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6 Attorneys for Petitioner  
Leggett & Platt, Incorporated  
7



8 STATE OF CALIFORNIA

9 STATE WATER RESOURCES CONTROL BOARD

10  
11 IN THE MATTER OF THE PETITION  
OF LEGGETT & PLATT,  
12 INCORPORATED, FOR REVIEW OF  
WATER CODE SECTION 13267  
13 ORDER DATED JUNE 11, 2008, BY  
THE CALIFORNIA REGIONAL  
14 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 FILED CONCURRENTLY  
HEREWITH

15  
16  
17  
18 **I. INTRODUCTION**

19 Pursuant to Water Code Section 13320 and Title 23 of the California Code of Regulations,  
20 Section 2050 et seq., Petitioner Leggett & Platt, Incorporated, a Missouri corporation ("Leggett &  
21 Platt") hereby petitions the State Water Resources Control Board ("State Water Board") for  
22 review of a Conditional Approval of Work Plan For Additional Investigation Pursuant to  
23 California Water Code Section 13267 Order issued on November 25, 2008 ("November 25, 2008  
24 Order") by the Executive Officer of the California Regional Water Quality Control Board, Los  
25 Angeles Region ("Regional Water Board"), which would require Petitioner to submit an  
26 assessment report, including all information specified in the November 25, 2008 Order, relating  
27 to soil and groundwater investigation at and about 4900 Valley Boulevard, Los Angeles,  
28 California ("Site"). A copy of the November 25, 2008 Order is attached hereto as **Exhibit A**.

339223 (4009 700)

1 **II. A RELATED PETITION HAS BEEN SUBMITTED TO THE STATE WATER**  
2 **BOARD AND IS CURRENTLY BEING HELD IN ABEYANCE WHILE**  
3 **PETITIONER WORKS WITH THE REGIONAL WATER BOARD IN GOOD**  
4 **FAITH**

5 Prior to issuing the November 25, 2008 Order, which is the subject of this Petition, on  
6 June 11, 2008, the Regional Water Board issued a Section 13267 Order requiring submittal of a  
7 work plan for additional investigation of soil and ground water at and about the Site (“June 11,  
8 2008 Order”).

9 On July 10, 2008, Leggett & Platt filed a Petition For Review Pursuant To Water Code  
10 Section 13320 relating to the June 11, 2008 Order (“July 10, 2008 Petition”). In support of the  
11 July 10, 2008 Petition Leggett & Platt simultaneously filed the Declaration of George Linkletter  
12 In Support Thereof (“July 10, 2008 Linkletter Declaration”). Additionally, on or about that same  
13 date, the owner of the Site, Valley Alhambra Properties (“Valley Alhambra”), filed a Partial  
14 Joinder in the July 10, 2008 Petition. Copies of the July 10, 2008 Petition, July 10, 2008  
15 Linkletter Declaration and Partial Joinder are attached hereto as **Exhibit B**, **Exhibit C** and  
16 **Exhibit D**, respectively.

17 Concurrently with the filing of the July 10, 2008 Petition, Petitioner submitted a request  
18 for reconsideration of the June 11, 2008 Order to the Regional Water Board. A copy of the  
19 request for reconsideration is attached hereto as **Exhibit E**. Thus, Petitioner requested that the  
20 State Water Board hold the July 10, 2008 Petition in abeyance pursuant to Title 23 of the  
21 California Code of Regulations, Section 2050.5(d), pending further good faith discussions  
22 between Petitioner and the Regional Water Board.

23 On July 14, 2009, the State Water Board sent Petitioner a letter acknowledging that the  
24 July 10, 2008 Petition had been received by the State Water Board and approving Petitioner’s  
25 request that the July 10, 2008 Petition be held in abeyance. A similar acknowledgment letter was  
26 sent to Valley Alhambra in relation to its Partial Joinder in the July 10, 2008 Petition. Copies of  
27 both acknowledgement letters are collectively attached hereto as **Exhibit F**. The July 10, 2008  
28 Petition has been designated SWRCB/OCC File No. A-1936.

1 In furtherance of Petitioner's request for reconsideration submitted to the Regional Water  
2 Board on July 10, 2008, on October 14, 2008, representatives of Leggett & Platt, Valley  
3 Alhambra and their consultants, ENVIRON, met with Regional Water Board representatives to  
4 discuss the June 11, 2008 Order, July 10, 2008 Petition and supporting July 10, 2008 Linkletter  
5 Declaration. During that meeting, the Regional Water Board agreed in concept to a work plan for  
6 onsite and offsite investigation intended to result in site closure. Consistent with those  
7 discussions, on November 17, 2008, the parties submitted a Work Plan For Additional  
8 Investigation ("Work Plan") to the Regional Water Board. In doing so, however, neither Leggett  
9 & Platt nor Valley Alhambra waived their objections to the June 11, 2008 Order or their right to  
10 reinstate the July 10, 2008 Petition, which is currently held in abeyance by the State Water  
11 Resources Control Board. A copy of a November 17, 2008 letter confirming the parties'  
12 discussions at the October 14, 2008, and transmitting a copy of the Work Plan to the Regional  
13 Water Board, is attached hereto as **Exhibit G**.

14 On November 25, 2008, the Regional Water Board issued a conditional approval of the  
15 Work Plan (i.e., the November 25, 2008 Order that is the subject of this Petition). The November  
16 25, 2008 Order contains conditions and requirements that go above and beyond what was  
17 discussed at the October 14, 2008 meeting with the Regional Water Board. Additionally, as with  
18 the June 11, 2008 Order, Petitioner maintains that the Regional Water Board's November 25,  
19 2008 Order is inappropriate, improper and not supported by the record. As such, Petitioner is  
20 filing the instant Petition to preserve its rights in relation to the November 25, 2008 Order.

