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10 STATE WATER RESOURCES CONTROL BOARD  
11 STATE OF CALIFORNIA

12 In the Matter of  
13 CHEVRON U.S.A. INC.,  
14  
15 Petitioner

PETITION NO.

**PETITION FOR REVIEW**

16 For Review of Order No. R2-2014-042,  
17 Adoption of Initial Site Cleanup  
18 Requirements, Issued by the California  
19 Regional Water Quality Control Board, San  
20 Francisco Bay Region

21 Pursuant to California Water Code section 13320 and Title 23 of the California  
22 Code Regulations §§ 2050 *et seq.*, Petitioner Chevron U.S.A. Inc. (“Chevron” or “Petitioner”)  
23 hereby petitions the State Water Resources Control Board (“State Water Board”) for review  
24 of Order No. R2-2014-042, Adoption of Initial Site Cleanup Requirements (“Order”) issued  
25 by the California Regional Water Quality Control Board, San Francisco Region (“Regional  
26 Water Board”) on November 12, 2014. The Order requires Chevron and M.B. Enterprises,  
27 Inc. to investigate, cleanup and abate alleged discharges of chlorinated volatile organic  
28 compounds (“CVOCs”) that are alleged to have been released from a used-oil underground  
storage tank (“UST”) and by a dry cleaner formerly located on the property now known as

1 1705 Contra Costa Boulevard, Pleasant Hill, Contra Costa County (“the Site”).<sup>1</sup> A Chevron-  
2 branded service station is currently located on the Site and a dry cleaner was located on the  
3 southern portion of the Site from 1950s to 1986. The Order improperly names Chevron as a  
4 discharger. Chevron requests a hearing in this matter.<sup>2</sup>

5 This Petition raises three questions of statewide significance that require  
6 resolution by the State Water Board so as to provide guidance to regulators and the regulated  
7 community. First, may a Regional Water Board require a party who previously remediated a  
8 used-oil UST, and obtained case closure, to remediate releases from an upgradient source that  
9 has commingled with the remediated UST source? Second, may a Regional Water Board  
10 name a former property owner a “discharger” where the party did not own the property at the  
11 time of the initial discharge and where the party, while it owned the property, complied with  
12 all regulatory directives regarding the property and obtained site closure? And third, may a  
13 Regional Water Board decline to name a party as a discharger based upon the application of a  
14 standard that has no support in the law?

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24 <sup>1</sup> The Order also refers to the Site as “Site 2.” On November 12, 2014, the Regional Water  
25 Board also signed Order No. R2-2014-0041 requiring various parties to investigate, cleanup  
26 and abate discharges at 1601-1699 Contra Costa Boulevard (the “Gregory Village Shopping  
Center”). The Regional Water Board has sometimes referred to the Gregory Village  
Shopping Center as “Site 1.” It is located to the north of the Site.

27 <sup>2</sup> Chevron previously filed a Petition for Review related to the Site on August 16, 2011,  
28 challenging the Regional Water Board’s July 20, 2011, Requirement to Submit a Work Plan.  
The petition is being held in abeyance pursuant to 23 Cal. Code Regs. § 2050.5(d).

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**I. PETITIONER**

The name and address of Petitioner is:

Chevron U.S.A. Inc.  
6001 Bollinger Canyon Road  
San Ramon, CA 94583

Petitioner should be contacted through its legal counsel:

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**II. ACTION OF THE REGIONAL WATER BOARD TO BE REVIEWED**

Chevron requests that the State Water Board review the Order, which improperly names Chevron as a “discharger” with respect to the Site and improperly establishes a requirement that Chevron investigate, clean up, and abate alleged discharges of CVOCs, both on-site and off-site. Chevron requests that certain language not supported by substantial evidence be deleted from the Order. Chevron further requests that the Order be required to apply the proper legal standard for evaluating whether the Central Contra Costa Sanitary District (“Sanitary District”) is a “discharger.” A copy of the Order is attached as **Exhibit A.**

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

The Regional Water Board signed the Order on November 12, 2014. However, the signed Order was first provided to Chevron via email after the close of business on November 20, 2014.

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

As set forth more fully below, the action of the Regional Water Board was not supported by the record, and was arbitrary, capricious, and in violation of law and policy.

1 **A. Background**

2 The Site is in Pleasant Hill, California. Until 1986 it was two separate parcels,  
3 referred to as the “northern parcel” and the “southern parcel.” A gasoline service station has  
4 been located on the northern parcel since approximately 1950. In 1971, the station was  
5 reconstructed with an automotive repair facility. The station was reconstructed in 1988 and  
6 the repair facility was removed. Up until 1986, a dry cleaner operated on the southern parcel.  
7 Prior to 1986 both parcels were owned by third parties with no connection to Chevron.  
8 Chevron had no involvement in the operation of the dry cleaner. In 1986 the dry cleaner  
9 ceased doing business and all dry cleaning equipment was removed from the southern parcel.  
10 Chevron subsequently bought both parcels. Over the next two years a new service station and  
11 car wash were built and occupied both of the parcels.

12 In May 1986, Chevron removed four underground storage tanks (“USTs”) on  
13 the northern parcel – which included a 1,000 gallon steel used-oil UST – and discovered that  
14 there had been a release of petroleum products. It then investigated this release and  
15 conducted clean up activities, all of which are described in detail in the September 13, 2004,  
16 Closure Request that was submitted to the Regional Water Board.<sup>3</sup> Cleanup included use of  
17 well EA-2, in the former used-oil UST pit, for a pump and treat system that operated from  
18 1991-1996. “Approximately 1,900,000 gallons of groundwater were extracted from wells  
19 EA-2 and MW-D, removing an estimated 11.5 pounds of dissolved TPHg and 41.1 pounds of  
20 dissolved chlorinated hydrocarbons.” (Conestoga-Rovers & Associates’ (“CRA”) Additional  
21 Site Investigation Report, August 4, 2014, § 2.4, p. 6.<sup>4</sup>)

22 The Regional Water Board issued a Case Closure letter for the Chevron-  
23 branded service station site on January 14, 2005.<sup>5</sup> In connection with its closure of the

24  
25 <sup>3</sup> September 13, 2004, Closure Request can be found on GeoTracker at  
[http://geotracker.waterboards.ca.gov/regulators/deliverable\\_documents/3453214883/9-13-2004%20Terradex%20Closure%20Request.pdf](http://geotracker.waterboards.ca.gov/regulators/deliverable_documents/3453214883/9-13-2004%20Terradex%20Closure%20Request.pdf)

26  
27 <sup>4</sup> The Additional Site Investigation Report can be found on GeoTracker at  
[http://geotracker.waterboards.ca.gov/esi/uploads/geo\\_report/3866947233/T0601300404.PDF](http://geotracker.waterboards.ca.gov/esi/uploads/geo_report/3866947233/T0601300404.PDF)

28 <sup>5</sup> The Case Closure letter can be found on GeoTracker at

1 service station site, the Regional Water Board recognized that “petroleum hydrocarbons and  
2 halogenated volatile organic compounds (“HVOCs”) will persist on the Site and into the  
3 public right-of-way.”<sup>6</sup> As a condition of closure, the Regional Water Board required that a  
4 site management plan be implemented, which it found “provides a mechanism to detect,  
5 evaluate, and mitigate any adverse impact the petroleum hydrocarbons or HVOCs may pose.”  
6 Chevron has been and is in full compliance with this site management plan. The “alert  
7 thresholds” set in the Case Closure letter have never been exceeded at the designated sentry  
8 well. (CRA’s Groundwater Monitoring Report, July 18, 2014, p. 2.<sup>7</sup>)

9           The Order states two grounds for naming Chevron as a discharger for the Site.  
10 First, it alleges that there is substantial evidence that CVOCs were discharged from a former  
11 used-oil UST associated with the service station. Second, the Order states that Chevron is  
12 properly named as a discharger for releases of CVOCs from the former dry cleaner that  
13 operated on the Site, prior to Chevron’s ownership of the Site. The Order alleges there was  
14 “an ongoing discharge” in soil and groundwater while Chevron owned the Site, that Chevron  
15 had knowledge of this ongoing discharge and the activity which caused it, and had the ability  
16 to control it.

