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Petitioners Uchenna Ukazim and Sanel Ljesnjanin

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of the North Coast Regional Water
Quality Control Board's Failure to Name Nick
Barbieri Trucking, LLC, Redwood Coast Fuels and
North Bay Petroleum As Responsible Parties for
the Fuel Release at 7501 Hearst Road Willits,
California

UCHENNA UKAZIM'S AND SANEL
LJESNJANIN'S PETITION FOR REVIEW AND
REQUEST FOR STAY (Water Code § 13320)

REQUEST FOR HEARING
(Cal. Code Reg., Title 23 § 2052)

I. INTRODUCTION

Uchenna Ukazim and Sanel Ljesnjanin ("Petitioners") hereby petition the State Water Resources Control Board ("State Board") under California Water Code § 13320 and Cal. Code Regs., Title 23 § 2050 to review the North Coast Regional Water Quality Control Board's ("RWQCB") Cleanup and Abatement Order No. R1-2022-0019 ("2022 Order") relating to a release from the property located at 7501 Hearst Road, Willits, California ("Property"). (A copy of the 2022 Order and Transmittal letter is attached as Exhibit A.)

The 2022 Order requires Petitioners and Hearst Willits Properties, LLC to investigate and remediate the Property, but it fails to name the key parties that are responsible for the release: the fuel companies that improperly installed the aboveground storage tank ("AST") that resulted in the release. As set forth in this Petition, the fuel companies should be added to the 2022 Order as they are responsible

1 parties pursuant to California Water Code § 13304.

2
3 The release that is the subject of this Petition was caused by the improper installation of the AST
4 that was installed on the Property by Redwood Coast Fuels, a company owned by Nick Barbieri
5 Trucking, LLC. Nick Barbieri Trucking, LLC also owns North Bay Petroleum, and the companies
6 together are referred to as “the Fuel Companies” for purposes of this Petition. The AST fell over and
7 caused a release of diesel. The RWQCB issued a previous Cleanup and Abatement Order R1-2018-012
8 (2018 Order) to Mr. Ukazim and Mr. Ljesnjanin which required Petitioners to clean up and abate the
9 discharge of fuel onto the Property that resulted from the improper installation of the AST. The
10 California Department of Fish & Wildlife issued its own Cleanup and Abatement Order on September
11 27, 2018, naming only the Fuel Companies as dischargers responsible for the release. The 2018 Order
12 from the RWQCB did not name the fuel companies, and this was improper. A copy of the 2018 Order is
13 attached as Exhibit B.

14 Petitioners have undertaken investigation and remediation activities in accordance with the 2018
15 Order. However, additional work is currently required and as a result of the ongoing obligations, in a
16 letter submitted to the RWQCB on behalf of Petitioners dated April 11, 2022, Petitioners requested that
17 the Fuel Companies be named as responsible parties to participate in the current obligations required
18 under the 2018 Order. The letter also requested that the RWQCB name Hearst Willits Properties, LLC as
19 a responsible party since it is the current owner of the Property. Finally, the letter requested the RWQCB
20 remove Mr. Ukazim and Mr. Ljesnjanin from the Order. A copy of the April 11, 2022, letter is attached
21 as Exhibit C.

22 The RWQCB did not respond to Petitioners request, and on May 12, 2022, Petitioners filed a
23 Petition with the State Water Resources Control Board (SWRCB) requesting review of: (1) the
24 RWQCB’s failure to name the Fuel Companies as responsible parties; (2) the RWQCB’s failure to name
25 Hearst Willits Properties, LLC as a responsible party; and (3) the RWQCB’s failure to remove Mr.
26 Ukazim and Mr. Ljesnjanin as responsible parties.¹ A copy of the May 12, 2022, Petition is attached as
27

28 ¹ In a letter dated July 11, 2022, the SWRCB declined review of the petition on the grounds that a
challenge to the 2018 Order must have been brought within 30 days of the 2018 Order. A copy of this
letter is attached as Exhibit E.