21 Petitioner intends to continue to cooperate and negotiate with the Regional Water Board in  
22 relation to the investigation of soil and ground water at and about the Site as discussed in the  
23 October 14, 2008 meeting without waiving its rights to petition the requirements of the November  
24 25, 2008 Order. As such, Petitioner requests that the State Water Board hold this Petition in  
25 abeyance, pursuant to Title 23 of the California Code of Regulations Section 2050.5(d), for the  
26 maximum time period permitted or until reactivated by Petitioner, as the State Water Board has  
27 already done with respect to the July 10 2008 Petition (SWRCB/OCC File No. A-1936).

28 A more detailed recitation of the facts underlying the assessment and remediation of the

1 Site are set forth in the July 10, 2008 Petition, July 10, 2008 Linkletter Declaration and Partial  
2 Joinder, which are attached hereto as **Exhibit B**, **Exhibit C** and **Exhibit D**, respectively. For the  
3 purpose of brevity, the factual and legal contentions contained in the July 10, 2008 Petition, July  
4 10, 2008 Linkletter Declaration and Partial Joinder are not repeated herein verbatim. However,  
5 the factual and legal contentions contained in those documents also form the basis of the instant  
6 Petition and are incorporated herein by reference. Additionally, Petitioner reserves the right to  
7 supplement this Petition with a further statement of reasons if the Petition is reactivated.  
8

### 9 **III. NAME AND ADDRESS OF THE PETITIONER**

10 As explained more fully in Section II of the July 10, 2008 Petition, Leggett & Platt has  
11 acted as the administrator of settlement funds used to fund the remediation of the Site pursuant to  
12 a settlement agreement between Valley Alhambra, Leggett & Platt and Dresher, Inc. (Leggett &  
13 Platt's wholly owned subsidiary).

14 As set forth in the July 10, 2008 Petition, Leggett & Platt's subsidiary, Dresher, Inc., was  
15 the survivor of the merger with Harris Hubb, in 1990 and fully vacated the Site in 1991.

16 Valley Alhambra is the owner of the Site and the real party in interest. Nevertheless, the  
17 Regional Water Board has issued the Order against Leggett & Platt, without naming Valley  
18 Alhambra or making any finding that Leggett & Platt was a potentially responsible party. In light  
19 of their respective interests in the outcome of the Petition, Leggett & Platt (as administrator of the  
20 settlement fund) and Valley Alhambra (filing a partial joinder as the owner of the Site and an  
21 interested party) are jointly concerned about the efficacy of the November 25, 2008 Order. Thus,  
22 all correspondence and other written communications regarding this matter should be addressed  
23 as follows:

24 Mr. Robert Anderson  
25 Leggett & Platt, Incorporated  
26 P.O. Box 757  
27 Number 1 Leggett Road  
28 Carthage, MO 64836

Gary J. Herman, Sr.  
1201 S. Olive Street  
Los Angeles, California 90015  
Telephone: 213-747-6531, Ext. 114

1 Facsimile: 213-747-4305  
2 [garysr@sdherman.com](mailto:garysr@sdherman.com)

3 With copies to:

4 Joan C. Donnellan, Esq., Counsel for Leggett & Platt  
5 Gary Meyer, Esq.  
6 Pedram Mazgani, Esq.  
7 Parker, Milliken, Clark, O'Hara & Samuelian  
8 A Professional Corporation  
9 555 S. Flower St., 30<sup>th</sup> Floor  
10 Los Angeles, CA 90071-2440  
11 Telephone: (213) 683-6500  
12 Facsimile: (213) 683-6669  
13 [JDonnellan@pmcos.com](mailto:JDonnellan@pmcos.com)  
14 [GMeyer@pmcos.com](mailto:GMeyer@pmcos.com)  
15 [PMazgani@pmcos.com](mailto:PMazgani@pmcos.com)

16 Linda Northrup, Counsel for Valley Alhambra  
17 Northrup Schlueter  
18 31365 Oak Crest Drive  
19 Suite 250  
20 Westlake Village, CA 91361  
21 Telephone: 818-707-2600  
22 Facsimile: 818-707-2675  
23 [lnorthrup@nsplc.com](mailto:lnorthrup@nsplc.com)

24 **IV. SPECIFIC ACTION OF THE REGIONAL WATER BOARD THAT PETITIONER**  
25 **REQUESTS THE STATE WATER BOARD REVIEW**

26 Petitioner requests review of the November 25, 2008 Order issued by the Regional Water  
27 Board to Petitioner Leggett & Platt. The Order requires the preparation of an assessment report  
28 including information specified in the November 25, 2008 Order pursuant to Water Code Section  
13267. A copy of the November 25, 2008 Order is attached hereto as **Exhibit A**.

**V. DATE OF THE REGIONAL WATER BOARD ACTION**

The Order is dated November 25, 2008.

**VI. STATEMENT OF REASONS WHY THE REGIONAL WATER BOARD'S**  
**ACTION WAS INAPPROPRIATE OR IMPROPER**

This Petition presents factual and legal issues that also form the basis of SWRCB/OCC  
File No. A-1936, which currently is being held in abeyance. Petitioner incorporates herein

1 Sections V and VIII of its July 10, 2008 Petition, as well as relevant portions of the July 10, 2008  
2 Linkletter Declaration, which are attached hereto as **Exhibit B** and **Exhibit C**, respectively.  
3 Petitioner requests that the State Water Board hold this Petition in abeyance for the maximum  
4 time period permitted or until reactivated by Petitioner. If the need arises, Petitioner will seek to  
5 reactivate both this Petition and the July 10, 2008 Petition, and request a single hearing on both  
6 matters. Petitioner reserves its right to supplement this Petition with a further statement of  
7 reasons if the Petition is reactivated.

