STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

IN THE MATTER OF THE PETITION OF LEGGETT & PLATT, INCORPORATED, FOR REVIEW OF WATER CODE SECTION 13267 ORDER DATED JUNE 11, 2008, BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION,

Petition No.

PETITION FOR REVIEW PURSUANT TO WATER CODE SECTION 13320 AND 23 C.C.R. SECTION §2050 ET SEQ.
[Request To Be Held In Abeyance Under 23 C.C.R. §2050.5(d)]

DECLARATION OF GEORGE LINKLETTER IN SUPPORT THEREOF
I. INTRODUCTION

Pursuant to Water Code Section 13320 and Title 23 of the California Code of Regulations, Section 2050 et seq., Petitioner Leggett & Platt, Incorporated, a Missouri corporation ("Leggett & Platt") hereby petitions the State Water Resources Control Board ("State Water Board") for review of a Water Code Section 13267 Order ("Order") issued on June 11, 2008 by the Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Water Board"), which would require Petitioner to submit a work plan for additional investigation of soil gas and ground water at and about 4900 Valley Boulevard, Los Angeles, California ("Site").

The Site has been subject to years of prior assessment, remediation, and monitoring activities subject to the oversight of the Regional Water Board. Indeed, the soil was extracted in the area of identified contamination in 1993 and subsequently the identified area on the Site was completely and successfully remediated with a gas vapor extraction process under the supervision of the Regional Water Board. After the gas vapor extraction was completed, the Site was monitored and sampled extensively as instructed by the Regional Water Board. In 2004, the Regional Water Board authorized removal of the monitoring equipment and the cessation of any further investigation or remediation activities at the Site. (See Linkletter Declaration)

The sole condition to close the Site was the Regional Water Board's request that Valley Alhambra (the Site owner) sign a deed restriction. Yet when Valley Alhambra agreed to accept the deed restriction in January 2007, the Regional Water Board failed to issue a closure; rather, the Regional Water Board, with no new evidence and with no factual or legal basis, decided to issue the Section 13267 Order, essentially re-opening the Site and requiring Petitioner to start the investigation and remediation process all over again.

Complying with the Order will require Petitioner to reinstall equipment that the Regional Water Board allowed to be shutdown and removed, and will require Petitioner to re-perform characterization and investigation of the same Site including, without limitation, sampling, analysis, reporting, and other work that has already been done and accepted by the Regional Water Board. Yet the Regional Water Board has no new evidence or any evidence of any change
at the Site to justify re-doing what has already been done at a previously remediating Site. Thus, pursuant to Water Code Section 13320, Petitioner requests that the State Water Board review the Regional Water Board’s Section 13267 Order, rescind the Order on the grounds that it is beyond the scope of the investigation necessary to characterize the Site for closure, and direct the Regional Water Board to grant closure of the Site without further unnecessary expenditure by Petitioners.

Concurrently with the filing of this Petition, Petitioner will pursue reconsideration of the Order by the Regional Water Board. Thus, Petitioner requests that the State Water Board hold this Petition in abeyance pursuant to Title 23 of the California Code of Regulations, Section 2050.5(d), pending further good faith discussions between Petitioner and the Regional Water Board.

II. NAME AND ADDRESS OF THE PETITIONER

Leggett & Platt has acted as the administrator of settlement funds used to fund the remediation of the Site pursuant to a settlement agreement between Valley Alhambra and Leggett & Platt and Dresher, Inc., its wholly owned subsidiary. The remediation process is documented in reports filed with the Regional Water Board by Environ and referred to in George Linkletter’s Declaration. Notably, the settlement was a resolution of a disputed claim regarding contamination at the Site after Leggett & Platt’s subsidiary Dresher, Inc. vacated the Site in 1991. The settlement was intended to terminate expensive protracted litigation in favor of remediating the alleged contamination at the Site. Neither party admitted liability. There has been no finding of liability against Leggett & Platt or Dresher, Inc. for contamination at the Site.

Valley Alhambra is the owner of the Site and the real party in interest. Nevertheless, the Regional Water Board has issued the Order against Leggett & Platt, without naming Valley Alhambra. In light of their respective interests in the outcome of the Petition, Leggett & Platt (as administrator of the settlement fund) and Valley Alhambra (filing a partial joinder as the owner of the Site and an interested party) are jointly concerned about the efficacy of the pending order. Thus, all correspondence and other written communications regarding this matter should be
addressed as follows:

    Mr. Robert Anderson  
    Leggett & Platt, Incorporated  
    P.O. Box 757  
    Number 1 Leggett Road  
    Carthage, MO 64836

    Gary J. Herman, Sr.  
    See Partial Joinder filed by Valley Alhambra

    Los Angeles, California

With copies to:

    Joan C. Donnellan, Esq., Counsel for Leggett & Platt  
    Gary Meyer, Esq.  
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    Westlake Village, CA 91361

III. SPECIFIC ACTION OF THE REGIONAL WATER BOARD THAT PETITIONER REQUESTS THE STATE WATER BOARD REVIEW

    Petitioner requests review of the Section 13267 Order issued by the Regional Water Board on June 11, 2008 to Petitioner Leggett & Platt. The Order requires the preparation of a work plan for additional investigation of soil gas and ground water at and about the Site pursuant to Water Code Section 13267. A copy of the Order is attached hereto as Exhibit A.

