



*Via Federal Express and Email/pdf ([jbashaw@waterboards.ca.gov](mailto:jbashaw@waterboards.ca.gov))*

State Water Resources Control Board  
Office of Chief Counsel  
**Attention:** Jeannette Bashaw, Legal Analyst  
P.O. Box 100  
Sacramento, CA 95812-0100

Re: Petition for Review - Approval of Risk  
Assessment and Requirement for a Feasibility Study  
Report: Property at 4186 Park Road, Benicia  
Industrial Park

Dear Ms. Bashaw,

In accordance with Section 2050 of Title 23 of the California Code of Regulations, Hayes Lemmerz International, Inc. ("Petitioner") hereby submits the following "Petition for Review" of the September 28, 2011 letter entitled "Approval of Risk Assessment and Requirement for a Feasibility Study Report: Property at 4186 Park Road, Benicia Industrial Park, Benicia, Solano County" ("the Letter") (attached as Exhibit A) issued by the Regional Water Quality Control Board, San Francisco Bay Region ("Water Board").

Petitioner provides the following information in support of its Petition:

1. Petitioner's name and address is:  
Hayes Lemmerz International, Inc.  
Attention – Michael A. Coffman  
([mcoffman@hayes-lemmerz.com](mailto:mcoffman@hayes-lemmerz.com))  
15300 Centennial Drive  
Northville, Michigan, 48168.
2. Petitioner requests that the State Water Resources Control Board ("State Board") review the above-referenced letter. Petitioner submits this petition for review as a protective filing while it works in good faith with the Water Board Staff to resolve its concerns and requests that the State Board hold this Petition in abeyance pursuant to State Board practice.

3. The Water Board, through its Executive Officer, Bruce Wolfe, issued the Letter on September 28, 2011.
4. In the event this Petition is made active, Petitioner will submit as an amendment to this Petition a more-complete statement of reasons that the letter is inappropriate and improper.
5. Petitioner and the other members of the Park Road Group and our consultants have in good faith worked closely with the Water Board Staff including:
  - Submittal of a draft workplan for a human health and ecological risk assessment (“HHRA”) in January 2009;
  - Submittal of the completed HHRA in February 2010;
  - Working through an additional lengthy third-party review process – a process that took significantly more time to complete on the Water Board’s end than was anticipated or justified, with final submittal of the revised HHRA in July 2011
6. The Petitioner is aggrieved because the Letter finally received at the end of this lengthy (almost three-year) process first indicates that the HHRA is approved but then proceeds with further comments and directives ignoring and in some cases contradicting important conclusions of that risk assessment:
  - The Letter notes that a third-party consulting toxicologist was retained to independently peer review the HHRA (at the Park Road Group’s cost) and that discussions among the Water Board staff, the independent consultant and the consultant for the alleged dischargers, ERM, resulted in revisions to the HHRA that increased the clarity and scientific validity of the document. Yet, many of those revisions were to HHRA conclusions that the Letter does not mention or appear to take into account. For example, the Letter notes that predicted risks for ingestion of groundwater by future off-site residents exceed acceptable risk ranges, but ignores the discussion in the approved HHRA explaining why that exposure pathway is incomplete and need not be considered.
  - Petitioner is also aggrieved because the Letter states that the HHRA indicates that VOCs “present potential elevated human health and ecological risks, and also constitute a nuisance.” This is contrary to the conclusions of the approved HHRA itself, and the independent peer reviewer’s views, and Petitioner objects to the Water Board arbitrarily choosing to emphasize some portions of the HHRA while seemingly ignoring other parts. Furthermore, Petitioner objects to describing the site as a “nuisance” because that term is a common-law standard that is not defined by Water Board regulations or policies. Petitioner cannot comply with such a vague standard and disagrees that the site is a nuisance. In fact, the HHRA conclusions and the independent third-party peer reviewer’s comments make clear that remediation activities already undertaken by the Park Road Group, at a site that none of its

members contaminated, have significantly reduced the mass and concentrations of chemicals in soils and groundwater and there are no remaining significant risks.

- After describing general concerns by Water Board staff regarding the Ecological Risk Assessments performed on behalf of CalTrans and previously approved by the Water Board, the Letter then states that the screening criteria for TCE established in those assessments is sufficiently protective. However this is followed by a sentence indicating remaining concerns with the monitoring program being implemented by CalTrans in the area. It is not clear what, if anything, Petitioner and the other members of the Park Road Group are being asked to do in response to this vague and contradictory set of remarks, but if the Water Board has concerns with the monitoring program implemented by CalTrans, we respectfully suggest that those issues should be taken up with CalTrans.

In summary, Petitioner is aggrieved because, after a nearly three-year risk assessment process, it has been instructed to submit a feasibility study report to mitigate risks that the Water Board-approved HHRA has demonstrated are not significant, and to reduce “nuisance”, without any way of measuring such a condition, and when the term is neither defined by Water Board regulations or policies nor justified based on the findings of the approved HHRA and Ecological Risk Assessment.