8  
9 **VII. MANNER IN WHICH THE PETITIONER IS AGGRIEVED**

10 Petitioner is aggrieved by the Order because: (1) closure should have been issued with  
11 restrictive covenants when requested by Valley Alhambra in January 2007; (2) the November 25,  
12 2008 Order was wrongfully issued solely to Leggett & Platt as the presumed responsible party  
13 without including Valley Alhambra and before any determination that Leggett & Platt was a PRP  
14 as to the Site; and (3) the November 25, 2008 Order imposes an excessive and unnecessary  
15 financial burden on Valley Alhambra and Leggett & Platt (as Fund administrator). This is  
16 supported by the Declaration of George Linkletter attached hereto as **Exhibit H**.

17  
18 **VIII. THE SPECIFIC ACTION THAT PETITIONER REQUESTS THE STATE BOARD**  
19 **TAKE**

20 Petitioner requests that both the June 11, 2008 Order and the November 25, 2008 Order be  
21 rescinded in their entirety on the grounds that they are beyond the scope of the investigation  
22 necessary to characterize the Site for closure. The State Water Board should direct the Regional  
23 Water Board to issue a closure letter for the Site.

24 Alternatively, Leggett & Platt requests that the both the June 11, 2008 Order and  
25 November 25, 2008 Order be amended to include Valley Alhambra, the owner of the Site (i.e.  
26 4900 Valley Boulevard property), and to limit the orders' application to Leggett & Platt to reflect  
27 Leggett & Platt's limited role as the administrator of the settlement funds available to remediate  
28 the Site, reserving any order against Leggett & Platt until the Regional Water Board establishes

1 that Leggett & Platt is a responsible party.

2       Petitioner requests that the State Water Board hold this Petition in abeyance for the  
3 maximum time period permitted or until reactivated by Petitioner. Petitioner reserves the right to  
4 request further action authorized by Water Code Section 13320 if the Petition is reactivated.

5  
6 **IX. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**  
7 **ISSUES RAISED IN THIS PETITION**

8       Petitioner incorporates herein Section VIII of its July 10, 2008 Petition, as well as relevant  
9 portions of the July 10, 2008 Linkletter Declaration, which are attached hereto as **Exhibit B** and  
10 **Exhibit C**, respectively. This Petition is also supported by the Declaration of George Linkletter  
11 attached hereto as **Exhibit H**.

12  
13 **X. STATEMENT OF SERVICE OF PETITION TO THE REGIONAL WATER**  
14 **BOARD**

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

16  
17 **XI. STATEMENT THAT THE SUBSTANTIVE ISSUES RAISED IN THE PETITION**  
18 **HAVE BEEN RAISED BEFORE THE REGIONAL WATER BOARD**

19       Petitioner is engaged in an ongoing dialogue with the Regional Water Board relating to  
20 the investigation of soil and ground water at and about the Site, including the November 25, 2008  
21 Order. Thus, Petitioner requests that this Petition be held in abeyance pursuant to Title 23 of the  
22 California Code of Regulations, Section 2050.5(d), pending further good faith discussions  
23 between Petitioner and the Regional Water Board.

24  
25 **XII. REQUEST TO THE REGIONAL BOARD FOR PREPARATION OF THE**  
26 **RECORD**

27       Petitioner is requesting that the Regional Water Board prepare the record, including  
28 available tape recordings and transcripts, for the hearing on this Petition. A copy of Petitioner's

1 request to the Regional Water Board for preparation of the record is attached hereto as **Exhibit I**.  
2 In light of the ongoing dialogue between Petitioner and the Regional Water Board, as well as  
3 Petitioner's request that this Petition be held in abeyance to allow further consideration of these  
4 matters by the Regional Water Board, Petitioner reserves the right to request that the Regional  
5 Water Board supplement the Regional Water Board record prepared pursuant to the attached  
6 request with additional and further information and documents submitted to or generated by the  
7 Regional Water Board following the preparation of the record by the Regional Water Board as  
8 requested by **Exhibit I** hereto. Moreover, pursuant to Water Code Section 13320(b) and Title 23  
9 of the California Code of Regulations section 2050.6(a), Petitioner requests that the State Water  
10 Board supplement the record before it. Petitioner will advise the State Water Board more  
11 specifically in this regard once the Regional Water Board has prepared the record and Petitioner  
12 knows what matters have not been included.

### 13 14 **XIII. REQUEST FOR EVIDENTIARY HEARING**

15 In accordance with Title 23 of the California Code of Regulations section 2050.6(b) and  
16 2052(c), Petitioner respectfully requests that the State Water Board hold a hearing to consider this  
17 Petition. At the hearing, Petitioner may present additional evidence that was not available to the  
18 Regional Water Board at the time the Order was issued or when this Petition is submitted. In  
19 addition, Petitioner requests permission at any hearing: (1) to present oral argument on the legal  
20 and policy issues raised by this Petition; and (2) to present to the State Water Board factual and  
21 technical information in the Regional Water Board's files which may have been overlooked by  
22 the Regional Water Board. Given that this Petition presents factual and legal issues that also form  
23 the basis of SWRCB/OCC File No. A-1936, which currently is being held in abeyance, Petitioner  
24 requests a single hearing on both matters if reactivated.

### 25 26 **XIV. REQUEST FOR STAY**

27 In accordance with Title 23 of the California Code of Regulations section 2053(a),  
28 Petitioner requests a stay of the November 25, 2008 Order. Compliance with the November 25,

1 2008 Order will cause substantial harm to the Petitioner, including the cost of compliance with  
2 the Order, which will exceed \$120,000.00. Moreover, in order to comply with the timelines  
3 established by the November 25, 2008 Order, the bulk of these costs will be incurred by  
4 Petitioner prior to a hearing on the Petition by the State Water Board unless a stay is granted.<sup>1</sup>

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

10 Finally, there exist substantial questions of fact and law regarding the propriety of the  
11 November 25, 2008 Order, including, *inter alia*, Leggett & Platt's contention that the Regional  
12 Water Board is without authority to issue a Section 13267 Order against Leggett & Platt except in  
13 Leggett & Platt's capacity as administrator of the settlement fund, and Petitioner's contention that  
14 the cost of compliance with the November 25, 2008 Order does not bear a reasonable relationship  
15 to the need for the additional scope of work and the benefits to be obtained therefrom.