IV. DATE OF THE REGIONAL WATER BOARD ACTION

    The Order is dated June 11, 2008.
V. STATEMENT OF REASONS WHY THE REGIONAL WATER BOARD'S ACTION WAS INAPPROPRIATE OR IMPROPER

As explained more fully below, the issuance of the Order was beyond the authority of the Regional Water Board and was inappropriate, improper and not supported by the record for the following reasons:

- The Order contains findings of fact that are not supported by substantial evidence in the record;

- Investigation, remediation, and confirmation monitoring activities, as well as the data derived from these activities, evidence that current conditions of the soil and ground water at the Site do not pose a substantial risk to human health or the waters of the State;

- Given the extensive work performed at the Site over the last 10 years, characterization of the Site is sufficient to understand the pre- and post-remedial conditions at the Site;

- The burden, including costs of compliance, imposed on Petitioner by the Order does not bear a reasonable relationship to the benefits that may be obtained from the reports and investigations sought by the Order;

- Valley Alhambra should be included in the 13267 Order as the owner of the property located at 4900 Valley Boulevard as Leggett & Platt’s Dresher subsidiary has not occupied the Site for almost 18 years and has no legal rights to use, manage, control, alter, modify or dispose of the Site. Any inclusion of Leggett & Platt in a 13267 Order should be specifically limited to its role as the administrator of the settlement fund pending a determination of its status as a potentially responsible party;

- Investigation, remediation, and confirmation monitoring to date justifies closure of the Site without further investigation.

A more complete explanation of the statement of reasons why the Regional Water Board’s Order is inappropriate and improper is set for in Section VIII of this Petition, which is incorporated.
herein.

Petitioner requests that the State Water Board hold this Petition in abeyance for the
maximum time period permitted or until reactivated by Petitioner. Petitioner reserves its right to
supplement this Petition with a further statement of reasons if the Petition is reactivated.

VI. MANNER IN WHICH THE PETITIONER IS AGGRIEVED

Petitioner is aggrieved by the Order because: (1) Closure should have been issued with
restrictive covenants when requested by Valley Alhambra in January 2007; (2) the Section 13267
Order was wrongfully issued solely to Leggett & Platt as the presumed responsible party without
including Valley Alhambra and before any determination that Leggett & Platt was a PRP as to the
Site; and (3) the Order imposes an excessive and unnecessary financial burden on Valley
Alhambra and on Leggett & Platt (as Fund administrator).

VII. THE SPECIFIC ACTION THAT PETITIONER REQUESTS THE STATE BOARD
TAKE

Petitioner requests that the Order be rescinded in its entirety on the grounds that it is
beyond the scope of the investigation necessary to characterize the Site for closure. The State
Water Board should direct the Regional Water Board to issue a closure letter for the Site.

Alternatively, Leggett & Platt requests that the Order be amended to include Valley
Alhambra, the owner of the Site (i.e. 4900 Valley Boulevard property), and to limit the Order’s
application to Leggett & Platt to reflect Leggett & Platt’s limited role as the administrator of the
settlement funds available to remediate the Site, reserving any order against Leggett & Platt until
the Regional Water Board establishes that Leggett & Platt is a responsible party with respect to
the scope of the current order or any subsequent order pertaining to Site investigation or
characterization.

Petitioner requests that the State Water Board hold this Petition in abeyance for the
maximum time period permitted or until reactivated by Petitioner. Petitioner reserves the right to
request further action authorized by Water Code Section 13320 if the Petition is reactivated.
VIII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THIS PETITION

A. APPLICABLE STANDARD OF REVIEW

Any aggrieved person may petition the State Water Board to review an action or failure to act by a Regional Water Board within 30 days of such action or failure. Water Code §13320(a).

Pursuant to Water Code section 13320(c), the State Water Board may find that the actions of a Regional Water Board were inappropriate or improper. Upon finding that the action of a Regional Water Board, or the failure of a Regional Water Board to act, was inappropriate or improper, the State Water Board may take the appropriate action, direct the Regional Water Board to take the appropriate action, and/or refer the issue to another state agency with jurisdiction. Water Code §13320(c). The State Water Board is vested with all the powers of the Regional Water Board for purposes of taking such actions. Water Code §13320(c).

Upon a Water Code Section 13320 Petition, the State Water Board must review the Regional Water Board record to determine if there is sufficient evidence ensuring an appropriate and proper action by the Regional Water Board. See Water Code §13320. The State Water Board is required to make an independent review of the Regional Water Board action to determine whether the weight of the evidence supports the issuance of the Regional Water Board’s order. In the Matter of the Petition of Exxon Company, U.S.A., et al. of the Adoption of the Cleanup and Abatement Order No. 85-066 by the California Regional Water Quality Control Board, Central Valley Region, Order No. WQ 85-7, at p. 10 (standard of State Water Board review under Section 13320 requires independent judgment as to whether the action was reasonable).

In reviewing a decision of a Regional Water Board, the State Water Board is not subject to the same strict standards that govern court review of administrative actions. See Cal. Water Code § 13320; In the Matter of the Petition of Exxon Company, supra, Order No. WQ 85-7, at p. 10. Rather, the State Water Board must consider both the record before the Regional Water Board and “any other relevant evidence” when reviewing an order. Water Code §13320(b). Thus, the scope of review is “closer to that of independent review.” In the Matter of the Petition of Exxon
Company, supra, Order No. WQ 85-7, at pp. 10, 12.

To uphold the Regional Water Board’s challenged action as appropriate and proper, the State Water Board must conclude that the action was “based on substantial evidence.” See Cal. Water Code § 13320; In the Matter of the Petition of Exxon Company, supra, Order No. WQ 85-7, at pp. 10, 12.

B. THE REGIONAL WATER BOARD HAS IMPROPERLY ISSUED THE WATER CODE 13267 ORDER TO ONLY LEGGETT & PLATT WITHOUT SUBSTANTIAL EVIDENCE IN THE RECORD THAT LEGGETT & PLATT HAS DISCHARGED OR IS THREATENING TO DISCHARGE WASTE AFFECTING WATER QUALITY; THE ORDER SHOULD BE AMENDED TO REFLECT LEGGETT & PLATT’S ROLE AS THE ADMINISTRATOR OF SETTLEMENT FUNDS

In relevant part, Water Code Section 13267(b)(1) authorizes a Regional Water Board to “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 ... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.” The Regional Board has not established that Leggett & Platt has discharged waste at the Site which would be the subject of the current Order and, as such, the Regional Water Board has exceeded its authority under Water Code Section 13267 by issuing its Order against Leggett & Platt.

