

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

**MEETING OF JULY 8 AND 9, 2009
South Lake Tahoe**

ITEM: 7

SUBJECT: **CONSIDERATION OF AN ADMINISTRATIVE CIVIL LIABILITY (ACL) ORDER FOR SARBJIT S. KANG AND THE KANG PROPERTY, INCORPORATED FOR VIOLATION OF (1) CALIFORNIA WATER CODE SECTION 13267 AND (2) CALIFORNIA WATER CODE SECTION 13304 – SWISS MART GAS STATION, EL DORADO COUNTY**

CHRONOLOGY: Dec. 14, 2007 Cleanup and Abatement Order No. R6T-2007-0029 issued
Dec. 19, 2008 ACL Complaint No. R6T-2008-0021 issued
Apr. 15, 2009 ACL Complaint No. R6T-2009-0021 rescinded
ACL Complaint No. R6T-2009-0015 issued

ISSUES: Should the Water Board adopt the proposed ACL Order against Sarbjit S. Kang and the Kang Property, Incorporated?

Does the proposed liability of \$460,300 sufficiently address the alleged violations?

DISCUSSION: The Kang Property, Incorporated is the legal owner of the Swiss Mart Gas Station at 913 Emerald Bay Road (APN 023-181-191) in South Lake Tahoe (Property). According to El Dorado County Department of Environmental Management, Sarbjit S. Kang is listed as the operator of the underground storage tanks on the permit issued to the Property. Mr. Kang and the Kang Property, Incorporated are known herein as the Dischargers.

On December 14, 2007, the Water Board Executive Officer issued Cleanup and Abatement Order No. R6T-2007-0029 (Order) to the Dischargers for an unauthorized release of petroleum hydrocarbons at the Property. The release was detected above drinking water standards in groundwater beneath the Property and in a domestic well, located 500 feet to the east. The Order required the Dischargers to cleanup and abate the effects of the release and provide an alternate drinking water supply to the resident of the affected domestic well. The Dischargers complied with one

07-0001

requirement in the Order by the listed deadline. All other requirements were either conducted past their respective deadlines or not conducted at all. No alternate water supply was ever provided or offered to the resident of the affected domestic well.

On December 19, 2008, the Water Board's Assistant Executive Officer issued ACL Complaint No. R6T-2008-0021 (Complaint). The Complaint was issued to the Dischargers in response to violations associated with (1) Water Code section 13267 (Orders for Technical Reports) and (2) Water Code section 13304 (Cleanup and Abatement Order). The Complaint cited ten months of violations of the Order and contained a total civil liability amount of \$403,900. The certified letter containing the Complaint for Kang Property, Inc. was signed and accepted. The certified letter addressed to Mr. Kang at the Property, however, was refused. Other documents concerning the hearing procedure and written evidence for the Complaint were also refused by the Dischargers.

On March 9, 2009, the Water Board received a request by counsel for Mr. Kang to postpone the March 11, 2009 hearing on the Complaint. The request was granted.

On April 15, 2009, the Water Board's Assistant Executive Officer rescinded Complaint R6T-2008-0021 and issued ACL Complaint R6T-2009-0015 for the amount of \$460,300 (Enclosure 1). Because prior certified letters had been refused by the Dischargers, the new Complaint was delivered by a Process Server on April 16, 2009 (Enclosure 2). Delivered at the same time were the Water Board Advisory Team's hearing procedures and Prosecution Team's written materials for consideration of the ACL. The Water Board has received no comments, evidence, testimony or other correspondence from the Dischargers on the Complaint.

At the public hearing, the Water Board will be asked to adopt the proposed Administrative Civil Liability Order (Enclosure 3) based upon Complaint R6T-2009-0015.

RECOMMENDATION:

Adoption of the Administrative Civil Liability Order as proposed.

ENCLOSURES:

1. Administrative Civil Liability Complaint R6T-2009-0015
2. April 16, 2009 Declaration of Service
3. Proposed Administrative Civil Liability Order

ENCLOSURE 1

07-0003



California Regional Water Quality Control Board
Lahontan Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

April 15, 2009

Sarbjit S. Kang
Kang Property, Incorporated
Swiss Mart Gas Station
913 Emerald Bay Road
South Lake Tahoe, CA 96150

PROCESS SERVER

**RESCISSION OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R6T-2008-0021
AND ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R6T-2009-
0015**

**SWISS MART GAS STATION, 913 EMERALD BAY ROAD, SOUTH LAKE TAHOE, EL
DORADO COUNTY**

This letter rescinds Administrative Civil Liability Complaint No. R6T-2008-0021, issued to Mr. Sarbjit S. Kang and the Kang Property, Incorporated, on December 19, 2008.

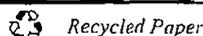
Enclosed please find Administrative Civil Liability Complaint (Complaint) No. R6T-2009-0015 against Kang Property, Incorporated and Mr. Sarbjit Kang (together "Dischargers") for failure to comply with requirements of Cleanup and Abatement Order No. R6T-2007-0029. The Complaint recommends the Water Board impose a civil liability of \$460,300 for these violations.

Waiver of Hearing

Pursuant to Water Code section 13323, the Water Board will hold a hearing on the Complaint no later than 90 days after it is served. The Dischargers may elect to waive their right to a hearing before the Water Board and agree to pay the proposed liability. Waiver of the hearing constitutes admission of the validity of the allegations of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$460,300 as set forth in the Complaint. If the Dischargers wish to exercise this option, it must complete the following:

1. **By 5:00 p.m., May 21, 2009**, an authorized agent must sign the enclosed waiver and submit it to the Water Board, along with cashier's checks in the amount of \$282,500 made payable to the "State Water Pollution Cleanup and Abatement Account" and \$177,800 made payable to the "State Waste Discharge Permit Fund";
2. **By May 26, 2009**, the Dischargers must publish the enclosed public notice in the Tahoe Daily Tribune; and

California Environmental Protection Agency



07-0004

3. **By 5:00 p.m., May 29, 2009**, the Dischargers must submit verification to the Water Board that the enclosed public notice has been published.

Please note that the Dischargers' waiver and agreement to pay the proposed liability constitutes a proposed settlement that will not become final until after a 30-day public comment period, as provided by the State Water Resources Control Board Water Quality Enforcement Policy (version dated February 12, 2002). As described in the enclosed waiver, the Water Board Assistant Executive Officer may withdraw the Complaint, return payment and issue a new complaint should new information be received during the comment period. If no information is received which causes to the Assistant Executive Officer to withdraw the Complaint, the settlement will be brought before the full Water Board for approval at a future meeting. **The settlement will not be effective until approved by the Water Board.**

Public Hearing

Alternatively, if the Dischargers elect to proceed to a public hearing, a hearing is tentatively scheduled to be held at the Water Board meeting on July 8-9, 2009. The meeting is scheduled to convene at a time and location as announced in the Water Board meeting agenda. The agenda will be issued at least ten days before the meeting and will be posted on the Water Board web page at <http://waterboards.ca.gov/lahontan>. At that time, the Water Board will accept testimony and public comment and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Please contact State Water Resources Control Board Office of Enforcement Attorney David Boyers at (916) 341-5276 or Ms. Lisa Dernbach at (530) 542-5424 or via e-mail at ldernbach@waterboards.ca.gov if you have any questions concerning this matter.



Robert S. Dodds
Assistant Executive Officer

- Enclosures: 1. Complaint No. R6T-2009-0015
2. Waiver of Public Hearing Form
3. Public Notice of Waiver

cc: Harold J. Singer, Executive Officer/Water Board
David Boyers, Senior Staff Counsel/SWRCB, Enforcement
David Coupe, Staff Counsel/SWRCB
Swiss Mart mailing list

LSD/T: Swiss Mart Complaint Transmittal Let 4-14-09
[File: UGT, El Dorado County, 6T0297A]

MAILING LIST
SWISS MART GAS STATION

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Board, Div. of Water Quality
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California Regional Water Quality Control Board Lahontan Region



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Governor

STATE OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD LAHONTAN REGION

In the Matter of Sarbjit S. Kang and
Kang Property, Incorporated:
Violation of Cleanup and Abatement Order (CAO)
No. R6T-2007-0029, Swiss Mart Gas Station,
913 Emerald Bay Road, South Lake Tahoe,
El Dorado County

) COMPLAINT NO.
) R6T-2009-0015
) FOR ADMINISTRATIVE
) CIVIL LIABILITY

SARBJIT S. KANG AND KANG PROPERTY, INCORPORATED, YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are charged with violating provisions of law and regulations for which the California Regional Water Quality Control Board, Lahontan Region (Water Board) may impose administrative civil liability pursuant to Water Code section 13350, subdivision (a)(1) and Water Code section 13268, subdivision (a)(1).
2. Unless waived, a hearing on this matter will be held before the Water Board within 90 days following the issuance of this Complaint. Sarbjit S. Kang and Kang Property, Inc., or their representative(s), will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability by the Water Board.
3. At the hearing, the Water Board will consider whether to affirm, reject, or modify (either increase or decrease) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

ALLEGATIONS

4. The Swiss Mart Gas Station ("Facility") is located at 913 Emerald Bay Road in the City of South Lake Tahoe, El Dorado County, as shown in Attachment A of this Complaint.
5. Kang Property, Incorporated, is the property owner of the Facility, on record with El Dorado County (APN 023-181-19-10). Sarbjit S. Kang is the operator of the underground storage tanks at the Facility, according to El Dorado County Department of Environmental Management. Both Sarbjit S. Kang and Kang Property, Inc. are identified in CAO No. R6T-2007-0029 as the parties responsible for complying with the CAO. For the purposes of this Complaint, these two parties will be hereinafter referred to as the "Dischargers."

6. Sarbjit S. Kang and other parties were the subject of CAO No. 6-98-78 issued in 1998 and an amendment issued in 1999 for petroleum releases at the Facility adversely affecting groundwater quality, a municipal well, and two domestic wells in the area. Between 1999 and 2007, Sarbjit S. Kang and the other parties had a sporadic record of compliance with Amended CAO 6-98-78A1. Six Notices of Violation were issued to the responsible parties for failing to continuously operate the remediation system and/or conduct quarterly groundwater monitoring and reporting.

7. Water Board staff collected water samples from residences at 883 and 903 Eloise Avenue on May 24, 2007. The residences are located approximately 500 and 600 feet, respectively, to the north of the Facility and have been adversely impacted by hydrocarbons in the past. The laboratory report showed that the following petroleum constituents were detected in the water sample collected at 883 Eloise Avenue:

Benzene	3.2 micrograms per liter ($\mu\text{g/L}$)
Toluene	3.2 $\mu\text{g/L}$
1,2,4-Trimethylbenzene	0.74 $\mu\text{g/L}$
1,3,5-Trimethylbenzene	0.60 $\mu\text{g/L}$

8. The concentration of benzene detected in the domestic well at 883 Eloise Avenue exceeds the state primary drinking water standard of 1 $\mu\text{g/L}$. The property owner of the well was informed of these results in a letter dated June 28, 2007. No hydrocarbons were detected in the water sample taken from 903 Eloise Avenue.

9. On August 13, 2007, the Water Board issued an order to Sarbjit S. Kang to investigate a potential discharge of gasoline to groundwater at the Facility. The order stated that hydrocarbons detected in the domestic well referenced in Finding No. 7 were consistent with a petroleum release occurring after MTBE was phased out of gasoline in California in 2003. The order directed Mr. Kang to collect groundwater samples from all on-site monitoring wells. A technical report containing laboratory results of the water samples was due within 21 days of the date of the order, or by September 3, 2007.

