

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

INVESTIGATIVE ORDER NO. R9-2008-0110

An Order Directing
MCS Civic Center Plaza, LLC
990 Highland Avenue, Suite 200
Solana Beach, California 92075

Ralph Stone and Company, Inc.
10954 Santa Monica Boulevard
Los Angeles, California 90025

CMH Environmental Group, Inc.
2501 Chapman Ave., Suite 100
Fullerton, California 92831

To submit a technical report pertaining to the discharges of two
treatment agents into the subsurface environment at the
Mr. Terry One-Hour Cleaners Site,
431 North Escondido Boulevard, Escondido, California

Pursuant to its authority in California Water Code section 13267, the California
Regional Water Quality Control Board, San Diego Region (hereinafter Regional
Board), finds:

1. **Subsurface Discharge:** From June 2004 through August 2006, Ralph Stone
and Company, Inc. (hereinafter RSC), and CMH Environmental Group, Inc.
(hereinafter CMH), discharged two treatment agents into the subsurface
environment in the vicinity of 431 North Escondido Boulevard, Escondido,
California. Primary constituents of one treatment agent were contaminated
groundwater, a proprietary microbial mixture, and numerous additives.
Primary constituents of the second treatment agent were bacteria and distilled
water.

2. **Parties Responsible for the Discharges:**

MCS Civic Center Plaza, LLC
990 Highland Avenue, Suite 200
Solana Beach, California 92075

Ralph Stone and Company, Inc.
10954 Santa Monica Boulevard
Los Angeles, California 90025

CMH Environmental Group, Inc.
2501 Chapman Ave., Suite 100
Fullerton, California 92831

MCS Civic Center Plaza, LLC is identified as a party responsible for the discharge because it is the current property owner of 431 North Escondido Boulevard, Escondido, California, it owned the subject property when the discharges occurred, and it contracted with an environmental consulting firm, RSC, to perform remediation activities.

RSC is identified as a party responsible because RSC's activities in performing remediation, while acting within the scope of employment and as the agent of MCS in the capacity as "environmental consultant of record for the property owner," caused or is suspected to have caused a discharge to groundwater that may have caused and/or threatened to cause conditions of pollution and/or nuisance at the subject property.

CMH is identified as a party responsible because CMH designed, installed, constructed, operated, and monitored the remedial system; generated Site specific submittals; tested the physical properties of the subsurface environment; performed duties as the Site Safety Officer during field activities; and provided the proprietary treatment agents that were used at the subject property. CMH performed activities that caused or is suspected to have caused a discharge to groundwater that may have caused and/or threatened to cause conditions of pollution and/or nuisance at the subject property.

3. **Background:** From 1967 through approximately 1990, a dry cleaning facility (Mr. Terry One-Hour Cleaners, hereinafter Facility) operated in Unit 13 of a multiple-unit building located at 431 North Escondido Boulevard, Escondido, California. A Phase II type environmental investigation at and in the vicinity of the Facility demonstrated the presence of contaminated soils around a sewer lateral and an associated plume of contaminated groundwater. The Facility and the impacted environmental media (soil, groundwater, etc.) constitute the Site.

Commencing in February of 2002, MCS Civic Center Plaza, LLC contracted with RSC to perform investigative and remedial activities to address the adverse effects of historical practices conducted at the Facility. RSC is identified as the "environmental consultant of record for the property owner" in numerous submittals.

During April of 2002, MCS Civic Center Plaza, LLC purchased several acres of land at and surrounding the Facility.

On October 29, 2003, the Regional Board received an application from RSC, on behalf of the MCS Civic Center Plaza, LLC, requesting that the then-proposed discharge at the Site be regulated under Regional Board Order No. R9-2003-0111 ("*General Waste Discharge Requirements for Discharges of Treated Groundwater from Volatile Organic Compound Cleanup Sites to Land in the San Diego Region*", hereinafter "Order"). An RSC employee signed the Form 200, dated October 28, 2003. On December 1, 2003, RSC submitted a check to the State Water Resources Control Board (SWRCB) for

\$1,800, the proposed discharge became enrolled under the Order, and the parties responsible as the entities enrolled under the Order became obligated to comply with the terms of the Order.

