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Donan Environmental  
Services, Inc.

**BEFORE THE**  
**STATE WATER RESOURCES CONTROL BOARD**

**PETITION FOR REVIEW**

Donan Environmental Services, Inc. ("Petitioner") hereby respectfully requests that the State Water Board review, and after such review and consideration of this petition set aside, that certain Cleanup and Abatement Order #R9-2013-0022 (the "CAO") heretofore issued by the California Regional Water Quality Control Board, San Diego Region (the "Regional Board"). The CAO, a true and correct copy of which is attached, relates to the former Santa Ysabel Chevron Station located at 30350 Highway 78, Santa Ysabel, California.

(1) Information as to Petitioner:

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(2) Regional Board action requested to be reviewed: The naming of Petitioner as a Responsible Party ("RP") therein; the failure or refusal to name as additional RPs therein, each and all of the following parties: (a) the California Department of Transportation ("Caltrans"); (b) John Farkash; (c) Chevron Environmental Management Company; and (d) Donna Sherrill.

(3) Date of issuance of CAO: September 18, 2013.

(4) Reasons why Regional Board action was improper:

(a) Petitioner is not subject to liability as an RP, because Petitioner did not either create or assist in the creation of the alleged "discharge of waste" and/or any "condition of pollution or nuisance in waters of the State" (CAO, ¶3. p.2) and/or any ground water contamination by dispersal of the gasoline additive methyl tertiary butyl ether ("MTBE");

(b) Caltrans is properly subject to liability as an RP, as are John Farkash, Chevron Environmental Management Company and Donna Sherrill and/or their respective successors in interest and/or assigns.

(c) Separably, because Petitioner acted at all relevant times in the capacity of a lender seeking to protect a security interest in real property, Petitioner is exempt from liability as an RP under "safe harbor" provisions of both California and federal statutory and decisional law; and

(d) The Regional Board inclusion of Petitioner as an alleged RP was arbitrary and capricious. In the matter effected, this actio also constituted a deprivation of Petitioner's right to be protection of procedural due process of law.

(5) Manner in which Petitioner is aggrieved: Petitioner has been, and continues to be, improperly and wrongfully subjected to contingent liability, including but not limited to fines, forfeitures, costs, attorneys fees and other monetary damage, all as a direct and proximate result of having been named as an RP in the CAO.

(6) Action requested of the State Water Board: The vacation and setting aside of the Regional Board's CAO.

(7) Supporting documentation:

On July 3, 2013 and on August 2, 2013, Petitioner submitted comments and legal authorities to the Regional Board concerning a draft and a revised draft CAO, to which the Regional Board responded by letter dated August 22, 2013. There also occurred a meeting among Regional Board staff and Petitioner and its attorney on July 14, 2013. Petitioner assumes and relies upon the future furnishing of copies of all of these documents as a part of the administrative record to be later filed herein by the Regional Board, pursuant to 23 CCR § 2050.5(a), Cal. Admin. Code. Petitioner believes no transcript or tape recording was made of the July 14th meeting; it is unknown whether the Regional Board has made, or will make available, any written or other record of this meeting.

(8) Petitioner's legal position; supporting authorities:

(a) Petitioner is immunized from liability under the CAO by the lender "safe harbor" exemption provisions of both California and federal statutory and decisional law. By its August 2, 2013 submission to the Regional Board, Petitioner asserted its

"position that, either directly or by applicable analogue under California law, the CERCLA Security Interest Exemption, (42 U.S.C. § 9601(20)(E)(ii)), as amplified by the safe harbor provided to lenders under the EPA rule, 40 C.F.R. § 300.1100, applies and is protective of DES [Petitioner] in the event the Board goes ahead and issues its proposed CAO. (See also *United States v. McLamb* (4th Cir. 1993) 5 F.3d 69; *Waterville Industries, Inc. v. Finance Authority of Maine* (1st Cir., 1993) 984 F.2d 549; and *In re Bergsoe Metal Corp.* (9th Cir. 1990) 910 F.2d 668."

In *Bergsoe Metal Corp.*, *supra*, the Ninth Circuit held, per Kozinski, J., that a port authority which held title to property as a part of a transaction the purpose of which was to provide financing for a lead recycling plant was not subject to "owner" liability for the cost of environmental cleanup under CERCLA, pursuant to the aforementioned "safe harbor" federal lender exemption (910 F.2d 671-672).

*Bergsoe* was followed in *Waterville Industries*, *supra*, finding that a party holding title to real property under a sale-and-lease-back arrangement was protected from CERCLA liability despite having attained full ownership of the property (984 F.2d at 552-554). In *United States v. McLamb*, *supra*, the Fourth Circuit similarly held a bank to be exempt and protected from CERCLA liability, despite having owned the real property in question after a mortgagor's default, stemming from and "pursuant to the security interest exemption found in 42 U.S.C. § 9601(20)(A) and 40 C.F.R. § 300.1100(d) (1992)."

By its August 22, 2013 response, the Regional Board initially evaded this issue, by citing authority for the conceded and unremakable proposition that "CERCLA does not preempt state law causes of action", and by making reference to the "innocent third party purchaser" defense to CERCLA liability -- a defense which has not even been claimed by Petitioner, and hence is totally irrelevant herein.

The Regional Board thereafter did concede that "[t]he secured creditor exception [sic] removes qualifying lenders from the definition

of 'owner' or 'operator' under CERCLA", but then stated "[h]owever, CERCLA also imposes liability on person [sic] who arrange for the transportation of hazardous substances for disposal or treatment" (notably, also irrelevant, since no issue of CERCLA "arranger" liability is presented herein). Finally, the Regional Board argued as to the lender exemption: "...even this exception [sic] is not a safe harbor in all instances, and does not protect creditors against all potential CERCLA claims, and therefore cannot protect [Petitioner] against a claim brought under a broader state law without a similar affirmative defense"; the Regional Board concluded "this [lender exception] defense simply does not apply to being named in a CAO under California state law".