1 Exhibit D.

2 On June 27, 2022, the RWQCB issued the 2022 Order that supersedes the 2018 Order. The 2022
3 Order names Hearst Willits, LLC as a responsible party, but failed to name the Fuel Companies as
4 responsible parties, and it failed to remove Mr. Ukazim and Mr. Ljesnjanin as responsible parties. The
5 purpose of this Petition is to request that the 2022 Order be amended to include the Fuel Companies as
6 responsible parties and remove Mr. Ukazim and Mr. Ljesnjanin from the 2022 Order.
7

8 This Petition is timely because it is filed within thirty days of the issuance of the 2022 Order.

9 Petitioners are filing this Petition to object to the 2022 Order, however Petitioners reserve their
10 rights to revise, amend and or supplement this Petition as they acquire additional information.

11 Additionally, Petitioners request a hearing before the State Board to consider testimony, other
12 evidence and argument. If necessary, Petitioners will submit an amended petition containing a summary
13 of contentions to be addressed or evidence to be introduced, as well as a showing of why the contentions
14 or evidence could not have been previously presented. Included with this Petition is the Declaration of
15 Uchenna Ukazim. The facts of this matter are undisputed, however if necessary, Petitioners will submit
16 additional declarations in support of this Petition.
17

18 Petitioners also request a stay of enforcement of the 2022 Order pending resolution of this
19 Petition.

20 **II. PETITION FOR REVIEW**

21 **(1) Name, Address, Telephone Number and Email Addresses of the Petitioners**

22 Petitioners are the individuals named in the 2022 Order as they were the owners of the Property at
23 the time the 2022 Order was issued. Below is the contact information for the Petitioners:
24

25 Uchenna Ukazim
26 1521 Alton Rd # 426
27 Miami Beach, FL 33139-3301.
28 Tel: 561.901.3471
Email: uukazim@gmail.com

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Sanel Ljesnjanin
306 Gold Street, 15G
Brooklyn, New York 11201-3028
Tel: 347.784.0316
Email: sanell306@gmail.com

(2) **The Specific Action or Inaction of the Regional Board which the State Board is Requested to Review**

Petitioners request the State Board review the following:

- (i) The RWQCB's failure to name the Fuel Companies as responsible parties on the 2022 Order. (Petitioners request that the Fuel Companies be named as responsible parties.)
- (ii) The RWQCB's failure to remove Mr. Ukazim and Mr. Ljesnjanin from the Order as they are no longer the owners of the Property. (Petitioners request that Mr. Ljesnjanin and Mr. Ukazim be removed from the Order.)

(3) **The Date on which the Regional Board Acted or Refused to Act or on Which the Regional Board was Requested to Act.**

The RWQCB issued the 2022 Order superseding the 2018 Order on June 27, 2022.

(4) **A full and complete statement of the reasons the action or failure to act was inappropriate or improper.**

The failure of the RWQCB to name the Fuel Companies on the Order, and the inclusion of Mr. Ukazim and Mr. Ljesnjanin on the 2018 Order was unreasonable, arbitrary and capricious, unlawful and not supported by the record for the reasons set forth below.

(a) Background

Petitioners, Mr. Ukazim and Mr. Ljesnjanin, are the former owners of the Property. In 2019, Petitioners transferred the Property into Hearst Willits Properties, LLC who is the current owner of the Property. (Ukazim ¶ 1)