16 Based upon these reasons, as well as the other contentions set forth in this Petition,  
17 Petitioner requests a stay of the November 25, 2008 Order pursuant to Title 23 of the California  
18 Code of Regulations section 2053(a). Petitioner has attached to this Petition the Declaration of  
19 Dr. George Linkletter setting forth proof of the facts alleged in support of its request for stay and,  
20 further, requests a hearing on its request for stay to present further relevant evidence and  
21 arguments. Petitioner also incorporates herein Section XIII of its July 10, 2008 Petition, as well as  
22 relevant portions of the July 10, 2008 Linkletter Declaration, which are attached hereto as  
23 **Exhibit B** and **Exhibit C**, respectively.

## 24

### 25 **XV. REQUEST THAT PETITION BE HELD IN ABEYANCE**

26 Petitioner requests that the State Water Board hold this Petition in abeyance pursuant to

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28 <sup>1</sup> 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.

1 Title 23 of the California Code of Regulations, Section 2050(d) or 2050.5(d), pending further  
2 good faith discussions between Petitioner and the Regional Water Board. In this regard,  
3 Petitioner notes that the State Water Board has previously granted Petitioner's request to hold the  
4 related Petition (SWRCB/OCC File A-1936) in abeyance based upon the same facts and  
5 circumstances. Petitioner requests that the State Water Board hold this Petition in abeyance for  
6 the maximum time period permitted or until reactivated by Petitioner. Petitioner will promptly  
7 notice the State Water Board when it is ready to reactivate and have its Petition considered.  
8 Petitioner reserves the right to supplement this Petition if the State Water Board does not grant  
9 Petitioner's request for abeyance or should the Petition be reactivated in the future.

10  
11 **XVI. CONCLUSION**

12 For the foregoing reasons, Petitioner respectfully submits that the issuance of the  
13 November 25, 2008 Order was improper, inappropriate, unlawful, and not supported by  
14 substantial evidence. Petitioner respectfully requests that the State Water Board grant this  
15 Petition and review the Regional Water Board's action in issuing the November 25, 2008 Order.  
16 However, until such time that Petitioner requests the State Water Board to reactivate this Petition,  
17 Petitioner requests that the State Water Board hold this Petition in abeyance.

18  
19 DATED: December 23, 2008

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

20  
21  
22 By:   
23 JOAN C. DONNELLAN

24 Attorneys for Petitioner  
25 Leggett & Platt, Incorporated  
26  
27





# California Regional Water Quality Control Board

## Los Angeles Region



Linda S. Adams  
Cal/EPA Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013  
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger  
Governor

November 25, 2008

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

**CONDITIONAL APPROVAL OF WORK PLAN FOR ADDITIONAL INVESTIGATION  
PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER - VALLEY  
ALHAMBRA PROPERTY, 4900 VALLEY BOULEVARD, LOS ANGELES, CALIFORNIA  
(SLIC NO. 0967, SITE ID 204DJ00)**

Dear Mr. Anderson:

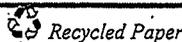
Los Angeles Regional Water Quality Control Board (Regional Board) staff has received and reviewed the document titled *Work Plan for Additional Investigations* (Work Plan), dated November 14, 2008, prepared by Environ International Corporation (Environ). The Work Plan was prepared in response to the Regional Board's June 11, 2008, California Water Code (CWC) section 13267 order (Order)(enclosed), directing you to submit a conceptual site model, a work plan for additional soil gas and groundwater investigation on and offsite, and a vapor intrusion evaluation. In addition, the Order directed you to resume groundwater monitoring on a semi-annual basis.

The Work Plan proposes advancing 10 borings on site to collect soil vapor samples from approximately 5 feet below ground surface (bgs). These proposed sampling locations are in the vicinity of the former dip tank and former underground storage tanks. Environ indicates that the soil gas analytical data will be compared with the commercial/industrial California Human Health Screening Levels (CHHSLs) and, if necessary, a vapor intrusion evaluation will be prepared. In addition, the Work Plan proposes collection of grab groundwater samples via hydropunch from five off-site locations to determine if groundwater impacted by releases of volatile organic compounds (VOCs) has migrated beneath the adjacent property.

Based on our review of the Work Plan and other file documents, we approve the Work Plan, provided the following conditions are met:

1. To assess residual VOCs in soil vapor at or near the former source areas, additional soil vapor sampling locations are needed beyond what is proposed in the Work Plan. Specifically, you are required to collect a soil vapor sample at 5 feet bgs in the area of the previous soil sampling location identified as SB6 (adjacent to former paint dip tank). Furthermore, one additional soil vapor sample must be collected at 5 feet bgs in close proximity to the previous soil vapor sampling location identified as SG-7 (adjacent to the former methylene chloride dip tank). The sampling methodology and laboratory analysis for these additional borings/samples should be consistent with the Work Plan.