The State Water Board has recognized that it is important for orders to explain the basis for naming persons under Sections 13267 and 13304. See e.g., In the Matter of the Petition of Mr. Kelly Engineer/All Star Gasoline, Inc., Order No. WQO - 2002-0001, at pp. 4-5 (holding that because Administrative Civil Liability Order did not contain requisite findings to justify individual’s responsibility under Section 13267 the matter must be remanded to regional board to “separately name each responsible party, and include the justification for each named party.”); see also, In the Matter of the Petition of Exxon Company, supra, Order No. WQ 85-7, at p. 10-11 (“[T]here must be a reasonable basis on which to name each party. There must be substantial
evidence to support a filing of responsibility for each party named. This means credible and
reasonable evidence which indicates the named part has responsibility.”)

Further, while Section 13267 broadly authorizes the regional water boards to require
persons who “are suspected to have discharged” wastes to prepare technical reports, “[w]hen
acting under this broad authority, regional boards must identify the evidence that supports
requiring that person to provide the reports.” In Re Petition for Review of Technical Report
Order/Chevron Products Co, Order No. WQO 2004-0005, at p. 4. Moreover, if later
investigations do not support the regional water board’s initial “suspicions” then that person can
no longer be required to prepare further technical reports under Section 13267. Id. at pp. 6-8
(holding that regional board appropriately ordered Chevron to conduct an investigation during the
initial phases of the investigation but evidence gathered during the earlier investigations does not
support continuing requirements imposed on Chevron); see also, Petition of Larry and Pamela
Canchola for Review of Water Code Section 13267 re MTBE, Order No. 2003-0020, at p. 3, 7-8
(holding that regional board cannot require petitioners to further investigate MTBE pollution at
UST site because there is substantial evidence in the existing record that petitioners are not
responsible for MTBE pollution).

Contract Metal Fabricators (a.k.a. Harris Hubb), the predecessors of the current Dresher,
Inc. conducted assembly operations at the Site and leased the Site from Harold Roach, the
predecessor of Valley Alhambra, to “assemble” and “paint” bed frames. Evidence produced in
connection with the litigation settled in 2000 demonstrated that bed frames were delivered,
assembled and painted at the Site from about 1973 to 1990. A subsidiary of Leggett & Platt
acquired the stock of the former Dresher, Inc. on June 19, 1990, and the subsidiary took the name
of Dresher, Inc., which is the current Dresher entity. The current Dresher, Inc. was not a party to
the lease of 4900 Valley Boulevard (Site) nor did it operate the facility at that Site. Shortly after
the June 19, 1990 stock acquisition, the current Dresher, Inc. shut down and transferred the plant
operations to a different facility in Whittier, California, ultimately ceasing all activity at the Site
in early 1991 and vacating the Site thereafter. Leggett & Platt has no ownership rights to the Site
and no legal right to manage or operate the Site.
Leggett & Platt has agreed to manage a fund to remediate the Site pursuant to a settlement agreement with Valley Alhambra executed in September of 2000. The settlement agreement stipulated that neither Leggett & Platt nor Valley Alhambra admitted liability. To date, Leggett & Platt’s dealings with the Regional Water Board in relation to the Site have been in its capacity as administrator of the settlement fund. Consequently, the Regional Water Board has exceeded its statutory authority by issuing a Section 13267 Order to Leggett & Platt as a responsible party because the Regional Water Board failed to identify substantial evidence in support of its decision to issue the Section 13267 Order to Leggett & Platt as a potentially responsible party. Thus, the State Water Board should amend the Order to clarify that Leggett & Platt is being named in the Order in its capacity as administrator of the settlement fund. Further, Leggett & Platt reserves the right to dispute the Regional Water Board’s issuance of any future Order’s directed to Leggett & Platt in any capacity other than as administrator of the settlement fund.

C. DATA FROM GROUND WATER SAMPLING REPORTS PREPARED BY ENVIRON AND SUBMITTED TO THE REGIONAL WATER BOARD SHOW THAT THE CURRENT CONDITION OF THE SOIL AND GROUND WATER DOES NOT POSE A SUBSTANTIAL RISK TO THE WATERS OF THE STATE OR THE GENERAL ENVIRONMENT AND IS COMPLIANT WITH THE CURRENT CONDITIONS FOR SITE CLOSURE

The Site has been subject to years of prior assessment, remediation, and monitoring activities under the oversight of the Regional Water Board. As detailed more fully in the Regional Water Board record, these activities have included soil and ground water investigation, successful remediation including soil extraction in 1993 and utilizing a gas vapor extraction process, confirmation monitoring and sampling, and a risk assessment for the Site as recounted in George Linkletter’s Declaration. Indeed, following these activities, the Regional Water Board authorized removal of the monitoring equipment and the cessation of any further environmental related activities at the Site. As a result of the investigation, remediation, and confirmation
monitoring Environ has concluded that the current soil and ground water conditions at the Site do not pose a substantial risk to human health or the environment based upon, *inter alia*, the following factors:

- The Site is located atop shallow alluvial deposits, which lie above a non-waterbearing formation. Further, borings and wells installed at the Site confirm that the water-bearing strata at the Site is locally non-contiguous and that there is relatively little water present. In light of these data, contamination detected in shallow ground water beneath the Site does not pose a threat to aquifers that may be present down valley to the west of the Site.

- There are no public supply or privately owned wells within a one-mile radius of the Site.

- Ground water testing between 2001 and 2003 demonstrated that PCE levels in the ground water beneath the Site were reduced by orders of magnitude (e.g., from a peak of 4,800 µg/l to 26 µg/l at MW2, which is located immediately adjacent to the source area at the Site) as a result of Regional Water Board approved remediation at the Site.