10. On September 27, 2007, the Water Board received a document prepared by CalClean, on behalf of Mr. Kang, containing well sampling results. The document shows that water samples collected from two of the five monitoring wells at the Facility contain high concentrations of petroleum hydrocarbons. Besides benzene, the hydrocarbons included trimethylbenzene, toluene, ethylbenzene, xylenes, and total petroleum hydrocarbons as gasoline. The highest levels of hydrocarbons were detected in a water sample from monitoring well MW-1, taken at 17 feet below ground surface:

Benzene	1,070 $\mu\text{g/L}$
Toluene	12,600 $\mu\text{g/L}$

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1,2,4-Trimethylbenzene	3,030 µg/L
1,3,5-Trimethylbenzene	751 µg/L
Ethylbenzene	2990 µg/L
Xylenes	15,400 µg/L
Total Petroleum hydrocarbons-gasoline	32,200 µg/L

11. On December 14, 2007, the Water Board Executive Officer issued CAO No. R6T-2007-0029 to Sarbjit S. Kang and Kang Property, Inc. (Attachment B). The Order found that, based on water sample results listed in Findings No. 7 and 10, a new unauthorized release of petroleum hydrocarbons had occurred at the Facility, as indicated by the increase in concentration of volatile organic compounds by two or more orders of magnitude compared to water samples from 2006. The Order noted that lack of MTBE in the water samples suggested that the release occurred after the 2003 phase-out of MTBE in gasoline. The Order also noted that the presence of trimethylbenzene, a highly volatile hydrocarbon that attenuates quickly in the environment, implies the release was relatively recent, given that past monitoring reports to 2001 show that trimethylbenzene was not detected in monitoring wells at the Facility until March 2006.

12. CAO No. R6T-2007-0029 required the Dischargers to take the following cleanup actions: (1) provide alternate water supply to the affected domestic well owner; (2) identify and stop the source of the release, (3) conduct groundwater monitoring and submit technical reports, (4) conduct interim remediation to contain plume migration, (5) investigate the extent of the discharge, and (6) propose clean up of contamination in soil and groundwater. Specifically, the CAO provided, in relevant part:
 - "4. Provide Alternate Water Supply for Affected Domestic Wells
 - 4.1. **By December 19, 2007**, the Dischargers must provide an alternate supply of clean water to the occupants at 883 Eloise Avenue in South Lake Tahoe. The Dischargers must notify the Water Board within one working day of providing the alternate water supply and state how it was achieved.
 - 4.2. **By December 28, 2007**, the Dischargers must submit a technical report to the Water Board describing how it intends to comply with section 4.1 of this Order to provide an alternate supply of clean water to the occupants at 883 Eloise Avenue in South Lake Tahoe.
 5. Release Investigation.
 - 5.1. **By December 19, 2007**, submit a letter to the Water Board describing means to investigate the source or cause of petroleum release at the Facility.

- 5.2. **By December 21, 2007**, implement the release investigation. Notify the Water Board within one working day of implementing the investigation.
- 5.3. **By December 24, 2007**, abate any and all releases from the facility.
- 5.4. **By December 27, 2007**, submit a technical report to the Water Board describing the release investigation conducted at the Facility.

6. Groundwater Monitoring and Reporting

Groundwater monitoring and reporting required in this Order supersedes that required in CAO No. 6-98-78A1.

- 6.1. **Beginning December 30, 2007 and every three months thereafter**, conduct groundwater sampling at all on-site and off-site monitoring and extraction well locations associated with the Facility: MW-1 to 13, EW-1 to 5. Also collect water samples from all drinking water wells within 1,000 feet of the Facility, subject to permission by the property owners: Lukins No. 3 Well, 883 Eloise Avenue, and 903 Eloise Avenue.
- 6.2. **Beginning February 20, 2008**, and every three months thereafter, submit a technical report to the Water Board describing groundwater monitoring results for the prior quarter.

7. Interim Remediation

- 7.1. **By December 31, 2007**, submit a workplan to the Water Board proposing interim remediation to contain the petroleum plume in groundwater from migration. At a minimum, this workplan must propose restarting the groundwater pump and treat system or another equally effective method for containing the petroleum plume in groundwater from migration.
- 7.2. **By January 15, 2008**, implement the interim remediation workplan, as accepted by Water Board staff, for containing plume migration in groundwater. Notify the Water Board within one working day of implementing this action.
- 7.3. **By February 28, 2008**, submit a technical report to the Water Board that describes interim remediation conducted at the site in accordance with the workplan accepted by Board staff. List the start date and time and initial volume or rate of the remediation method.

8. Contaminant Investigation

- 8.1. **By February 15, 2008**, submit a workplan to the Water Board that is designed to determine the lateral and vertical extent of petroleum hydrocarbons in soil and groundwater due to the release at the Facility.
- 8.2. **By March 15, 2008**, implement the site investigation workplan, as accepted by Water Board staff, for determining the extent of contamination in soil and groundwater. Notify the Water Board within one working day of implementing the investigation.
- 8.3. **By May 5, 2008**, submit a technical report to the Water Board that describes the soil and groundwater investigation conducted at the site in accordance with the workplan accepted by Board staff.

13. On January 30, 2008, the Water Board Executive Officer issued a Notice of Violation to the Dischargers for violation of CAO No. R6T-2007-0029 (Attachment C). The Notice states that the Dischargers have violated eight directives and have complied with only one directive in the CAO. The Notice informed the Dischargers that continued violation of the CAO would result in enforcement actions against them.
14. On June 9, 2008, the Water Board received the First Quarter 2008 Groundwater Monitoring Report. The Report states that groundwater sampling was conducted on March 5, 2008 at seven of the thirteen monitoring locations listed in CAO No. R6T-2007-0029. Six locations could not be sampled due to snowpiles. The Report states that no detectable levels of petroleum hydrocarbons were found in six monitoring well locations and the domestic well at 883 Eloise Avenue. The Report concludes there was no longer evidence of the prior unauthorized release at the site. No monitoring report was received for fourth quarter 2007.
15. As of November 10, 2008, the Dischargers have violated 13 of 16 CAO directives, as discussed in further detail below:

Directive No. 4.1. – Dischargers did not provide alternate supply of clean water to the occupants at 883 Eloise Avenue. The period of non-compliance ended on June 9, 2008, **173 days** past the deadline of December 19, 2007, when the Water Board received the First Quarter 2008 monitoring report that contained monitoring well results showing non-detect levels of hydrocarbons at all sampling locations. Since the report indicated that groundwater was no longer affected by the discharge from the Facility, an alternate supply of clean water was no longer required. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

Directive No. 4.2 – Dischargers did not submit a technical report regarding the alternate supply of clean water. The period of non-compliance ended on June 9,

2008, **164 days** past the deadline of December 28, 2007, when the Water Board received the First Quarter 2008 monitoring report that contained monitoring well results showing non-detect levels of hydrocarbons at all sampling locations. Since the report indicated that groundwater was no longer affected by the discharge from the Facility, an alternate supply of clean water was no longer required and there was no longer a need for the report. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.1. – Dischargers failed to submit a letter proposing to investigate the release until August 15, 2008, **240 days** past the deadline of December 19, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.2. – Dischargers failed to implement the release investigation, as required, until August 26, 2008, **249 days** past the deadline of December 21, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No 5.3. – Dischargers failed to abate any and all releases from the Facility. The period of non-compliance ended on August 26, 2008, **246 days** past the deadline of December 24, 2007, when the Enhanced Leak Detection test was completed that showed the system was no longer leaking. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

Directive No. 5.4. – Dischargers failed to submit a technical report to the Water Board describing the release investigation conducted at the Facility until September 11, 2008, **259 days** past the deadline of December 24, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.1. – Dischargers failed to implement groundwater monitoring at the site until March 5, 2008, **66 days** past the deadline of December 30, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.2. – Dischargers failed to submit the Fourth Quarter 2007 groundwater monitoring report required pursuant to Directive 6.2. The period of non-compliance ended on May 20, 2008, **89 days** past the deadline of February 20, 2008, when the next quarterly monitoring report was due. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.2. – Dischargers failed to submit the First Quarter 2008 monitoring report required pursuant to Directive 6.2 until June 9, 2008, **20 days** past the deadline of May 20, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 7.2. – Dischargers failed to implement the interim remediation workplan, as required pursuant to Directive 7.2. The period of non-compliance ended on June 9, 2008, **146 days** past the deadline of January 15, 2008, when the Water Board received the First Quarter 2008 monitoring report that contained monitoring well results showing non-detect levels of hydrocarbons at all sampling locations. Since the report indicated that groundwater was no longer affected by the discharge from the Facility, remediation was no longer required. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

Directive No. 7.3. – Dischargers failed to submit a technical report describing interim remediation. The period of non-compliance ended on June 9, 2008, **102 days** past the deadline of February 28, 2008, when the Water Board received the First Quarter 2008 monitoring report that contained monitoring well results showing non-detect levels of hydrocarbons at all sampling locations. Since the report indicated that groundwater was no longer affected by the discharge from the Facility, remediation and a report describing the remediation was no longer required. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.1. – Dischargers failed to submit a workplan describing means to investigate the extent of petroleum contamination in soil and groundwater at the Facility, until August 28, 2008, **195 days** past the deadline of February 15, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.2. – Dischargers failed to implement a site investigation, as required pursuant to Directive 8.2, until October 6, 2008, **205 days** past the deadline of March 15, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.3. – Dischargers failed to submit a technical report describing results of the site investigation until November 10, 2008, **189 days** past the deadline of May 5, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

16. With the submittal of the site investigation technical report on November 10, 2008, the Dischargers were in compliance with all directives in CAO R6T-2007-0029.

PROPOSED CIVIL LIABILITY

17. Civil Liability – California Water Code

Any person who violates any cleanup and abatement order shall be liable civilly, and remedies may be proposed. The Water Board may impose civil liability in an

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amount up to that specified by the Water Code. Section 13350, subdivision (e)(1) states, in part:

“(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge and a cleanup and abatement order is issued...the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.”

Any person failing or refusing to furnish technical or monitoring program reports as required of section 13267, is guilty of a misdemeanor and may be liable civilly in accordance with section 13268. Section 13268, subdivision (b)(1) states:

“(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”

a. The Dischargers violated two requirements under directive No. 4 in CAO No. R6T-2007-0029.

i. The maximum amount of civil liability for violation of directive No. 4.1 of the CAO under Water Code section 13350, subdivision (e)(1) is \$865,000 for 173 days of violations. This maximum administrative civil liability is based upon:

(173 days of violations of directive No. 4.1) x (\$5,000/day of violation) =
\$865,000

ii. The maximum amount of civil liability for violation of directive No. 4.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$164,000 for 164 days of violations. This maximum administrative liability is based upon:

(164 days of violations of directive No. 4.2) x (\$1,000/day of violation) =
\$164,000

b. The Dischargers violated four requirements under directive No. 5 in CAO No. R6T-2007-0029.

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- i. The maximum amount of civil liability for violation of directive No. 5.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$240,000 for 240 days of violations. This maximum administrative liability is based upon:

$$(240 \text{ days of violations of directive No. 5.1}) \times (\$1,000/\text{day of violation}) = \mathbf{\$240,000}$$

- ii. The maximum amount of civil liability for violation of directive No. 5.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$249,000 for 249 days of violations. This maximum administrative civil liability is based upon:

$$(249 \text{ days of violations of directive No. 5.2}) \times (\$1,000/\text{day of violation}) = \mathbf{\$249,000}$$

- iii. The maximum amount of civil liability for violation of directive No. 5.3 of the CAO under Water Code section 13350, subdivision (e)(1) is \$1,230,000 for 246 days of violations. This maximum administrative civil liability is based upon:

$$(246 \text{ days of violations of directive No. 5.3}) \times (\$5,000/\text{day of violation}) = \mathbf{\$1,230,000}$$

- iv. The maximum amount of civil liability for violation of directive No. 5.4 of the CAO under Water Code section 13268, subdivision (b)(1) is \$259,000 for 259 days of violations. This maximum administrative liability is based upon:

$$(259 \text{ days of violations of directive No. 5.4}) \times (\$1,000/\text{day of violation}) = \mathbf{\$259,000}$$

- c. The Dischargers violated two requirements on three occasions under directive No. 6 in CAO No. R6T-2007-0029.