*California Environmental Protection Agency*



*Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.*

2. The Work Plan proposes drilling five off-site borings to approximately 3 feet beyond first encountered groundwater, which has historically ranged between 10 to 14 feet below ground surface. As directed in the Order, you are required to conduct an investigation of the physical properties of the saturated zone (including laboratory sieve analysis of soil matrix samples) and collection of 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. Multi-depth and discrete groundwater samples must be collected from water bearing zones or at a minimum of every 10 feet if the lithology appears consistent over a large depth interval.
3. If any soil vapor data from the proposed investigation have concentrations of contamination above the commercial/industrial CHHSLs, you are required to submit a vapor intrusion human health risk evaluation to the Regional Board using site specific physical and chemical data. Considering the delayed field work, the due date for submittal of the vapor intrusion evaluation is extended from December 19, 2008 (required in the Order) to **March 31, 2009**. This report may be included with the assessment report (see below) following completion of the field sampling and laboratory analysis. The Regional Board does not have a toxicologist on staff and will request the assistance of the California Office of Environmental Health Hazard Assessment (OEHHA) in reviewing the vapor intrusion evaluation to ensure protection of human health at the site. Please provide all input data and calculations for screening and/or modeling purposes in this report so that Regional Board and OEHHA staff can validate the risk calculations. The following document can be referenced for completion of a 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 California Department of Toxic Substances Control.
4. As directed in the Order, you were required to submit a site conceptual model (SCM) concurrently with the Work Plan. Because the Work Plan does not include a SCM, you are required to prepare, using existing and new data, and include the SCM in the assessment report following additional site investigation due by **March 31, 2009**. The goals of the SCM are to identify how the distribution of contaminants in soil, soil vapor, and groundwater have changed in space and time; potential current and future receptors; and, environmental issues that need to be addressed.
5. As directed in the Order, you are required to resume monitoring of the existing groundwater wells at the site according to the semi-annual schedule and requirements specified in the Order, with the July through December 2008 groundwater monitoring report due to the Regional Board no later than **January 31, 2009**.
6. The Work Plan indicates that Environ will update its previous site specific Health and Safety Plan (HASP) for the proposed field work. Please submit a copy of the updated HASP for our records at least 10 days prior to the start of field work. This HASP must be onsite during any work to be completed in accordance with the Work Plan. Furthermore, a health and safety briefing should be conducted with all site personnel on a daily basis, prior to commencing fieldwork.

7. Please notify the Regional Board at least 10 working days prior to the start of fieldwork.
8. Following the completion of the field work and laboratory analysis, an assessment report presenting the results of soil gas and groundwater/lithologic investigation, a SCM, and a vapor intrusion evaluation, if necessary, shall be submitted to the Regional Board no later than **March 31, 2009**.
9. As indicated in the Order, based on the results of the hydropunch groundwater sampling, additional investigation and multi-depth monitoring wells on and offsite may be required until the vertical and lateral extent of the groundwater contamination originating from the site are fully defined.

Pursuant to section 13267 of the CWC, you are required to submit an assessment report including all required information, and groundwater monitoring reports according to the schedule specified above. Please provide us with two hard copies of the assessment report. One copy will be forwarded to the OEHHA for review, if necessary.

Pursuant to section 13268 of the CWC, failure to submit the required technical reports by the specified 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 reports are not received.

Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

If you have any questions, please feel free to contact Mr. David Young at (213) 576-6733, or via email at [dyoung@waterboards.ca.gov](mailto:dyoung@waterboards.ca.gov).

Sincerely,

*David A. Bacharowski, AEO*  
for Tracy J. Egoscue  
Executive Officer

Enclosure: Regional Board Order dated June 11, 2008

Mr. Robert Anderson  
Leggett & Platt

- 4 -

November 25, 2008

cc: Mr. Gordon Billheimer, Leggett & Platt  
Ms. Linda Northrup, Northrup Schlueter  
Mr. Gary Herman, S.D. Herman Co.  
Mr. Gary Meyer, Parker, Milliken, Clark, O'Hara & Samuelian  
Ms. Joan Donnellan, Parker, Milliken, Clark, O'Hara & Samuelian  
Dr. George Linkletter, Environ  
Mr. Eddie Arslanian, Environ  
Ms. Seema Sutarwala, Environ

***California Environmental Protection Agency***



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*Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.*

EXHIBIT B

1 Joan C. Donnellan SBN 79462  
2 Gary A. Meyer SBN 94144  
3 Pedram F. Mazgani SBN 204808  
4 PARKER, MILLIKEN, CLARK, O'HARA & SAMUELIAN  
5 A Professional Corporation  
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11 Attorneys for Petitioner  
12 Leggett & Platt, Incorporated  
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STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

11 IN THE MATTER OF THE PETITION  
12 OF LEGGETT & PLATT,  
13 INCORPORATED, FOR REVIEW OF  
14 WATER CODE SECTION 13267  
15 ORDER DATED JUNE 11, 2008, BY  
16 THE CALIFORNIA REGIONAL  
17 WATER QUALITY CONTROL BOARD,  
18 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

1 **I. INTRODUCTION**

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

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

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

24 Complying with the Order will require Petitioner to reinstall equipment that the Regional  
25 Water Board allowed to be shutdown and removed, and will require Petitioner to re-perform  
26 characterization and investigation of the same Site including, without limitation, sampling,  
27 analysis, reporting, and other work that has already been done and accepted by the Regional  
28 Water Board. Yet the Regional Water Board has no new evidence or any evidence of any change

1 at the Site to justify re-doing what has already been done at a previously remediated Site. Thus,  
2 pursuant to Water Code Section 13320, Petitioner requests that the State Water Board review the  
3 Regional Water Board's Section 13267 Order, rescind the Order on the grounds that it is beyond  
4 the scope of the investigation necessary to characterize the Site for closure, and direct the  
5 Regional Water Board to grant closure of the Site without further unnecessary expenditure by  
6 Petitioners.

7 Concurrently with the filing of this Petition, Petitioner will pursue reconsideration of the  
8 Order by the Regional Water Board. Thus, Petitioner requests that the State Water Board hold  
9 this Petition in abeyance pursuant to Title 23 of the California Code of Regulations, Section  
10 2050.5(d), pending further good faith discussions between Petitioner and the Regional Water  
11 Board.