Petitioner requests that the State Board set aside the Letter or that the State Board direct the Water Board to set aside the Letter. It is the intention of the Petitioner and the other members of the Park Road Group to resolve these differences through continued discussions with Water Board staff .

In the event this Petition is made active, Petitioner will submit as an amendment to this Petition a full and more-complete statement of the manner in which Petitioner is aggrieved and a complete statement of points and authorities in support of the legal issues raised in this Petition.

A copy of this Petition for Review and the attached Exhibit A has been sent to the Water Board and the other interested parties via email.

In the event this Petition is made active, Petitioner will submit as an amendment to this Petition a statement that the substantive issues and objections raised in this Petition were either raised before the Water Board or an explanation of why Petitioner was not required or was unable to raise the substantive issues and objections before the Water Board.

Petitioner requests that the State Board hold a hearing at which Petitioner can present additional evidence to the State Board. In the event this Petition is made active, Petitioner will submit as an amendment to this Petition a statement regarding that additional evidence and a summary of contentions to be addressed or evidence to be introduced and a showing of why the contentions or evidence have not been previously or adequately presented, as required under 23 Cal. Code Regulations. § 2050.6(a), (b).

10/25/2011

For all the reasons stated above, Petitioner respectfully requests that the State Board set aside the Water Board's September 28, 2011 Letter or direct the Water Board to set aside the Letter.

Sincerely;

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form a stylized, somewhat abstract shape.

Michael A. Coffman  
Director – Global Risk Management

**EXHIBIT A**



# California Regional Water Quality Control Board

## San Francisco Bay Region



Matthew Rodriquez  
Secretary for  
Environmental Protection

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Edmund G. Brown, Jr.  
Governor

September 28, 2011  
File No: 48S0046 (KA)

Champion Laboratories, Inc.  
c/o Todd Maiden  
Reed Smith LLP

[TMaiden@ReedSmith.com](mailto:TMaiden@ReedSmith.com)

Equity Office Properties Trust  
Attn: James Soutter

[James\\_Soutter@equityoffice.com](mailto:James_Soutter@equityoffice.com)

Hayes Lemmerz International, Inc.  
Attn: Michael Coffman

[mcoffman@hayes-lemmerz.com](mailto:mcoffman@hayes-lemmerz.com)

SUBJECT: Approval of Risk Assessment and Requirement for a Feasibility Study Report:  
Property at 4186 Park Road, Benicia Industrial Park, Benicia, Solano County

Dear Messrs. Maiden, Soutter, and Coffman:

This letter is being sent to you as representatives of the Park Road Group (PRG), a consortium of companies responsible for investigation and cleanup of contamination discharged at the property located at 4186 Park Road in Benicia, Solano County (Site). Regional Water Board staff has reviewed the *Human Health and Ecological Risk Assessment* (Environmental Resources Management (ERM), July 2011 (HHERA)) prepared for the Site and the offsite area downgradient of the property.

The HHERA was developed using the methods and procedures included in the ERM *Risk Assessment Workplan* (Workplan) dated, July 31, 2009, to evaluate human health risk and ecological risk associated with the release of volatile organic compounds (VOCs) at the site. As described in the Workplan, ERM was tasked with preparing a human health risk assessment and evaluating a CalTrans ecological risk assessment (ERA) prepared in 1999 for the offsite wetland area. This letter describes the HHERA review process, approves the HHERA, and requires preparation of a feasibility study report (FS) for the impacted area.

### Site Conditions

The Site was originally part of the Benicia Arsenal, which operated from the 1850s until 1964. From the 1970s through the early 1980s aftermarket automobile wheels were manufactured in a building at 4186 Park Road. The manufacturing operations included use of trichloroethylene (TCE) and 1,1,1-trichloroethane (1,1,1-TCA) as degreasing solvents. These operations resulted in release of these volatile organic solvents (VOCs) and contamination of soil and groundwater. The primary contaminants of concern at the Site and downgradient to the southeast are TCE and related breakdown compounds, including vinyl chloride. Previous work by ERM has

documented that VOCs have migrated offsite in groundwater beneath a light industrial area and to adjoining wetlands southeast of Interstate Highway 680.

### **Risk Assessment Review**

To facilitate our review of the HHERA, the Regional Water Board requested that the PRG provide technical assistance to supplement the capabilities of our staff. Ms. Ann Holbrow Verwiel, a senior toxicologist with the consulting firm AMEC, was retained by the PRG to actively participate in the review of the HHERA. Ms. Verwiel worked with Regional Water Board staff, independently from ERM and the PRG, as a peer reviewer of this document. She thoroughly evaluated the methods, procedures, data, assumptions, and calculations that ERM used in preparing the HHERA. Discussions among ERM, Ms. Verwiel, and Regional Board staff over an extended period resulted in substantial revisions to the draft work product that increased the clarity and scientific validity of the final document. A letter from AMEC summarizing the review process, the information provided in the HHERA, and the results of Ms. Verwiel's review are enclosed with this letter.