- i. The maximum amount of civil liability for violation of directive No. 6.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$66,000 for 66 days of violations. This maximum administrative civil liability is based upon:

$$(66 \text{ days of violations of directive No. 6.1}) \times (\$1,000/\text{day of violation}) = \mathbf{\$66,000}$$

- ii. The maximum amount of civil liability for the first violation of directive No. 6.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$89,000 for 89 days of violations. This maximum administrative liability is

based upon:

(89 days of violations of directive No. 6.2) x (\$1,000/day of violation) =
\$89,000

- iii. The maximum amount of civil liability for the second violation of directive No. 6.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$20,000 for 20 days of violations. This maximum administrative liability is based upon:

(20 days of violations of directive No. 6.2) x (\$1,000/day of violation) =
\$20,000

- d. The Dischargers violated two requirements under directive No. 7 in CAO No. R6T-2007-0029.

- i. The maximum amount of civil liability for violations of directive No. 7.2 of the CAO under Water Code section 13350, subdivision (e)(1) is \$730,000 for 146 days of violations. This maximum administrative civil liability is based upon:

(146 days of violations of directive No. 7.2) x (\$5,000/day of violation) =
\$730,000

- ii. The maximum amount of civil liability for violations of directive No. 7.3 of the CAO under Water Code section 13268, subdivision (b)(1) is \$102,000 for 102 days of violations. This maximum administrative liability is based upon:

(102 days of violations of directive No. 7.3) x (\$1,000/day of violation) =
\$102,000

- e. The Dischargers violated three requirements under directive No. 8 in CAO No. R6T-2007-0029.

- i. The maximum amount of civil liability for violations of directive No. 8.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$195,000 for 195 days of violations. This maximum administrative liability is based upon:

(195 days of violations of directive No. 8.1) x (\$1,000/day of violation) =
\$195,000

- ii. The maximum amount of civil liability for violations of directive No. 8.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$205,000

for 205 days of violations. This maximum administrative civil liability is based upon:

(205 days of violations of directive No. 8.2) x (\$1,000/day of violation) =
\$205,000

- iii. The maximum amount of civil liability for violations of directive No. 8.3 of the CAO under Water Code section 13268, subdivision (b)(1) is \$189,000 for 189 days of violations. This maximum administrative liability is based upon:

(189 days of violations of directive No. 8.3) x (\$1,000/day of violation) =
\$189,000

The cumulative maximum administrative civil liability for violations of Order Nos. 4 – 8 of CAO No. R6T-2007-0029 is **\$4,603,000**.

18. Factors Affecting the Amount of Civil Liability

Water Code section 13327 requires the Water Board to consider enumerated factors when it determines the amount of civil liability assessed pursuant to Water Code sections 13268 and 13350. The Assistant Executive Officer of the Water Board considered those factors in recommending the amount of the administrative civil liability:

- a. The nature, circumstances, extent, and gravity of the violations;

Violating a CAO, classified as a "formal" enforcement action by the Water Quality Enforcement Policy, is a serious offense. Violating directive No. 4 of CAO No. R6T-2007-0029 prevented the occupants of 883 Eloise Avenue from using and enjoying water from their domestic well. Violating directive No. 5 of the CAO prevented Water Board staff from finding out the source or cause of the petroleum release adversely affecting water quality, as referenced in Allegation No. 10. The Dischargers' violation of directive No. 6 prevented knowledge of the fate and migration of petroleum hydrocarbons detected beneath the Facility for nine months following submittal of the September 27, 2007 groundwater report. Violation of directive No. 7 prevented abatement and containment of hydrocarbons in groundwater beneath the Facility and sooner enjoyment of beneficial uses located in the downgradient flow direction. Finally, the Dischargers' violation of directive No. 8 prevents Water Board staff from knowing if petroleum products that could affect water quality in the future remain in the vadose zone at the Facility. As a result of failing to comply with these five directives, staff has needed to conduct verification well sampling at the Facility and at 883 Eloise Avenue, which diverts resources away from other Water Board work.

b. Whether discharge is susceptible to cleanup or abatement;

The discharge of petroleum products to groundwater is susceptible to abatement. For a past release at the Facility, the operator arranged for a carbon canister to be plumbed to the domestic well at 883 Eloise Avenue to remove petroleum hydrocarbons from the well water. A pump and treat system exists at the Facility from prior contamination and could have been re-started to contain plume migration from threatening other beneficial uses besides the affected domestic well at 883 Eloise Avenue. In addition, the Dischargers proposed implementing interim remediation by use of portable high vacuum dual-phase extraction equipment. This proposal was conditionally accepted by Water Board staff on January 8, 2008. As of June 9, 2008, when the First Quarter 2008 Monitoring Report was received, the Dischargers had not taken corrective action to abate or contain petroleum hydrocarbons from migration in groundwater.

c. The degree of toxicity of the discharge;

Groundwater at the site contained gasoline-range petroleum hydrocarbons and known toxic volatile organic carbons, including benzene, toluene, ethylbenzene, xylenes, and trimethylbenzenes. Concentrations of these petroleum constituents in groundwater exceed drinking water standards and public health goals. Levels of benzene in groundwater at the Facility and the domestic well at 883 Eloise Avenue exceed the one-in-a-million risk level for cancer. Since no corrective action was taken by the Dischargers, the fate and migration of the petroleum constituents in groundwater is unknown.

d. Ability to pay;

In addition to the Facility, Kang Property, Incorporated currently owns property zoned for use as service stations at:

- 1140 Emerald Bay Road, South Lake Tahoe, CA (APN 023-181-191 & APN 032-141-3510)
- 7920 Brentwood Boulevard, Brentwood, CA (APN 016-150-025-1)
- 425 Moraga Road, Moraga, CA (APN 256-070-001-1)
- 4480 Chiles Road, Davis, CA (APN 069-070-10-1)
- 4949 County Road 89, Yolo County, CA (APN 052-020-04-1)
- 4300 Watt Avenue, Sacramento, CA (APN 240-0232-058-0)

Kang Property, Incorporated also owns the following property:

- 1122 Emerald Bay Road, South Lake Tahoe, CA (APN 032-141-041 [vacant lot])

Given the assets described above, it appears the Dischargers are able to pay the liability.

- e. The effect on the Dischargers' ability to continue its business; .

Water Board staff is not aware of any reason that the Dischargers' ability to continue their business would be affected by the proposed liability. The Dischargers own and operate multiple gas stations in California.

- f. Any voluntary cleanup efforts undertaken by the violator;

To date, the Dischargers have only implemented corrective actions at the site when ordered to by the Water Board in CAO No. R6T-2007-0029 and Water Code section 13267 orders.

- g. Prior history of violations;

Sarbjit S. Kang has a history of violations in complying with directives for clean up at the Facility and another facility. This history is summarized in the table below. In 1999, the Lahontan Water Board issued Administrative Civil Liability Order No. 6-99-46 to Mr. Kang and other parties in the amount of \$95,000 for non-compliance with Amended CAO 6-98-78A1. The Water Board stayed \$63,750 of the total amount after Mr. Kang implemented remediation tasks at the site. Of the remaining liability still owed, \$1,993 was collected in 2008 when the Attorney General's Office initiated a till tax at one of Mr. Kang's other gas stations. Liability in the amount of \$29,257 was never paid and is still owed. Also in 1999, the Lahontan Water Board issued Administrative Civil Liability Order No. 6-99-47 to Mr. Kang and other parties in the amount of \$59,000 for non-compliance with other directives in Amended CAO 6-98-78A1. The Water Board stayed \$33,150 of the total amount following Mr. Kang's completion of certain cleanup actions. Liability in the amount of \$25,850 was never paid and is still owed. Civil liabilities in both Orders were assessed at the rate of \$1,000 per day of violation. Furthermore, in 1999, the Lahontan Water Board issued Administrative Civil Liability Order No. 6-99-50 to Mr. Kang and another party in the amount of \$112,500 for non-compliance with a cleanup and abatement order at another gas station in which Mr. Kang was the operator. The full civil liability was paid in 2008 when the Attorney General's Office implemented a till tax upon one of Mr. Kang's other gas stations.

	Site	Amount	Status
ACL 6-99-46	Swiss Mart	\$95,000: \$63,750 stayed \$31,250 owed	\$1,993 paid in 2008 from AG office till tax; \$29,257 unpaid
ACL 6-99-47	Swiss Mart	\$59,000: \$33,150 stayed \$25,850 owed	\$25,850 unpaid
ACL 6-99-50	Meyers Beacon	\$112,500	Paid in 2008 from AG office till tax action

h. Degree of culpability;

Sarbjit S. Kang and Kang Property, Inc. are identified as the "Dischargers" by CAO No. R6T-2007-0029 and, thus, are ultimately responsible for compliance with CAO No. R6T-2007-0029, and applicable state laws and regulations. Despite issuance of a Notice of Violation on January 30, 2008 and repeated contacts between Water Board staff and the Dischargers' consultant, during which violations were discussed, the Dischargers failed to comply with applicable requirements.

i. Economic savings resulting from the violation;

Water Board staff has calculated the Discharger's cost savings associated with violating the CAO. The nature of such cost savings would be "avoided costs" and "delayed costs." Avoided costs include those associated with quarterly monitoring and reporting, conducting interim remediation, and providing replacement drinking water for the residence at 883 Eloise Avenue. Estimated avoided costs are \$37,000. Delayed cost savings would be the potential interest earned on the delayed costs, which given the short violation period addressed by this Complaint would be small and substantially less than the proposed liability.

j. Other matters as justice may require.

Staff Costs

Staff from the State and Regional Boards have spent time responding to the incident and preparing the Administrative Civil Liability Complaint. Estimated staff costs for investigation and complaint preparation are **\$37,059**.

19. Amount of Civil Liability

The Assistant Executive Officer of the Water Board considered the above factors and proposes that administrative civil liability be imposed by the Water Board at a rate of \$500 per day for a total of 565 days of violation of Water Code section 13304

and at a rate of \$100 per day for a total of 1,778 days of violation of Water Code section 13267 for a total amount of **\$460,300**.

WAIVER OF HEARING

You may waive the right to a hearing. Waiver of your right to a hearing constitutes acceptance of the assessment of civil liability in the amount set forth within the Complaint. If you wish to waive your right to a hearing, an authorized person must sign the Waiver of Hearing form prepared for this Complaint, and submit it to the address below.

Lahontan Regional Water Quality Control Board
Attn: Robert S. Dodds, Assistant Executive Officer
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

Please note that any settlement will not be effective until reasonable opportunity for public participation has been provided pursuant to title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) and the State Water Board's 2002 Enforcement Policy. The Water Board will notify interested persons of any proposed settlement for and will solicit comments on the settlement for a period of thirty (30) days. Any settlement will not become final until after the public comment period.