## 12

### 13 **II. NAME AND ADDRESS OF THE PETITIONER**

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

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

1 addressed as follows:

2 Mr. Robert Anderson  
3 Leggett & Platt, Incorporated  
4 P.O. Box 757  
5 Number 1 Leggett Road  
6 Carthage, MO 64836

7 Gary J. Herman, Sr.  
8 See Partial Joinder filed by Valley Alhambra  
9 Los Angeles, California

10 With copies to:

11 Joan C. Donnellan, Esq., , Counsel for Leggett & Platt  
12 Gary Meyer, Esq.  
13 Pedram Mazgani, Esq.  
14 Parker, Milliken, Clark, O'Hara & Samuelian  
15 A Professional Corporation  
16 555 S. Flower St., 30<sup>th</sup> Floor  
17 Los Angeles, CA 90071-2440  
18 Telephone: (213) 683-6500  
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20 [JDonnellan@pmcos.com](mailto:JDonnellan@pmcos.com)  
21 [GMeyer@pmcos.com](mailto:GMeyer@pmcos.com)  
22 [PMazgani@pmcos.com](mailto:PMazgani@pmcos.com)

23 Linda Northrup, Counsel for Valley Alhambra  
24 Northrup Schlueter  
25 31365 Oak Crest Drive  
26 Suite 250  
27 WestlakeVillage, CA 91361

28 **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.

1 **V. STATEMENT OF REASONS WHY THE REGIONAL WATER BOARD'S**  
2 **ACTION WAS INAPPROPRIATE OR IMPROPER**

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

- 6 • The Order contains findings of fact that are not supported by substantial evidence  
7 in the record;
- 8 • Investigation, remediation, and confirmation monitoring activities, as well as the  
9 data derived from these activities, evidence that current conditions of the soil and  
10 ground water at the Site do not pose a substantial risk to human health or the  
11 waters of the State;
- 12 • Given the extensive work performed at the Site over the last 10 years,  
13 characterization of the Site is sufficient to understand the pre- and post-remedial  
14 conditions at the Site;
- 15 • The burden, including costs of compliance, imposed on Petitioner by the Order  
16 does not bear a reasonable relationship to the benefits that may be obtained from  
17 the reports and investigations sought by the Order;
- 18 • Valley Alhambra should be included in the 13267 Order as the owner of the  
19 property located at 4900 Valley Boulevard as Leggett & Platt's Dresher subsidiary  
20 has not occupied the Site for almost 18 years and has no legal rights to use,  
21 manage, control, alter, modify or dispose of the Site. Any inclusion of Leggett &  
22 Platt in a 13267 Order should be specifically limited to its role as the administrator  
23 of the settlement fund pending a determination of its status as a potentially  
24 responsible party;
- 25 • Investigation, remediation, and confirmation monitoring to date justifies closure of  
26 the Site without further investigation.

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

1 herein.

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

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6 **VI. MANNER IN WHICH THE PETITIONER IS AGGRIEVED**

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

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14 **VII. THE SPECIFIC ACTION THAT PETITIONER REQUESTS THE STATE BOARD**  
15 **TAKE**

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

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

26 Petitioner requests that the State Water Board hold this Petition in abeyance for the  
27 maximum time period permitted or until reactivated by Petitioner. Petitioner reserves the right to  
28 request further action authorized by Water Code Section 13320 if the Petition is reactivated.

1  
2 **VIII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**  
3 **ISSUES RAISED IN THIS PETITION**

4 **A. APPLICABLE STANDARD OF REVIEW**

5 Any aggrieved person may petition the State Water Board to review an action or failure to  
6 act by a Regional Water Board within 30 days of such action or failure. Water Code §13320(a).  
7 Pursuant to Water Code section 13320(c), the State Water Board may find that the actions of a  
8 Regional Water Board were inappropriate or improper. Upon finding that the action of a  
9 Regional Water Board, or the failure of a Regional Water Board to act, was inappropriate or  
10 improper, the State Water Board may take the appropriate action, direct the Regional Water  
11 Board to take the appropriate action, and/or refer the issue to another state agency with  
12 jurisdiction. Water Code §13320(c). The State Water Board is vested with all the powers of the  
13 Regional Water Board for purposes of taking such actions. Water Code §13320(c).

14 Upon a Water Code Section 13320 Petition, the State Water Board must review the  
15 Regional Water Board record to determine if there is sufficient evidence ensuring an appropriate  
16 and proper action by the Regional Water Board. *See* Water Code §13320. The State Water Board  
17 is required to make an independent review of the Regional Water Board action to determine  
18 whether the weight of the evidence supports the issuance of the Regional Water Board's order. *In*  
19 *the Matter of the Petition of Exxon Company, U.S.A., et al. of the Adoption of the Cleanup and*  
20 *Abatement Order No. 85-066 by the California Regional Water Quality Control Board, Central*  
21 *Valley Region, Order No. WQ 85-7, at p. 10 (standard of State Water Board review under Section*  
22 *13320 requires independent judgment as to whether the action was reasonable).*

23 In reviewing a decision of a Regional Water Board, the State Water Board is not subject to  
24 the same strict standards that govern court review of administrative actions. *See* Cal. Water Code  
25 § 13320; *In the Matter of the Petition of Exxon Company, supra, Order No. WQ 85-7, at p. 10.*  
26 Rather, the State Water Board must consider both the record before the Regional Water Board  
27 and "any other relevant evidence" when reviewing an order. Water Code §13320(b). Thus, the  
28 scope of review is "closer to that of independent review." *In the Matter of the Petition of Exxon*

1 *Company, supra*, Order No. WQ 85-7, at pp. 10, 12.

2 To uphold the Regional Water Board's challenged action as appropriate and proper, the  
3 State Water Board must conclude that the action was "based on substantial evidence." *See* Cal.  
4 Water Code § 13320; *In the Matter of the Petition of Exxon Company, supra*, Order No. WQ 85-  
5 7, at pp. 10, 12.

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

14 In relevant part, Water Code Section 13267(b)(1) authorizes a Regional Water Board to  
15 "require that any person who has discharged, discharges, or is suspected of having discharged or  
16 discharging, or who proposes to discharge waste within its region ... shall furnish, under penalty  
17 of perjury, technical or monitoring program reports which the regional board requires." The  
18 Regional Board has not established that Leggett & Platt has discharged waste at the Site which  
19 would be the subject of the current Order and, as such, the Regional Water Board has exceeded its  
20 authority under Water Code Section 13267 by issuing its Order against Leggett & Platt.