The immediately preceding contentions by the Regional Board below are conspicuously erroneous. California law does in fact contain -- as Petitioner vainly argued to the Regional Board -- an analogue to the lender exemption codified in 42 U.S.C. § 9601(20)(E)(ii), as amplified by the safe harbor provided to lenders under the EPA rule, 40 C.F.R. §300.1100. The California statute that does in fact provide a lender exemption "safe harbor" to parties positioned as Petitioner herein is Health & Safety Code §25548.2:

"(a) (1) Except as provided in Sections 25548.4 and 25548.5, a person, by reason of acting in the capacity of a lender, shall not be liable under any state or local statute, regulation, or ordinance to the extent of either of the following:

"(A) to the extent that the statute, regulation, or ordinance requires the person to take a removal or remedial action, pay a penalty, fine, imposition, or assessment or to forfeit the property specified in paragraph (2), and that liability arises from the release of hazardous materials, at, from, or in connection with the property.

"(B) To the extent that the statute, regulation, or ordinance authorizes damages arising from the release or threatened release of hazardous materials, at, from, or in connection with the property specified in paragraph (2).

"(2) The exemption from liability provided by paragraph (1) shall apply to the following property:

"(A) Property in which the lender maintains indicia of ownership primarily to protect a security interest.

"(B) Property that was acquired by the lender through foreclosure or its equivalent." [Emphasis Added.]

The evidence before the Regional Board demonstrated incontrovertibly that Petitioner acquired the real property -- the ownership of which constituted the sole and only reason contended by the Regional Board for the inclusion of Petitioner as a RP in the CAO -- as a secured lender seeking to protect a \$440,411.84 indebtedness and related security interest in the property (see, e.g., County of San Diego Sheriff's Deed, "Sale under Foreclosure", Attachment 2 to August 22, 2013 Regional Board Response). It was also shown that none of the exceptions set forth in Health & Safety Code § 25548.5 to the exemption provided by § 25548.2 is applicable herein. Accordingly, the Regional Board erred in disentitling Petitioner to the § 25548.2 "safe harbor" exemption, and the CAO is properly to be vacated and set aside for this reason, alone and without more.

(b) Petitioner neither created nor assisted in the creation of, the alleged "discharge of waste" and/or any "condition of pollution or nuisance in waters of the State" (CAO, ¶3, p.2) and/or any ground water contamination resulting from any dispersal of the gasoline additive MTBE.

The Regional Board in its August 22, 2013 response asserted that Petitioner bears liability solely by virtue of having become the owner of the real property involved -- a sort of strict liability imposable, claimed the Regional Board, automatically and *ipso facto* merely and solely by virtue of Petitioner having accepted a Sheriff's Deed to the property. As the Regional Board put it: "The Water Board names all owners in CAOs, regardless of how they came to own the property". The Water Board followed up this assertion with: "The legal authority for this proposition is valid", as if the claimed inevitability and ineluctability of this "proposition" is so well settled as to require no citation of authority.

Petitioner respectfully submits that to the contrary, under apposite California law "mere property ownership" is far from enough to be "valid"; rather, under applicable California law the Regional Board could not properly impose environmental cleanup responsibility upon Petitioner in the absence of an affirmative showing that Petitioner "created or assisted in the creation of [the condition requiring remediation]." (*City of Modesto Redevelopment Agency v. Superior Court* (2004) 119 Cal.App.4th 28, 38 (Emphasis Added)).

The Regional Board in the CAO at issue cited as "legal and regulatory authority" the Porter-Cologne Water Quality Control Act, and specifically sections 14267 and 13304 thereof. In *City of Modesto Redevelopment Agency v. Superior Court*, *supra*, 119 Cal.App.4th at 37-38, the Court of Appeal pointed out:

"The Porter-Cologne Act similarly appears to be harmonious with the common law of nuisance. Water Code section 13304, subdivision (a) authorizes cleanup or abatement orders against a person who 'has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a pollution or nuisance ....' (Italics added.) The Porter-Cologne Act defines "[n]uisance" to mean 'anything which meets all of the following requirements: ¶(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction of the free use of property, so as to interfere with the comfortable enjoyment of life or property. ¶(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. ¶(3) Occurs during, or as a result of, the treatment or disposal of wastes.' (Wat.Code, § 13050, subd. (m).) The first two paragraphs of this definition track relevant portions of the language of Civil Code sections 3479 and 3480, which define nuisance and public nuisance. The third paragraph establishes that the Porter-Cologne Act regulates only nuisances that are connected with the treatment or disposal of wastes. Thus, it appears that the Legislature not only did not intend to depart from the law of nuisance, but also explicitly relied on it in the Porter-Cologne Act."

Lest there be any doubt as to the applicability and controlling effect to be given to California statutory and decisional law relating to nuisance liability, when determining environmental cleanup responsibility under the exact code provision at issue herein -- Water Code § 13304 -- the *City of Modesto* court observed (119 Cal. App.4th at 43:

"Thus, construing Water Code section 13304, subdivision (a) 'in light of the common law principles, bearing upon [nuisance]' (*Leslie Salt, supra*, 153 Cal.App.3d [605] at p. 619, 200 Cal.Rptr. 575), we conclude that those who took affirmative steps directed toward the improper discharge of solvent wastes -- for

instance, by manufacturing a system designed to dispose of wastes improperly or by instructing users of its products to dispose of wastes improperly -- may be liable under that statute, but those who merely placed solvents in the stream of commerce without warning adequately of the dangers of improper disposal are not liable under that section of the Porter-Cologne Act."

Numerous additional California published appellate decisions make it clear that liability, or non-liability, of a party positioned as Petitioner herein is to be evaluated and determined under Porter-Cologne by reference to California law pertaining to public nuisance (*Leslie Salt Co. v. San Francisco Bay Conservation etc. Com.* (1984) 153 Cal.App.3d 7605; *Hellman v. LaCumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224; *Lussier v. San Lorezo Valley Water Dist.* (1988) 206 Cal.App.3d 92. Under this nuisance law, liability is properly to be placed upon a party situated as Petitioner is herein, only if that party has been guilty of some affirmative intentional, reckless, negligent, or unreasonable conduct. The paradigmatic example of such conduct is the creation of, or assistance in the creation of, the condition that results in the necessity to remediate. As stated in *City of Modesto Redevelopment Agency v. Superior Court, supra*, 119 Cal.App. 4th at 38, to reiterate for emphasis:

"... [L]iability for nuisance does not hinge on whether the defendant owns, possesses or controls the property, nor on whether he is in a position to abate the nuisance; the critical question is whether the defendant created or assisted in the creation of the nuisance. (*Newhall Land & Farming Co. v. Superior Court* (1993) 19 Cal.App.4th 334, 343, 23 Cal.Rptr.2d 377.)" (Emphasis Added.)