- Investigations relating to historic operations at the Site are inconclusive regarding the cause of the PCE contamination at the Site but clearly defined the source area. Given the results of the assessment, investigation, and remediation history of the Site it appears that source contamination at the Site has been sufficiently remediated and remaining materials do not pose a substantial risk to human health or the environment.

- Data collected from monitoring wells and soil borings along the western property line of the Site (as well as other data points located downgradient from the source area), when compared to substantially higher contamination levels in the source area on the Site and within the context of the hydrostratigraphy at the Site, indicate only limited migration of contaminants away from the source area.

- The radius of influence of the remediation system that operated at the Site, which include an extraction well immediately adjacent to the Site’s western property line, indicate that the remedial process also addressed adjacent contamination which may have migrated to the downgradient property.

- The analytical results from the deepest samples were judged reflective of ground water
conditions and demonstrated only low or nondetectable concentrations of contaminants
along the western Site boundary prior to the startup of the remediation system.

- Environ prepared a “Risk Assessment of Potential Migration of VOCs to Indoor Air,”
dated November 28, 2005, which concluded that the “cumulative cancer risks are no
higher than $1 \times 10^{-5}$ (mostly attributed to PCE) and recommended that the Regional Water
Board provide an NFA designation for “unrestricted use for the site.” In its April 17,
2006 memorandum addressed to the Regional Water Board, OEHHA stated that it agreed
with Environ’s conclusions regarding the risk assessment.

- Remaining contamination at and beneath the Site should dissipate without further active
remediation and there is no evidence to suggest that it will pose a significant risk to
human health or the environment.

Based upon the above-listed factors, Petitioner maintains that soil and ground water
conditions at the Site do not pose a substantial risk to human health or the environment, that there
is no need for further investigation at or downgradient from the Site, and, further, that closure
should be granted. Further, given the extensive work performed at the Site over the last 10 years,
characterization of the Site is sufficient to understand the pre- and post-remedial conditions at the
Site. The Regional Water Board has failed to present “substantial evidence” in support of the
further investigation required by the Order.

D. THE REGIONAL WATER BOARD HAS NOT PROVIDED PRIMA FACIE
EVIDENCE TO SHOW A CHANGE IN CONDITIONS SINCE IT
ORDERED THE REMEDIATION EQUIPMENT REMOVED AND
STATED THAT THE SITE WAS ELIGIBLE FOR CLOSURE, SUBJECT
TO RESTRICTIVE COVENANTS

The Site has been subject to years of prior assessment, remediation, and monitoring
activities. Indeed, the Site was completely and successfully remediated with a gas vapor
extraction process, and after the gas vapor extraction was completed, the Site was monitored and
sampled extensively as instructed by the Regional Water Board. As established by the following
timeline of events, the Regional Water Board authorized removal of the monitoring equipment
and the cessation of any further environmental related activities at the Site:

to address subsurface volatile organic compounds (VOCs) at the Site. The
Regional Water Board authorized the implementation of the work on June 8,
2001. The remediation system, consisting of 2-PHASE soil vapor and ground
water extraction, began operating on December 6, 2001.

- Following an October 8, 2002 on-site meeting with representatives from Environ
(George Linkletter, Eddie Arslanian, and Bita Tabatabai) and the Regional Water
Board (David Young and J.T. Liu), it was mutually agreed to shut down the
remediation system in order to evaluate possible rebound in ground water. On
October 15, 2002, Environ submitted to the Regional Water Board a “Request for
Post-Remediation Monitoring” documenting the outcome of the October 8, 2002
meeting.

- Following the agreed upon number of post-remediation ground water monitoring
events, a meeting was held on November 18, 2003 between representatives from
Environ (George Linkletter, Bita Tabatabai, and Eddie Arslanian) and the
Regional Water Board (David Young and J.T. Liu) to discuss the data from the
post-remediation ground water monitoring and protocols for confirmation soil
sampling and a final round of ground water monitoring as a prelude to site closure
(No Further Action [NFA] designation).

Sampling and Final Round of Groundwater Sampling.” The work plan included
an historical summary of the soil, soil gas, and ground water data collected from
the Site. In a December 9, 2003 email, Mr. Young approved the work plan.

- In a January 16, 2004 email Environ submitted to the Regional Water Board the
results of the confirmation soil sampling and final round of ground water
sampling and requested an NFA designation for the Site.
- In a February 11, 2004 email Environ followed up with Mr. Young on the status of the NFA.

- In a February 24, 2004 email Mr. Young requested a few items after talking to Regional Water Board “management” for the “closure process.”

- In a March 25, 2004 email Environ submitted a case review form via electronic mail.

- Following various emails between Environ and Regional Water Board staff in a June 30, 2004 email Mr. Liu stated that Mr. Young had begun working on the NFA designation for the Site.

- In an August 10, 2004 email Environ once again submitted information to Mr. Young regarding the Site use history.

- Following various emails between Environ and Regional Water Board staff in an October 1, 2004 email Mr. Liu stated that the closure was discussed with Dr. Arthur Heath, Remediation Section Chief.

- In an October 6, 2004 telephone conversation with Mr. Liu, Environ informed the Regional Water Board that the Site is not located within the San Gabriel Valley Superfund Area. Also, Mr. Liu stated that a deed restriction would be placed as part of the NFA designation for the Site, restricting the use to non-sensitive receptors (i.e., excluding uses such as residential, schools, health care). In an October 6, 2004 email Environ confirmed its understanding of the results of the telephone discussion held earlier that day.

- To address the Regional Water Board’s concern that a deed restriction would be required for unrestricted future use, and the implications of VOCs remaining in soil and ground water, Environ prepared a “Risk Assessment of Potential Migration of VOCs to Indoor Air,” dated November 28, 2005. The risk assessment concluded that the “cumulative cancer risks are no higher than 1 X 10^{-5} (mostly attributed to PCE) and recommended that the Regional Water Board provide an NFA designation for “unrestricted use for the site.”
The Regional Water Board submitted the risk assessment to the Office of Environmental Health Hazard Assessment (OEHHA) for review. In its April 17, 2006 memorandum addressed to the Regional Water Board OEHHA stated that it agreed with Environ’s conclusions regarding the risk assessment, but raised certain questions for Regional Water Board consideration.