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

1 evidence to support a filing of responsibility for each party named. This means credible and  
2 reasonable evidence which indicates the named part has responsibility.”)

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

17 Contract Metal Fabricators (a.k.a. Harris Hubb), the predecessors of the current Dresher,  
18 Inc. conducted assembly operations at the Site and leased the Site from Harold Roach, the  
19 predecessor of Valley Alhambra, to “assemble” and “paint” bed frames. Evidence produced in  
20 connection with the litigation settled in 2000 demonstrated that bed frames were delivered,  
21 assembled and painted at the Site from about 1973 to 1990. A subsidiary of Leggett & Platt  
22 acquired the stock of the former Dresher, Inc. on June 19, 1990, and the subsidiary took the name  
23 of Dresher, Inc., which is the current Dresher entity. The current Dresher, Inc. was not a party to  
24 the lease of 4900 Valley Boulevard (Site) nor did it operate the facility at that Site. Shortly after  
25 the June 19, 1990 stock acquisition, the current Dresher, Inc. shut down and transferred the plant  
26 operations to a different facility in Whittier, California, ultimately ceasing all activity at the Site  
27 in early 1991 and vacating the Site thereafter. Leggett & Platt has no ownership rights to the Site  
28 and no legal right to manage or operate the Site.

1 Leggett & Platt has agreed to manage a fund to remediate the Site pursuant to a settlement  
2 agreement with Valley Alhambra executed in September of 2000. The settlement agreement  
3 stipulated that neither Leggett & Platt nor Valley Alhambra admitted liability. To date, Leggett &  
4 Platt's dealings with the Regional Water Board in relation to the Site have been in its capacity as  
5 administrator of the settlement fund. Consequently, the Regional Water Board has exceeded its  
6 statutory authority by issuing a Section 13267 Order to Leggett & Platt as a responsible party  
7 because the Regional Water Board failed to identify substantial evidence in support of its decision  
8 to issue the Section 13267 Order to Leggett & Platt as a potentially responsible party. Thus, the  
9 State Water Board should amend the Order to clarify that Leggett & Platt is being named in the  
10 Order in its capacity as administrator of the settlement fund. Further, Leggett & Platt reserves the  
11 right to dispute the Regional Water Board's issuance of any future Order's directed to Leggett &  
12 Platt in any capacity other than as administrator of the settlement fund.

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

21 The Site has been subject to years of prior assessment, remediation, and monitoring  
22 activities under the oversight of the Regional Water Board. As detailed more fully in the  
23 Regional Water Board record, these activities have included soil and ground water investigation,  
24 successful remediation including soil extraction in 1993 and utilizing a gas vapor extraction  
25 process, confirmation monitoring and sampling, and a risk assessment for the Site as recounted in  
26 George Linkletter's Declaration. Indeed, following these activities, the Regional Water Board  
27 authorized removal of the monitoring equipment and the cessation of any further environmental  
28 related activities at the Site. As a result of the investigation, remediation, and confirmation

1 monitoring Environ has concluded that the current soil and ground water conditions at the Site do  
2 not pose a substantial risk to human health or the environment based upon, *inter alia*, the  
3 following factors:

- 4 • The Site is located atop shallow alluvial deposits, which lie above a non-waterbearing  
5 formation. Further, borings and wells installed at the Site confirm that the water-bearing  
6 strata at the Site is locally non-contiguous and that there is relatively little water present.  
7 In light of these data, contamination detected in shallow ground water beneath the Site  
8 does not pose a threat to aquifers that may be present down valley to the west of the Site
- 9 • There are no public supply or privately owned wells within a one-mile radius of the Site.
- 10 • Ground water testing between 2001 and 2003 demonstrated that PCE levels in the ground  
11 water beneath the Site were reduced by orders of magnitude (e.g., from a peak of 4,800  
12 µg/l to 26 ug/l at MW2, which is located immediately adjacent to the source area at the  
13 Site) as a result of Regional Water Board approved remediation at the Site.
- 14 • Investigations relating to historic operations at the Site are inconclusive regarding the  
15 cause of the PCE contamination at the Site but clearly defined the source area. Given the  
16 results of the assessment, investigation, and remediation history of the Site it appears that  
17 source contamination at the Site has been sufficiently remediated and remaining materials  
18 do not pose a substantial risk to human health or the environment.
- 19 • Data collected from monitoring wells and soil borings along the western property line of  
20 the Site (as well as other data points located downgradient from the source area), when  
21 compared to substantially higher contamination levels in the source area on the Site and  
22 within the context of the hydrostratigraphy at the Site, indicate only limited migration of  
23 contaminants away from the source area.
- 24 • The radius of influence of the remediation system that operated at the Site, which include  
25 an extraction well immediately adjacent to the Site's western property line, indicate that  
26 the remedial process also addressed adjacent contamination which may have migrated to  
27 the downgradient property.
- 28 • The analytical results from the deepest samples were judged reflective of ground water

1 conditions and demonstrated only low or nondetectable concentrations of contaminants  
2 along the western Site boundary prior to the startup of the remediation system.

- 3 • Environ prepared a "Risk Assessment of Potential Migration of VOCs to Indoor Air,"  
4 dated November 28, 2005, which concluded that the "cumulative cancer risks are no  
5 higher than  $1 \times 10^{-5}$  (mostly attributed to PCE) and recommended that the Regional Water  
6 Board provide an NFA designation for "unrestricted use for the site." In its April 17,  
7 2006 memorandum addressed to the Regional Water Board, OEHHA stated that it agreed  
8 with Environ's conclusions regarding the risk assessment.
- 9 • Remaining contamination at and beneath the Site should dissipate without further active  
10 remediation and there is no evidence to suggest that it will pose a significant risk to  
11 human health or the environment.