Other decisions to like effect abound; see, illustratively, *Lussier, supra*, 206 Cal.App.3d at 100 [Liability imposable "...'only for such interferences as are intentional and unreasonable or result from negligent, reckless or abnormally dangerous conduct.' ..."]; *Sturges v. Charles L. Harney, Inc.* (1958) 165 Cal.App.2d 306, 318 [In order for liability to attach, a defendant must have intentionally done some act which caused the nuisance]; *Shields v. Wondries* (1957) 154 Cal.App.2d 249, 255 [Same]; *Hellman, supra*, 6 Cal.App.4th at 1230 [In the absence of negligence, there must be some intentional conduct that is unreasonable]; and *Redevelopment Agency of City of Stockton v. BNSF Ry. Co.* (Ninth Circuit 2011) 643 F.3d 668, 674, fn.2 ["... [N]uisance liability requires more than a passive or attenuated causal connection to contamination"].

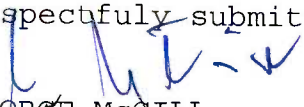
The Regional Board utterly and completely failed to carry its burden of proof, and failed to show, that any conduct by Petitioner created or assisted in the creation of the MTBE groundwater contamination alleged by the Regional Board. The Regional Board likewise failed to demonstrate that Petitioner did anything intentional, abnormally dangerous, reckless, unreasonable, or even negligent that was causally or at all related to the alleged discharge/release/groundwater contamination. For these reasons, among others, the CAO should be vacated and set aside.

(9) Service upon Regional Board. A true and correct copy of this Petition is concurrently being served upon the Regional Board.

(10) Substantive issues raised below. The foregoing issues were presented and contested before the Regional Board in the documentation adverted to in Paragraph 7 above and/or during the July 14, 2013 meeting with Regional Board staff.

(11) Request for hearing. Petitioner hereby respectfully requests, pursuant to 23 CCR § 2050.6(b), Cal. Admin. Code, that a hearing be held on this petition.

Respectfully submitted,

  
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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

CLEANUP AND ABATEMENT ORDER NO. R9-2013-0022

AN ORDER DIRECTING MR. ERNEST AND MRS. JOYCE MORETTI AND  
DONAN ENVIRONMENTAL SERVICES, INC. TO CLEANUP AND ABATE THE  
EFFECTS OF WASTE AND SUBMIT TECHNICAL AND MONITORING  
REPORTS PERTAINING TO CORRECTIVE ACTIONS AT THE  
SITE OF THE FORMER SANTA YSABEL CHEVRON STATION  
30350 HIGHWAY 78, SANTA YSABEL, CALIFORNIA

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) finds that:

- 1. Legal and Regulatory Authority.** This Order conforms to and implements policies and requirements of the Porter-Cologne Water Quality Control Act (Division 7, commencing with Water Code section 13000) including (1) sections 13267 and 13304; (2) applicable State and federal regulations; (3) all applicable provisions of Statewide Water Quality Control Plans adopted by the State Water Resources Control Board (State Water Board) and the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) adopted by the San Diego Water Board including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board policies and regulations, including State Water Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, Resolution No. 88-63, *Sources of Drinking Water*, and Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under California Water Code Section 13304*; California Code of Regulations (CCR) Title 23, Chapter 16, Article 11; CCR Title 23, section 2720 (3) and section 3890 et. seq., and (5) relevant standards, criteria, and advisories adopted by other State and federal agencies.
- 2. Persons Responsible for the Discharge of Waste.** Mr. Ernest and Mrs. Joyce Moretti acquired the property located at 30350 Highway 78, Santa Ysabel, California, in 1980. They also owned the former Chevron Service Station facility, including the underground storage tanks (USTs), located on the property. Cleanup and Abatement Order (CAO) No. 99-26 and Addenda Nos. 1-9 were issued to Mr. and Mrs. Moretti to assess the extent of petroleum pollution, mitigate the effects of petroleum pollution, and provide replacement potable water to persons affected by the petroleum pollution caused by the leaking USTs at the facility. In 2009, Mr. and Mrs. Moretti

abandoned all cleanup and abatement activities and declared bankruptcy.<sup>1</sup> Petroleum pollutants may include, but are not limited to: total petroleum hydrocarbons, benzene, toluene, ethylbenzene, xylenes, methyl tertiary butyl ether (MTBE), ethyl tertiary butyl ether, di-isopropyl ether, tertiary amyl methyl ether, tertiary butyl alcohol, and the degradation products of such constituents.

- 3. Persons Responsible for the Discharge of Waste.** Four water supply wells in Santa Ysabel have been contaminated with petroleum wastes from the discharge. To secure funding for well head treatment on the affected wells and continue the cleanup following the Morettis' abandonment of the site, the San Diego Water Board nominated the site to the State Water Board Emergency, Abandoned and Recalcitrant (EAR) Account Annual Site List in 2009. Since receiving funds from the EAR account in 2009, the San Diego Water Board has worked with a consultant to install effective well head treatment systems on the affected wells in March 2010, to maintain the treatment systems, to conduct groundwater monitoring, and to evaluate the feasibility of different remedial alternatives for the site. Based on the evaluation received in November 2012, the San Diego Water Board directed its consultant to prepare a proposal for an air sparge/soil vapor extraction system to complete the cleanup at the site.

Mr. and Mrs. Moretti's environmental consultant, Donan Environmental Services, Inc. (DES), acquired the property on November 8, 2012 in a sheriff's auction. As the property owner, DES has responsibility to clean up the property because it has knowledge of the discharge and the ability to control the discharge.<sup>2</sup>

Mr. and Mrs. Moretti, and Donan Environmental Services, Inc., hereinafter the Dischargers, are subject to this Order because they caused or permitted waste to be discharged in a manner that has created a condition of pollution or nuisance in waters of the State.<sup>3</sup> The term "discharge" includes the active,

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<sup>1</sup> Bankruptcy does not discharge the Morettis' responsibility pursuant to this CAO because CAOs are not "claims" for money under existing law and therefore not dischargeable. See *Ohio v. Kovacs* (1985) 469 U.S. 274; *Chategaugay I* (3d Cir. 1993) 944 F.2d 997.