1 This matter arises out of the failure of an AST which caused a release of diesel on the Property.
2 In December of 2017, Petitioners contacted Redwood Coast Fuel Company ("Redwood") to arrange for
3 the lease of a 1000-gallon AST to store diesel on the Property. Redwood delivered and installed the AST
4 on the Property on December 13, 2017. Mr. Ukazim and Mr. Ljesnjanin were not present when the AST
5 was installed, and they never owned or operated the AST. Shortly after the installation, on December 17,
6 2017, the AST fell over and diesel was released and some of the diesel impacted the nearby Rocktree
7 Creek. The release was discovered by a caretaker at the Property who tried to recover as much of the
8 diesel as possible and placed it into buckets. The caretaker then called Redwood who came out to pump
9 any remaining fuel out of the AST. Although Redwood pumped the fuel out of the AST, it did not
10 undertake any cleanup activities. On January 18, 2018, a representative of Mr. Ukazim and Mr.
11 Ljesnjanin reported the discharge to the Mendocino County Environmental Health Division. The next
12 week, on January 25, 2018, the RWQCB named Mr. Ukazim and Mr. Ljesnjanin as responsible parties in
13 the 2018 Order, but it did not name the Fuel Companies. (Uzakim ¶¶2-3)

14 The California Department of Fish & Wildlife issued its own Cleanup and Abatement Order on
15 September 27, 2018, naming only the Fuel Companies as dischargers responsible for the release. It is
16 undisputable that the Fuel Companies are responsible for the release as described below.

17 After the release was discovered, Redwood came out to the Property and assumed responsibility
18 for the cleanup. Redwood conducted the initial corrective action measures as they rightfully should have.
19 Redwood pumped the diesel out of the buckets and pumped the remaining fuel out of the AST. Mr.
20 Ukazim and Mr. Ljesnjanin were out of state at the time and never operated the tank. (Uzakim ¶2)

21 Below is a photo of the AST as it was installed on the Property (Uzakim ¶ 4):



1 The Fuel Companies' installation of the AST was deficient for the following reasons:

2 (1) The AST that was delivered to the Property was in poor condition when it was
3 delivered.

4 (2) The AST stand was inadequate to support the weight of the fully loaded tank and one
5 of the struts or cross-pieces was bent (see red circle in photo).

6 (3) The AST was placed on soil and cement that was not adequate to support the AST and
7 did not have secondary containment.

8 (4) The Fuel Companies chose the location where the AST was placed which was too
9 close to the Rocktree Creek.

10 **(b) Why the 2022 Order is Inappropriate**

11 The RWQCB named Mr. Ukazim and Mr. Ljesnjanin as dischargers but declined to name the
12 Fuel Companies. This was improper because as the entities that caused and permitted the discharge, the
13 Fuel Companies should also be named in the 2022 Order. The California Department of Fish & Wildlife
14 has acknowledged the responsibility of the Fuel Companies by naming them in a separate order.
15 Petitioners did not cause the release because they never owned or operated the AST. Mr. Ukazim and Mr.
16 Ljesnjanin should be removed from the order as they are no longer the owners of the Property.

17 **(5) The Manner in which the Petitioners are Aggrieved.**

18 Petitioners are aggrieved in that they and Hearst Willits Properties, LLC are currently the only
19 parties named in the Order and are therefore solely responsible for the costs of remediation. They have
20 incurred consultant's costs and attorneys' fees and will continue to do so until the RWQCB closes the
21 site. The Fuel Companies should also be named in the Order and should be primarily responsible for
22 remediating the contamination they created.

23 **(6) The Specific Action by the State or Regional Board which Petitioners Request.**

24 Petitioners request that the State Board direct the RWQCB to: (1) name the Fuel Companies as
25 responsible parties as the owners of the AST; and (2) remove Petitioners as responsible parties since they
26 are no longer the owners of the Property.

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1 (7) **A Statement of Points and Authorities in Support of Legal Issues Raised in the Petition,**
2 **Including Citations to Documents or the Transcript of the Regional Board Hearing if it is**
3 **Available.**

4 **A. The Fuel Companies Should be Named as Responsible Parties as they Caused the**
5 **Release**

6 The State Board has determined that direct dischargers should be named when the burden of
7 cleanup otherwise would fall on a party solely because it holds an ownership interest in the property. In
8 *In the Matter of the Petition of Alvin Bacharach and Barbara Borsuk*, (WQ 91-07) the State Board held
9 that it would be unfair for a cleanup order to place all responsibility on a landowner where substantial
10 evidence existed to name the operator of the tanks.