Payment of the liability will be due within 30 days of the settlement becoming final. Payment must be made with a cashier's check or money order made payable as follows:

\$282,500 to the **State Water Resources Control Board, Waste Discharge Permit Fund.**

\$177,800 to the **State Water Resources Control Board, Cleanup and Abatement Account.**

Send your remittance to:

Lahontan Regional Water Quality Control Board
Attn: Robert S. Dodds, Assistant Executive Officer
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

Ordered by:



Robert S. Dodds
Assistant Executive Officer

Dated:

April 15, 2009

07-0022

- Attachments:
- A. Site Vicinity Map
 - B. Cleanup and Abatement Order No. R6T-2007-0029
 - C. January 30, 2008 Notice of Violation

LSD/clhT: Swiss Mart CAO Violations ACL-Complaint 4-09

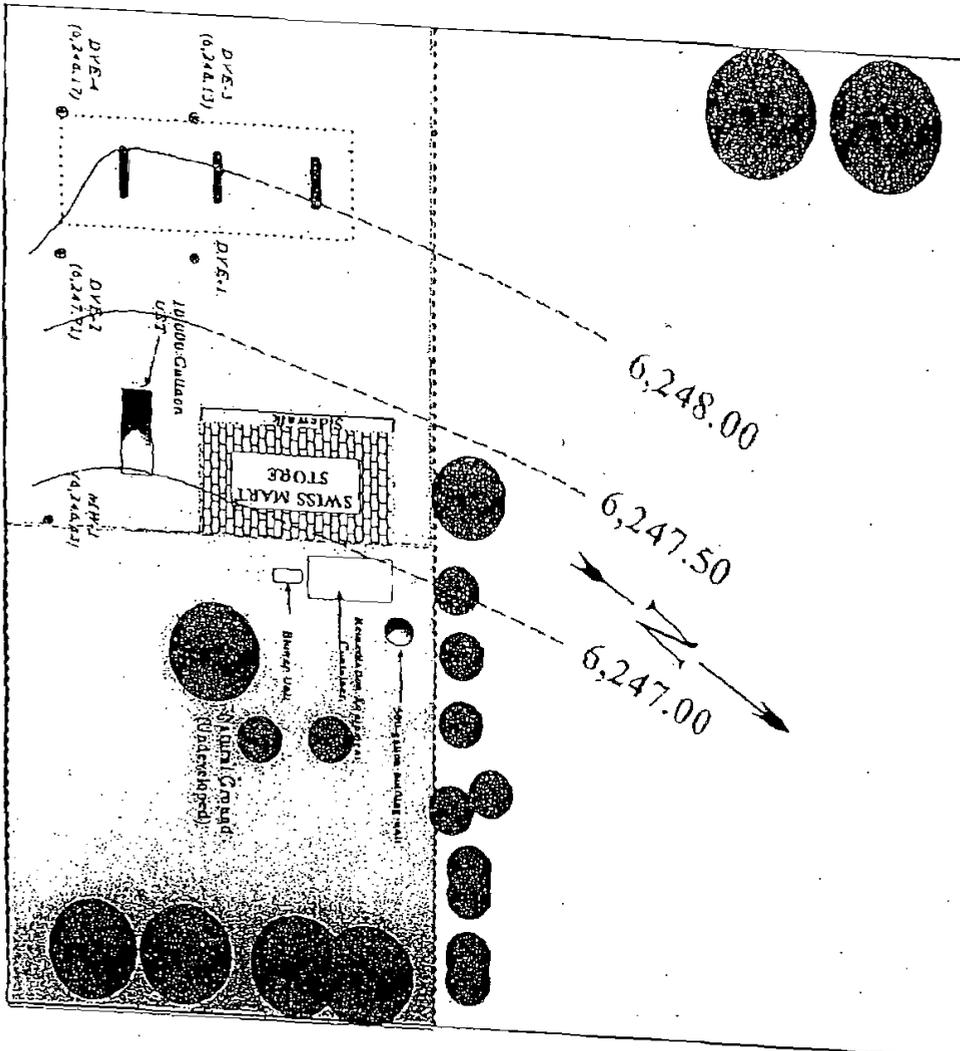
07-0029

ATTACHMENT A

07-0024

EMERALD BAY DRIVE

FIFTH STREET



JAMES

AVENUE

Approximate Direction of
Groundwater Flow 07/05/08

ARDOR ASSOCIATES, INC.
Environmental Geological Services

ATTACHMENT B

07-0026

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

CLEANUP AND ABATEMENT ORDER NO. R6T-2007-0029

REQUIRING SARBJIT SINGH KANG
AND KANG PROPERTY, INCORPORATED
TO CLEAN UP AND ABATE THE EFFECTS OF
THE DISCHARGE OF PETROLEUM PRODUCTS
TO THE GROUNDWATERS OF THE LAKE TAHOE HYDROLOGIC UNIT
AT THE SWISS MART GAS STATION LOCATED AT
913 EMERALD BAY ROAD IN SOUTH LAKE TAHOE

El Dorado County

The California Regional Water Quality Control Board, Lahontan Region (Water Board), finds:

1. This is a new Cleanup and Abatement Order issued to Sarbjit Singh Kang and Kang Properties, Incorporated, for new discharges of petroleum products at the Swiss Mart Gas Station having a prior history of contamination and enforcement actions.
2. The Swiss Mart Gas Station (hereinafter referred to as the Facility) is located at 913 Emerald Bay Road, South Lake Tahoe, El Dorado County (Assessor's Parcel Number 023-181-191).
2. On November 10, 1998, the Water Board issued Cleanup and Abatement Order No. 6-98-78 (CAO). The Order required Mary Ann Ferguson, Sarbjit Singh Kang, Azad Amiri and Amiri Oil Company to clean up and abate the effects of petroleum products discharged from underground storage tanks and associated piping to the groundwaters of the Lake Tahoe Hydrologic Unit at the Facility. Petroleum products are any oil-based products which can be obtained by distillation and are normally used outside the refining industry. The responsible parties complied with Orders listed in CAO 6-98-78.
3. On March 23, 1999, the Water Board issued Amended CAO 6-98-78A1 requiring the same responsible parties listed in Finding No. 2 to conduct further actions to clean up and abate the effects of petroleum hydrocarbons from the discharge identified in 1998. Specifically, the Amended CAO required implementation of remedial actions to abate MTBE (methyl tertiary butyl ether) contamination adversely affecting municipal and domestic drinking water wells and threatening other beneficial uses. The Amended CAO directed quarterly monitoring and reporting until remediation has achieved background levels of groundwater quality.

07-0027

4. In 2000, the responsible parties listed in Finding No. 2 began full-scale remediation in the form of dual vapor extraction for soil and groundwater contamination. By 2006, groundwater monitoring reports reflected that petroleum constituents had decreased in concentrations by about 90 percent of those concentrations detected in 1999 and the groundwater plume had reduced in size to being just beneath the Facility.
5. In December 2004, the responsible parties stopped operating the dual vapor extraction system. In July 2005, the responsible parties replaced the dual vapor extraction with an ozone sparge system. The replacement, made with Board staff's acceptance, was done to better enhance cleanup of residual hydrocarbons in the vadose zone beneath the Facility. The ozone system was down for repairs for six months between March and September 2006. It was re-started in September 2006; however, the responsible parties have failed to provide reports on periods of operation and non-operation.
6. Between 1999 and 2007, Mary Ann Ferguson, Sarbjit Singh Kang, Azad Amiri and Amiri Oil Company had a sporadic record of compliance with Amended CAO 6-98-78A1. Six Notices of Violation were issued to the responsible parties for failing to continuously operate the remediation system and/or conduct quarterly groundwater monitoring and reporting. The last groundwater monitoring report received by the Water Board was for the third quarter of 2006. On April 6, 2007, the most recent Notice of Violation was issued to the responsible parties for failure to submit the fourth quarter 2006 and first quarter 2007 monitoring reports.
7. Water Board staff collected water samples from residences at 883 and 903 Eloise Avenue on May 24, 2007. The laboratory report showed that the following petroleum constituents were detected in the water sample collected at 883 Eloise Avenue:

Benzene	3.2 micrograms per liter (µg/L)
Toluene	3.2 µg/L
1,2,4-Trimethylbenzene	0.74 µg/L
1,3,5-Trimethylbenzene	0.60 µg/L

The concentration of benzene detected in the domestic well exceeds the state primary drinking water standard of 1 µg/L. The property owner of the well was informed of these results in a letter dated June 28, 2007. No hydrocarbons were detected in the water sample taken from 903 Eloise Avenue.

8. On August 13, 2007, the Water Board issued an order to Mr. Sarbjit Singh Kang to investigate a potential discharge of gasoline to groundwater at the Facility. The order stated that hydrocarbons detected in the domestic well referenced in Finding No. 7 were consistent with a petroleum release occurring after MTBE was phased out of gasoline in California in 2003. The order directed Mr. Kang to collect groundwater samples from all on-site monitoring wells. A technical report containing laboratory results of the water samples was due within 21 days of the

date of the order, or by September 3, 2007.

9. On September 27, 2007, the Water Board received a document prepared by CalClean, on behalf of Mr. Kang, containing well sampling results. The document shows that water samples collected from two of the five monitoring wells at the Facility contain high concentrations of petroleum hydrocarbons. Besides benzene, the hydrocarbons included trimethylbenzene, toluene, ethylbenzene, xylenes, and total petroleum hydrocarbons as gasoline. The highest levels of hydrocarbons were detected in a water sample from monitoring well MW-1, taken at 17 feet below ground surface:

Benzene	1,070 µg/L
Toluene	12,600 µg/L
1,2,4-Trimethylbenzene	3,030 µg/L
1,3,5-Trimethylbenzene	751 µg/L
Ethylbenzene	2990 µg/L
Xylenes	15,400 µg/L
Total Petroleum hydrocarbons-gasoline	32,200 µg/L

The document was incomplete in that it did not contain items listed in the Water Board's August 13, 2007 order, including a description of sampling techniques, a table of laboratory analytical results for all wells sampled, and the signature or stamp of a California licensed profession engineer or geologist.

10. Based on water sample results listed in Findings No. 7 and 9, a new unauthorized release of petroleum hydrocarbons is indicated at the Facility. The indication of a new release is supported by the increase in concentration of volatile organic compounds by two or more orders of magnitude compared to water samples from 2006. The lack of MTBE in the water samples suggests that the release occurred after the 2003 phase-out of MTBE in gasoline. The presence of trimethylbenzene, a highly volatile hydrocarbon that attenuates quickly in the environment, implies the release was relatively recent. A review of past monitoring reports to 2001 shows that trimethylbenzene was not detected in monitoring wells at the Facility until starting in March 2006.
11. According to El Dorado County property records, Kang Property, Incorporated became the owner of the Facility on August 6, 2003. The agent for service of process is Mr. Sarbjit S. Kang. As the owner of the facility, Kang Property, Incorporated either knows or should have known of the discharge of waste and has the ability to control it. Consequently, Kang Property, Inc. is properly named as a responsible party subject to this order.
12. According to the El Dorado County Department of Environmental Management, Mr. Sarbjit Singh Kang is listed as the operator of the underground storage tanks on the permit issued for the Facility. As the current operator of the underground storage tanks on the permit issued for the Facility, Mr. Sarbjit

Singh Kang either knows or should have known of the discharge of waste and has the ability to control it. Consequently, Mr. Sarbjit Singh Kang is properly named as a responsible party subject to this order.

13. The beneficial uses of groundwater in the area as designated in the 1995 Water Quality Control Plan for the Lahontan Region ("Basin Plan") for the Lahontan Region include municipal and domestic supply, agriculture supply, fresh water replenishment, and industrial service supply.
14. Active and inactive wells near the Facility include: the Lukins Well No. 3; an inactive municipal well located on James Avenue, about 300 feet to the east; active domestic drinking water wells at 903 and 883 Eloise Avenue, located approximately 500 and 600 feet, respectively, to the north; and a currently active Lukins municipal well located on Hazel Drive, less than 2,000 feet to the north of the Facility.
15. The Basin Plan establishes water quality objectives for the protection of beneficial uses. Those objectives include the following Maximum Contaminant Levels (MCLs) and Action Levels (ALs) that have been established by the California Department of Public Health (formerly the California Department of Health Services) as safe levels to protect public drinking water supplies:

Benzene	1 µg/L (MCL)
Toluene	150 µg/L (MCL)
Ethylbenzene	300 µg/L (MCL)
Xylenes	1,750 µg/L (MCL)

The Basin Plan contains the following narrative taste and odor objectives for the Lake Tahoe Hydrologic Unit:

Groundwaters shall not contain taste or odor-producing substances in concentrations that cause nuisance or that adversely affect beneficial uses. For ground water designated as municipal and domestic supply, at a minimum, concentrations shall not exceed adopted secondary maximum contaminant levels specified in... Title 22 of the California Code of Regulations which is incorporated by reference into this plan.