17           The basis for not naming the Sanitary District as a discharger is not provided in  
18 the Order. However, in the Regional Water Board’s July 2, 2014, Cleanup Team Staff Report  
19 it stated that the Sanitary District was not named because of “numerous policy considerations,  
20 as well as guidance from the California courts.” (Regional Water Board’s July 2, 2014, Staff  
21 Report, § VI, p. 12.) The Regional Water Board then considered four criteria unique to an  
22 owner/operator of a sanitary sewer and concluded the evidence submitted did not demonstrate  
23 that any of those four criteria had been met. These criteria are contrary to the Water Code

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25 [http://geotracker.waterboards.ca.gov/regulators/deliverable\\_documents/7076858341/1-14-  
26 2005%20Transmittal%20of%20Case%20Closure%20Letter%20mym.pdf](http://geotracker.waterboards.ca.gov/regulators/deliverable_documents/7076858341/1-14-2005%20Transmittal%20of%20Case%20Closure%20Letter%20mym.pdf)

27 <sup>6</sup> HVOCs and CVOCs are synonymous.

28 <sup>7</sup> The Groundwater Monitoring Report, July 18, 2014 can be found on GeoTracker at  
[http://geotracker.waterboards.ca.gov/esi/uploads/geo\\_report/8028587102/T0601300404.PDF](http://geotracker.waterboards.ca.gov/esi/uploads/geo_report/8028587102/T0601300404.PDF)

1 because they allow the Sanitary District to avoid responsibility for causing and permitting  
2 discharges of CVOCs.

3 The Order asserts on page 4 that the data indicate that groundwater migrates  
4 from the Site toward the north. (*See also* Regional Water Board’s October 28, 2014,  
5 Response to Comments, p. D-23.) Based on this determination, the Order further asserts that  
6 CVOCs have migrated from the Site and commingled with the CVOC plume associated with  
7 the Gregory Village Shopping Center. The Order’s assertions contradict the many years of  
8 groundwater data collected at the Site, which show that groundwater flows from the Site is to  
9 the north-northeast. (CRA’s Comments on Tentative Order at § 2.5, p. 8<sup>8</sup>; Arcadis U.S., Inc.,  
10 Notes to Accompany Conceptual Site Model Presentation Slides, October 30, 2013.<sup>9</sup>)  
11 Further, Regional Water Board Staff actually concluded that “there is insufficient well data to  
12 draw reliable conclusions about the predominant groundwater flow direction.” (Regional  
13 Water Board’s Response to Comments, p. D-24.) Thus the Order’s finding that groundwater  
14 flows from the Site to the north and northwest and that there is a commingled plume is not  
15 supported by substantial evidence, and these findings should be stricken from the Order.

16 **B. The Regional Water Board’s Action Naming Chevron as a**  
17 **“Discharger” is not Supported by Substantial Evidence and**  
18 **is Contrary to Law**

19 A regional water board’s authority to name responsible parties is not limitless.  
20 A regional water board must have “a reasonable basis on which to name each responsible  
21 party.” (*In the Matter of the Petition of Exxon Company, U.S.A. Inc.*, 1985 WL 20026 \*6,  
22 Order No. WQ 85-7 (Cal.St.Wat.Res.Bd. August 22, 1985). (“*Exxon*”).) A reasonable basis  
23 is established when “credible and reasonable evidence [] indicates the named party has

24 <sup>8</sup> CRA’s Comments on Tentative Order are attached to the letter from Todd Littleworth to  
25 Mr. Bruce H. Wolfe, dated August 4, 2014, and can be found on GeoTracker at  
26 [http://geotracker.waterboards.ca.gov/regulators/deliverable\\_documents/7853925943/311741-  
WOLFE-1.pdf](http://geotracker.waterboards.ca.gov/regulators/deliverable_documents/7853925943/311741-WOLFE-1.pdf)

27 <sup>9</sup> The Arcadis U.S., Inc., Notes to Accompany Conceptual Site Model Presentation Slides is  
28 available on GeoTracker at  
[http://geotracker.waterboards.ca.gov/regulators/deliverable\\_documents/3336857438/10-30-  
13%20Information%20Provided%20by%20Chevron%20ARCADIS%20ZyMax.pdf](http://geotracker.waterboards.ca.gov/regulators/deliverable_documents/3336857438/10-30-13%20Information%20Provided%20by%20Chevron%20ARCADIS%20ZyMax.pdf)

1 responsibility.” (*Id.*) The fact that a regional water board was “searching to find responsible  
2 parties who could effectuate the cleanup” does not justify holding a non-responsible party  
3 liable. (*Id.*) This is consistent with the language of Water Code Section 13304(a), which  
4 requires “active, affirmative or knowing conduct” with regard to the contamination.  
5 (*Redevelopment Agency v. BNSF Ry.*, 643 F.3d 668, 678 (9th Cir. 2011); *See also City of*  
6 *Modesto Redevelopment Agency v. Superior Court*, 119 Cal.App.4th 28, 44 (2004) [Section  
7 13304’s “causes and permits” language was not intended “to encompass those whose  
8 involvement with a spill was remote or passive.”].)

9 **1. It was Improper for the Regional Water Board to**  
10 **Name Chevron as a Discharger Based on Assumed**  
11 **Discharges of CVOCS from a Former Used-Oil Tank**

12 The Order alleges that there is substantial evidence that CVOCS were  
13 discharged from a former leaking used-oil UST. The alleged evidence falls into two basic  
14 categories: 1) “common knowledge” regarding the use of tetrachloroethylene (“PCE”) and  
15 trichloroethylene (“TCE”) by automotive repair facilities; and 2) soil, soil vapor, and  
16 groundwater data collected at the Site. Neither type of evidence supports the conclusion that  
17 PCE or TCE was discharged from the used-oil UST. Instead, they support the conclusion that  
18 the former dry cleaner is the source of the CVOCS and Chevron was properly granted closure  
19 for the waste-oil UST in 2005.

20 The Order claims it is “common knowledge” that PCE and TCE were used at  
21 automotive repair stations for cleaning and degreasing, and “oftentimes” USTs were used to  
22 store “waste oil and related products.” (Order, p. 2.) This “common knowledge” regarding  
23 the use of PCE and TCE is said to be derived from three documents - a draft document  
24 prepared by the United States Environmental Protection Agency (“USEPA”) in 1993; a report  
25 prepared for the California Air Resources Board (“CARB”) in 1997; and a report prepared for  
26 the California Department of Toxic Substances Control (“DTSC”) and the City of Santa  
27 Monica. As discussed on page 5, section 2.3, of CRA’s August 4, 2014, Comments on  
28 Tentative Order, these documents provide no evidentiary support for the Regional Water  
Board’s conclusion that PCE and TCE were used at the service station and leaked from the

1 used-oil UST.

2           The 2006 report prepared for DTSC (“Automotive Aerosol Cleaning Products:  
3 Low-VOC, Low Toxicity Alternatives”) generically refers to “chlorinated solvents,” stating  
4 they were used in automotive aerosol cleaning products. It makes no mention of either TCE  
5 or PCE. The CARB report (“Perchloroethylene Needs Assessment for Automotive Consumer  
6 Products”) (CARB 1997), which focused on brake cleaners, found that 63% of the brake  
7 cleaning products did not contain PCE. (CARB 1997, Table III-1.) Of the 37 “brake service  
8 facilities” visited, only 16 “used Perc-containing products in their brake service process.”  
9 (CARB 1997, p. 7.) Further, even when a PCE-containing brake cleaner was used, “ARB  
10 staff concluded that 100 percent of the Perc contained in aerosol brake cleaners is emitted  
11 into the air when used.” (CARB 1997, p. 8.) The draft USEPA document (“Economic  
12 Impact Analysis of the Halogenated Solvent Cleaning NESHAP – Draft,” November 1993)  
13 (USEPA 1993) does state that “Automotive Repair Shops” comprise 50% of the “users of  
14 degreasing equipment,” and that “Gasoline Service Stations, also do such work [automotive  
15 repairs].” (USEPA 1993, pp. 38, 40.) However, it concludes that “degreasing end-uses”  
16 accounts for only 13% of PCE consumption, in contrast to 90% of TCE consumption. (*Id.*, p.  
17 85.) An isotopic analysis of chlorinated solvents at the Site by Zymax Forensics has  
18 demonstrated that the TCE detected at the Site is actually a breakdown product of PCE,  
19 which EPA found was rarely used for “degreasing end-uses.” (CRA’s Comments on  
20 Tentative Order at p.6, [citing Zymax Forensics, Forensic Report for Groundwater Samples  
21 Collected in Pleasant Hill, California, October 9, 2013, p. 18<sup>10</sup>].) Thus, the Regional Water  
22 Board’s reliance on “common knowledge” to support its claim that PCE and TCE were used  
23 by service station is merely speculation lacking in evidentiary support, and does not constitute  
24 substantial evidence. Moreover, even if PCE and TCE were used, there is no evidence it was  
25 disposed of in the used-oil UST.