<sup>2</sup> State Water Board Order No. WQ 86-2 (*In the Matter of Zoecon Corporation*), and Order No. WQ 89-8 (*In the Matter of Spitzer et al.*).

<sup>3</sup> The Morettis were named in a previous CAO, No. 99-26, as described in Paragraph 2. The property then was overseen by the State's "EAR" Account program since July 2009. Once DES acquired the property and became an owner, costs for the cleanup are properly borne by it and not the EAR Account/California public. The legal basis for this position is provided in greater detail in the San Diego Water Board staff's August 22, 2013 Response to Comments on Draft Cleanup and Abatement Order No. R9-2013-0022. DES' financial obligations commence from the date of acquisition of the property. The Morettis' obligations run from the CAO 99-26 through

initial release of petroleum wastes from the USTs, and the passive migration of petroleum wastes in groundwater.<sup>4</sup>

4. **Water Quality Standards.** The site is located in the Santa Ysabel Hydrologic Area (HA 5.50).<sup>5</sup> The beneficial use designated in the Basin Plan for groundwater in the Santa Ysabel Hydrologic Area is municipal and domestic supply.

The Basin Plan contains numeric water quality objectives<sup>6</sup> for chemical constituents to protect groundwater designated for MUN. The numeric objectives are derived from primary maximum contaminant levels (MCLs)<sup>7</sup> established by the California Department of Public Health in Title 22 of the CCR.<sup>8</sup> Groundwater concentrations of petroleum hydrocarbons are not in conformance with the water quality objectives needed to support Municipal and Domestic uses of the groundwater, creating a condition of pollution and nuisance in water of the State.

5. **Basis for Cleanup and Abatement Order.** Water Code section 13304 contains the authority for the San Diego Water Board to require cleanup and abatement of pollution caused by discharges of waste. Water Code section 13304 requires a person to clean up waste or abate the effects of the waste discharge if so ordered by a regional water board in the event there has been a discharge in violation of waste discharge requirements, or if a

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the present. Staff chose to re-number the CAO rather than describing it as Amendment 10 and the passage of time since CAO 99-26.

<sup>4</sup> State Water Board Order No. WQ 86-2 (*In the Matter of Zoecon Corporation*). See also *Castaic Lake Water Agency v. Whittaker Corp.* (C.D. Cal. 2003) 272 F.Supp.2d 1053, 1076.

<sup>5</sup> Basin Plan. Table 2-5 at page 2-55.

<sup>6</sup> "Water quality objectives" are defined in Water Code section 13050(h) as "the limits or levels water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area."

<sup>7</sup> MCLs, maximum contaminant levels, are public health-protective drinking water standards to be met by public water systems. MCLs take into account not only chemicals' health risks but also factors such as their detectability and treatability, as well as the costs of treatment. Primary MCLs can be found in Title 22 California Code of Regulations (CCR) sections 64431 - 64444. Secondary MCLs address the taste, odor, or appearance of drinking water, and are found in 22 CCR section 64449.

<sup>8</sup> Basin Plan, footnote 2, supra. Page 3-24 and Table 3-5 at page 3-25. The Basin Plan provides that "Water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels specified in California Code of Regulations, Title 22, Table 64444-A of section 64444 (Organic Chemicals) which is incorporated by reference into this plan. This incorporation by reference is prospective including future changes to the incorporated provisions as the changes take effect. (See Table 3-5.)"

person has caused or permitted waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates or threatens to create a condition of pollution or nuisance. Therefore, based on the previous findings the San Diego Water Board is authorized to order the Dischargers to cleanup and abate the effects of the waste discharge.

Because the State of California is providing replacement water by means of the wellhead treatment systems installed on one public and three private water supply wells in Santa Ysabel, the replacement water service provisions of Water Code section 13304 apply to this cleanup. Water Code section 13304(a) provides, in part, that a cleanup and abatement order may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment to each affected public water supplier or private well owner. Section 13304(h) requires the San Diego Water Board to request a water replacement plan from the discharger in cases where replacement water is to be provided for more than 30 days.

Any public water supplier or private well owner receiving replacement water pursuant section 13304(a), or any person who is ordered to provide replacement water pursuant to section 13304(a) may request nonbinding mediation of all replacement water claims [section 13304(g)(1)]. The party or parties requesting the mediation must pay for the costs [section 13304(g)(5)]. The San Diego Water Board is not required to participate in any requested nonbinding mediation [section 13304(g)(4)].

6. **Basis for Requiring Technical and Monitoring Reports.** Water Code section 13267 provides that the San Diego Water Board may require the discharger, past dischargers, or suspected dischargers to furnish those technical or monitoring reports as the San Diego Water Board may specify, provided that the burden, including costs, of these reports, bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In requiring the reports, the San Diego Water Board must provide the person with a written explanation with regard to the need for the reports, and identify the evidence that supports requiring that person to provide the reports.
7. **Need for and Benefit of Technical and Monitoring Reports.** Technical and Monitoring reports are needed to provide information to the San Diego Water Board regarding (a) the nature and extent of the discharge, (b) the nature and extent of pollution conditions in State waters created by the discharge, (c) the threat to public health posed by the discharge, and (d) appropriate cleanup and abatement measures. The reports will enable the San Diego Water Board to determine the vertical and lateral extent of the discharge, ascertain if the condition of pollution poses a threat to human health in the vicinity of the Site, and provide technical information to

determine what cleanup and abatement measures are necessary to bring the Site into compliance with applicable water quality standards. Based on the nature and possible consequences of the discharges, the burden of providing the required reports, including the costs, bears a reasonable relationship to the need for the reports, and the benefits to be obtained from the reports.

8. **Cleanup Levels.** State Water Board Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under California Water Code Section 13304*, sets forth the policies and procedures to be used during an investigation or cleanup of a discharge of waste, and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, the *Statement of Policy with Respect to Maintaining High Quality of Waters in California*. Resolution No. 92-49 applies to the cleanup and abatement of the effects of waste discharges at the Site.

Resolution No. 92-49 requires that dischargers clean up and abate the effects of discharges in a manner which promotes the attainment of background water quality, or the best water quality which is reasonable if background water quality cannot be restored, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. Any alternative cleanup level greater than background must (1) be consistent with the maximum benefit to the people of the State; (2) not unreasonably affect present and anticipated beneficial use of waters of the State; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board.