The following Taste and Odor Thresholds (TOT) are adopted as secondary water quality goals by the United States Environmental Protection Agency or the California Department of Public Health for drinking water. Petroleum concentrations above these levels would violate the taste and odor objective in the Basin Plan:

Toluene	42 µg/L (TOT)
1,3,5-Trimethylbenzene	15 µg/L (TOT)
Ethylbenzene	29 µg/L (TOT)
Xylenes	17 µg/L (TOT)
Total Petroleum Hydrocarbons (Gasoline)	50 µg/L (TOT)

State Action Levels are used to interpret narrative water quality objectives that prohibit toxicity to humans that beneficially use the water resource. The following Action Level (AL) is adopted as secondary water quality goals by the United States Environmental Protection Agency or the California Department of Public Health for drinking water. Petroleum concentrations above this level will violate the narrative objective in the Basin Plan:

1,2,4-Trimethylbenzene 330 µg/L (AL)

16. The concentration of 3.2 µg/L benzene detected in a water sample collected from the domestic well at 883 Eloise Avenue (Finding No. 7), exceeds the water quality objective for groundwater specified in the Basin Plan, as listed in Finding No. 15. In addition, concentrations of benzene, toluene, trimethylbenzene, ethylbenzene, xylenes, and total petroleum hydrocarbons as gasoline detected in groundwater samples taken from monitoring wells on the Facility and referenced in Finding No. 9 exceed water quality objectives for groundwater specified in the Basin Plan. These concentrations adversely affect the groundwater for its beneficial uses, as listed in Finding No. 13.
17. The levels of waste in groundwater at the Facility constitute a pollution as defined in Water Code section 13050, subdivision (I); Pollution means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (a) the waters for beneficial uses; or (b) facilities which serve these beneficial uses.]
18. The discharge of petroleum products to the groundwaters of the Lake Tahoe Hydrologic Unit as described in Finding No. 9 violates a prohibition contained in the Basin Plan. Specifically, the discharge violates and threatens to violate the following discharge prohibition:

"The discharge of waste... as defined in Section 13050(d) of the California Water Code which would violate the water quality objectives of this plan, or otherwise adversely affect the beneficial uses of water designated by this plan, is prohibited."
19. This enforcement action is being taken by this regulatory agency to enforce the provisions of the California Water Code and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et. seq.) in accordance with California Code of Regulations, title 14, section 15321.

ORDERS

THEREFORE, IT IS HEREBY ORDERED that pursuant to Water Code sections 13267 and 13304, Sarbjit Singh Kang and Kang Property, Incorporated (referred to hereafter as the "Dischargers") shall clean up and abate the discharge and threatened discharge of petroleum hydrocarbons to waters of the State, and shall comply with the provisions of this order:

1. Orders listed in Cleanup and Abatement Order No. 6-98-78A1 remain in effect and are not superseded by this enforcement action, with the exception of groundwater monitoring and reporting that follows in Order No. 6.
2. The Dischargers shall conduct the investigation and cleanup tasks listed below by or under the direction of a California registered geologist or civil engineer experienced in the area of groundwater pollution cleanup. All technical documents submitted to the Water Board shall contain the signature and stamp of the registered individual overseeing corrective actions.
3. The Dischargers shall not cause or permit any additional waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State.
4. Provide Alternate Water Supply for Affected Domestic Wells
 - 4.1. **By December 19, 2007**, the Dischargers must provide an alternate supply of clean water to the occupants at 883 Eloise Avenue in South Lake Tahoe. The Dischargers must notify the Water Board within one working day of providing the alternate water supply and state how it was achieved.
 - 4.2. **By December 28, 2007**, the Dischargers must submit a technical report to the Water Board describing how it intends to comply with section 4.1 of this Order to provide an alternate supply of clean water to the occupants at 883 Eloise Avenue in South Lake Tahoe. The proposal must describe how this requirement will be achieved and how it will be maintained until this requirement is rescinded by the Water Board.
 - 4.3. **Within 2 days** of receiving laboratory results for any sampling event that indicates a domestic well contains a petroleum-related waste or wastes at concentrations exceeding state standards, the Dischargers must provide alternate supply of clean water to the property owner of the affected domestic well. The Dischargers must notify the Water Board within one working day of providing the alternate water supply and state how it was achieved.

5. Release Investigation.

- 5.1. **By December 19, 2007**, submit a letter to the Water Board describing means to investigate the source or cause of petroleum release at the Facility. Enclose a map showing all potential source areas, property boundaries, and building footprints at the Facility. State the licensed professional who will be conducting the work.
- 5.2. **By December 21, 2007**, implement the release investigation. Notify the Water Board within one working day of implementing the investigation.
- 5.3. **By December 24, 2007**, abate any and all releases from the facility.
- 5.4. **By December 27, 2007**, submit a technical report to the Water Board describing the release investigation conducted at the Facility. At a minimum, the report must:
 - 5.4.1. Provide a narrative description of work performed and information obtained.
 - 5.4.2. Tabulate all analytical data obtained.
 - 5.4.3. Include site maps showing the location of all sampling points.
 - 5.4.4. Provide an interpretation of the results and a conclusion about the source or cause of the petroleum release.
 - 5.4.5. Provide a discussion about the means and method used to stop the release including, but not limited to;
 - 5.4.5.1. Information about what was fixed, how it was fixed, and who fixed it (provide contractor license number).
 - 5.4.5.2. A figure of the site and identification of the item(s) repaired.
 - 5.4.5.3. Information that verifies all repairs were completed with El Dorado County concurrence.

6. **Groundwater Monitoring and Reporting**

Groundwater monitoring and reporting required in this Order supercedes that required in Cleanup and Abatement Order No. 6-98-78A1.

- 6.1. **Beginning December 30, 2007 and every three months thereafter**, conduct groundwater sampling at all on-site and off-site monitoring and extraction well locations associated with the Facility: MW-1 to 13, EW-1 to 5. Also collect water samples from all drinking water wells within 1,000 feet of the Facility, subject to permission by the property owners: Lukins No. 3 Well, 883 Eloise Avenue, and 903 Eloise Avenue.
- 6.2. **Beginning February 20, 2008**, and every three months thereafter, submit a technical report to the Water Board describing groundwater monitoring results for the prior quarter. The report must contain the following information:

- 6.2.1. Either a table of contents or an attachment list.
- 6.2.2. Laboratory analytical results of water samples for the following constituents: TPH-gasoline using Method 8015 or its equivalent; all volatile and semi-volatile organic compounds using Method 8260 or its equivalent. Detection limits shall be no greater than 0.5 µg/L for volatile organic compounds and 50 µg/L for TPH as gasoline.
- 6.2.3. A narrative description and analysis of all information provided.
- 6.2.4. Potentiometric surface map for groundwater elevations in all monitoring wells. Show the ground water flow direction as an arrow on the map.
- 6.2.5. Calculate horizontal hydraulic gradient.
- 6.2.6. Maps showing the location of all monitoring wells and boundary lines of the dissolved petroleum plume out to 0.5 µg/L for benzene and 50 µg/L TPH for gasoline.
- 6.2.7. Tabulate water analytical results and groundwater elevations for each well over time that includes all data collected since 2002.
- 6.2.8. Description of groundwater elevation trend from previous monitoring event.
- 6.2.9. Discussion of contaminant concentration trend in monitoring wells from previous monitoring event.
- 6.2.10. Discussion of whether the dissolved petroleum plume is migrating, stable or reducing in size and concentration. Describe the basis for all conclusions.
- 6.2.11. Submittal of laboratory analytical data, ground water information, and monitoring well locations in Electronic Data Format to the State Water Resources Control Board Geotracker Database.
- 6.2.12. Identification of corrective actions planned during the next quarterly reporting period.
- 6.2.13. All figures shall be in color.

7. Interim Remediation

- 7.1. **By December 31, 2007**, submit a workplan to the Water Board proposing interim remediation to contain the petroleum plume in groundwater from migration. At a minimum, this workplan must propose restarting the groundwater pump and treat system or another equally effective method for containing the petroleum plume in groundwater from migration.
- 7.2. **By January 15, 2008**, implement the interim remediation workplan, as accepted by Water Board staff, for containing plume migration in groundwater. Notify the Water Board within one working day of implementing this action.
- 7.3. **By February 28, 2008**, submit a technical report to the Water Board that describes interim remediation conducted at the site in accordance with the workplan accepted by Board staff. List the start date and time and initial volume or rate of the remediation method. Provide laboratory sheets for all analytical data of samples collected. All figures must be drawn to scale.

8 Contaminant Investigation

- 8.1. **By February 15, 2008**, submit a workplan to the Water Board that is designed to determine the lateral and vertical extent of petroleum hydrocarbons in soil and groundwater due to the release at the Facility. The workplan must propose collecting multi-depth samples or propose another suitable method to define the lateral and vertical extent of contamination out to background (non-detect) concentrations. The investigation must be designed in a manner that does not promote the vertical migration of contaminants to lower portions of the aquifer. The Dischargers must propose to sample all potentially affected municipal and domestic, active and inactive wells within 2,000 feet of the Facility, subject to permission from well owner. All maps must be drawn to scale, color coded, show all potential petroleum release source areas, and show proposed sampling locations.
- 8.2. **By March 15, 2008**, implement the site investigation workplan, as accepted by Water Board staff, for determining the extent of contamination in soil and groundwater. Notify the Water Board within one working day of implementing the investigation.
- 8.3. **By May 5, 2008**, submit a technical report to the Water Board that describes the soil and groundwater investigation conducted at the site in accordance with the workplan accepted by Board staff. All figures must be drawn to scale and in color. At a minimum, the report must:
 - 8.3.1. Provide a narrative description of work performed and information obtained.
 - 8.3.2. Include boring logs, monitoring well designs (if constructed), and analytical data.
 - 8.3.3. Include site maps showing the location of all borings and sampling points.
 - 8.3.4. Include an isoconcentration map with boundary lines of benzene in soil and groundwater out to 10 µg/kg and 1 µg/L, respectively, in all directions. Also include an isoconcentration map with boundary lines of TPH-gasoline in soil and groundwater out to 100 µg/kg and 50 µg/L, respectively, in all directions. Question marks shall indicate areas where boundaries are unknown.
 - 8.3.5. Describe the geology beneath the Facility and at off-site sampling locations.

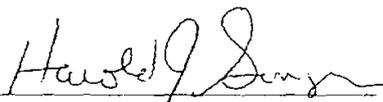
- 8.3.6. List the depth of first encountered groundwater at all points sampled. State whether perched zones were encountered and the basis for this finding. Describe whether or not the contaminants are following preferential pathways and the basis for that conclusion.
- 8.3.7. If the full extent of contamination in soil or groundwater is not defined out to background levels, provide a workplan proposing a supplemental investigation.

9. Corrective Action Plan (CAP)

By June 10, 2008, submit a CAP to the Water Board to abate impacts to soil and groundwater from discharges at the Facility. The CAP shall describe at least three cost-effective remediation technologies to restore groundwater to State of California primary or secondary Maximum Contaminant Levels for drinking water. Include the following information:

- 9.1. Summarize the extent of soil and groundwater contamination caused from releases at the Facility.
- 9.2. Provide a map showing the boundary of soil contamination out to 100 µg/kg for total petroleum hydrocarbons. Question marks shall be used to indicate unknown boundaries.
- 9.3. Provide a map showing the boundary of groundwater contamination out to 50 µg/L for total petroleum hydrocarbons. Question marks shall be used to indicate unknown boundaries.
- 9.4. Describe the geology beneath the Facility and at all off-site areas requiring remediation. Include geologic cross-sections to show the depth to the water table and the lateral and vertical extent of petroleum hydrocarbons.
- 9.5. Describe necessary equipment, materials and methods, implementation schedule, and permits required to implement each of the three technologies.
- 9.6. Estimate the cleanup time to achieve drinking water standards for each of the three technologies and the basis for the estimation.
- 9.7. State the recommended remediation technology to implement at the site for abating soil and groundwater contamination. Describe an estimate time frame for designing, permitting, constructing, and initial operation of the recommended technology.
- 9.8. All figures shall be in color.

Failure to comply with the terms or conditions of this Order will result in additional enforcement action that may include the imposition of administrative civil liability pursuant to sections 13268 and 13350 of the Water Code or referral to the Attorney General of the State of California for such legal action as he may deem appropriate.

Ordered by: 
HAROLD J. SINGER
EXECUTIVE OFFICER

Dated: Dec 14, 2007

07-0030

ATTACHMENT C

07-0037

JAN 30 2008

Sarbjit Singh Kang
Swiss Mart Gas Station
913 Emerald Bay Road
South Lake Tahoe, CA 96150

Certified Mail: 7006 2760 0003 9496 9909

Kang Property, Incorporated
Attn: Sarbjit S. Kang
61 Chilpancingo Parkway #201
Pleasant Hill, CA 94523

Certified Mail: 7006 2760 0003 9496 9763

NOTICE OF VIOLATION OF CLEANUP AND ABATEMENT ORDER NO. R6T-2007-0029, SWISS MART GAS STATION, 913 EMERALD BAY ROAD, SOUTH LAKE TAHOE, EL DORADO COUNTY

This notice of violation informs you that you are in violation of directives in Cleanup and Abatement Order (CAO) No. R6T-2007-0029 for the Swiss Mart Gas Station in South Lake Tahoe. The CAO, issued on December 14, 2007, requires the above-listed parties to conduct corrective actions and reporting for contamination from petroleum releases. To date, you have violated eight directives and have complied with only one directive in CAO No. R6T-2007-0029.