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27 <sup>10</sup> The Zymax Forensics Report is available on GeoTracker at  
28 [http://geotracker.waterboards.ca.gov/regulators/deliverable\\_documents/3336857438/10-30-13%20Information%20Provided%20by%20Chevron%20ARCADIS%20ZyMax.pdf](http://geotracker.waterboards.ca.gov/regulators/deliverable_documents/3336857438/10-30-13%20Information%20Provided%20by%20Chevron%20ARCADIS%20ZyMax.pdf).

1           The Order also alleges that the evidence of a discharge from the used-oil UST  
2 includes Chevron’s alleged operation of the UST for many years and the pattern of petroleum  
3 contamination subsequently detected in the vicinity of the UST. As a preliminary matter,  
4 there is no evidence that Chevron “operated” the used-oil UST, that CVOCs were placed in  
5 the UST, or, if they were, that Chevron authorized its independent dealers to do so. While  
6 there is evidence of a *de minimis* release of **petroleum** from the used-oil UST, there is no  
7 evidence of a release of CVOCs. The Regional Water Board points to data showing the  
8 existence of CVOCs at the Site, and because it assumes that PCE and TCE were used at the  
9 service station, goes on to assume that some portion of the CVOCs originated from the used-  
10 oil UST. The Regional Water Board’s discussion of soil, soil vapor, and groundwater data to  
11 support the conclusion that there was a release of CVOCs from the tank is technically  
12 deficient and do not support that assumption. (*See* CRA’s Comments on Tentative Order, at  
13 Sections 2.3, 2.4, 2.8, 3.4-3.8.) The data show that the dry cleaning facility, which was  
14 directly upgradient of the used-oil UST, is the source of CVOCs at the Site. (CRA’s  
15 Additional Site Investigation Report and Site Conceptual Model, March 2, 2012, § 4.5, p. 12;  
16 § 4.7, p. 14.)

17           The Order alleges on page 5 that the “data demonstrates that CVOC  
18 concentrations in groundwater are generally higher near the former steel waste oil UST.”  
19 This statement ignores the fact the highest concentrations of CVOCs have actually been  
20 detected in soil *upgradient* of the former used-oil UST, where the dry cleaner was located,  
21 and they diminish in the area of downgradient of the former UST. (CRA’s Comments on  
22 Tentative Order at § 2.8, p. 9-10; § 3.5, p. 14-15; § 3.6, pp 16-18; CRA’s August 4, 2014,  
23 Additional Site Investigation Report at § 3.2, pp. 9-10.)

24           The July 2, 2014, Regional Water Board Staff Report, on page 4, concluded  
25 that soil vapor data “indicates a distinct CVOC release occurred from the former steel waste  
26 oil tank.” The Staff Report appears to rely on historic maximum concentrations to reach this  
27 conclusion, ignoring the significant limitations of that data. The Staff Report fails to  
28 acknowledge that soil vapor could not be collected where CVOCs were likely discharged

1 from the dry cleaner. (CRA’s Comments on Tentative Order at § 3.7, p. 18.) The Staff  
2 Report also ignores the fact that vapor samples collected upgradient of the used-oil UST were  
3 also collected upgradient of the dry cleaner. (CRA’s Technical Report, April 7, 2014, pp. 6-  
4 7.<sup>11</sup>) Further, the characteristics of the fill material in the former UST pit likely contributed  
5 to the concentration of CVOCs detected. The fill has a higher permeability than surrounding  
6 soil, has oxygen present, and lacks water. (*Id.*, p. 9.) Finally, located in well EA-2, in the  
7 former used-oil UST pit, was used for a pump and treat system that operated from 1991-1996.  
8 Approximately 1,900,000 gallons of groundwater were extracted from wells EA-2 and MW-  
9 D, removing an estimated 11.5 pounds of dissolved TPHg and 41.1 pounds of dissolved  
10 chlorinated hydrocarbons. (CRA’s Additional Site Investigation Report, August 4, 2014,  
11 § 2.4, p. 6.) This process likely pulled CVOCs from the dry cleaner source area toward the  
12 former used-oil UST pit. Thus, put into context, the data collected in the area of the former  
13 used-oil UST does not indicate a distinct release. The presence of CVOCs in soil vapor in the  
14 area of the used-oil UST is consistent with a significant dry cleaning source immediately  
15 adjacent to the UST. (CRA’s Technical Report, April 7, 2014.<sup>12</sup>) In sum, there is both a lack  
16 of evidence that CVOCs were used at the service station and that they leaked from the former  
17 used-oil UST.

18 In addition, the evidence establishes that the used-oil UST released only *de*  
19 *minimis* amounts of petroleum, meaning that even if it had contained CVOCs (and there is no  
20 evidence that it did) any such release would also have been *de minimis*. When the steel used-  
21 oil UST was removed in 1986 it contained approximately 20 gallons of sludge. (CRA’s  
22 Additional Site Investigation Report, August 4, 2014, § 2.3, p. 4.) Soil beneath the tank was  
23 sampled for total oil and grease (“TOG”). (*Id.*) TOG was detected immediately below the

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26 <sup>11</sup> The Technical Report can be found on GeoTracker at  
27 [http://geotracker.waterboards.ca.gov/esi/uploads/geo\\_report/7239554703/T0601300404.PDF](http://geotracker.waterboards.ca.gov/esi/uploads/geo_report/7239554703/T0601300404.PDF)

28 <sup>12</sup> The Technical Report can be found on GeoTracker at  
[http://geotracker.waterboards.ca.gov/esi/uploads/geo\\_report/7239554703/T0601300404.PDF](http://geotracker.waterboards.ca.gov/esi/uploads/geo_report/7239554703/T0601300404.PDF)

1 tank at a concentration of only 11 mg/kg at 8 feet below ground (“fbg”).<sup>13</sup> (*Id.*) A second  
2 sample collected in 1988 at 10 fbg contained 50 mg/kg TOG. (*Id.*) These results are not  
3 indicative of a significant release from the former used-oil USTs. (*Id.*) If a significant  
4 release had occurred, TOG concentrations would have been much higher in magnitude.  
5 (CRA’s Comments on Tentative Order, at § 2.3, p. 6.) Thus, even if a release from the used-  
6 oil UST contained CVOCs, the concentration of those CVOCs would have also been *de*  
7 *minimis* and would not require any further investigation or cleanup. (CRA’s Additional Site  
8 Investigation Report, August 4, 2014, § 4.0, p.13.) During CRA’s June 2014 investigation of  
9 the Site, the only chemicals of concern detected above the Regional Water Board’s  
10 environmental screening levels for commercial land where groundwater is a potential source  
11 of drinking water were PCE, TCE, and C-1,2-DCE. (CRA’s Additional Site Investigation  
12 Report at § 3.2, p. 10.) These CVOCs were discharged by the dry cleaner, not the used-oil  
13 UST. (*Id.* at § 4.0, p. 13.)

14           The Regional Water Board’s issuance of site closure in 2005 determined that  
15 the discharge from the used-oil UST – including any discharge of CVOCs – had been  
16 adequately investigated and characterized, and would on its own meet closure criteria. The  
17 Regional Water Board has now changed its position, claiming that “[b]ased on more recent  
18 data,” it has been determined by Staff that characterization of the Site was incomplete at the  
19 time of closure. (Regional Water Board’s Response to Comments at D-26.) However, as  
20 discussed above, these data actually show there was a significant release of CVOCs from the  
21 dry cleaner, not from the former used-oil UST, and that these releases have migrated to the  
22 former used-oil UST location. Thus, the existing impacts that require action are a result of  
23 discharges of CVOCs from the dry cleaner, not the UST.

24           The State Water Board recently stated in *In the Matter of the Petition of James*  
25 *Salvatore*, Order WQ 2013-0109, 2013 WL 6234175 \* 8 (Cal.St.Wat.Res.Bd. Nov. 5, 2013)

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27 <sup>13</sup> The steel used-oil UST was replaced with fiberglass used-oil UST in 1986. It was removed  
28 in 1988. There is no evidence of a release from this UST. (CRA’s August 4, 2014,  
Additional Site Investigation Report, § 2.3, p. 5; *See* Regional Water Board July 2, 2014,  
Staff Report, p. 3.)