9. **California Environmental Quality Act Compliance.** The issuance of this Order is an enforcement action taken by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a) (2), Chapter 3, Title 14 of the California Code of Regulations. This Order requires submittal of detailed work plans that address cleanup activities. The proposed activities under the work plans are not yet known, but implementation of the work plans may result in significant physical impacts to the environment that must be evaluated under CEQA. The appropriate lead agency will address the CEQA requirements prior to implementing any work plan that may have a significant impact on the environment.
10. **Cost Recovery.** Pursuant to California Water Code section 13304, and consistent with other statutory and regulatory requirements, including but not limited to Water Code section 13365, the San Diego Water Board is entitled to, and will seek reimbursement for, all reasonable costs actually incurred by

the San Diego Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. These costs include funds from the EAR account expended to clean up and abate the effects of wastes at the site. The costs from the EAR account expended before the issuance of this Order are accountable to Mr. and Mrs. Moretti. The costs from the EAR account expended after the issuance of this Order are accountable to both Mr. and Mrs. Moretti and Donan Environmental Services, Inc., jointly and severally.<sup>9</sup>

- 11. Qualified Professionals.** The Discharger's reliance on qualified professionals promotes proper planning, implementation, and long-term cost-effectiveness of investigation, and cleanup and abatement activities. Professionals should be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of licensed professionals.

**IT IS HEREBY ORDERED** that, this Order supersedes Cleanup and Abatement Order No. 99-26 and Addenda 1-9, except for enforcement purposes. It is further ordered that, pursuant to Water Code sections 13267 and 13304, the Dischargers must comply with the following Directives.

- A. CLEANUP AND ABATE DISCHARGES.** The Dischargers shall take all corrective actions necessary to clean up and abate the effects of petroleum hydrocarbon wastes discharged from the former Santa Ysabel Chevron station. Dischargers shall remove all light non-aqueous phase liquid (LNAPL) from groundwater, both on the property and beyond the property limits, to the extent technically practicable.
- B. INTERIM REMEDIAL ACTION.** The Dischargers shall take appropriate interim remedial actions. Interim remedial actions can occur concurrently with any phase of the Site investigation or remedial action. Before taking interim remedial action, the Dischargers shall notify the San Diego Water Board 30 days in advance of the proposed action.

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<sup>9</sup> Health and Safety Code section 25299.70 provides that the State Water Board may recover EAR account funds through a civil action or through recordation of a notice of lien that identifies the property on which the condition was abated, the amount of the lien, and the owner of record of the property. Water Code section 13304 subdivision (c) also allows for the San Diego Water Board to pursue cost recovery through civil action or recordation of a notice of lien on the affected property.

**C. MAINTAIN GROUNDWATER WELLHEAD TREATMENT SYSTEMS.** The Dischargers must provide operation and maintenance (O&M) for the groundwater wellhead treatment systems on the four affected water supply wells. At a minimum, the O&M on the well head treatment systems must include the following:

1. Quarterly evaluation of granular activated carbon (GAC) system pressure to deliver water to residences and businesses for adequate use to flush toilets and conduct other routine household and business functions.
2. Visual inspection of the system piping, valves, fittings, bag filter housing, GAC vessels, wellhead equipment, and replace when needed.
3. Replace GAC vessels when needed to maintain water pressure or to prevent petroleum hydrocarbon breakthrough.
4. Provide emergency contact information to water supply well owners to resolve any problems with water treatment systems.
5. Include results of O&M and visual inspections in semi-annual monitoring reports.

**D. HUMAN HEALTH RISK ASSESSMENT.** The Dischargers must prepare a human health risk assessment (HHRA) that evaluates the risks to human health from LNAPL migration into utilities and surface water. The risks from each chemical and from all applicable exposure pathways should be summed to obtain the overall screening level risk posed by chemicals detected from the Site. The HHRA may be included as an appendix within the semi-annual monitoring report (see Directive F Monitoring Program below).

**E. CORRECTIVE ACTION**

**1. Corrective Action Plan.** The Dischargers must prepare a Corrective Action Plan (CAP) capable of restoring the municipal and domestic beneficial uses of groundwater affected by the release of petroleum hydrocarbon wastes. The CAP must be received by the San Diego Water Board by **5:00 p.m. on** December 2, 2013. At a minimum, the CAP must contain the following information.

- a. Air Sparge/Soil Vapor Extraction System. The CAP must either
  - i. include provisions to install, operate and maintain the air sparge/soil vapor extraction (AS/SVE) system described in the Tetra Tech Inc. proposal dated March 14, 2013 and titled **Installation, Startup, and Operation and Maintenance (O&M) of an Air Sparge/Soil Vapor Extraction (AS/SVE) System**, or
  - ii. propose a feasible alternative remediation system capable of restoring beneficial uses within the same time frame. Any alternative to the AS/SVE system must be capable of effectively

removing LNAPL, groundwater pollutants, and control conditions that contribute to the migration of pollutants.

- b. Cleanup Levels. The CAP must propose cleanup levels for soil and groundwater that conform to the provisions of Resolution No. 92-49. If background water quality is not technically or economically feasible to attain in the receiving water, any alternative cleanup levels proposed in the CAP must attain the best water quality which is reasonable if background water quality cannot be restored, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. Any alternative cleanup level greater than background must (1) be consistent with the maximum benefit to the people of the State; (2) not unreasonably affect present and anticipated beneficial use of waters of the State; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board.
  - c. Implementation Activities Schedule. The CAP must contain a detailed description of all activities planned to implement the recommended remedial action alternative, approved by the San Diego Water Board, for the waste constituents and a schedule for the completion of all such implementation activities.
  - d. Updated Site Conceptual Model. The CAP must contain an updated Site Conceptual Model (SCM).
- 2. Corrective Action Plan Implementation.** Upon approval of the CAP by the San Diego Water Board, the Dischargers must implement the CAP in accordance with the activities schedule in the CAP, unless otherwise directed in writing by the San Diego Water Board. Before beginning CAP implementation activities, the Dischargers shall:
- a. Notify the San Diego Water Board of its intention to begin cleanup; and
  - b. Comply with any conditions set by the San Diego Water Board, including mitigation of adverse consequences from cleanup activities.
- 3. Monitoring and Evaluation.** The Dischargers shall monitor, evaluate, and report the results of the CAP implementation on a semi-annual schedule. Results from monitoring and evaluation of CAP implementation may be included as an appendix to the regular monitoring reports required in Directive F - Monitoring Program.