On January 19, 2007, representatives from Environ (George Linkletter, CY Jeng, Eddie Arslanian), the Regional Water Board (Adnan Siddiqui and David Young), and representatives of the Site owner (Linda Northrup, counsel for the Site owners and Gary J. Herman, Sr.) and representatives of Leggett & Platt (Joan Donnellan, counsel for Leggett & Platt as administrator of the settlement fund) met to discuss the outstanding items raised in the OEHHA memo. Valley Alhambra waived its objections to executing restrictive covenants that run with the land as a condition of closure. The Regional Water Board agreed on an approach to address the various comments made by OEHHA. At the January 19, 2007 meeting Messrs. Siddiqui and Young indicated that they would discuss with Regional Water Board upper management whether there would be a need to conduct a post-remediation soil vapor study to confirm that there had been no change in the Site from the last ground water sampling as part of the closure process.

Throughout the above timeline of events Petitioner, Valley Alhambra and Environ were lead to understand, based upon the representations made by the Regional Water Board, that closure would be granted for the Site (either with or without a deed restriction). Nevertheless, when Environ (George Linkletter, Eddie Arslanian, Seema Sutarwala) and the Regional Water Board staff (Su Han and David Young) met on May 16, 2008, the Regional Water Board staff stated that additional work would be required prior to obtaining closure for the Site. Thereafter, on June 11, 2008, the Regional Water Board issued the Section 13267 Order. Regional Water Board staff, however, did not identify any new evidence or changed circumstances that would justify the Regional Water Board’s apparent change in position.
As evidenced by the above timeline, the Regional Board had previously indicated that the Site qualified for closure based on extensive ground water monitoring after a comprehensive remediation had been completed in 2004. There have been no changes in the condition of the Site or new or additional facts to support reopening the investigation. To the contrary, investigation, assessment, and remediation activities conducted at the Site support closure at this time. The Regional Water Board bears the burden of establishing by substantial evidence the need for additional investigation after the Regional Water Board has previously authorized the removal of the monitoring equipment and the cessation of any further environmental related activities at the Site.

E. THE COST ASSOCIATED WITH THE INVESTIGATION REQUIRED BY THE ORDER HAS NO REASONABLE RELATIONSHIP TO THE NOMINAL THREAT CAUSED BY THE RESIDUAL TRACES OF CHEMICALS IN SOIL AND GROUND WATER AT THE SITE

In relevant part, Water Code Section 13267(b)(1) provides that 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.” Water Code Section 13267(b)(1) further provides that 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.”

While the statute may not require a formal “economic analysis,” it does place an obligation on the Regional Water Board to come forward with prima facie evidence that the burdens, including the costs, of the study are reasonable relative to the benefits. Where the benefit is nominal or nonexistent, a disproportionately high cost will invalidate the request. See, In the Matter of the Petitions of the City of Pacific Grove, Order No. WQ 82-8, at pp. 5-7, 14 (holding that record contained ample evidence of the need for a study under Section 13267 but that “the scope of the study is excessive resulting in unreasonably high costs” and, thus, should be modified); see also, In re the Matter of the Petition of Pacific Lumber Company and Scotia
Pacific Company LLC, Order WQ 2001-14, at pp. 9-10 ("Information that is required to be provided under Section 13267 is subject to the requirement that '[t]he burden, including costs of these reports shall bear a reasonably relationship to the need for the reports and benefits to be obtained from the reports.").

In the present case, the Order requires an extensive work plan, investigation, technical reports, and monitoring that will result in significant and unnecessary costs. The burden placed on Petitioner, as the administrator of the settlement fund, and Valley Alhambra, as the owner of the Site, by the Order far exceeds the benefit that the additional assessment required thereunder would provide. The scope and breadth of the investigation that is required by the Order will require substantial monetary expenditures, despite any substantial evidence that there is a pressing need for this additional analysis. Moreover, the costs associated with complying with the Order will be further compounded by logistical problems in obtaining access to an adjacent property whose owner has been uncooperative to date. These costs have no reasonable relationship to the need for the investigation sought by the Regional Water Board or the benefits that could be gained from such an investigation.

At great expense, and with the approval of the Regional Water Board, Environ completely and successfully remediated the Site with a gas vapor extraction process. After the gas vapor extraction was completed to the Regional Water Board’s satisfaction, the Site was monitored and sampled extensively as instructed by the Regional Water Board. Eventually satisfied with the results of the monitoring, the Regional Water Board authorized removal of the monitoring equipment and the cessation of any further environmental related activities at the Site. The sole remaining issue was whether the Regional Water Board would require a deed restriction. Yet when the Site owner (Valley Alhambra) agreed to accept the restrictive required by the Regional Water Board as a condition of closure, in January 2007, the Regional Water Board failed to issue a closure; rather the Regional Water Board, with no new evidence and with no factual or legal basis, decided to issue the Order instead, essentially re-opening the Site and requiring Petitioners to start the investigation and remediation process all over again.

Complying with the Order will require the reinstallation of equipment that the Regional
Water Board allowed to be shutdown and removed and will require the re-performance of
sampling, analysis, reporting, and other work that has already been done and accepted by the
Regional Water Board. Yet the Regional Water Board has no new evidence or any evidence of
any change at the Site to justify re-doing what has already been done at an already remediated
Site.

As set forth in the accompanying Declaration of George Linkletter, the cost of complying
with the Order is conservatively estimated to be in excess of $250,000.00. In light of the
investigation, remediation, and confirmation monitoring conducted to date, the burden placed on
Petitioner by the Order (including the monetary cost of compliance) does not bear a reasonable
relationship to the need for the reports and the benefits to be obtained from the reports requested
by the Regional Water Board.