1 (“*Salvatore*”)that “if a party’s unauthorized release has been adequately characterized and  
2 there are sufficient data to determine that the individual release could get closed, then the  
3 party for that release may be relieved from responsibility even though the release has  
4 commingled with another release.” Instead of “acknowledg[ing] the relative contributions of  
5 the responsible parties and provid[ing] relief to the party whose release is not significant  
6 enough on its own to require corrective action,” the Regional Water Board improperly seeks  
7 to shift the entire burden onto Chevron. (*Salvatore* at \*8.) Here, any contribution by the  
8 used-oil UST would not require further corrective action “on its own,” and it is only the dry  
9 cleaner release that requires corrective action. Thus there was no basis for naming Chevron  
10 as a discharger due to alleged releases from the used oil UST.<sup>14</sup>

11 **2. It was Improper for the Regional Water Board to**  
12 **Name Chevron as a Discharger Based on Discharges**  
13 **of CVOCs from the former Dry Cleaner**

14 The Regional Water Board has determined that the Site was owned by Jane A.  
15 Lehrman, Philip M. Lehrman, Marjorie P. Robinson, and Ned Robinson from June 25, 1965  
16 to December 26, 1986. During some portion of this time period, one or more dry cleaners  
17 operated on the southern portion of the Site and caused the discharge of CVOCs into the soil  
18 and groundwater. Chevron acquired ownership of the real property in the Site at the end of  
19 1986, after the dry cleaner ceased operation. Chevron sold the real property to MB  
20 Enterprises, Inc. in 2003. Chevron had no role in the activities that caused CVOCs to be  
21 discharged from the former cleaner. The Order’s sole basis naming Chevron as a discharger  
22 from the former dry cleaner is its claim there was “an ongoing discharge” in soil and  
23 groundwater. The Order alleges that Chevron had knowledge of the discharge and the  
24 activity which caused it, and had the ability to control it. No new discharge occurred during  
25 Chevron’s ownership of the Site. (Regional Water Board’ Response to Comments, Page D-  
26 21 [“Staff recognizes that Chevron did not own the parcel where and when a dry cleaner

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27 <sup>14</sup> During the hearing on the Order, case officer Kevin D. Brown was asked to refute  
28 Chevron’s position that it was not aware of any used-oil UST release that had required  
remediation of CVOCs. Mr. Brown identified one such site, which on cross-examination he  
conceded was downgradient of a former dry cleaner site, as is the case here.

1 operated.”].)

2                   While Chevron did own the Site, it took all steps that the Regional Water  
3 Board required to address site contamination. The court in the *City of Modesto*  
4 *Redevelopment Agency*, in addressing Water Code section 13304, found that “the Legislature  
5 not only did not intend to depart from the law of nuisance, but also explicitly relied on it in  
6 the Porter-Cologne Act.” (119 Cal.App.4th at 37-38.) Courts have consistently held that a  
7 property owner is liable for nuisance only when it has actively participated in creating the  
8 nuisance, or failed to act after becoming aware of the nuisance. (*See e.g. Resolution Trust*  
9 *Corporation v. Rossmoor Corporation*, 34 Cal.App.4th 93, 104-05 (1995); *City of*  
10 *Redevelopment Agency*, 643 F.3d at 678.)

11                   Here, Chevron played no role in the dry cleaner’s discharge of CVOCs, which  
12 occurred before Chevron owned the property. And Chevron took action while it owned the  
13 property, resulting in the Regional Water Board’s issuance of a closure letter and  
14 determination that “that additional assessment and remediation was not necessary.”  
15 (Regional Water Board’s Response to Comments at D-26.) This conclusion was based on the  
16 existing data and analysis generated by Chevron and provided to the Regional Water Board.  
17 (*Id.*) In other words, to the best of Chevron’s and the Regional Board’s knowledge at that  
18 time, no further action to address the discharge was needed. Thus, the substantial evidence  
19 shows that Chevron fulfilled any obligation it had to abate the nuisance when it owned the  
20 Site. (*See Capogeannis v. Superior Court*, 12 Cal.App.4th 668, 683 (1993) [cleanup  
21 standards set by responsible agency reflected expert appraisal of the best that could be done  
22 to abate contamination in particular case].)

23                   The Regional Water Board has now changed its position, stating that “[b]ased  
24 on more recent data,” it has been determined by Staff that characterization of the Site was  
25 incomplete. (Regional Water Board’s Response to Comments at D-26.) This change in  
26 position should not retroactively be used to shift responsibility onto Chevron because it is no  
27 longer in possession of the Site and took the reasonable steps agreed to by the Regional Water  
28 Board to abate the nuisance when it owned the Site. (*Coppola v. Smith*, 935 F. Supp.2d 993,

1 1019-20 (2013).)

2 Chevron is not liable as a discharger because it neither owned the Site at the  
3 time the activity which caused the discharge occurred, and is not the current owner. (*In the*  
4 *Matter of the Petitions of Wenwest, Inc.*, Order No. 92-013 1992 WL 12622783 \*2  
5 (Cal.St.Wt.Res.Bd Oct. 22, 1992) [“No order issued by this Board has held responsible for a  
6 cleanup a former landowner who had no part in the activity which resulted in the discharge of  
7 the waste and whose ownership interest did not cover the time during which that activity was  
8 taking place.”].) The Regional Water Board Staff cited several State Water Board orders to  
9 support their argument that Chevron is a discharger because CVOCs discharged from the dry  
10 cleaning activities constituted a “continuous discharge” during Chevron’s past ownership.<sup>15</sup>  
11 Not one of these decisions addresses an interim owner such as Chevron. Instead they either  
12 address a party that owned the site when the activity that caused the discharge occurred, or  
13 that was the current owner. These owners were found to be dischargers because they caused  
14 or permitted the activity which caused the discharge, or were causing and permitting the  
15 discharge to continue. (*E.g. Stuart* at \*3; *Spitzer* at \*4, \*6.) Here, Chevron did not cause or  
16 permit the discharge from the dry cleaning operation because it occurred during the time that  
17 the Lehrmans and Robinsons owned the property. And because Chevron no longer is the  
18 owner of the Site, it does not have possession or control of the Site, and is therefor not  
19 permitting the discharge to continue.

20 Following the hearing on the draft Order, the Regional Water Board (without  
21 notice to Chevron) amended the draft Order changing its theory for naming Chevron as a  
22 “dischager,” claiming that a discharge also including passive migration of contamination.

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23  
24 <sup>15</sup> *In the Matter of the Petition of Spitzer*, Order No. WQ 89-8, 1989 WL 97148  
25 (Cal.St.Wat.Res.Bd. May 16, 1989) (“*Spitzer*”); *In the Matter of the Petition of Stuart*, Order  
26 No. WQ 86-15, 1986 WL 25522 (Cal.St.Wat.Res.Bd. Sept. 18, 1986) (“*Stuart*”); *In the*  
27 *Matter of the Petition of Harold and Joyce Logsdon*, Order No. WQ 84-6, 1984 WL 19063  
28 (Cal.St.Wat.Res.Bd. July 19, 1984); *In the Matter of the Petition of Zoecon Corporation*,  
Order No. WQ 86-2 1986 WL 25502 (Cal.St.Wat.Res.Bd. February 20, 1986); *In the Matter*  
*of the Petitions of Llyod Walker, Walker & Sons Custom Chrome, Inc. and Clifford R.*  
*Conroy*, Order No. WQ 80-12, 1980 WL 590845 (Cal.St.Wat.Res.Bd. June 19, 1980); and *In*  
*the Matter of the Petition of Aerojet General Corp. and Cordova Chemical Company*, Order  
No. WQ 80-4, 1980 WL 590838 (Cal.St.Wat.Res.Bd. Mar. 20, 1980).