4. **Modify or Suspend Cleanup Activities.** The Dischargers must modify or suspend cleanup activities when directed to do so by the San Diego Water Board.

F. **MONITORING PROGRAM.** The Dischargers shall conduct a monitoring program to regularly assess progress toward attainment of cleanup levels, document achievement of cleanup levels, and provide data to answer the following questions:

- a. Are interim remedial actions effective?
  - b. Has the lateral and vertical extent of each waste constituent in soil, groundwater, and soil vapor been delineated?
  - c. Is the plume of each waste constituent decreasing in size and/or mass?
  - d. Has the source of each waste constituent been effectively cleaned up?
  - e. Is the selected remedial action alternative effectively removing waste constituents from the soil, groundwater, and soil vapor, and is the alternative capable of achieving the cleanup levels in the CAP?
  - f. Have the beneficial uses of the groundwater been restored, and are human health and the environment protected?
1. **Wells to be Monitored.** At a minimum, the wells named in the table below must be sampled at the frequency indicated in the table.

Sampling Frequency	Monitoring Wells
Annual Monitoring	All monitoring wells as proposed in the CAP and any new wells.
Quarterly Monitoring	B2*, B3*, Q1*, Q3*

\* Samples must include pre and post carbon treatment filter groundwater.

2. **Analytical Methods.** Groundwater samples shall be analyzed using U.S. Environmental Protection Agency (USEPA) method 8260b for the full list of constituents. Monitoring wells with free product must be gauged for depth to water/product on a semi-annual basis. The elevation of the groundwater surface must be measured in each well for every sampling event.
3. **Monitoring Program Work Plan.** The Dischargers shall submit a Monitoring Program Work Plan that incorporates the monitoring wells, monitoring frequencies, and analytical methods indicated in Directives

F.1 and F.2 above. The Work Plan shall also propose any other monitoring activities or methods needed to collect the data needed to answer questions in Directive F. The work plan can be submitted as a chapter in the CAP, or as a separate document.

The Dischargers may provide a written proposal to change the monitoring requirements in this Order. Change proposals must be based on data submitted to the San Diego Water Board, delineation of the groundwater plume, remediation methods, rebound effect, and other conditions that can arise during remediation of the groundwater pollution. The Dischargers shall not implement proposed changes to Monitoring Program Work Plan requirements without prior San Diego Water Board approval.

4. **Monitoring Reports.** The Dischargers must submit monitoring reports according to the schedule in the table below. The first Quarterly monitoring report must be received by the San Diego Water Board **no later than 5:00 PM on January 30, 2014**. Subsequent reports must be received by the San Diego Water Board no later than 30 days following the end of the monitoring period according to the following schedule:

Monitoring Wells	Monitoring Period	Report Due Date
B2, B3, Q1, Q3	January-March	April 30
	April-June	July 30
	July-September.	October 30
	October-December	January 30
All monitoring wells	Jul-Dec	January 30

The monitoring reports must include the following minimum information:

- a. Transmittal Letter with Penalty of Perjury Statement. The transmittal letter must discuss any violations during the reporting period and actions taken or planned to correct the problem. The letter must be signed by the Dischargers' principal executive officer or their duly authorized representative, and must include a statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge.
- b. Groundwater Elevations. Groundwater elevation data must be presented in tabular format with depth to groundwater (in feet below ground surface), groundwater elevation, top of casing elevations, depths to the top of well screens, length of well screens and total depth for each well included in the monitoring program. A groundwater elevation map must be prepared for each monitored

water-bearing zone with the groundwater flow direction and calculated hydrologic gradients(s) clearly indicated in the figures(s). A complete tabulation of historical groundwater elevations must be included in the annual report each year.

- c. Reporting Groundwater Results. All groundwater monitoring reports must:
- i. Present all groundwater sampling data in tabular format. Isoconcentration map(s) must be prepared for constituents of concern (COCs) for each monitored water-bearing zone, as appropriate. Time versus concentration plots and distance versus concentration plots that also show groundwater elevations must be prepared for all constituents of concern at appropriate wells.
  - ii. Provide a Site plot plan which clearly illustrates the location of storm drains near the Site and storm drain sampling locations.
  - iii. Provide a text discussion and technical interpretations of the storm water data, groundwater elevation data relevant to the depth of the storm drain, describe any significant increases in pollutant concentrations since the last report, any measures proposed to address the increases, and documentation that the MS4 owner was informed of the discharge of hydrocarbons to the storm drain.
  - iv. Provide a Site plot plan which clearly illustrates the locations of monitoring wells, the former location(s) of industrial processes and equipment, and buildings located on the property and immediately adjacent to the property lines of the facility.
  - v. Provide a Site plot plan with the most recent concentrations of chemicals of concern in groundwater.
  - vi. Provide a text discussion and technical interpretations of the groundwater data, and describe any significant increases in pollutant concentrations since the last report, any measures proposed to address the increases, any changes to the Site conceptual model, and any conclusions and recommendations for future action with each report.
  - vii. Provide depth to groundwater, depth to product, and LNAPL thickness in tabular form.

- viii. Describe analytical methods used, detection limits obtained for each reported constituent, and a summary of Quality Assurance/Quality Control (QA/QC) data.
  - ix. Describe sample collection protocol(s), how investigation derived wastes are managed at the facility, and include documentation of proper disposal of contaminated well purge water and/or soil cuttings removed from the facility.
  - x. List historical groundwater sampling results in tabular form and include them in the annual report each year.
- d. Remediation. The report must include an estimate of the mass of contaminant(s) removed reported in a tabular format, for each extraction well and for the Site as a whole, expressed in units of chemical mass per day and total mass removed during the reporting period. A tabulation of historical annual contaminant mass removal results must be included in the second semiannual report each year.
  - e. Status Report. Each semi-annual report must describe relevant work completed during the reporting period (e.g. Site investigation, interim remedial measures) and a description of work planned for the following monitoring period.
  - f. Site Conceptual Model. Each monitoring report must include an updated Site Conceptual Model.
- 5. Record Keeping.** The Dischargers or their agent must retain data generated for the above reports, including laboratory results and QA/QC data, for a minimum of six years after origination and must make them available to the San Diego Water Board upon request.
- 6. Monitoring Program Revisions.** The Dischargers may request revisions to the Monitoring Program Work Plan, however, the revisions may not be implemented until approved by the San Diego Water Board. Prior to approving revisions, the San Diego Water Board will consider the burden, including costs, of the groundwater monitoring reports relative to the benefits to be obtained from these reports.
- G. VERIFICATION MONITORING.** The Dischargers shall conduct verification monitoring in conformance with State regulations<sup>10</sup> to demonstrate that the cleanup levels have been achieved and maintained in groundwater at the site.

