, May, June, July, August, 2011 testing of the Antlers water supply system, and a 16 July 2010 invoice for replacement of the granular activated carbon, in the filter system.
57. 23 September 2011 email from Clint Snyder (Central Valley Water Board) to Tony Ackernecht, Joshua Bloom, Bob Davis, and Loren Harlow, transmitting a Draft Clean-up and Abatement Order drafted for the Antler's Shell. The Draft CAO was attached to the email. Draft CAO names TBS Petroleum and Bob Davis as responsible parties.
58. 7 October 2011 fax from Mark Cramer (SCEHD) to Grant Stein (Central Valley Water Board) containing all past analytical results of Nitrate testing of the Antler's water system.
59. 11 October 2011 letter from Loren Harlow to Clint Snyder (Central Valley Water Board), presenting comments on the 23 September 2011 Draft CAO. The letter contains four comments on the CAO:
  - a. The Draft CAO ignores the Third Appellate District Opinion.
  - b. The Draft CAO requires Mr. Davis to perform idle acts and subjects him to potential monetary damages for failure to comply.
  - c. The draft CAO improperly dismisses TBS's failure to abate a water line leak for nearly 3.5 months as the cause of the discharge of waste subject to the provisions of Water Code section 13304.
  - d. The draft CAO in Finding 6 misstates or misrepresents Mr. Davis's position regarding secondary liability.

60. 14 October 2011 letter from Tony Ackernecht to Clint Snyder (Central Valley Water Board) presenting comments on the 23 September 2011 Draft CAO. The letter contains two comments on the CAO.
  - a. TBS believes it is appropriate to classify TBS as secondarily responsible, instead of primarily responsible.
  - b. TBS requests a six month extension of each of the implementation dates specified in the draft CAO.
61. 14 November 2011 email from Clint Snyder (Central Valley Water Board) to Tony Ackernecht, Joshua Bloom, Bob Davis, and Loren Harlow. The email transmits a second draft of the Cleanup and Abatement order which incorporates comments received from each of the parties on the 23 September 2011 Draft CAO. This draft only lists TBS Petroleum as responsible party.
62. 21 November 2011 letter from Joshua Bloom, on behalf of TBS Petroleum, to Clint Snyder (Central Valley Water Board) presenting comments to the 14 November 2011 Draft CAO. TBS strongly objects with the Board's decision to only name TBS Petroleum in the CAO. TBS requests that the final order include Mr. Davis as a primary responsible party.
63. 23 November 2011 letter from Loren Harlow, on behalf of Bob Davis, to Clint Snyder (Central Valley Water Board) presenting comments on the 14 November 2011 Draft CAO. Four comments were made:
  - a. Mr. Harlow concurs with Mr. Davis being left off the draft CAO.
  - b. Finding 6 in the Draft Order should be deleted.
  - c. Typographical error on page 11 of the Draft Order. Mr. Davis should be removed from the "Hereby Ordered" paragraph.
  - d. Request that this letter and the 11 October 2011 letter be incorporated into the administrative record.
64. 29 November 2011 field notes, analytical chemistry data, and chain of custody, for sampling performed by Grant Stein Central Valley Water Board. On 29 November 2011, Mr. Stein sampled six domestic wells nearby the Site for volatile organic compounds, by method 8260b. All wells were non-detect for all constituents analyzed with the exception of the sample obtained from the inactive well located at APN 083-340-08. This well contained MTBE at 49 ug/L.
65. 6 December 2011, Transmittal, Cleanup and Abatement Order R5-2011-0713, to Tony Ackernecht, TBS Petroleum. Transmits a signed copy of Cleanup and Abatement Order R5-2011-0713.
66. 4 January 2012 letter from Joshua Bloom, on behalf of TBS Petroleum, to Jeannette Bashaw (State Water Board), petitioning for State Water Board review of Cleanup and Abatement Order R5-2011-0713, and requests that the petition be held in abeyance.
67. 1 March 2012 Workplan for Subsurface Exploration and Domestic Well Monitoring and 10 April 2012 Workplan Addendum: Subsurface Exploration and Domestic Well Monitoring. These documents were prepared by LACO, on behalf of TBS Petroleum, so satisfy the requirement of CAO R5-2011-0713 that "By March 1 2012, submit an additional site investigation work plan including an on-site domestic well investigation and evaluation." The work plan and work plan addendum propose installing five off-site soil boring and obtaining in-site soil and groundwater samples for chemical analysis. The workplan also proposes instituting a quarterly sampling program to regularly sample potentially affected domestic wells in the area. The workplan and addendum further proposes conducting a geophysical investigation of the on-site domestic well to evaluate the well as a pollution conduit.

68. 4 April 2012 letter from Loren Harlow, on behalf of Bob Davis, to Ms. Pamela Creedon (Central Valley Water Board). In the letter Mr. Harlow objects to the proposed public hearing on the matter.
69. 6 April 2012 letter from Clint Snyder (Central Valley Water Board) to Jim Seiler, Tony Ackernecht, Bob Davis, Loren Harlow, and James Arnold, transmitting the hearing procedures for reconsideration of Cleanup and Abatement Order R5-2011-0713.
70. 9 April 2012 certified mail receipts from Jim Seiler, Tony Ackernecht, Bob Davis, Loren Harlow, James Arnold, confirming that they had received the hearing procedures sent 6 April 2012.
71. 13 April 2012 letter from Loren Harlow, on behalf of Bob Davis, to Central Valley Water Board, presenting comments on the 6 April 2012 Hearing Procedures. He requested that the time limit for testimony be increased from 20 minutes to 30 minutes.
72. 13 April 2012 letter from James Arnold, on behalf of TBS Petroleum, to Central Valley Water Board, presenting comments on the 6 April 2012 Hearing Procedures. He requested that the time limit for testimony be increased from 20 to 30 minutes and that all designated parties be allowed to submit summaries and responses to comments by 17 May 2012.

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 *EVIDENCE LIST*

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.

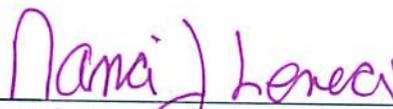
18 [ X ] **BY ELECTRONIC TRANSMISSION** – I transmitted a PDF version of this document  
19 by electronic mail to the party(s) identified on the attached service list using the e-mail  
20 address(es) indicated.

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

<b>ADVISORY TEAM:</b>	<b>CLEANUP TEAM:</b>
<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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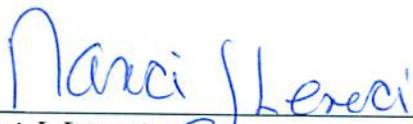
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business.

22  (State) I declare under penalty of perjury under the laws of the State of  
California that the above is true and correct.

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

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

26   
27 Nanci J. Lenoci  
28

SERVICE LIST

<b>DESIGNATED PARTY: BOB DAVIS</b>	<b>DESIGNATED PARTY: CLEANUP TEAM</b>
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