11 In *In the Matter of the Petition of Exxon Company, U.S.A, et al*, WQ 85-7, the State Board found:

12 Generally speaking **it is appropriate and responsible for a Regional Board to name all parties**
13 **for which there is reasonable evidence of responsibility**, even in cases of disputed
14 responsibility. However, there must be a reasonable basis on which to name each party. There
15 must be substantial evidence to support a finding of responsibility for each party named. This
16 means credible evidence which indicates the named party has responsibility. *Id.* (Emphasis
17 added.)

18 The State Board has found that even a relatively minor contribution to a discharge may support a
19 finding of responsibility under Water Code §13304. In *In re County of San Diego* (WQ 96-2), the State
20 Board found that a Regional Board had properly treated a city as a discharger, solely because the city had
21 an easement over (and authority to control) a street that overlay part of a landfill, and subsidence of
22 landfill material beneath the roadway was contributing to runoff coming from the street to the landfill
23 surface, which in turn was adversely affecting water quality beneath the site.

24 In this case, the Fuel Companies had more than a minor role, and in fact had the only role, in
25 creating the release. Neither Mr. Ukazim or Mr. Ljesnjanin ever operated the tank and were never present
26 on the Property when the tank was there. On the other hand, it is clear that the Fuel Companies
27 improperly installed the AST which caused the release, and they failed to properly remediate the
28 contamination. The Fuel Companies are named in the Fish & Wildlife Order, and this is undeniably
credible evidence of their responsibility.

1 **B. Companies that Supply Defective Equipment Should be Named as Dischargers**
2 **Under § 13304**

3
4 The Order was issued pursuant to Water Code § 13304(a) which states:

5 A person who has discharged or discharges waste into the waters of this state in violation
6 of any waste discharge requirement or other order or prohibition issued by a regional
7 board or the state board, **or who has caused or permitted, causes or permits, or**
8 **threatens to cause or permit any waste to be discharged or deposited where it is, or**
9 **probably will be, discharged into the waters of the state and creates, or threatens to**
10 **create, a condition of pollution or nuisance**, shall, upon order of the regional board,
 clean up the waste or abate the effects of the waste, or, in the case of threatened pollution
 or nuisance, take other necessary remedial action, including, but not limited to, overseeing
 cleanup and abatement efforts. (Emphasis added.)

11 Generally, the State Board has broadly interpreted the scope of liability under § 13304. (See
12 Manaster & Selmi, *California Environmental Law and Land Use Practice*, § 32.31 (Matthew Bender)).
13 This interpretation is consistent with the policy that because cleanups are expensive, liability must be
14 imposed broadly to assure that funding for cleanup is available, and the State Board considers fairness,
15 especially when private individuals and small companies are involved. (*Id.*, citing *U.S. Cellulose et al.*,
16 Order No. WQ 92-4 (SWRCB 1992)).

17 Under California law, because the Fuel Companies supplied and installed a defective AST, they
18 should be named as dischargers under § 13304. There are two related cases arising out of contamination
19 from dry cleaning equipment that address this issue, and the courts held that a manufacturer that designs
20 equipment that results in a release is a discharger under § 13304.

21 In *City of Modesto Redevelopment Agency v. Superior Court* (2004) 119 Cal. App. 4th 28
22 (“*Modesto I*”), the court considered whether parties could be found liable under Water Code § 13304 if
23 they designed and installed the equipment (and made recommendations on its operation) that resulted in
24 the leak. The court looked to the law of nuisance and found that the companies could be dischargers
25 under § 13304 if they took affirmative steps that led to the discharge, such as by manufacturing a system
26 designed to dispose of waste improperly, or by improperly instructing users of the system (See also *City*
27 *of Modesto v. Dow Chemical Co.* (2018) 19 Cal. App. 5th 130, 147 (“*Modesto II*”))
28

1 Under this standard, the court found manufacturers of dry-cleaning equipment could be
2 dischargers under § 13304. The court disagreed with the contention that only those who are physically
3 engaged in a discharge, or have the ability to control waste disposal activities, are liable under 13304. *Id.*
4 at 41. The court said in construing §13304 in light of the common law principles bearing upon nuisance,
5 those who took affirmative steps directed toward the improper discharge of solvent wastes – by
6 manufacturing a system designed to dispose of waste improperly or by instructing users to dispose of
7 waste improperly – may be liable under §13304.