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

19  
20 **D. THE REGIONAL WATER BOARD HAS NOT PROVIDED PRIMA FACIE**  
21 **EVIDENCE TO SHOW A CHANGE IN CONDITIONS SINCE IT**  
22 **ORDERED THE REMEDIATION EQUIPMENT REMOVED AND**  
23 **STATED THAT THE SITE WAS ELIGIBLE FOR CLOSURE, SUBJECT**  
24 **TO RESTRICTIVE COVENANTS**

25 The Site has been subject to years of prior assessment, remediation, and monitoring  
26 activities. Indeed, the Site was completely and successfully remediated with a gas vapor  
27 extraction process, and after the gas vapor extraction was completed, the Site was monitored and  
28 sampled extensively as instructed by the Regional Water Board. As established by the following

1 timeline of events, the Regional Water Board authorized removal of the monitoring equipment  
2 and the cessation of any further environmental related activities at the Site:

- 3 • On April 30, 2001, Environ submitted an "Interim Remedial Action Plan" (IRAP)  
4 to address subsurface volatile organic compounds (VOCs) at the Site. The  
5 Regional Water Board authorized the implementation of the work on June 8,  
6 2001. The remediation system, consisting of 2-PHASE soil vapor and ground  
7 water extraction, began operating on December 6, 2001.
- 8 • Following an October 8, 2002 on-site meeting with representatives from Environ  
9 (George Linkletter, Eddie Arslanian, and Bitu Tabatabai) and the Regional Water  
10 Board (David Young and J.T. Liu), it was mutually agreed to shut down the  
11 remediation system in order to evaluate possible rebound in ground water. On  
12 October 15, 2002, Environ submitted to the Regional Water Board a "Request for  
13 Post-Remediation Monitoring" documenting the outcome of the October 8, 2002  
14 meeting.
- 15 • Following the agreed upon number of post-remediation ground water monitoring  
16 events, a meeting was held on November 18, 2003 between representatives from  
17 Environ (George Linkletter, Bitu Tabatabai, and Eddie Arslanian) and the  
18 Regional Water Board (David Young and J.T. Liu) to discuss the data from the  
19 post-remediation ground water monitoring and protocols for confirmation soil  
20 sampling and a final round of ground water monitoring as a prelude to site closure  
21 (No Further Action [NFA] designation).
- 22 • On December 3, 2003, Environ submitted its "Work Plan for Confirmation Soil  
23 Sampling and Final Round of Groundwater Sampling." The work plan included  
24 an historical summary of the soil, soil gas, and ground water data collected from  
25 the Site. In a December 9, 2003 email, Mr. Young approved the work plan.
- 26 • In a January 16, 2004 email Environ submitted to the Regional Water Board the  
27 results of the confirmation soil sampling and final round of ground water  
28 sampling and requested an NFA designation for the Site.

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- 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  $1 \times 10^{-5}$  (mostly attributed to PCE) and recommended that the Regional Water Board provide an NFA designation for “unrestricted use for the site.”

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- 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.

1 As evidenced by the above timeline, the Regional Board had previously indicated that the  
2 Site qualified for closure based on extensive ground water monitoring after a comprehensive  
3 remediation had been completed in 2004. There have been no changes in the condition of the Site  
4 or new or additional facts to support reopening the investigation. To the contrary, investigation,  
5 assessment, and remediation activities conducted at the Site support closure at this time. The  
6 Regional Water Board bears the burden of establishing by substantial evidence the need for  
7 additional investigation after the Regional Water Board has previously authorized the removal of  
8 the monitoring equipment and the cessation of any further environmental related activities at the  
9 Site.

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

15 In relevant part, Water Code Section 13267(b)(1) provides that the “burden, including  
16 costs, of these reports shall bear a reasonable relationship to the need for the report and the  
17 benefits to be obtained from the reports.” Water Code Section 13267(b)(1) further provides that  
18 in “requiring those reports, the regional board shall provide the person with a written explanation  
19 with regard to the need for the reports, and shall identify the evidence that supports requiring that  
20 person to provide the reports.”

21 While the statute may not require a formal “economic analysis,” it does place an  
22 obligation on the Regional Water Board to come forward with *prima facie* evidence that the  
23 burdens, including the costs, of the study are reasonable relative to the benefits. Where the benefit  
24 is nominal or nonexistent, a disproportionately high cost will invalidate the request. *See, In the*  
25 *Matter of the Petitions of the City of Pacific Grove*, Order No. WQ 82-8, at pp. 5-7, 14 (holding  
26 that record contained ample evidence of the need for a study under Section 13267 but that “the  
27 scope of the study is excessive resulting in unreasonably high costs” and, thus, should be  
28 modified); *see also, In re the Matter of the Petition of Pacific Lumber Company and Scotia*

1 *Pacific Company LLC*, Order WQ 2001-14, at pp. 9-10 (“Information that is required to be  
2 provided under Section 13267 is subject to the requirement that “[t]he burden, including costs of  
3 these reports shall bear a reasonably relationship to the need for the reports and benefits to be  
4 obtained from the reports.”).

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

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

28 Complying with the Order will require the reinstallation of equipment that the Regional

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

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

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

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

18  
19 **IX. STATEMENT OF SERVICE OF PETITION TO THE REGIONAL WATER**  
20 **BOARD**

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

22  
23 **X. STATEMENT THAT THE SUBSTANTIVE ISSUES RAISED IN THE PETITION**  
24 **HAVE BEEN RAISED BEFORE THE REGIONAL WATER BOARD**

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

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**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**

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

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10 **XIII. REQUEST FOR STAY**

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

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

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

27  
28 <sup>1</sup> 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.

1 the need for the reports and the benefits to be obtained from the reports requested by the Regional  
2 Water Board.

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

8  
9 **XIV. REQUEST THAT PETITION BE HELD IN ABEYANCE**

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

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