Violations

Sarbjit S. Kang and Kang Property, Incorporated have failed to comply with the following directives in CAO R6T-2007-0029:

1. Provide Alternate Water Supply for Affected Domestic Wells
 - a) By December 19, 2007, you must submit a letter proposing to provide an alternate supply of clean water to the occupants at 883 Eloise Avenue in South Lake Tahoe.
 - b) By December 28, 2007, you must provide an alternate supply of clean water to the occupants of the affected domestic well at 883 Eloise Avenue in South Lake Tahoe.

2. Release Investigation
 - a) By December 19, 2007, submit a letter to the Water Board describing means to investigate the source or cause of petroleum release at the Facility.
 - b) By December 21, 2007, implement the release investigation in coordination with the El Dorado County Environmental Management Department.

In addition, be aware that the Water Board may administratively impose civil liability for violations of CAO R6T-2007-0029. According to Water Code section 13350, the Water Board may impose a civil liability up to \$5,000 per day of non-compliance. You are urged to immediately come into compliance with requirements in CAO R6T-2007-0029 to reduce your exposure to future civil liability.

Finally, by copy of this notice of violation, I am notifying State Water Resources Control Board (State Board) staff with the Underground Storage Tank Cleanup Fund of your non-compliance status with CAO R6T-2007-0029. Your status will likely adversely affect State Board staff's ability to offer you reimbursement and a Letter of Commitment from the Cleanup Fund unless you take immediate steps to comply with CAO R6T-2007-0029.

I hope to hear from you or your agent in the near future. You may contact Lisa Dernbach at (530) 542-5424 if you have any questions or comments concerning this matter.



HAROLD J. SINGER
EXECUTIVE OFFICER

cc: El Dorado County, Dept. of Environmental Management, Virginia Huber
South Tahoe Public Utility District, Richard Solbrig
Lukins Brothers Water Company, Danny Lukins
State Water Board, Office of Chief Counsel, David Coupe
State Water Board, Division of Financial Assistance, UST Cleanup Fund
City of South Lake Tahoe, David Jinkens
SAA Programs, Gabe Litvin
Michael Schneeweis
Tahoe Outdoor Living, Pat Baginski

LSD/didT/Swiss Marl SLT, NOV 1-22-08 lsd.doc
[To be filed: UGT - El Dorado Co., 6T0297A]

07-0039

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Mr. Sarbjit S. Kang and the Kang Property, Incorporated (hereinafter "Dischargers") in connection with Administrative Civil Liability Complaint No. R6T-2009-0015 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Dischargers waive the hearing requirement and will pay the liability.)

- a. I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board.
- b. I certify that the Dischargers will remit payment for the civil liability imposed in the total amount of **four hundred sixty thousand three hundred dollars (\$460,300)** by checks that reference "ACL Complaint No. R6T-2009-0015" made payable in the amount of **\$282,500** to the "State Water Resources Waste Discharge Permit Fund" and in the amount of **\$177,800** to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Regional Water Board by **May 21, 2009** or this matter will be placed on the Regional Water Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Dischargers having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Dischargers to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Dischargers waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines.)

I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I intend to request a hearing in the future. By checking this box, the Dischargers request that the Regional Water Board delay the hearing and/or hearing deadlines so that the Dischargers may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

(Print Name and Title)

(Signature)

(Date)

NOTICE OF WAIVER OF PUBLIC HEARING

**California Regional Water Quality Control Board, Lahontan Region
Issuance of Administrative Civil Liability (ACL) Order
Against
Sarbjit S. Kang and The Kang Property, Incorporated
Swiss Mart Gas Station
South Lake Tahoe, California**

On April 15, 2009, the California Regional Water Quality Control Board, Lahontan Region (Water Board) issued Complaint No. R6T-2009-0015 to the Mr. Sarbjit S. Kang and the Kang Property, Incorporated (Dischargers) in the amount of \$460,300 for alleged violations of Cleanup and Abatement Order No. R6T-2007-0038. The Dischargers have elected to waive their right to a public hearing in this matter. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$460,300 as set forth in the Complaint. The Water Board will consider accepting the Discharger's waiver at its July 8-9, 2009 meeting.

Written comments regarding the allegations contained in Complaint No. R6T-2009-0015, and/or acceptance of the waiver, will be accepted through Friday June 5, 2009.

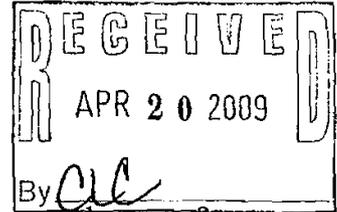
The Water Board's July 8-9, 2009 meeting will be held at a time and location as announced in the Water Board meeting agenda. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Water Board's web page at <http://waterboards.ca.gov/lahontan/>. Oral comments for this item may be made during the meeting upon receipt of a request to speak slip. For more information regarding this matter, please call Ms. Lisa Dernbach at (530) 542-5424.

Robert S. Dodds
Assistant Executive Officer

07-0043

ENCLOSURE 2

07-0044



DECLARATION OF SERVICE

I declare that I am employed in the County of El Dorado, California. I am over the age of eighteen years and not a party to the within entitled cause. That my business address is ACCURATE PROCESS SERVICES, P.O. BOX 17485, South Lake Tahoe, Ca. 96151.

On April 16,2009, at 11:30 am, I served the attached document(s), to-wit:
3 sealed envelopes addressed to Sarbjit S. Kang

on the parties in said cause, by:

(x) Personally delivering a true and correct copy of same upon:
I personally served Sarbjit S. Kang. (Indian, Male, 40's, 5'10", 220 lbs.)

Location of Service: 913 Emerald Bay Road, South Lake Tahoe CA 96150

I declare under penalty of perjury the foregoing is true and correct, and that this declaration was executed on April 16, 2009 at South Lake Tahoe, California.

BY: Sarah Griffis #S3-232 El Dorado County
ACCURATE PROCESS SERVICES
P.O. BOX 17485
SOUTH LAKE TAHOE, CA 96151
(530) 544 6025

07-0045

ENCLOSURE 3

07-004C

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6T-2009-(PROPOSED)

**ADMINISTRATIVE CIVIL LIABILITY ORDER
AGAINST SARBJIT S. KANG AND KANG PROPERTY, INCORPORATED
FOR VIOLATIONS OF (1) CALIFORNIA WATER CODE SECTION 13267 AND
(2) CALIFORNIA WATER CODE SECTION 13304 -
SWISS MART GAS STATION**

El Dorado County

The California Regional Water Quality Control Board – Lahontan Region (Lahontan Water Board) finds that Sarbjit S. Kang and Kang Property, Incorporated have violated the following:

- A. Water Code section 13267 by failing to submit required reports and documentation by their due dates, as required by Cleanup and Abatement Order (CAO) No. R6T-2007-0029.
- B. Water Code section 13304 by failing to implement cleanup and abatement measures as required by CAO No. R6T-2007-0029.

A hearing on Complaint No. R6T-2009-0015 was held before the Lahontan Water Board on July 8, 2009. Based upon evidence and testimony received at the hearing, the Lahontan Water Board makes the following findings:

1. Dischargers

Kang Property, Incorporated, a California corporation (corporate number C2472703), is the legal owner of El Dorado County Assessor Parcel Number (APN) 023-181-19-10 (Property). The Swiss Mart Gas Station is located on the Property. As the legal owner of the Property, Kang Property, Incorporated is responsible for activities that take place on the Property. Kang Property, Incorporated is a discharger identified in CAO No. R6T-2007-0029, and is responsible for complying with the requirements specified by that CAO.

Sarbjit S. Kang is identified as the operator of the underground storage tanks on the operating permit for the Swiss Mart Gas Station, according to the El Dorado County Department of Environmental Management (County). Sarbjit S. Kang is a discharger identified in CAO No. R6T-2007-0029, and is responsible for complying with the requirements specified by that CAO.

07-0047

Kang Property, Incorporated and Mr. Sarbjit S. Kang are hereinafter referred to as the "Dischargers."

2. Property

The Property (APN 023-181-19-10) is located at 913 Emerald Bay Road in South Lake Tahoe, El Dorado County (See Attachment A – Vicinity Map.)

3. Facility

Swiss Mart Gas Station. The Property contains a gas station and food mart. Based on the underground storage tank operating permit issued by the County, there is one regular, unleaded tank and one super, unleaded tank on the Property. Three dispenser islands are used to dispense gasoline.

4. Discharge

Pollution of groundwater beneath the Property was verified by the Dischargers during an August 2007 groundwater investigation required by the Lahontan Water Board. The pollution was likely a result of an unauthorized vapor release of petroleum hydrocarbons from the dispensers or underground storage tank system. The pollution was also identified in a domestic well at 883 Eloise Avenue, located about 500 feet to the east of the Property.

5. Enforcement History

In response to the unauthorized discharge of petroleum hydrocarbons to groundwaters of the Lake Tahoe Hydrologic Unit and threats to beneficial uses, the Lahontan Water Board Executive Officer issued CAO No. R6T-2007-0029 on December 14, 2007, pursuant to Water Code sections 13304, subdivision (a), and 13267, subdivision (b)(1). Among other requirements, the CAO required the Dischargers to take the following cleanup and investigation actions: (1) provide alternate water supply to the affected domestic well owner; (2) identify and stop the source of the release, (3) conduct groundwater monitoring and submit technical reports, (4) conduct interim remediation to contain plume migration, (5) investigate the extent of the discharge, and (6) propose clean up of contamination in soil and groundwater.

On January 30, 2008, the Lahontan Water Board Executive Officer issued a Notice of Violation citing the Dischargers' failure to submit required technical information and implement corrective actions by deadlines listed in CAO No. R6T-2007-0029.

6. Violation – Water Code section 13267

Water Code section 13267, subdivision (b)(1) states, in part,

"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging ...waste within its region... that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

The Dischargers violated Water Code section 13267 subdivision (b)(1) in 11 of 14 CAO directives by failing to submit the following reports and/or documentation by specified due dates:

Directive No. 4.2 – Dischargers did not submit a technical report regarding the alternate supply of clean water. The period of non-compliance ended on June 9, 2008, **164 days** past the deadline of December 28, 2007, when the Water Board received the First Quarter 2008 monitoring report that contained monitoring well results showing non-detect levels of hydrocarbons at all sampling locations. Since the report indicated that groundwater was no longer affected by the discharge from the Facility, an alternate supply of clean water was no longer required and there was no longer a need for the report. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.1. – Dischargers failed to submit a letter proposing to investigate the release until August 15, 2008, **240 days** past the deadline of December 19, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.2. – Dischargers failed to implement the release investigation, as required, until August 26, 2008, **249 days** past the deadline of December 21, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.4. – Dischargers failed to submit a technical report describing the release investigation conducted at the Facility until September 11, 2008, **259 days** past the deadline of December 24, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.1. – Dischargers failed to implement groundwater monitoring at the site until March 5, 2008, **66 days** past the deadline of December 30, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.2. – Dischargers failed to submit the groundwater monitoring report required pursuant to Directive 6.2. The period of non-compliance ended on May 20, 2008, **89 days** past the deadline of February 20, 2008, when the next quarterly monitoring report was due. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.2. – Dischargers failed to submit the First Quarter 2008 monitoring report required pursuant to Directive 6.2 until June 9, 2008, **20 days** past the deadline of May 20, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 7.3. – Dischargers failed to submit a technical report describing interim remediation. The period of non-compliance ended on June 9, 2008, **102 days** past the deadline of February 28, 2008, when the Water Board received the First Quarter 2008 monitoring report that contained monitoring well results showing non-detect levels of hydrocarbons at all sampling locations. Since the report indicated that groundwater was no longer affected by the discharge from the Facility, remediation and a report describing the remediation was no longer required. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.1. – Dischargers failed to submit a workplan describing means to investigate the extent of petroleum contamination in soil and groundwater at the Facility, until August 28, 2008, **195 days** past the deadline of February 15, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.2. – Dischargers failed to implement a site investigation, as required pursuant to Directive 8.2, until October 6, 2008, **205 days** past the deadline of March 15, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.3. – Dischargers failed to submit a technical report describing results of the site investigation until November 10, 2008, **189 days** past the deadline of May 5, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

7. Violation – Water Code section 13304

Water Code section 13304, subdivision (a) states, in part,

“Any person who has discharged or discharges waste into waters of the state ... shall upon order of the regional board, clean up the waste or abate the effects of the waste A cleanup and abatement order ... may require the provision of, or payment for, uninterrupted replacement water service ...”