8 Based on the reasoning articulated in the *Modesto* cases, the Fuel Companies are dischargers
9 under § 13304. They improperly designed and installed the AST knowing that it could result in a
10 discharge. They created the nuisance, and it is appropriate to name them in the Order. Furthermore, they
11 took steps to clean up the discharge thereby acknowledging their responsibility. The Fuel Companies’
12 failure to properly install the AST caused the discharge, and their insufficient efforts to remediate it
13 allowed the contamination to migrate.

14
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16 **C. Mr. Ljesnjanin and Mr. Ukazim should be Removed from the 2022 Order**

17 Mr. Lesnjanin and Mr. Ukazim have not owned the Property since 2019 and should be removed
18 from the 2022 Order.

19 **D. Conclusion**

20 The Fuel Companies had complete control over the activities that led to the discharge and should
21 be named in the Order. This is justified under § 13304 and is consistent with California case law and
22 State Board decisions. We respectfully request that the Fuel Companies be added as responsible parties.
23 We also request Mr. Ljesnjanin and Mr. Ukazim be removed from the 2022 Order.

24
25 **(8) A Statement that the Petition has been Sent to the Appropriate Regional Board and to the**
26 **Discharger, if not the Petitioner.**

27 A copy of this Petition has been sent to the Fuel Companies and the RWQCB.

28 //

1 **(9) A Statement that the Substantive Issues or Objections Raised in the Petition were Raised**
2 **Before the Regional Board, or an Explanation of why the Petitioners Were Not Required or**
3 **were Unable to Raise These Substantive Issues or Objections before the Regional Board**

4 Petitioners have previously requested the relief sought in this Petition. Petitioners have contacted
5 the RWQCB to request that the Fuel Companies be named; the request was made in the April 11, 2022,
6 letter (Exhibit C); and the request was again made to the RWQCB when it was copied on the May 12,
7 2022 Petition.

8 **III. REQUEST FOR STAY**

9 Petitioners request a stay of enforcement of the 2022 Order pending resolution of the issues raised
10 in this Petition. This stay request is based on the information set forth in this Petition and the
11 accompanying declaration that demonstrates the following: (1) substantial harm to Petitioners if the stay
12 is not granted; (2) a lack of substantial harm to other interested persons or the public interest if a stay is
13 granted; and (3) substantial questions of law or fact regarding the disputed action.

14 **(1) Substantial Harm to Petitioner if a Stay is not Granted.**

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16 If the stay is not granted, Petitioners and Hearst Willits Properties, LLC will continue to be solely
17 responsible for compliance with the 2022 Order, and they will continue to incur additional consultants'
18 costs and additional attorneys' fees. The costs of remediation should be shared with the Fuel Companies
19 based on their responsibility for the release as described above.

20 **(2) Lack of Substantial Harm to Other Interested Persons and or the Public Interest if a Stay is**
21 **Granted.**

22 The Fuel Companies should be named as responsible parties. They will not be harmed if the stay
23 is granted as they are not currently bound by the 2022 Order. There will be no substantial harm to the
24 public interest if the stay is granted as there is no imminent threat to public health or the environment.

25 **(3) Substantial Questions of Law or Fact Regarding the Disputed Action.**

26 There are substantial questions of law regarding the naming of the Fuel Companies in the 2022
27 Order. As set forth above, the Fuel Companies' improper installation of the AST resulted in the release,
28 and they should be named in the 2022 Order. (Ukazim ¶¶2-3) Naming the Fuel Companies is consistent
with California case law and the State Board's interpretation of Water Code § 13304. There are

1 significant issues of fact and law that are sufficient to warrant the granting of the stay. If a stay is not
2 granted, the Petitioners will continue to incur costs while this Petition is pending. Petitioners should not
3 be solely responsible for the remediation of this release - these costs should be shared with the Fuel
4 Companies.
5

6 **IV. CONCLUSION**

7 For the foregoing reasons, Petitioners respectfully submit that the actions and inactions of the
8 RWQCB complained of above were improper, inappropriate, unlawful and not supported by substantial
9 evidence. Petitioners respectfully request that the State Board grant a stay and a hearing on this matter.