F. FAILURE TO ISSUE CLOSURE CAN RESULT IN SERIOUS FINANCIAL
HARDSHIP TO VALLEY ALHAMBRA SINCE IT CANNOT SELL ITS
REAL ESTATE FOR A COMPETITIVE PRICE

Petitioner incorporates herein by reference the Joinder filed by Valley Alhambra and the
supporting Declaration of Gary J. Herman, Sr.

IX. STATEMENT OF SERVICE OF PETITION TO THE REGIONAL WATER
BOARD

A copy of this Request has been sent to the Regional Water Board.

X. STATEMENT THAT THE SUBSTANTIVE ISSUES RAISED IN THE PETITION
HAVE BEEN RAISED BEFORE THE REGIONAL WATER BOARD

Concurrently with the filing of this Petition, Petitioner will pursue reconsideration of the
Order by the Regional Water Board. Thus, Petitioner requests that this Petition be held in
abeyance pursuant to Title 23 of the California Code of Regulations, Section 2050.5(d), pending
further good faith discussions between Petitioner and the Regional Water Board.
XI. REQUEST TO THE REGIONAL BOARD FOR PREPARATION OF THE RECORD

Prior to filing this Petition, Petitioner and Valley Alhambra, acting through their respective legal counsel, as well as Environ, made repeated efforts to obtain access to the Regional Water Board file relating to the Site. Copies of multiple written requests to the Regional Water Board for access to the Regional Water Board file are collectively attached hereto as Exhibit B. Despite their best efforts, however, Petitioner, Valley Alhambra, and Environ were unable to review the file prior to the filing of this Petition. Thus, Petitioner reserves the right to supplement this Petition at a later date after being granted an opportunity to review the Regional Water Board file.

Additionally, in furtherance of this Petition, Petitioner is requesting that the Regional Water Board prepare the record, including available tape recordings and transcripts, for the hearing on this Petition. A copy of Petitioner’s request to the Regional Water Board for preparation of the record is attached hereto as Exhibit C. In light of the ongoing dialogue between Petitioner and the Regional Water Board, as well as Petitioner’s request that this Petition be held in abeyance to allow further consideration of these matters by the Regional Water Board, Petitioner reserves the right to request that the Regional Water Board supplement the Regional Water Board record prepared pursuant to the attached request with additional and further information and documents submitted to or generated by the Regional Water Board following the preparation of the record by the Regional Water Board as requested by Exhibit C hereto.

Moreover, pursuant to Water Code Section 13320(b) and Title 23 of the California Code of Regulations section 2050.6(a), Petitioner requests that the State Water Board supplement the record before it. Petitioner will advise the State Water Board more specifically in this regard once the Regional Water Board has prepared the record and Petitioner knows what matters have not been included.

XII. REQUEST FOR EVIDENTIARY HEARING
In accordance with Title 23 of the California Code of Regulations section 2050.6(b) and 2052(c), Petitioner respectfully requests that the State Water Board hold a hearing to consider this Petition. At the hearing, Petitioner may present additional evidence that was not available to the Regional Water Board at the time the Order was issued or when this Petition is submitted. In addition, Petitioner requests permission at any hearing: (1) to present oral argument on the legal and policy issues raised by this Petition; and (2) to present to the State Water Board factual and technical information in the Regional Water Board’s files which may have been overlooked by the Regional Water Board.

XIII. REQUEST FOR STAY

In accordance with Title 23 of the California Code of Regulations section 2053(a), Petitioner requests a stay of the Order. Compliance with the Order will cause substantial harm to the Petitioner, including the cost of compliance with the Order, which will exceed $250,000.00. Moreover, in order to comply with the timelines established by the Order the bulk of these costs will be incurred by Petitioner prior to a hearing on the Petition by the State Water Board unless a stay is granted.¹

By contrast, there will be no substantial harm to the public interest or other interested parties if a stay is granted because investigation, remediation, and confirmation monitoring, as well as a prior risk assessment, confirm that the current conditions at the Site do not pose a significant risk to human health or the environment. To the contrary, the Regional Water Board has previously indicated that the Site was ready for closure.

Finally, there exist substantial questions of fact and law regarding the propriety of the Regional Water Board’s Order, including, inter alia, Leggett & Platt’s contention that the Regional Water Board is without authority to issue a Section 13267 Order against Leggett & Platt except in Leggett & Platt’s capacity as administrator of the settlement fund, and Petitioner’s contention that the cost of compliance with the Order does not bear a reasonable relationship to

¹ Alternatively, Petitioner may be placed in the position of having to incur substantial fines or penalties for failing to comply with the Regional Water Board Order pending a hearing on their Petition.
the need for the reports and the benefits to be obtained from the reports requested by the Regional
Water Board.

Based upon these reasons, as well as the other contentions set forth in this Petition, Petitioner requests a stay of the Order pursuant to Title 23 of the California Code of Regulations section 2053(a). Petitioner has attached to this Petition the Declaration of Dr. George Linkletter setting forth proof of the facts alleged in support of its request for stay and, further, requests a hearing on its request for stay to present further relevant evidence and arguments.

XIV. REQUEST THAT PETITION BE HELD IN ABEYANCE

Petitioner requests that the State Water Board hold this Petition in abeyance pursuant to Title 23 of the California Code of Regulations, Section 2050(d) or 2050.5(d), pending further good faith discussions between Petitioner and the Regional Water Board. Petitioner requests that the State Water Board hold this Petition in abeyance for the maximum time period permitted or until reactivated by Petitioner. Petitioner will promptly notice the State Water Board when it is ready to reactivate and have its Petition considered. Petitioner reserves the right to supplement this Petition if the State Water Board does not grant Petitioner's request for abeyance or should the Petition be reactivated in the future.
XV. CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the issuance of the Order was improper, inappropriate, unlawful, and not supported by substantial evidence. Petitioner respectfully requests that the State Water Board grant this Petition and review the Regional Water Board's action in issuing the Order. However, until such time that Petitioner requests the State Water Board to reactivate this Petition, Petitioner requests that the State Water Board hold this Petition in abeyance.