1 (Order, p. 3.) As discussed above, the Regional Water Board provided no authority finding  
2 that an interim owner such as Chevron was responsible for a “continuing” or migrating  
3 discharge. Water Code section 13304 does not define “discharge.” However, the State Water  
4 Board has defined “discharge” as having the same meaning as it would under section  
5 66260.10 of Chapter 11 of Division 4.5 of Title 22, CCR. (23 CCR § 2601.) Section  
6 66260.10 in turn defines “discharge” as “the accidental or intentional spilling, leaking,  
7 pumping, pouring, emitting, emptying or dumping of hazardous waste into or on any land or  
8 water.” The definition looks to the activity that caused the discharge and does not encompass  
9 an interim land owner such as Chevron. (*See Carson Harbor Village, Ltd. v. Unocal Corp.*,  
10 270 F.3d 863, 868-69, 879-80 (9th Cir. 2001) [in addressing a similar list of words included  
11 in the Comprehensive Environmental Response, Compensation, and Liability Act, the court  
12 found that “these words simply do not describe the passive migration that occurred here”];  
13 *See also City of Modesto Redevelopment Agency*, 119 Cal.App.4th at 44 [Section 13304’s  
14 “causes and permits” language was not intended “to encompass those whose involvement  
15 with a spill was remote or passive.”].)

16 In sum, Chevron has not “caused or permitted” the discharge from the dry  
17 cleaner because it occurred before Chevron owned the Site. And Chevron is not causing or  
18 permitting, or threatening to cause or permit a discharge because it no longer owns the Site.  
19 The Order is thus plainly defective in its naming of Chevron as a discharger.

20 **3. The Central Costa County Sanitary District Should be**  
21 **Names as a Discharger for the Site.**

22 Despite being provided with substantial evidence that discharges of CVOCs  
23 were caused and permitted by the Sanitary District, the Order does not name the Sanitary  
24 District as a discharger for the Site. No basis for is provided in the Order. In the Regional  
25 Water Board’s July 2, 2014, Cleanup Team Staff Report it stated that the Sanitary District  
26 was not named because of “numerous policy considerations, as well as guidance from the  
27 California courts.” The Regional Water Board Staff initially sets out the criteria for their  
28 “standard evaluation of whether a party is discharger.” (Regional Water Board’s Staff  
Report, p. 12.) However, these criteria are not applied. Instead, the Regional Water

1 Board created from whole cloth four criteria unique to an owner/operator of a sanitary sewer  
2 and concluded the those four criteria had not been met. These criteria are contrary to Water  
3 Code section 13304 because they create a higher threshold of liability for the Sanitary  
4 District, allowing it to avoid responsibility for causing and permitting discharges of CVOCs.  
5 By failing to follow the law in evaluating the Sanitary District’s liability, the Regional Water  
6 Board’s adoption of the Order, and not naming the Sanitary District as a discharger, was  
7 arbitrary and capricious and contrary to law. The Regional Water Board should be required  
8 to apply the appropriate legal standard in determining whether the Sanitary District is a  
9 “discharger.”

10 **V. THE MANNER IN WHICH PETITIONER HAS BEEN**  
11 **AGGRIEVED**

12 Chevron has been aggrieved by the Regional Water Board’s action because it  
13 will be subjected to provisions of an arbitrary and capricious finding unsupported by evidence  
14 in the record. As a result of being named as a discharger in connection with the Site, Chevron  
15 will be forced to shoulder significant costs of compliance, to bear a heavy burden of  
16 regulatory oversight and to suffer other serious economic consequences to its business  
17 operations.

18 **VI. STATE WATER BOARD ACTION REQUESTED BY**  
19 **PETITIONERS**

20 Chevron requests that the State Water Board find that the Regional Water  
21 Board’s naming of Chevron as a “discharger” in the Order was arbitrary and capricious or  
22 otherwise inappropriate and improper. Chevron further requests that the State Water Board  
23 require the Regional Water Board to delete Chevron as a named discharger from the Order  
24 and add the Sanitary District as a discharger.

25 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT**  
26 **OF LEGAL ISSUES RAISED IN THE PETITION**

27 For purposes of this protective filing, the Statement of Points and Authorities is  
28 subsumed in section IV of the Petition. Chevron reserves the right to file a Supplemental  
Statement of Points and Authorities, including references to the complete administrative  
record, which is not yet available. Chevron also reserves its right to supplement its

1 request for a hearing to consider testimony, other evidence and argument.

2 **VIII. STATEMENT REGARDING SERVICE OF THE PETITION ON**  
3 **THE REGIONAL WATER BOARD**

4 A copy of this Petition is being sent to the Regional Water Board, to the  
5 attention of Bruce H. Wolfe, Executive Officer. Copies are also being sent to the interested  
6 parties identified on the attached proof of service.

7 **IX. STATEMENT REGARDING ISSUES PRESENTED TO THE**  
8 **REGIONAL WATER BOARD**

9 The substantive issues and objections raised in this Petition were raised before  
10 the Regional Water Board.

11 For all of the foregoing reasons, Chevron respectfully request that the State  
12 Water Board review the finding in the Regional Water Board's Order that Chevron is a  
13 "discharger" and grant the relief as set forth above.

14 Dated: December 12, 2014

ROGERS JOSEPH O'DONNELL, PC

15 By: 

16 ROBERT C. GOODMAN  
17 Attorneys for Petitioner  
18 Chevron U.S.A. Inc.

# EXHIBIT A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

**ORDER NO. R2-2014-0042**

**ADOPTION OF INITIAL SITE CLEANUP REQUIREMENTS for:**

**CHEVRON U.S.A. INC. and  
MB ENTERPRISES, INC.**

for the property located at:

**1705 CONTRA COSTA BOULEVARD  
PLEASANT HILL, CONTRA COSTA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter “Regional Water Board”), finds that:

- 1. Site Location and Description:** The 0.48-acre property (Assessor’s Parcel No. 150-103-016-5) is a rectangular-shaped, commercial parcel (the “Site”). The Site is located in the Gregory Gardens area of Pleasant Hill and is currently developed with a Chevron-branded gasoline service station. The Site is bounded by Contra Costa Boulevard to the east, Doris Drive to the north, Linda Drive to the west, and a parking lot and commercial building to the south. The Gregory Village Shopping Center and its main parking lot are located directly north of Doris Drive.

Site improvements include a small station/convenience store, car wash, three underground storage tanks (“USTs”) for automotive fuels, product dispensers and underground piping, underground pavements and landscape areas. A dry cleaner once occupied the southern portion of the Site.

- 2. Site History:** An automotive fueling facility has existed on the northern parcel for over 60 years. Standard Oil operated on the northern parcel from 1950 until 1977. The successor to Standard Oil, Chevron U.S.A. Inc. (herein referred to as “Chevron”), operated at the Site from 1977 until 2003. Automotive repairs were undertaken on the Site from approximately 1950 to 1987.

In 1971, two commercial parcels, a northern lot at 1705 Contra Costa Boulevard (Assessor’s Parcel No. 150-103-011) and a southern lot at 1709 Contra Costa Boulevard (Assessor’s Parcel No. 103-103-012) were merged to form one parcel, which was then split to create a larger northern parcel to facilitate the construction of an automotive maintenance and repair building (constructed in 1972). Both of these properties were owned jointly by the Lehrmans and Robinsons between 1965 and late 1986. A dry cleaner had reportedly operated at 1709 Contra Costa Boulevard since the mid-1950s. According to information provided by the Contra Costa County Assessor’s office, prior to the construction of the new service station building in 1972, the common (central) property line between 1705 and 1709 Contra Costa Boulevard was shifted to the south

approximately 35 feet to create a bigger lot. The southern part of the new building, along with a steel waste oil UST, were then located in a section over the original dry cleaner property.

In late December 1986, Chevron purchased both 1705 and 1709 Contra Costa Boulevard, and sometime in 1987 merged the two lots into one parcel. According to available building permits and inspection reports, by late 1987, the former dry cleaner building had been removed, and in early 1988 Chevron constructed the car wash. Chevron sold the Site in March 2003 to MB Enterprises, Inc., the current property owner and gas station operator.

Unauthorized releases of volatile organic compounds (VOCs) and related constituents, including chlorinated volatile organic compounds (CVOCs), chiefly tetrachloroethylene (PCE) and trichloroethylene (TCE), and various petroleum hydrocarbons (e.g., benzene, toluene, ethylbenzene, xylenes, etc.), were documented at the Site, mainly from former leaking USTs. It is common knowledge that PCE and TCE have been used at automotive repair stations for many years to clean brakes, carburetors, and fuel injection systems and to degrease engines and other parts, and oftentimes USTs were used to store waste oil and related products.<sup>1 2 3</sup> PCE is also commonly associated with dry cleaners.