The Dischargers violated Water Code section 13304 in three CAO directives:

Directive No. 4.1. – Dischargers did not provide alternate supply of clean water to the occupants at 883 Eloise Avenue. The period of non-compliance ended on June 9, 2008, **173 days** past the deadline of December 19, 2007, when the Water Board received the First Quarter 2008 monitoring report that contained monitoring well results showing non-detect levels of hydrocarbons at all sampling locations. Since the report indicated that groundwater was no longer affected by the discharge from the Facility, an alternate supply of clean water was no longer required. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

Directive No 5.3. – Dischargers failed to abate any and all releases from the Facility until the Enhanced Leak Detection test was completed on August 26, 2008, **246 days** past the deadline of December 24, 2007. Since test results showed that no leak was continuing at the site, there was no longer a need to abate the release. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

Directive No. 7.2. – Dischargers failed to implement the interim remediation workplan, as required pursuant to Directive 7.2, for **146 days** past the deadline of January 15, 2008. Compliance was achieved on June 9, 2008 when the Water Board received the First Quarter 2008 monitoring report containing monitoring well results showing non-detect levels of hydrocarbons at all sampling locations. Since the report indicated that there was no longer a threat to water quality, interim remediation for containing plume migration was no longer required. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

8. Authority and Maximum Potential Civil Liability

Any person who violates any cleanup and abatement order issued pursuant to section 13304 may be liable civilly in accordance with section 13350. Section 13350, subdivision (e)(1) states, in part:

“(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

Any person failing or refusing to furnish technical or monitoring program reports as required by section 13267, is guilty of a misdemeanor and may be liable civilly in accordance with section 13268. Section 13268, subdivision (b)(1) states:

“(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”

For each period of violation of directives in the CAO, the Lahontan Water Board calculated the maximum civil liability as follows:

a. The Dischargers violated two requirements in directive No. 4. in CAO No. R6T-2007-0029.

i. The maximum amount of civil liability for violation of directive No. 4.1 of the CAO under Water Code section 13350, subdivision (e)(1) is \$865,000 for 173 days of violations. This maximum administrative civil liability is based upon:

$(173 \text{ days of violations of directive No. 4.1}) \times (\$5,000/\text{day of violation}) =$
\$865,000

ii. The maximum amount of civil liability for violation of directive No. 4.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$164,000 for 164 days of violations. This maximum administrative liability is based upon:

$(164 \text{ days of violations of directive No. 4.2}) \times (\$1,000/\text{day of violation}) =$
\$164,000

b. The Dischargers violated four requirements under directive No. 5 in CAO No. R6T-2007-0029.

i. The maximum amount of civil liability for violation of directive No. 5.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$240,000 for 240 days of violations. This maximum administrative liability is based upon:

$(240 \text{ days of violations of directive No. 5.1}) \times (\$1,000/\text{day of violation}) =$
\$240,000

ii. The maximum amount of civil liability for violation of directive No. 5.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$249,000

for 249 days of violations. This maximum administrative civil liability is based upon:

$$(249 \text{ days of violations of directive No. 5.2}) \times (\$1,000/\text{day of violation}) =$$

\$249,000

- iii. The maximum amount of civil liability for violation of directive No. 5.3 of the CAO under Water Code section 13350, subdivision (e)(1) is \$1,230,000 for 246 days of violations. This maximum administrative civil liability is based upon:

$$(246 \text{ days of violations of directive No. 5.3}) \times (\$5,000/\text{day of violation}) =$$

\$1,230,000

- iv. The maximum amount of civil liability for violation of directive No. 5.4 of the CAO under Water Code section 13268, subdivision (b)(1) is \$259,000 for 259 days of violations. This maximum administrative liability is based upon:

$$(259 \text{ days of violations of directive No. 5.4}) \times (\$1,000/\text{day of violation}) =$$

\$259,000

- c. The Dischargers violated two requirements on three occasions under directive No. 6 in CAO No. R6T-2007-0029.

- i. The maximum amount of civil liability for violation of directive No. 6.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$66,000 for 66 days of violations. This maximum administrative civil liability is based upon:

$$(66 \text{ days of violations of directive No. 6.1}) \times (\$1,000/\text{day of violation}) =$$

\$66,000

- ii. The maximum amount of civil liability for the first violation of directive No. 6.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$89,000 for 89 days of violations. This maximum administrative liability is based upon:

$$(89 \text{ days of violations of directive No. 6.2}) \times (\$1,000/\text{day of violation}) =$$

\$89,000

- iii. The maximum amount of civil liability for the second violation of directive No. 6.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$20,000 for 20 days of violations. This maximum administrative liability is based upon:

(20 days of violations of directive No. 6.2) x (\$1,000/day of violation) =
\$20,000

d. The Dischargers violated two requirements under directive No. 7 in CAO No. R6T-2007-0029.

i. The maximum amount of civil liability for violations of directive No. 7.2 of the CAO under Water Code section 13350, subdivision (b)(1) is \$730,000 for 146 days of violations. This maximum administrative civil liability is based upon:

(146 days of violations of directive No. 7.2) x (\$5,000/day of violation) =
\$730,000

ii. The maximum amount of civil liability for violations of directive No. 7.3 of the CAO under Water Code section 13268, subdivision (b)(1) is \$102,000 for 102 days of violations. This maximum administrative liability is based upon:

(102 days of violations of directive No. 7.3) x (\$1,000/day of violation) =
\$102,000

e. The Dischargers violated three requirements under directive No. 8 in CAO No. R6T-2007-0029.

i. The maximum amount of civil liability for violations of directive No. 8.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$195,000 for 195 days of violations. This maximum administrative liability is based upon:

(195 days of violations of directive No. 8.1) x (\$1,000/day of violation) =
\$195,000

ii. The maximum amount of civil liability for violations of directive No. 8.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$205,000 for 205 days of violations. This maximum administrative civil liability is based upon:

(205 days of violations of directive No. 8.2) x (\$1,000/day of violation) =
\$205,000

- iii. The maximum amount of civil liability for violations of directive No. 8.3 of the CAO under Water Code section 13268, subdivision (b)(1) is \$189,000 for 189 days of violations. This maximum administrative liability is based upon:

$$(189 \text{ days of violations of directive No. 8.3}) \times (\$1,000/\text{day of violation}) =$$

\$189,000

The cumulative maximum potential liability for the violations identified above is **\$4,603,000**. This is based upon the methods for calculating the maximum potential liability as defined by Water Code sections 13268 and 13350, and also described above in Finding Nos. 6 - 7.

9. Factors Affecting the Amount of Civil Liability

Water Code section 13327 require the Lahontan Water Board to consider enumerated factors when it determines the amount of civil liability for a discharge covered by sections 13268 and 13350. The Lahontan Water Board considered those factors, discussed below, in determining the amount of the administrative civil liability:

- a. The nature, circumstances, extent, and gravity of the violations;

Violating a CAO, classified as a "formal" enforcement action by the Water Quality Enforcement Policy, is a serious offense. Violating directive No. 4 of CAO No. R6T-2007-0029 prevented the occupants of 883 Eloise Avenue from using and enjoying water from their domestic well. Violating directive No. 5 of the CAO prevented Lahontan Water Board staff from finding out the source or cause of the petroleum release adversely affecting water quality. The Dischargers' violation of directive No. 6 prevented knowledge of the fate and migration of petroleum hydrocarbons detected beneath the Facility for nine months following submittal of the September 27, 2007 groundwater report. Violation of directive No. 7 prevented abatement and containment of hydrocarbons in groundwater beneath the Facility and sooner enjoyment of beneficial uses located in the downgradient flow direction. Finally, the Dischargers' violation of directive No. 8 prevents Lahontan Water Board staff from knowing if petroleum products that could affect water quality in the future remain in the vadose zone at the Facility. As a result of failing to comply with these five directives, staff has needed to conduct verification well sampling at the Facility and at 883 Eloise Avenue, which diverts resources away from other Lahontan Water Board work.

- b. Whether discharge is susceptible to cleanup or abatement;

The discharge of petroleum products to groundwater is susceptible to cleanup and abatement. For a past release at the Facility, the operator arranged for a

carbon canister to be plumbed to the domestic well at 883 Eloise Avenue to remove petroleum hydrocarbons from the well water. A pump and treat system exists at the Facility from prior contamination and could have been re-started to contain plume migration from threatening other beneficial uses besides the affected domestic well at 883 Eloise Avenue. In addition, the Dischargers proposed implementing interim remediation by use of portable high vacuum dual-phase extraction equipment. This proposal was conditionally accepted by Lahontan Water Board staff on January 8, 2008. As of June 9, 2008, when the First Quarter 2008 Monitoring Report was received, the Dischargers had not taken corrective action to abate or contain petroleum hydrocarbons from migration in groundwater. This action is no longer needed since monitoring data shows the threat to water quality has been abated.

c. The degree of toxicity of the discharge;

Groundwater at the site contained gasoline-range petroleum hydrocarbons and known toxic volatile organic carbons, including benzene, toluene, ethylbenzene, xylenes, and trimethylbenzenes. Concentrations of these petroleum constituents in groundwater exceed drinking water standards and public health goals. Levels of benzene in groundwater at the Facility and the domestic well at 883 Eloise Avenue exceed the one-in-a-million risk level for cancer. Since no corrective action was taken by the Dischargers, the fate and migration of the petroleum constituents in groundwater was unknown for nine months.

d. Ability to pay;

In addition to the Facility, Kang Property, Incorporated currently owns property zoned for use as service stations at:

- 1140 Emerald Bay Road, South Lake Tahoe, CA (APN 023-181-191 & APN 032-141-3510)
- 7920 Brentwood Boulevard, Brentwood, CA (APN 016-150-025-1)
- 425 Moraga Road, Moraga, CA (APN 256-070-001-1)
- 4480 Chiles Road, Davis, CA (APN 069-070-10-1)
- 4949 County Road 89, Yolo County, CA (APN 052-020-04-1)
- 4300 Watt Avenue, Sacramento, CA (APN 240-0232-058-0)

Kang Property, Incorporated also owns the following property:

- 1122 Emerald Bay Road, South Lake Tahoe, CA (APN 032-141-041 [vacant lot])

Given the assets described above, the Lahontan Water Board finds that the Dischargers are able to pay the liability.

- e. The effect on the Dischargers' ability to continue its business;

Lahontan Water Board staff is not aware of any reason that the Dischargers' ability to continue their business would be affected by the proposed liability. The Dischargers own and operate multiple gas stations in California.

- f. Any voluntary cleanup efforts undertaken by the violator;

To date, the Dischargers have only implemented corrective actions at the site when ordered to by the Lahontan Water Board in CAO No. R6T-2007-0029 and Water Code section 13267 investigative orders.