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<sup>10</sup> CCR Chapter 16, Title 23, section 2727.

Within 60 days of completion of the approved CAP, the Dischargers shall submit a Verification Monitoring Work Plan describing the monitoring activities needed to demonstrate that cleanup levels have been achieved and maintained at the site. The Work Plan must include a schedule for submitting monitoring reports. The Dischargers shall implement the Verification Monitoring Work Plan within 30 days of submitting the work plan to the San Diego Water Board.

**H. REPLACEMENT WATER SERVICE.** The Dischargers shall provide or pay for uninterrupted replacement water service, which may include wellhead treatment, to the public water supplier, three private well owners, and any future water supply well affected by the discharge of petroleum from the site. Replacement water provided pursuant to this Directive shall meet all applicable federal, State, and local drinking water standards, and shall have comparable quality to that pumped from the public and private wells prior to the discharge of waste.

**1. Water Replacement Plan.** The Dischargers shall submit a Water Replacement Plan describing how the Dischargers will continue to operate and maintain the well head treatments systems on the four affected water supply wells in Santa Ysabel, or otherwise provide replacement water to the owners of those wells. The Water Replacement Plan must be received by the San Diego Water Board by **5:00 p.m. on December 2, 2013**. The Water Replacement Plan shall contain the following elements:

- a. Affected Public Water Supplier or Private Well Owner. The Report shall identify the names and mailing addresses of each affected public water supplier or private well owner;
- b. Replacement Water Quality. The Report shall demonstrate that the replacement water to be provided or paid for will meet all applicable federal, State, and local drinking water standards, and shall have comparable quality to that pumped by the public and private wells prior to the discharge of waste.
- c. Replacement Water Service Schedule. The Report shall describe the schedule for providing uninterrupted replacement water service to each affected public water supplier or private well owner.

**2. Water Replacement Plan Implementation Provisions.** The Dischargers shall implement the Water Replacement Plan upon approval of the plan by the San Diego Water Board. Before beginning the activities in the plan, the Dischargers shall:

- a. Notify the San Diego Water Board of the intent to initiate the proposed actions included in the Water Replacement Plan;
- b. Comply with any conditions set by the San Diego Water Board;
- c. Provide a written notice to each affected public water supplier or private well owner, explaining the purpose of the Water Replacement Plan and including the following language:

"Any public water supplier or private well owner may request nonbinding mediation of all replacement water claims. If so requested, the parties receiving replacement water or the persons or entities required to provide replacement water, within 30-days of submittal of a water replacement plan, shall engage in at least one confidential settlement discussion before a mutually acceptable mediator.

Any agreement between parties regarding replacement water claims resulting from participation in the nonbinding mediation process shall be consistent with the requirements of this cleanup and abatement order (Order No. 99-26 and addenda thereto). Neither the San Diego Water Board nor the State Water Board is required to participate in any nonbinding mediation requested by the parties. The party or parties requesting mediation shall pay for the cost of the mediation."

The written notice sent to each affected water supplier or private well owner shall clearly identify the Dischargers' contact information or the current point of contact for the Dischargers' environmental consultant (i.e., at a minimum the name, affiliation, mailing address and telephone number). The closing paragraph of the required notice shall also indicate the following information:

"The leaking underground storage tank (UST) case files are available for public review by making a file review appointment with:

**California Regional Water Quality Control Board,  
San Diego Region  
2375 Northside Drive, Suite 100, San Diego, CA 92108-2700  
TEL: 619-516-1990  
ATTN: File Review Records Clerk**

When making a file review request, interested parties should request to review San Diego Water Board case file number 50-3537 and the GeoTracker case number T0607302306 .”

d. If so requested by the public water suppliers or private well owners receiving the replacement water, the Dischargers within 30 days of the submittal of the Water Replacement Plan, shall engage in at least one confidential settlement discussion before a mutually acceptable mediator.

3. **Newly Affected Wells.** If new water supply wells are determined to contain constituents associated with the release of fuel waste constituents at the Former Santa Ysabel Chevron Service Station, then the Dischargers shall provide or pay for uninterrupted replacement water service, which may include wellhead treatment, to the public water supplier or private well owner in accordance with Directives H.1 and H.2 of this Order.

I. **PENALTY OF PERJURY STATEMENT.** All reports must be signed by the Dischargers' responsible corporate officer or its duly authorized representative, and must include the following statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge.

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

J. **DOCUMENT SUBMITTALS.** The Dischargers shall submit both one paper and one electronic text-searchable PDF copy of all documents required under this Order to:

Executive Officer  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, California 92123-4353  
Attn: Supervisor Central Cleanup Unit

All correspondence and documents submitted to the San Diego Water Board shall include the following Geotracker Site ID in the header or subject line:

**T0607302306**

**K. ELECTRONIC DATA SUBMITTALS.** The Electronic Reporting Regulations (Chapter 30, Division 3 of Title 23 and Division 3 of Title 27, CCR) require electronic submission of any report or data required by a regulatory agency from a cleanup site after July 1, 2005. All information submitted to the San Diego Water Board in compliance with this Order is required to be submitted electronically via the Internet into the Geotracker database

<http://geotracker.waterboards.ca.gov/> (Geotracker Site ID. **T0607302306**).

The electronic data shall be uploaded on or prior to the regulatory due dates set forth in the Order or addenda thereto. To comply with these requirements, the Dischargers shall upload to the Geotracker database the following minimum information.