**Land Ownership:** According to information provided by Chevron, the Site was owned by several different individuals and/or businesses since about 1950, as follows:

1950 to 1960

- Gregory Village, Inc. (a business that no longer exists with no agent for service of process)

1960 to 1986

- Phil Heraty Organization (a business that no longer exists with no agent for service of process)
- Philip and Jane Lehrman (Philip Lehrman is deceased)
- Ned and Marjorie P. Robinson (both are deceased)
- Philip and Jane Lehrman, Ned and Marjorie P. Robinson owned the property between June 25, 1965 and December 31, 1986
- Merle D. Hall Company (no clear evidence of property ownership)
- Max W. Parker (no clear evidence of property ownership)

December 1986 to March 2003

- Chevron U.S.A. Inc.

March 2003 to Present

- MB Enterprises, Inc. (current property owner and gas station operator)

<sup>1</sup> USEPA, November 1993, Economic Impact Analysis of the Halogenated Solvent Cleaning NESHAP, EPA-453/D-93-058.

<sup>2</sup> State of California Environmental Protection Agency/Air Resources Board, June 1997, Status Report, Perchloroethylene Needs Assessment for Automotive Consumer Products.

<sup>3</sup> State of California Environmental Protection Agency, November 2006, Automotive Aerosol Cleaning Products: Low-VOC, Low Toxicity Alternatives, Report prepared by Institute for Research and Technical Assistance for the Department of Toxic Substances Control and City of Santa Monica.

3. **Named Dischargers:** Marjorie P. Robinson has passed away since this Order was noticed and is therefore not being named as a discharger. Jane A. Lehrman is not being named as a discharger because there is insufficient evidence that she permitted a discharge. She owned the Site in name only; her husband was the actual owner. Mrs. Lehrman did not even know she owned the Site, much less what occurred there. She had no role in purchasing, leasing or selling the Site; her husband made those decisions. He would often ask her to sign documents without explaining them to her. At the time of her ownership, Mrs. Lehrman did not know nor should she have known about the dangers inherent in the gas station/auto repair and dry cleaning activities at the Site because her connection to the Site was tenuous other than her nominal ownership.

Gregory Village, Inc. and Phil Heraty Organization are not being named as dischargers because these businesses no longer exist, and the California Secretary of State has no record for an agent for service of process on file for either company. Merle D. Hall Company and Max W. Parker are not being named as dischargers because there is no clear evidence of their ownership of Site 2.

Chevron is named as a discharger with respect to the discharge and migration of CVOCs from a former waste oil tank and the former dry cleaner, both located on the Site. First, with respect to CVOC releases from a former on-Site leaking waste oil UST, Chevron is named as a discharger because of substantial evidence that it discharged CVOCs to soil and groundwater at the Site. This evidence includes Standard Oil/Chevron's operation of the waste oil UST for many years, and the pattern of CVOC and petroleum contamination subsequently detected in the vicinity of the former waste oil UST. As of at least 1986, Chevron knew of the discharge or the activities that caused the discharge and had the legal ability to prevent the discharge.

Second, with respect to CVOC releases from the former on-Site dry cleaner, Chevron is a discharger because it owned the property during the time of an ongoing discharge of CVOCs in soil and groundwater, had knowledge of the discharge and the activities that caused the discharge, and had the legal ability to control the discharge.

MB Enterprises, Inc. is named as a discharger because it is the current owner of the property on which there is an ongoing discharge of pollutants, has knowledge of the discharge, and the ability to control the discharge.

Regional Water Board staff was unable to locate a former operator of the dry cleaner, Charles Grant Bostwick and Joanne Bostwick. Regional Water Board staff understands that former operators of the dry cleaner, Morris and Genoise Jorgenson, are also deceased.

If additional information is submitted indicating other parties caused or permitted any waste to be discharged on the Site where it entered or could have entered waters of the State, the Regional Water Board will consider adding those parties to this order. Collectively the above identified responsible parties are referred as Dischargers.

4. **Regulatory Status:** The Site is currently not subject to a Regional Water Board order.

5. **Site Hydrogeology:** The Site is located within the Ygnacio Valley Groundwater Basin, a structural depression between the Berkeley Hills to the west and the Diablo Range to the east. The basin sediments consist of thick Quaternary-age alluvial and floodplain deposits, generally comprised of unconsolidated to partially consolidated, discontinuous layers of silt, clay, sand, and gravel. The local topography is gently tilted to the north and northwest.

From June 1989 through May 2013, groundwater levels in various monitoring wells associated with the Site ranged from a low of approximately 20 feet below the ground surface (bgs) to a high of approximately six feet bgs. The lowest groundwater level recorded coincides with a time when Chevron was pumping and treating polluted groundwater. Groundwater flow direction in the shallow zone has been mainly to the north at an average gradient of approximately 0.005 feet per foot.

6. **Hydrology:** The closest major surface water bodies are Grayson Creek, located approximately 2,000 feet to the west, and Walnut Creek, located approximately 2,000 feet to the east. No municipal drinking water supply wells are known to exist within a two-mile radius of the site. Shallow “backyard” irrigation wells are common on residential parcels in Pleasant Hill, but a door-to-door domestic well survey has not been completed in the residential subdivision downgradient of the Site.

7. **Remedial Investigation:** Numerous soil, soil vapor, and groundwater samples collected and analyzed during approximately 26 years of environmental investigation and cleanup activities at the Site have detected a variety of chemicals, several of which are very toxic to human health. The data indicates CVOCs are present in groundwater at levels exceeding the maximum contaminant levels (MCLs)<sup>4</sup> beneath and downgradient (north and northwest) of the Site, and have likely commingled with another CVOC groundwater plume associated with the former P&K Cleaners location north of the Site

Petroleum and chlorinated VOCs were detected in soil, soil vapor, and shallow groundwater within the boundaries of the Site, adjacent to the Site, and within the Gregory Village Shopping Center parcel downgradient of the Site.

The Site was an open environmental case from 1986 to early 2005. Chevron indicated the Site did not pose a threat to human health, groundwater and the environment. Based on the findings and analysis in environmental assessment reports from Chevron, groundwater contamination appeared to be localized and adequately characterized. Chevron requested closure of the UST case. Based on the data presented, the Regional Water Board concurred and closed the fuel UST case on January 14, 2005. All groundwater monitoring wells, with the exception of off-Site well EA-5, were destroyed in March 2005.

An October 31, 2005, letter from Cambria Environmental Technology, Inc. about the destruction of monitoring wells stated, *As part of approved case closure, one sentinel well, EA-5, will remain active and sampled annually for petroleum hydrocarbons and halogenated volatile organic compounds.* EA-5 has been monitored on an annual basis for

<sup>4</sup> The drinking water standard for PCE and TCE, known as the maximum contaminant level, or MCL, is 5 µg/L.

the past eight years. The maximum historic PCE and TCE detections in groundwater samples from off-Site well EA-5 have been 52 µg/L, and 84 µg/L, respectively.<sup>5</sup>

The maximum detected concentrations of contaminants of potential concern are listed by medium in the table below:

| Analyte        | Maximum Concentration Detected |                 |                                  |
|----------------|--------------------------------|-----------------|----------------------------------|
|                | Groundwater<br>(µg/L)          | Soil<br>(mg/kg) | Soil Gas<br>(µg/m <sup>3</sup> ) |
| PCE            | 5,000                          | 720             | 3,247,700                        |
| TCE            | 3,600                          | 1.6             | 2,100,000                        |
| cis-1,2-DCE    | 2,900                          | 2.7             | 410,000                          |
| vinyl chloride | 910                            | <48             | <5,200                           |
| benzene        | 12,000                         | 2.2             | 520,733                          |
| TPH-gasoline   | 110,000                        | 80              | 916,667                          |

The CVOC concentrations in groundwater are substantially above the drinking water standards (e.g., the Maximum Contaminant Level, or MCL, for PCE is 5 µg/L). The CVOC concentrations in soil vapor are well above risk-based screening levels (e.g., Regional Water Board's ESLs<sup>6</sup>) for potential vapor intrusion concerns at commercial facilities (e.g., ESL is 2,100 µg/m<sup>3</sup>), and pose a direct threat to indoor air.

The distribution and types of contaminants in groundwater downgradient of the Site generally mirror the contaminants found in soil, soil vapor and groundwater directly beneath the Site. The data demonstrates that CVOC concentrations in groundwater are generally higher near the former steel waste oil UST, then generally decrease in concentrations as the plume expanded to the north and attenuated, indicating the pollution in groundwater migrated and likely commingled with the P&K Cleaners plume.