DATED: July 10, 2008

PARKER, MILLIKEN, CLARK, O'HARA & SAMUELIAN
A Professional Corporation

By: JOAN C. DONNELLAN
Attorneys for Petitioner
Leggett & Platt, Incorporated
June 11, 2008

Mr. Robert Anderson  
Leggett and Platt, Inc.  
One Leggett Road  
Carthage, MO 64836  

CALIFORNIA WATER CODE (CWC) SECTION 13267 ORDER: REQUIRING SUBMITTAL OF A WORK PLAN FOR ADDITIONAL SOIL GAS AND GROUNDWATER INVESTIGATION – VALLEY ALHAMBRA PROPERTY, 4900 VALLEY BOULEVARD, LOS ANGELES, CALIFORNIA (SLIC NO. 0967, SITE ID 204DJ00)  

Dear Mr. Anderson:  

Los Angeles Regional Water Quality Control Board (Regional Board) staff has completed a review of the case file for the subject site. Based on the information provided to us, we have determined that the site is not eligible for closure of soil and/or groundwater at this time. The Regional Board is issuing this letter to require submittal of a work plan for additional investigation of soil gas and groundwater at the site.  

Background  

The site operated as a service station from at least 1920 until 1953 and subsequently was used by a variety of private companies. In 1953, three 500 gallon underground storage tanks (USTs) and three 1,000 gallon USTs were removed. In 1969, the Green Mountain Paper Company received a permit to install one 2,000 gallon UST. From January 1972 to January 1993, the site was occupied by Harris Hub/Contract Metal Fabricators/Dresher, Inc. In 1990, Leggett and Platt purchased the business and continued the operation. Activities at the site included painting and assembling metal bed frames. As part of the painting process, two dip tanks and three 750 gallon USTs were used to contain or store solvents. The three 750 gallon USTs were removed from the site in 1991, under the direction of the City of Los Angeles Fire Department (Fire Department). Several subsurface investigations were conducted at the site between 1991 and 1993 as required by the Fire Department for closure of the facility. These investigations are described in the report Response to Request for Subsurface Site Assessment Work Plan dated April 30, 2001.  

In March 1999 and June 2001, additional soil investigations were completed at the site. Based on boring logs completed at the site during the installation of five groundwater monitoring wells in 1999, lithology in the upper 25 feet of soil consists of sands, clayey sands, and clays. The soil investigations indicated that volatile organic compounds (VOCs), including tetrachloroethylene (PCE), trichloroethylene (TCE), toluene, ethylbenzene, and xylenes were present beneath the footprints of the
former dip tanks and USTs at approximately 8 to 10 feet below ground surface (bgs). Soil samples from beneath these tanks contained PCE at concentrations of up to 5,300 milligrams per kilogram (mg/kg), TCE at concentrations of up to 10 mg/kg, toluene at concentrations of up to 540 mg/kg, ethylbenzene at concentrations of up to 76 mg/kg, and xylenes at concentrations of up to 360 mg/kg. Soil samples also contained gasoline-range total petroleum hydrocarbons (TPH) at concentrations of up to 4,590 mg/kg. Analysis of soil samples for metals indicated concentrations consistent with background levels found in Southern California soils.

Soil-gas samples were collected in January 1999, at 15 locations from 5, 10, and 15 feet bgs, with the exception of two locations where the maximum achievable depth was 10 feet bgs. PCE was detected in soil gas in the upper 15 feet of soil at the site at concentrations up to 620 micrograms per liter (µg/L). TCE was only detected in two borings at much lower concentrations.

In May 1999, five groundwater monitoring wells (MW-1 through MW-5) were installed. These wells were first sampled in second quarter 1999 and showed moderate to high concentrations of VOCs. A quarterly groundwater monitoring program was initiated at the site in February 2001. The highest concentrations of VOCs in groundwater were detected during the second quarter sampling event completed in May 2001. During this sampling event, elevated concentrations of PCE were detected in wells MW-2 and MW-3 at 4,800 micrograms per liter (µg/L) and 4,100 µg/L, respectively. TCE and cis-1,2-DCE were also detected during this event, however at much lower concentrations. Groundwater was encountered during the installation of monitoring wells MW-1 through MW-5 between approximately 15 and 17 feet bgs.

Remediation of soil and groundwater began in December 2001, with the implementation of a dual-phase extraction system. The extraction system operated from December 2001 through October 2002 and removed approximately 107 pounds of VOCs from the site. After the remediation system was turned off, five additional quarters of groundwater sampling were performed to test for rebound and to verify residual contamination levels in groundwater. VOCs concentrations (PCE, TCE, and cis-1,2-DCE) in groundwater had decreased or remained generally stable after system shut down. Based on the latest groundwater sampling event in December 2003, VOCs remain in groundwater beneath the site with concentrations up to 26 µg/L of PCE, 19 µg/L of TCE, and 89 µg/L of cis-1,2-DCE.

Confirmation soil matrix sampling was conducted at the site in December 2003 and January 2004 at locations adjacent to the former dip tanks and USTs. Analytical results indicated that PCE was found in six of the nine samples with a maximum concentration of 140 micrograms per kilogram (µg/kg) at 10 feet bgs (decreasing to 37 µg/kg at 12 feet bgs). Other VOCs detected included toluene at up to 320 µg/kg, ethylbenzene up to 19 µg/kg, and xylenes up to 108 µg/kg. No other VOCs were detected above the laboratory reporting limits during this soil sampling event.