From June 2004 through August 2006, RSC and CMH conducted remedial activities at the Site to address subsurface contamination. According to reports provided by RSC, the remedial activities included mixing contaminated groundwater, a proprietary microbial mixture, and numerous additives (hereinafter treatment agent 1) in an above-ground treatment system (referred to as the "Nature Tank System" by CMH, hereinafter NTS). The proprietary microbial mixture consisted of garden-grade liquid urea and phosphorous, nutrients, trace minerals, microbes, oxygen, nitrogen, potassium, bacteria, and fungus. The liquid within the NTS was continuously discharged into the vadose zone via a drip-irrigation system. Additionally, a treatment agent of bacteria and distilled water (hereinafter treatment agent 2) was discharged into monitoring wells at the Site.

4. **Environmental Regulatory Oversight:** MCS enrolled in the Voluntary Assistance Program (VAP), which provides consultation, project oversight, report review, concurrence, and site closure letters for privately funded projects involving contaminated properties. The VAP is administered by the County of San Diego, Department of Environmental Health, Site Assessment and Mitigation Program (SAM).

The Regional Board is overseeing activities associated with the Order.

5. **Beneficial Uses:** The Site is within the Escondido Hydrologic Subarea (Basin Number 904.62), which has the following beneficial uses (BUs) of water resources designated in the *Water Quality Control Plan for the San Diego Basin* (Basin Plan, Tables 2-2 and 2-5):

| Hydrologic Unit/Watershed | Hydrologic Subarea Basin No. | Designated Beneficial Use ¹ |
|---------------------------|------------------------------|--|
| Groundwater | | |
| Carlsbad HU | Escondido HSA 904.62 | MUN |
| | | AGR |
| | | IND |
| Surface Water | | |
| Escondido Creek WS | HU 904.62 | MUN, AGR, REC1, |
| | | IND (potential), REC2 |
| | | WARM, COLD, WILD |

6. **Possible Conditions of Pollution and/or Nuisance:** The discharge of the two treatment agents is a discharge of waste that may have caused and/or threatened to cause conditions of pollution and/or nuisance at the Site; may have

1. According to the Basin Plan, beneficial uses are the uses of water necessary for the survival or well being of man, plants, and wildlife. These uses of water serve to promote the tangible and intangible economic, social, and environmental goals of mankind.

adversely affected conditions in the subsurface environment; may have caused the groundwater at or adjacent to the Site to exceed or threaten to exceed water quality objectives² (WQOs) that support the beneficial uses listed in Finding 5 above; and may have exacerbated conditions that existed in the subsurface environment prior to the remedial activities being performed. Additionally, the discharge may be a violation of the Regional Board Order, prohibitions in the Basin Plan, and the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code), section 13260.

7. **Legal and Regulatory Authority:** This Investigative Order is based on (1) section 13267 of the Water Code; (2) applicable state and federal regulations (California Code of Regulations (CCR) Title 27, 40 Code of Federal Regulations (CFR)); (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Board and the Basin Plan adopted by the Regional Board, including BUs, WQOs, and implementation plans; (4) SWRCB policies, including SWRCB Resolution No. 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California) and SWRCB Resolution No. 88-63 (Sources of Drinking Water); and (5) relevant standards, criteria, and advisories adopted by other state and federal agencies.

Water Code section 13267 provides:

"(b) (1) 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, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of 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 burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

8. **Regulatory Basis and Necessity for Submittal of Technical Reports:** Pursuant to Water Code section 13267(a), the Regional Board may investigate the quality of any waters of the state within the Regional Board's boundaries. As part of the water quality investigation, Water Code

2. According to Water Code section 13050(h) "Water Quality Objectives" means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or prevention of nuisance within a specific area.

section 13267(b)(1) authorizes the Regional Board to require the submittal of a technical report with the caveat that the burden of the report bear a reasonable relationship to the need and benefits to be obtained from the report. A technical report is needed to provide information to the Regional Board about the nature of the two treatment agents and the effects of the discharges on water quality and the environment. The benefits to be obtained from a technical report include enabling the Regional Board to determine if additional environmental activities are necessary at the Site and/or if an enforcement action(s) is warranted. Based on the nature and possible consequences of the discharges (refer to Investigative Order Findings No. 1, 3, and 6 above) the burden of providing the required report bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.