Nevertheless, there are several data gaps in regards to the vertical and lateral distribution of CVOCs in soil, soil vapor and groundwater, both on-Site and off-Site. Additional soil, soil vapor and groundwater characterization studies, and a human health risk assessment, are warranted.

- 8. Interim Remedial Measures:** The first-generation fueling facilities were removed and replaced in 1971-1972. The second-generation fueling facilities were removed and replaced in 1987-1988. A steel waste oil UST installed in 1972 was removed in 1986. There are no records to indicate contaminated soils were excavated and hauled away during any of the waste oil UST removal and replacement activities.

Between August 1991 and July 1996, pumping, treatment, and permitted disposal of contaminated groundwater was conducted at the Site as an interim remedial measure. Approximately 1,900,000 gallons of polluted groundwater were extracted, treated, and

<sup>5</sup> These concentrations are much lower than on-Site concentrations of CVOCs and in groundwater samples collected more recently and to the west of EA-5 (as discussed below), indicating EA-5 is probably not located in an appropriate area to function as a "sentinel" well.

<sup>6</sup> See Regional Water Board webpage: [http://www.waterboards.ca.gov/rwqcb2/water\\_issues/programs/esl.shtml](http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/esl.shtml)

discharged to the sanitary sewer system. Chevron reported removal of approximately 12 pounds of Total Petroleum Hydrocarbons and 41 pounds of CVOCs. Chevron reported that the pump and treat system did little to reduce the high concentrations of CVOCs dissolved in groundwater.

In 1995, as part of site renovation activities, trench liners, pea gravel, and product piping were removed, and shallow soil contaminated with petroleum hydrocarbons was excavated to approximately three feet bgs.

Additional interim remedial measures likely will be necessary to reduce the threat to water quality, public health, and the environment posed by the past chemical releases, and to provide a technical rationale behind the selection and design of final remedial measures.

- 9. Nearby Sites:** A commercial property to the north, 1601-1699 Contra Costa Boulevard and currently the Gregory Village Shopping Center, is directly downgradient of the Site. A dry cleaner that used PCE in their operations existed in one of the tenant suites within the plaza (with a property address of 1643 Contra Costa Boulevard). CVOC releases from this former dry cleaner are well-documented (Regional Water Board Case No. 07S0132). This property is the subject of another proposed order directed to Gregory Village Partners, L.P., and others.

A former Unocal gas station located at 1690 Contra Costa Boulevard is cross-gradient and approximately 150 feet northeast of the Site. This site, now a McDonald's restaurant, had confirmed releases of petroleum hydrocarbons and fuel oxygenates to soil and groundwater. A waste oil UST was removed from the site in 2000. The case (Regional Water Board Case No. 07-0450) was closed on September 27, 2010. There is insufficient evidence to determine whether MTBE and other fuel-related constituents from this former gas station property have commingled with contamination at the Site.

A former gas station (now a Taco Bell restaurant), located at 1700 Contra Costa Boulevard, is cross-gradient and approximately 100 feet east of the Site. This property had historic releases of petroleum hydrocarbons. A waste oil UST was removed from the site in the past (date unknown). The case (Regional Water Board Case No. 07-0873) was closed on May 20, 2008. There is insufficient evidence to determine whether fuel-related constituents from this property have commingled with contamination at the Site.

Minor concentrations of CVOCs were detected in the groundwater beneath a former gas station at 1521-1529 Contra Costa Boulevard, approximately 600 feet north of the Site and upgradient of CVOC detections in soil vapor and groundwater in the residential neighborhood north of the Gregory Village Shopping Center. The property, which was an automotive service and fueling station until 1977, has an unknown chemical release history. The case (Regional Water Board Case No. 07-0893) is currently open. There is insufficient evidence to determine whether fuel-related constituents from this former gas station property have commingled with contamination at the Site or migrated beneath the adjacent residential neighborhood. Additional data will be necessary to confirm that CVOCs were not released during the historic service station operations.

Two other dry cleaners, located at 1946 Contra Costa Boulevard (07S0088; Former Dutch Girl Cleaners and currently the "Hosanna Cleaners") and 2001 Contra Costa Boulevard, are

upgradient of the Site. The 07S0088 case is inactive and approximately 2,000 feet southeast of the Site. Because of the lateral distance between this property and the Site, it is unlikely that any PCE released on this property migrated in groundwater and commingled with the CVOC plume associated with the Site. The 2001 Contra Costa Boulevard property, currently PH Bargain Cleaners, is located approximately 1,300 feet to the south and is not listed as a case in the Water Board's records.

Former and current automotive maintenance facilities at 1855-1859 Contra Costa Boulevard are located approximately 650 feet upgradient (south) of the Site. CVOCs were released at this site. The case (Regional Water Board Case No. 07-0022) is open. There is insufficient evidence to determine whether fuel-related constituents from this property have commingled with contamination at the Site.

Three current and former paint shops - 1725 Contra Costa Boulevard, 1720 Linda Drive, and 1942 Linda Drive - are located upgradient of the Site. The 1725 Contra Costa Boulevard property, the former "Deen Pierce Paint Company (Case No. 07-0344 and closed on July 20, 1994), had a former UST which reportedly contained mineral spirits; the UST was removed on or about July 16, 1986. Regional Water Board staff does not have any information about the other two paint shops. There is insufficient evidence to determine whether constituents from these properties have commingled with contamination at the Site.

- 10. Basin Plan:** The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater, and also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board, U.S. EPA, and the Office of Administrative Law where required.

The potential beneficial uses of groundwater underlying and adjacent to the Site include:

- a. Municipal and domestic water supply
- b. Industrial process water supply
- c. Industrial service water supply
- d. Agricultural water supply

At present, there is no known use of the shallow groundwater zone underlying the Site and immediate area for the above purposes. The vertical extent of groundwater contamination is unknown, and a future vertical delineation study is warranted. Because the Regional Water Board has insufficient information regarding the actual use of groundwater in the vicinity of the Site, Task 1 includes a requirement to survey for sensitive receptors. Similarly, the extent to which the shallow groundwater zone is connected to lower zones is not well-defined, necessitating the requirement in Task 1 to study potential vertical conduits and preferential pathways.

- 11. State Water Board Policies:** State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this

discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background shall be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives. This order and its requirements are consistent with Resolution No. 68-16.

State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304," applies to this discharge. This order and its requirements are consistent with the provisions of Resolution No. 92-49, as amended.

- 12. Other Board Policy:** Regional Water Board Resolution No. 89-39, "Sources of Drinking Water," defines potential sources of drinking water to include all groundwater in the region, with limited exceptions for areas of high TDS, low yield, or naturally-high contaminant levels. The groundwater at this Site is a potential source of drinking water.
- 13. Preliminary Cleanup Goals:** The Dischargers will need to make assumptions about future cleanup standards for soil, soil vapor, and groundwater in order to determine the necessary extent of remedial investigation, interim remedial actions, and the draft remedial action plan. Pending the establishment of site-specific cleanup standards, the following preliminary cleanup goals shall be used for these purposes:
  - a. Groundwater: Applicable water quality objectives (e.g., lower of primary (toxicity) and secondary (taste and odor) maximum contaminant levels, or MCLs) or, in the absence of a chemical-specific objective, equivalent drinking water levels based on toxicity and taste and odor concerns.
  - b. Soil and Soil Vapor: Applicable screening levels as compiled in the Regional Water Board's draft Environmental Screening Levels (ESLs) document or its equivalent. Soil and soil vapor screening levels are intended to address a full range of exposure pathways, including direct exposure, indoor air impacts, nuisance, and leaching to groundwater. For purposes of this subsection, the Dischargers must assume that groundwater is a potential source of drinking water.
- 14. Basis for 13267 and 13304 Order:** Water Code section 13267 authorizes the Regional Water Board to require a person who has discharged, discharges or is suspected of having discharged or discharging, to furnish technical or monitoring program reports. The burden of the reports required by this Order bears a reasonable relationship to the need for the report and the benefits to be obtained (to characterize the extent of contamination, the associated risks to human health and the environment, and document success of remediation efforts).