The consultant for the site, Environ International Corporation (Environ), prepared a Risk Assessment of Potential Migration of Volatile Organic Compounds to Indoor Air (Risk Assessment) dated November 28, 2005. The Office of Environmental Health Hazard Assessment (OEHHHA) reviewed the Risk Assessment and provided comments to Regional Board staff in a memo dated April 17,
2006. OEHHA indicated that the lack of post-remediation soil-gas sampling could represent a limitation in the Risk Assessment as all modeling was based on soil matrix and groundwater data.

Comments and Requirements

After reviewing historic groundwater monitoring, dual-phase extraction, and confirmation sampling reports, as well as the Risk Assessment and other file documents, Regional Board staff has the following comments and requirements:

1. You are required to submit a conceptual site model (CSM), using existing and new data, to identify any data gaps for delineating the soil vapor plume and impacted groundwater on and offsite. This CSM is due to the Regional Board by August 19, 2008, and may be included with the required work plan(s) for additional investigation of soil-gas and groundwater (see below).

2. Additional groundwater data is needed to properly evaluate the lateral and vertical extent of groundwater contamination. Although groundwater data collected from the on-site monitoring wells indicate concentrations of chlorinated VOCs contamination in groundwater have been significantly reduced, the upgradient, cross-gradient, and downgradient extent of this contamination has not been defined to non-detect levels. Therefore, you are required to fully define the vertical and lateral extent of groundwater contamination originating from the site. However, prior to construction of additional groundwater monitoring wells you are required to conduct an investigation of the physical properties of the saturated zone (including laboratory sieve analysis of soil matrix samples) and collect discrete vertical groundwater samples. Investigation of the saturated zone must include continuous coring until a competent clay boundary with a minimum thickness of 5 feet is encountered. Discrete groundwater samples should be collected from water bearing zones or at a minimum of every 10 feet if the lithology appears consistent over a large depth interval. Based on this information, additional groundwater monitoring wells can be constructed to give the most useful data for evaluation of impact to groundwater beneath the site, which may require the installation of multi-depth nested or cluster wells on and offsite. You are required to submit a work plan to define the lateral and vertical extent of contamination in groundwater by August 19, 2008.

3. Based on comments received from OEHHA dated April 17, 2006 (copy attached), you are required to perform a post-remedial soil-gas investigation and complete a vapor intrusion evaluation for the site. The work plan for the soil-gas investigation may be included with the work plan for the lateral and vertical delineation of contaminated groundwater due to the Regional Board by August 19, 2008. The completed vapor intrusion evaluation is due to the Regional Board by December 19, 2008. The following document can be referenced for the site-specific vapor intrusion evaluation: "Interim Final Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air", dated December 15, 2004 (revised February 7, 2005), prepared by the Department of Toxic Substances Control.
4. Groundwater monitoring is not being conducted at the site. You must resume monitoring of the existing and new groundwater wells at the site according to the following semi-annual schedule:

<table>
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<tr>
<th>Report Period</th>
<th>Report Due Date</th>
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<tbody>
<tr>
<td>January – June</td>
<td>July 31&lt;sup&gt;st&lt;/sup&gt;</td>
</tr>
<tr>
<td>July – December</td>
<td>January 31&lt;sup&gt;st&lt;/sup&gt;</td>
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In addition to the information provided in the previous monitoring reports, all future groundwater monitoring reports shall include the following:

- Isoconcentration map(s) for contaminants of concern in groundwater at the site.
- A table detailing the construction of all existing (and planned) groundwater monitoring wells at the site.
- Cross-section figures showing the extent of dissolved-phase contamination in the saturated zone along the groundwater flow direction and perpendicular to groundwater flow direction.

You are required to resume groundwater monitoring at the site with the July through December 2008 groundwater monitoring report due to the Regional Board no later than January 31, 2009.

5. A Health and Safety Plan for the required work must be submitted to the Regional Board prior to initiating any fieldwork. You may include the Health and Safety Plan in the required work plan(s) as an appendix.

6. Please note that effective July 1, 2005, all reports submitted to the Regional Board must comply with the electronic submittal of information (ESI) to be submitted over the internet, including, groundwater monitoring reports, soil and/or groundwater investigation/characterization reports, remedial action plans; requests for closure, and portable data format (PDF). The text of the regulations can be found at the URL:


Additionally, the State Water Board Geotracker data management system is capable of accepting this electronic information. The Regional Board does not have the resources to acquire hardware to allow caseworkers to appropriately review documents in electronic form. Therefore, for the foreseeable future, we request that you continue to submit hard copies of all documents and data submittals, in addition to ESI to Geotracker.
Pursuant to section 13267 of the CWC, you are required to submit a conceptual site model and a work plan for additional soil gas and groundwater investigation on and offsite by August 19, 2008, a vapor intrusion evaluation by December 19, 2008, and to resume groundwater monitoring and reporting according to the schedule specified in item 4 (above), with the first semi-annual groundwater monitoring report due by January 31, 2009. A Health and Safety Plan for the proposed work must be submitted to the Regional Board prior to initiating any fieldwork. You may include the Health and Safety Plan with the required work plan as an appendix.

Pursuant to section 13268 of the CWC, failure to submit the required technical reports by their due dates may result in civil liability administratively imposed by the Regional Board in an amount up to one thousand dollars ($1000) for each day the technical report or document is not received.

If you have any questions, please feel free to contact Mr. David Young at (213) 576-6733 or Ms. Su Han at (213) 576-6735.

Sincerely,

[Signature]
Tracy J. Agoscue
Executive Officer

Enclosure: Memorandum from OEHHA dated April 17, 2006

Cc: Ms. Jennifer Fordyce, Office of Chief Counsel
    Ms. Linda Northrup, Northrup Schlueter
    Mr. Gary Herman, S.D. Herman Co.
    Ms. Joan Donnellan, Leland, Parachini, Steinberg, Matzger & Melnick, LLP
    Dr. George Linkletter, Environ
    Mr. Eddie Arslanian, Environ
    Ms. Seema Sutarwala, Environ