Using 2009 and earlier environmental data, ERM evaluated the risks associated with the inhalation pathway for both onsite and offsite workers and future offsite residents, and the ingestion pathway for future offsite residents. As noted in the AMEC letter, inhalation health risks to onsite and offsite workers and future offsite residents are below or at the lower end of the acceptable risk range established by U.S. EPA ( $1 \times 10^{-6}$  to  $1 \times 10^{-4}$ ). Predicted risks for ingestion of groundwater by future offsite residents exceed the upper end of U.S. EPA's acceptable risk range. TCE concentrations in groundwater also exceed the maximum contaminant level (MCL) allowable in drinking water for this compound.

ERM reviewed the 1999 CalTrans ERA and a supplemental ERA for the Benicia-Martinez Wetland area downgradient of the Site, which were prepared in support of a mitigation project for the Benicia-Martinez Bridge project, and concluded that these documents were acceptable. Further evaluation by Regional Water Board staff indicates that the hydrogeologic and contaminant transport models used in the CalTrans ERA do not accurately reflect the conditions that exist in or near the wetland. Additionally, assumptions regarding contaminant attenuation in groundwater included in the ERA to support these models are speculative and unsupported by data. However, based on current toxicological data, the screening criteria subsequently established by State and federal wildlife agencies for TCE in surface water in the wetland appear to be sufficiently protective of ecological receptors. Regional Water Board staff remain concerned that surface water sampling locations established in the wetland for verification monitoring of TCE concentrations may not be providing representative analytical data.

ERM has prepared an acceptable human health risk assessment and evaluated the 1999 CalTrans ecological risk assessment using the methods and procedures described in their July 2009 Workplan approved by the Regional Water Board. The HHERA submitted by ERM is approved.

### **Requirement for a Feasibility Study Report**

The HHERA and environmental data from the Site and offsite area indicate that VOCs in soil and groundwater present potential elevated human health and ecological risks, and also constitute

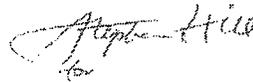
a nuisance. As representatives of the PRG you are directed to submit a feasibility study report for the Site and impacted areas offsite. This report shall evaluate methods to reduce concentrations of VOCs to mitigate potential human health and ecological risks and significantly reduce the nuisance that currently exists. The report shall include projections of cost, effectiveness, benefits, and impact on public health, welfare, and the environment of each alternative action, and be consistent with provisions of the NCP. It shall also include recommendations for implementation of feasible remediation alternatives at the Site and impacted areas offsite. **The feasibility study report shall be submitted by January 13, 2012, and must be acceptable to the Executive Officer.**

This requirement for a report is made pursuant to Water Code Section 13267, which allows the Regional Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. The enclosure provides additional information about Section 13267 requirements. Any extension in the above deadline must be confirmed in writing by Regional Water Board staff.

Please upload all documents pertaining to this Site to the GeoTracker database in addition to providing both an electronic file and a paper copy for staff use.

If you have any questions, please contact Kent Aue of my staff at (510) 622-2446 [e-mail [kaue@waterboards.ca.gov](mailto:kaue@waterboards.ca.gov)].

Sincerely,



Bruce H. Wolfe  
Executive Officer

Digitally signed by Stephen Hill  
Date: 2011.09.28 07:54:10  
-07'00'

Enclosures:

- 1) California Water Code Section 13267 Fact Sheet
- 2) AMEC Summary of HHERA Review

cc via email w/ enclosures:

John Lucio, PG [John.Lucio@erm.com](mailto:John.Lucio@erm.com)  
Environmental Resources Management

Jon L. Benjamin [jbenjamin@fbm.com](mailto:jbenjamin@fbm.com)  
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Solano County Department of Resource Management



# California Regional Water Quality Control Board

## San Francisco Bay Region



Matthew Rodriguez  
Secretary for  
Environmental Protection

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Edmund G. Brown, Jr.  
Governor

### Fact Sheet – Requirements for Submitting Technical Reports Under Section 13267 of the California Water Code

#### **What does it mean when the Regional Water Board requires a technical report?**

Section 13267<sup>1</sup> of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

#### **This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up.**

##### **What if that is not so?**

The requirement for a technical report is a tool the Regional Water Board uses to investigate water quality issues or problems. The information provided can be used by the Regional Water Board to clarify whether a given party has responsibility.

#### **Are there limits to what the Regional Water Board can ask for?**

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The Regional Water Board is required to explain the reasons for its request.

#### **What if I can provide the information, but not by the date specified?**

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

#### **Are there penalties if I don't comply?**

Depending on the situation, the Regional Water Board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

#### **Do I have to use a consultant or attorney to comply?**

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

#### **What if I disagree with the 13267 requirements and the Regional Water Board staff will not change the requirement and/or date to comply?**

You may ask that the Regional Water Board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the Regional Water Board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

#### **If I have more questions, whom do I ask?**

Requirements for technical reports include the name, telephone number, and email address of the Regional Water Board staff contact.

*Revised January 2008*

<sup>1</sup> All code sections referenced herein can be found by going to [www.leginfo.ca.gov](http://www.leginfo.ca.gov).