- 9. California Environmental Quality Act (CEQA) Exemption:** This Order, which enforces the laws and regulations administered by the Regional Board, meets the CEQA (Public Resources Code section 21000, *et seq.*) Categorical Exemption outlined in section 15321 of CCR Title 14, the CEQA Guidelines.

IT IS HEREBY ORDERED, pursuant to section 13267 of the Water Code, **by 5:00 pm on December 17, 2008, MCS, RSC, and CMH are required to submit all the documents and records required in this Investigative Order.** MCS, RSC, and CMH are required to submit the required information to the best of their knowledge. In the event that the information being requested is entirely within the knowledge of one of the responsible parties, please respond to the request to the best of your knowledge and indicate the appropriate party who will submit the requisite documents and records.

This Order requires the submittal of a scientifically-defensible technical report (hereinafter Investigative Report) that presents the results of an investigation of the discharged treatment agents and the effects of the discharges on the environment at the Site (hereinafter Investigation), and complies with the following directives.

A. INVESTIGATION OF DISCHARGES

MCS, RSC, and CMH shall submit a Investigative Report that contains a detailed, comprehensive, and thorough discussion of the methods, approach, findings, conclusion(s), and recommendation(s) of the Investigation. The Report shall describe and report the findings of a scientifically-defensible technical investigation that:

1. Identifies primary and secondary constituents related to the discharges. *Primary constituents include: All the physical, chemical, and biological constituents in the treatment agents; and pollutants and naturally-occurring constituents (chemical and biological) in the subsurface environment at the Site. Pollutants include chemicals associated with the Facility and offsite sources; and the reaction, transformation, degradation (biotic and abiotic), and metabolic and co-metabolic by-products of*

chemicals released from the Facility and offsite sources that are reasonably expected were generated/created in the environment.

Secondary constituents include all the reaction, transformation, degradation (biotic and abiotic), and metabolic and co-metabolic by-products that are reasonably expected were generated/created in the NTS and subsurface environment as a result of the discharges of the treatment agents.

2. Estimates the maximum concentration of each primary and secondary constituent that was present in the treatment agents, soil, and groundwater at the Site.
3. Identifies the total volume of each of the two treatment agents discharged at the Site.
4. Identifies and quantitates the volume of environmental media impacted by the discharges.

B. INVESTIGATIVE REPORT COMPONENTS

At a minimum, the Investigative Report shall contain the following:

1. Transmittal Letter - The transmittal letter shall include the following:

- a. **Content:** The Transmittal Letter shall include a brief discussion of the findings, conclusion(s), and recommendation(s) presented in the Investigative Report.
- b. **Certification Statement** – The person signing the Transmittal Letter shall make the following certification:

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

- c. **Signatory Requirements** – A principal executive officer or at least the vice president of the MCS Civic Center Plaza, LLC, Ralph Stone and Company, Inc., and CMH Environmental Group, Inc. shall sign the transmittal letter. If not feasible, the transmittal letter may be signed by a duly-authorized representative of the principal executive officer or the vice-president of the corporation only if:

making significant and/or substantive contributions shall be included in the report submitted by MCS, RSC, and CMH. The lead professional(s) shall sign and/or affix his/her license stamp to the report.

7. **Laboratory Report** – If the Investigative Report contains laboratory analytical data, the submission of the complete Laboratory Analytical Report(s) is required. The Laboratory Report(s) must be signed by the laboratory director and contain:
- a. a complete sample analytical report,
 - b. a complete laboratory quality assurance/quality control (QA/QC) report,
 - c. a discussion of the sample and QA/QC data, and
 - d. a transmittal letters that shall indicate that all the analytical work was supervised by the director of the laboratory, and contain the following statement, "All analyses were conducted at a laboratory certified for such analyses by the California Department of Health Services and in accordance with current U.S. Environmental Protection Agency (USEPA) procedures."

C. SUBMITTAL OF DOCUMENTS/RECORDS REQUIRED BY THE ORDER

MCS, RSC, and CMH are required to submit the following documents/records that are required in the Order and the Monitoring and Reporting Program No. R9-2003-0111 (Order Attachment B, hereinafter "MRP"). These documents are to be appended to the required Investigative Report.