1. **Laboratory Analytical Data.** Analytical data (including geochemical data) for all soil, vapor, and water samples in Electronic Data File (EDF) format. Water, soil, and vapor data include analytical results of samples collected from: monitoring wells, boreholes, gas and vapor wells or other collection devices, surface water, groundwater, piezometers, stockpiles, and drinking water wells.
2. **Locational Data.** The latitude and longitude of any permanent monitoring well or soil vapor probe for which data is reported in EDF format, accurate to within 1 meter and referenced to a minimum of two reference points from the California Spatial Reference System (CSRS-H), if available.
3. **Monitoring Well Elevation Data.** The surveyed elevation of the top of the groundwater well casing relative to a geodetic datum of any permanent monitoring well.
4. **Depth-to-Water Data.** The depth-to-water from the top of the well casing for any permanent monitoring well, even if water samples are not actually collected during the sampling event.
5. **Monitoring Well Screen Intervals.** The depth to the top of the screened interval and the length of screened interval for any permanent monitoring well.



6. **Site Map.** Site map or maps which display discharge locations,<sup>11</sup> streets bordering the facility, and sampling locations for all soil, water, and vapor samples. The Site map is a stand-alone document that may be submitted in various electronic formats.<sup>12</sup> A site map must also be uploaded to show the maximum extent of any groundwater pollution. An update to the site map may be uploaded at any time.
7. **Boring logs.** Boring logs (in searchable PDF format) prepared by an appropriately licensed professional.
8. **Electronic Report.** A complete copy (in searchable PDF format) of all workplans, assessment, cleanup, and monitoring reports including the signed transmittal letters, professional certifications, and all data presented in the reports.

**L. VIOLATION REPORTS.** If the Dischargers violate any requirement of this Order, then the Dischargers must notify the San Diego Water Board office by telephone and fax (FAX 858-571-6972) as soon as practicable once the Dischargers have knowledge of the violation. The San Diego Water Board may, depending on violation severity, require the Dischargers to submit a separate technical report on the violation within five working days of telephone notification.

**M. OTHER REPORTS.** The Dischargers must notify the San Diego Water Board in writing prior to implementing any Site activities that have the potential to cause further migration of contaminants or that would provide new opportunities for Site investigation.

## **N. PROVISIONS**

1. **No Pollution, Contamination or Nuisance.** The storage, handling, treatment, or disposal of soil containing waste or polluted groundwater must not create conditions of nuisance, as defined in Water Code section 13050(m). The Dischargers must properly manage, treat and dispose of wastes and polluted groundwater in accordance with applicable federal, State and local regulations.
2. **Good Operation and Maintenance.** The Dischargers must maintain in good working order and operate as efficiently as possible any monitoring

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<sup>11</sup> Areas related to discharge from former location(s) of industrial processes and equipment, liquid storage and conveyance systems, and buildings located on the property and immediately adjacent to the property lines of the facility.

<sup>12</sup> Formats include .gif, .jpeg, .jpg, .tiff, .tif, .pdf

system, Site or control system installed to achieve compliance with the requirements of this Order.

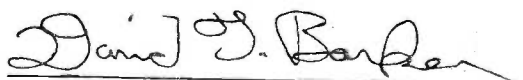
3. **Contractor/Consultant Qualifications.** All reports, plans and documents required under this Order shall be prepared under the direction of appropriately qualified professionals. A statement of qualifications and license numbers, if applicable, of the responsible lead professional and all professionals making significant and/or substantive contributions shall be included in the report submitted by the Dischargers. The lead professional performing engineering and geologic evaluations and judgments shall sign and affix their professional geologist or civil engineering registration stamp to all technical reports, plans or documents submitted the San Diego Water Board.
4. **Laboratory Qualifications.** All samples must be analyzed by California State-certified laboratories using methods approved by the USEPA for the type of analysis to be performed. All laboratories must maintain QA/QC records for San Diego Water Board review.
5. **Laboratory Analytical Reports.** Any report presenting new analytical data must include the complete Laboratory Analytical Report(s). The Laboratory Analytical Report(s) must be signed by the laboratory director and contain:
  - a. a complete sample analytical report,
  - b. a complete laboratory QA/QC report,
  - c. a discussion of the sample and QA/QC data, and
  - d. a transmittal letter indicating whether or not all the analytical work was supervised by the director of the laboratory, and contain the following statement, "All analyses were conducted at a laboratory certified for such analyses by the California Department of Health Services in accordance with current USEPA procedures."
6. **Reporting of Changed Owner or Operator.** The Dischargers must provide written notification to the San Diego Water Board **within 30 days** of any changes in property occupancy or ownership associated with the property described in this Order.
7. **Regulations.** All corrective actions must be in accordance with the provisions of CCR Title 23, Chapter 15, and the Cleanup and Abatement Policy in the Water Quality Control Plan for the San Diego Basin (9).

September 18, 2013

## O. NOTIFICATIONS

1. **Cost Recovery.** Upon receipt of invoices, and in accordance with instructions therein, the Dischargers must reimburse the State of California for all reasonable costs incurred by the San Diego Water Board and the State Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abate the effects thereof, provide replacement water or well head treatment, or other remedial action, required by this Order.
2. **All Applicable Permits.** This Order does not relieve the Dischargers of the responsibility of obtaining permits or other entitlements to perform necessary corrective action. This includes, but is not limited to, actions that are subject to local, State, and/or federal discretionary review and permitting.
3. **Enforcement Notification.** Failure to comply with requirements of this Order may subject the Dischargers to enforcement action, including but not limited to administrative enforcement orders requiring you to cease and desist from violations, imposition of administrative civil liability, pursuant to Water Code sections 13268 and 13350, in an amount not to exceed \$5,000 for each day in which the violation occurs referral to the State Attorney General for injunctive relief and referral to the District Attorney for criminal prosecution.
4. **Requesting Administrative Review by the State Water Board.** Any person affected by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with section 13320 of the Water Code and CCR Title 23 section 2050. The petition must be received by the State Water Board (Office of Chief Counsel, P.O. Box 100, Sacramento, California 95812) within **30 calendar days** of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

I, David T. Barker, Supervising Water Resource Control Engineer, do hereby certify the foregoing is a full, true, and correct copy of Cleanup and Abatement Order No. R9-2013-0022 as issued pursuant to the authority delegated to me by the Executive Officer.



DAVID T. BARKER  
Supervising Engineer

9/18/2013  
September 18, 2013