- g. Prior history of violations;

Sarbjit S. Kang has a history of violations in complying with directives for clean up at the Facility and another facility. This history is summarized in the table below. In 1999, the Lahontan Water Board issued Administrative Civil Liability Order No. 6-99-46 to Mr. Kang and other parties in the amount of \$95,000 for non-compliance with Amended CAO 6-98-78A1. The Water Board stayed \$63,750 of the total amount after Mr. Kang implemented remediation tasks at the site. Of the remaining liability still owed, \$1,993 was collected in 2008 when the Attorney General's Office initiated a till tax at one of Mr. Kang's other gas stations. Liability in the amount of \$29,257 was never paid and is still owed. Also in 1999, the Lahontan Water Board issued Administrative Civil Liability Order No. 6-99-47 to Mr. Kang and other parties in the amount of \$59,000 for non-compliance with other directives in Amended CAO 6-98-78A1. The Water Board stayed \$33,150 of the total amount following Mr. Kang's completion of certain cleanup actions. Liability in the amount of \$25,850 was never paid and is still owed. Civil liabilities in both Orders were assessed at the rate of \$1,000 per day of violation. Furthermore, in 1999, the Lahontan Water Board issued Administrative Civil Liability Order No. 6-99-50 to Mr. Kang and another party in the amount of \$112,500 for non-compliance with a cleanup and abatement order at another gas station in which Mr. Kang was the operator. The full civil liability was paid in 2008 when the Attorney General's Office implemented a till tax upon one of Mr. Kang's other gas stations.

	Site	Amount	Status
ACL 6-99-46	Swiss Mart	\$95,000: \$63,750 stayed \$31,250 owed	\$1,993 paid in 2008 from AG office till tax; \$29,257 unpaid
ACL 6-99-47	Swiss Mart	\$59,000: \$33,150 stayed \$25,850 owed	\$25,850 unpaid
ACL 6-99-50	Meyers Beacon	\$112,500	Paid in 2008 from AG office till tax action

h. Degree of culpability;

Sarbjit S. Kang and Kang Property, Inc. are identified as the "Dischargers" by CAO No. R6T-2007-0029 and, thus, are ultimately responsible for compliance with CAO No. R6T-2007-0029 and applicable state laws and regulations. Despite issuance of a Notice of Violation on January 30, 2008 and repeated contacts between Lahontan Water Board staff and the Dischargers' consultant, during which violations were discussed, the Dischargers failed to comply with applicable requirements.

i. Economic savings resulting from the violation;

Lahontan Water Board staff has calculated the Discharger's cost savings associated with violating the CAO. The nature of such cost savings would be "avoided costs" and "delayed costs." Avoided costs include those associated with quarterly monitoring and reporting, conducting interim remediation, and providing replacement drinking water for the residence at 883 Eloise Avenue. Estimated avoided costs are **\$37,000**. Delayed cost savings would be the potential interest earned on the delayed costs, which given the short violation period addressed by this Complaint would be small and substantially less than the proposed liability.

j. Other matters as justice may require.

Staff Costs

Staff from the State and Regional Water Boards have spent time responding to the incident and preparing the Administrative Civil Liability Complaint. Estimated staff costs for investigation and complaint preparation are **\$37,059**.

10. Administrative Civil Liability Complaint Issued by Assistant Executive Officer

The Lahontan Water Board's Assistant Executive Officer issued Administrative Civil Liability Complaint No. R6T-2009-0015 to the Dischargers on April 15, 2009. The Complaint states that the Dischargers violated 13 of 16 directives in the CAO, even after a Notice of Violation was issued on January 30, 2008. The Complaint recommends an administrative civil liability be imposed by the Water Board at a rate of \$500 per day for a total of 565 days of violation of Water Code section 13304 and at a rate of \$100 per day for a total of 1,778 days of violation of Water Code section 13267 for a total amount of \$460,300.

11. California Environmental Quality Act

This enforcement action is being taken by the Lahontan Water Board to enforce provisions of the Water Code and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 210000 et seq.) in accordance with California Code of Regulations, title 14, section 15321.

IT IS HEREBY ORDERED THAT:

1. Administrative Civil Liability recommended in Complaint No. R6T-2009-0015, which was issued by Robert S. Dodds, Assistant Executive Officer, on April 15, 2009, is hereby affirmed.
2. The Lahontan Water Board imposes administrative civil liability against the Dischargers in the amount of \$460,300.
3. The Dischargers must provide payment with a cashier's check or money order in the amount of **\$177,800** to the State Board's Cleanup and Abatement Account by **August 8, 2009**.

The Dischargers must provide payment with a cashier's check or money order in the amount of **\$282,500** to the State Board's Waste Discharge Permit Fund by **August 8, 2009**.

4. If the Dischargers fail to make the specified payments to the State Board's Cleanup and Abatement Account and Waste Discharge Permit Fund within the time limits specified in this Order, the Lahontan Water Board may enforce this Order by applying for a judgment pursuant to Water Code section 13328. The Lahontan Water Board's Executive Officer is hereby authorized to pursue a judgment pursuant to Water Code section 13328 if the criterion specified in this paragraph is satisfied.

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on July 8, 2009.

HAROLD J. SINGER
EXECUTIVE OFFICER

Attachments: Attachment A: Vicinity Map – Swiss Mart Gas Station
 Attachment B: Site Map – Swiss Mart Gas Station

PROPOSED

ATTACHMENT A

07-0061

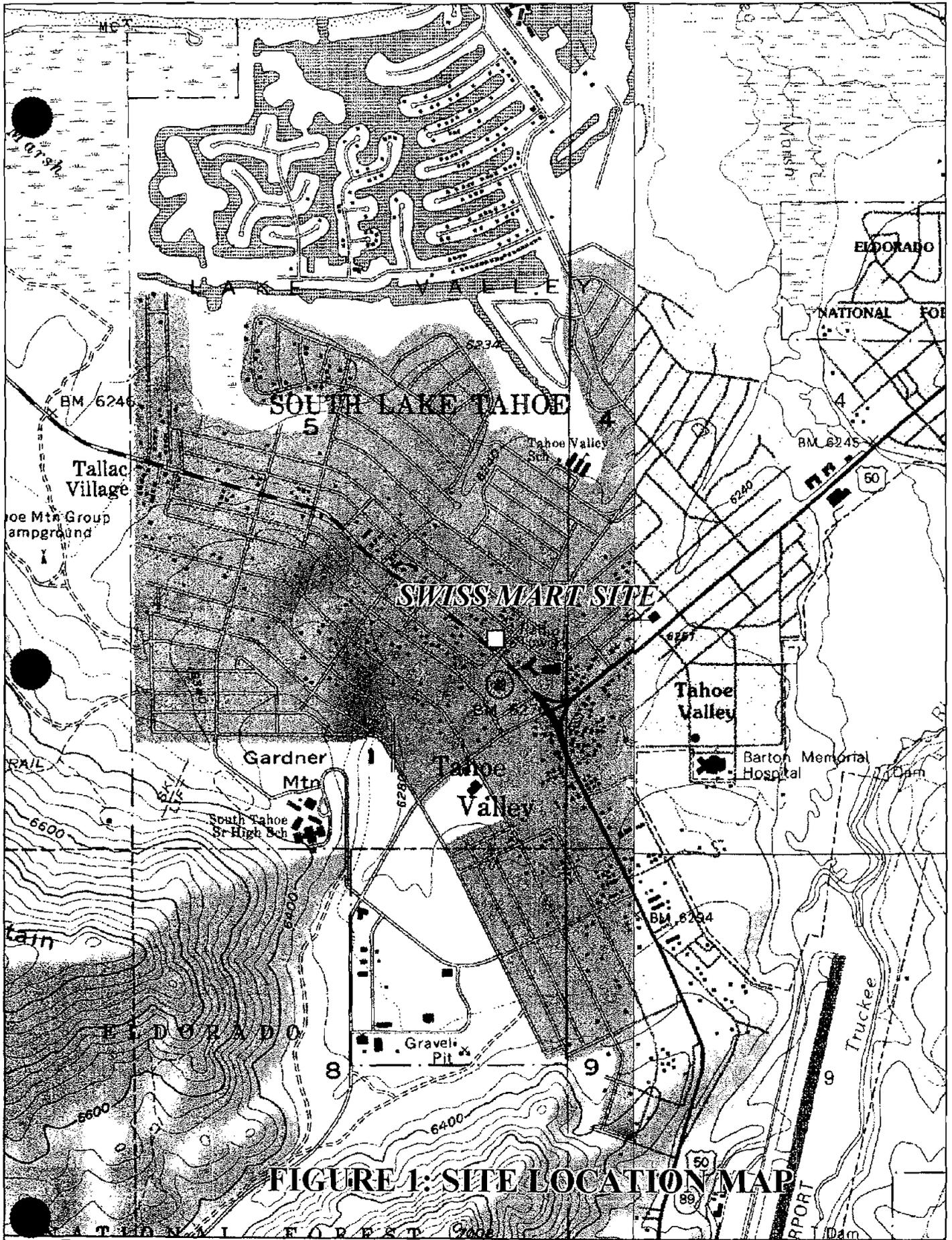
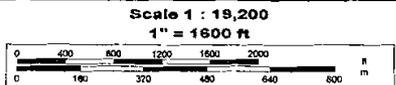


FIGURE 1: SITE LOCATION MAP

DELRORME

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07-0062

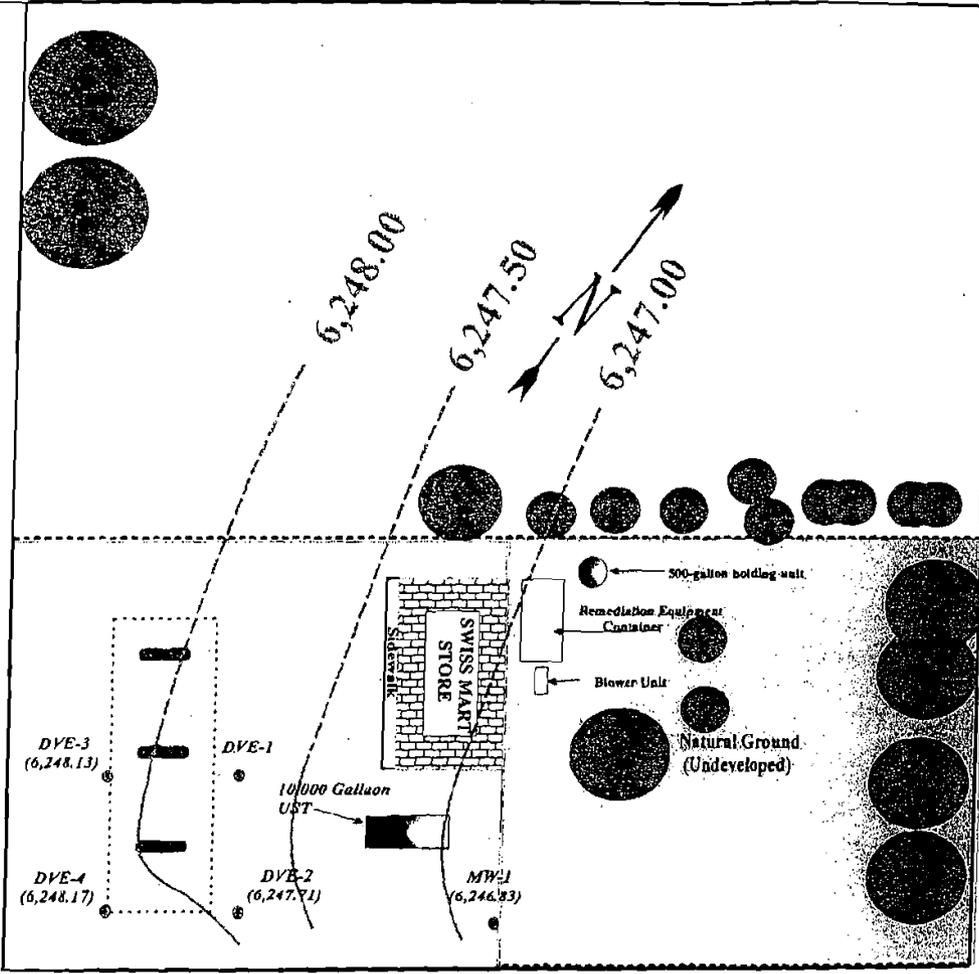
ATTACHMENT B

07-0063

EMERALD BAY DRIVE

AVENUE

JAMES



Approximate Direction of Groundwater Flow 03/05/08

FIFTH STREET

LARDO & ASSOCIATES, INC.
Environmental and Geological Services

GROUNDWATER CONTOUR MAP: SWISS MART SITE
Project 002.08 South Lake Tahoe Site, (March 5, 2008)

6,247.00

Natural Ground
(Undeveloped)