1. Contingency Plan required under Order Provision Requirement D.7.
2. Records of the calibration and maintenance of all monitoring instruments, devices, and equipment required under the MRP Monitoring Provision Requirements A.6 and A.7., and Order Attachment D (Standard Provisions Applicable to Waste Discharge Requirements) Requirement 15. Additionally, provide the annual written statements, signed by a registered professional engineer, certifying that all flow measurement devices were calibrated and were reliably accurate as required under Order Attachment D Requirement 15.
3. Records of all monitoring information required under MRP Monitoring Provision Requirements A.7. and A.8.
4. Records demonstrating the collection of a grab sample as required under MRP Monitoring Provision Requirement A.9.

D. DOCUMENTS/RECORDS TO BE FILED WITH THE REGIONAL BOARD

1. **Paper Copy of all the documents and records required in this Investigative Order – *By 5:00 pm on December 17, 2008, MCS, RSC, and CMH are required to submit a paper copy of all the documents and records required in this Order.***
2. **Electronic Format Reporting Requirements - Beginning January 1, 2005, all reports submitted to the Regional Board by MCS, RSC, and CMH, pursuant to sections 13304 and 13267 of the Water Code, must be submitted in an electronic format. MCS, RSC, and CMH shall comply with electronic reporting requirements of Title 23 of the California Code of Regulations, Division 3, section 3893, including the provision that complete copies of all reports be submitted in PDF format, and include the signed transmittal letter and professional certification. *By 5:00 pm on December 17, 2008, MCS, RSC, and CMH shall comply with these electronic reporting requirements.***

E. REPORTING TO THE REGIONAL BOARD

All the documents and records required in this Investigative Order shall be submitted in paper copy to:

Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
Attn: Supervisor Central San Diego County Groundwater Unit

F. NOTIFICATIONS

1. **Enforcement Discretion**—The Regional Board reserves its right to take any enforcement action authorized by law for violations of the terms and conditions of this Order.
2. **Enforcement Notification**— Water Code section 13268(a)(1) provides that any person failing or refusing to furnish technical or monitoring report information as required by Water Code section 13267(b), or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly for an administratively imposed liability of up to \$1,000 per day for each day compliance is not achieved with an Order issued in accordance with subdivision 13267(b).
3. **Requesting Evidentiary Hearing by the Regional Board**
Any person affected by this action of the Regional Board may request an evidentiary hearing before the Regional Board. The Regional Board's Executive Officer may elect to hold an informal hearing or a "paper hearing" in lieu of scheduling a hearing before the Regional Board itself. If you decide to request an evidentiary hearing, send your request to the Regional Board Executive Officer, Attn: Supervisor Central San Diego

County Groundwater Unit, at the address provided on the Investigative Order transmittal letter. Please consider the following carefully:

- a. The Regional Board must receive your request within 30 days of the date of this Order.
- b. Your request must include all comments, technical analysis, documents, reports, and other evidence that you wish to submit for the evidentiary hearing. However, please note that the administrative record will include all materials the Regional Board has previously received regarding this site. **You are not required to submit documents that are already in the record.**
- c. The Executive Officer or Regional Board may deny your request for a hearing after reviewing the evidence.
- d. If you do not request an evidentiary hearing, the SWRCB may prevent you from submitting new evidence in support of a SWRCB petition.
- e. Your request for an evidentiary hearing, if you submit one, does not stay the effective date of the Order, whether or not a hearing is scheduled.
- f. **A request for a hearing does not extend the 30-day period to file a petition with the SWRCB (see below).** However, we suggest that you ask the SWRCB to hold the petition in abeyance while your request for a hearing is pending (Refer to CCR Title 23 section 2050.5(d)). Additional information regarding the SWRCB petition process is provided below.

4. Requesting Administrative Review by the SWRCB

Any person affected by this action of the Regional Board may petition the SWRCB to review the action in accordance with section 13320 of the Water Code and CCR Title 23 section 2050. The petition must be received by the SWRCB (Office of Chief Counsel, P.O. Box 100, Sacramento, California 95812) within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

I, Michael P. McCann, Assistant Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of a Water Quality Investigative Order issued on October 9, 2008.

Ordered By: 

Michael P. McCann
Assistant Executive Officer
October 9, 2008