Water Code section 13304 authorizes the Regional Water Board to issue orders requiring dischargers to cleanup and abate waste where the dischargers have caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the State and creates or threatens to create a condition of pollution or nuisance. As

discussed above, each of the dischargers has caused or permitted waste to be discharged or deposited, causing contamination of groundwater. Contamination of groundwater creates and threatens to create conditions of pollution and nuisance.

- 15. Cost Recovery:** Pursuant to Water Code section 13304, the Dischargers are hereby notified that the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional 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.
- 16. California Environmental Quality Act (CEQA):** This action is an order to enforce the laws and regulations administered by the Regional Water Board. As such, this action is categorically exempt from the provisions of CEQA pursuant to Title 14 of the California Code of Regulations, section 15321.
- 17. Safe Drinking Water Act:** It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This order promotes that policy by requiring discharges to meet the lower of primary and secondary maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.
- 18. Notification:** The Regional Water Board has notified the Dischargers and all interested agencies and persons of its intent under Water Code section 13304 to prescribe Site Cleanup Requirements for the discharge, and has provided them with an opportunity to submit their written comments.
- 19. Public Hearing:** The Regional Water Board, at a public meeting, heard and considered all comments pertaining to the proposed site cleanup requirement for the Site.

**IT IS HEREBY ORDERED**, pursuant to sections 13267 and 13304 of the Water Code, that the Dischargers (or its agents, successors, or assigns) shall investigate, cleanup and abate the effects described in the above findings as follows:

#### **A. PROHIBITIONS**

1. The discharge of wastes or hazardous substances in a manner which will degrade water quality or adversely affect beneficial uses of waters of the State is prohibited.
2. Further significant migration of wastes or hazardous substances through subsurface transport to waters of the State is prohibited.
3. Activities associated with the subsurface investigation and cleanup which will cause significant adverse migration of wastes or hazardous substances are prohibited.

**B. TASKS****1. COMPLETION OF SENSITIVE RECEPTOR SURVEY AND CONDUIT STUDY**

COMPLIANCE DATE: January 7, 2015

Submit a technical report acceptable to the Executive Officer documenting completion of an up-to-date sensitive receptor survey and a conduit study. To evaluate the potential impact of the contamination on human health and the environment, the locations of sensitive receptors, including water supply and irrigation wells, shall be identified. A conduit study is needed to evaluate the role of subsurface utilities in the migration or accumulation of CVOCs in the subsurface.

**2. PUBLIC PARTICIPATION PLAN**

COMPLIANCE DATE: January 7, 2015

Submit a technical report acceptable to the Executive Officer to ensure adequate public participation will be undertaken at key steps in the remedial action process.

**3. REMEDIAL INVESTIGATION/DATA GAP WORK PLAN**

COMPLIANCE DATE: February 12, 2015

Submit a work plan acceptable to the Executive Officer to further evaluate all source areas and to define the vertical and lateral extent of CVOCs in soil, soil vapor, and groundwater. The work plan shall specify investigation methods and a proposed time schedule.

**4. COMPLETION OF REMEDIAL INVESTIGATION**

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 3.  
Work Plan

Submit a technical report acceptable to the Executive Officer documenting completion of necessary tasks identified in the Task 2 work plan. The technical report shall define the vertical and lateral extent of pollution down to concentrations at or below typical cleanup standards for soil, soil vapor, and groundwater.

**5. COMPLETION OF HUMAN HEALTH RISK ASSESSMENT**

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 4.

Submit a technical report acceptable to the Executive Officer documenting the completion of an appropriate human health risk assessment.

## 6. DRAFT REMEDIAL ACTION PLAN INCLUDING DRAFT CLEANUP STANDARDS

COMPLIANCE DATE: 90 Days after Executive Officer approval of Task 5.

Submit a technical report acceptable to the Executive Officer containing:

- a. Results of the remedial investigation
- b. Evaluation of the installed interim remedial actions measures
- c. Feasibility study evaluating alternative final remedial actions
- d. Risk assessment for current and post-cleanup exposures
- e. Recommended final remedial actions and cleanup standards
- f. Implementation tasks and time schedule

Item c shall include projections of cost, effectiveness, benefits, and impact on public health, welfare, and the environment of each alternative action.

Items a through c shall be consistent with the guidance provided by Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), CERCLA guidance documents with respect to remedial investigations and feasibility studies, Health and Safety Code section 25356.1(c), and State Water Board Resolution No. 92-49 as amended ("Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304").

Item e shall consider the preliminary cleanup goals for soil and groundwater identified in finding 13 and shall address the attainability of background levels of water quality (see finding 11).

## 7. DELAYED COMPLIANCE

If the Dischargers are delayed, interrupted, or prevented from meeting one or more of the completion dates specified for the above tasks, the Dischargers shall promptly notify the Executive Officer and the Regional Water Board may consider revision to this Order.

## C. PROVISIONS

1. **No Nuisance:** The storage, handling, treatment, or disposal of polluted soil or groundwater shall not create a nuisance as defined in Water Code section 13050(m).
2. **Good Operations and Maintenance (O&M):** The Dischargers shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.
3. **Cost Recovery:** The Dischargers are liable, pursuant to Water Code section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional 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. If the site addressed by this Order is enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Dischargers over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.

4. **Access to Site and Records:** In accordance with Water Code section 13267(c), the Dischargers shall permit the Regional Water Board or its authorized representative:
  - a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.
  - b. Access to copy any records required to be kept under the requirements of this Order.
  - c. Inspection of any monitoring or remediation facilities installed in response to this Order.
  - d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the Dischargers.
5. **Self-Monitoring Program:** The Dischargers shall comply with the Self-Monitoring Program as may be established by the Executive Officer.
6. **Contractor/Consultant Qualifications:** All technical documents shall be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.
7. **Lab Qualifications:** All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Regional Water Board using approved EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control records for Regional Water Board review. This provision does not apply to analyses that can only reasonably be performed on-Site (e.g., temperature).
8. **Document Distribution:** Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the following agencies:
  - Regional Water Quality Control Board
  - City of Pleasant Hill
  - County of Contra Costa

The Executive Officer may modify this distribution list as needed.

All reports submitted pursuant to this Order shall be submitted as electronic files in PDF format. All electronic files shall be submitted via the State Water Board's Geotracker website, email (only if the file size is less than 3 megabytes), or on CD.

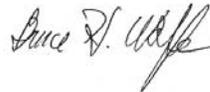
- 9. Reporting of Changed Owner or Operator:** The Dischargers shall file a technical report on any changes in Site occupancy or ownership associated with the property described in this Order.
- 10. Reporting of Hazardous Substance Release:** If any hazardous substance is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the Dischargers shall report such discharge to the Regional Water Board by calling (510) 622-2369 during regular office hours (Monday through Friday, 8:00 AM to 5:00 PM).

A written report shall be filed with the Regional Water Board within five working days. The report shall describe: the nature of the hazardous substance, estimated quantity involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective actions taken or planned, schedule of corrective actions planned, and persons/agencies notified.

This reporting is in addition to reporting to the Office of Emergency Services required pursuant to the Health and Safety Code.

- 11. Periodic SCR Review:** The Regional Water Board will review this Order periodically and may revise it when necessary. The Dischargers may request revisions and upon review the Executive Officer may recommend that the Regional Water Board revise these requirements.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on November 12, 2014.



Digitally signed by Bruce H. Wolfe  
DN: cn=Bruce H. Wolfe, o=SWRCB,  
ou=Region 2,  
email=bwolfe@waterboards.ca.g  
ov, c=US  
Date: 2014.11.19 17:56:46 -08'00'

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Bruce H. Wolfe  
Executive Officer

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FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO: IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER CODE SECTIONS 13268 OR 13350, OR REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY

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1 **PROOF OF SERVICE**

2 I, Clara Chun, declare that I am over 18 years of age and not a party to the within  
3 action. I am employed in San Francisco County at 311 California Street, 10th Floor, San  
4 Francisco, CA 94104. On December 12, 2014, I served the following documents described  
5 as:

6 **PETITION FOR REVIEW**

7 By placing a true copy thereof enclosed in first class mail and/or or electronic mail addressed  
8 to:

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13 Walnut Creek, CA 94595-1167  
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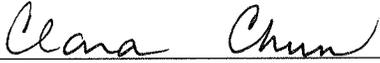
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Fullerton, CA 92833

X BY FIRST CLASS MAIL: I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to-wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing on same day, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this date at San Francisco, California.

Dated: December 12, 2014

  
\_\_\_\_\_  
Clara Chun