10 Dated: July 26, 2022

Respectfully submitted,

11
12 SILICON VALLEY LAW GROUP

13 /s/

14 Lauren Berger, SBN 136149

15 Counsel for Petitioners
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EXHIBIT A

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North Coast Regional Water Quality Control Board

June 27, 2022

Mr. Sanel Ljesnjanin
306 Gold Street, 15C
Brooklyn, NY 11201-3028

Mr. Uchenna Ukazim
1521 Alton Road, # 426
Miami Beach, FL 33139-3301

Dear Mr. Ljesnjanin and Mr. Ukazim

Site: Hearst Road Diesel Spill, 7501 Hearst Road, Willits, CA 95490
Case No. 1NMC633 (201 0152)

Subject: Cleanup and Abatement Order No. R1-2022-0019
Revising Order No. R1-2018-0018

Enclosed is Cleanup and Abatement Order (CAO) No. R1-2022-0019, which contains specific provisions directing you to cleanup and abate the discharge of petroleum fuels to waters of the State caused by releases of petroleum product from an aboveground storage tank at 7501 Hearst Road, Willits, California. This Order supersedes and revises Order No. R1-2018-0018, naming Hearst Willits Properties, LLC as an additional responsible party to this action.

Please contact me by email at Tom.Magney@waterboards.ca.gov or by telephone at (707) 543-7128 if you have any questions.

Sincerely,

Tom Magney
Engineering Geologist

Enclosure: CAO No. R1-2022-0019

cc: Laurie Berger, Silicon Valley Law Group, lb@svlg.com
Alexander Diener, Mendocino County DAO, dienera@mendocinocounty.org
Will Nalty, Mendocino County EHD, naltyw@co.mendocino.ca.us
Lisa Wolfe, Fish and Wildlife, Lisa.Wolfe@wildlife.ca.gov
Trisha Taniguchi, Fish and Wildlife, Trisha.Taniguchi@wildlife.ca.gov
Jeff Dayton, Fish and Wildlife, Jeff.Dayton@wildlife.ca.gov

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

CLEANUP AND ABATEMENT ORDER NO. R1-2019-0019
Revising Order R1-2018-0012

for

SANEL LJESNJANIN
UCHENNA UKAZIM

and

HEARST WILLITS PROPERTIES LLC

7501 HEARST ROAD
WILLITS, CA
ASSESSOR PARCEL NUMBER 037-301-62-00
MENDOCINO COUNTY

CASE NUMBER 1NMC636

This Order is issued to Sanel Ljesnjanin and Uchenna Ukazim and Hearst Willits Properties LLC hereafter referred to as the Dischargers) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order and Water Code section 13267 investigative order, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports (Order).

The Executive Officer finds, with respect to the Dischargers' acts, or failure to act, the following:

1. **Site Conditions:** The Dischargers caused or allowed a discharge and threatened discharge of waste to receiving waters through the release of diesel fuel from an aboveground storage tank to soil and groundwater at 7501 Hearst Road, Mendocino County, APN 037-301-62-0, (hereinafter "Property"). The discharged diesel fuel subsequently reached Rocktree Creek. Rocktree Creek is a water of the state, as well as a water of the United States.¹

¹ The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those water as "waters of the United States." Waters of the United States has been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters and their tributaries (40 C.F.R. 122.2). The Porter-Cologne provides the Regional Water Board additional authority to regulate discharges of waste into

2. **Purpose of the Order:** This Order requires the Dischargers to clean up and abate the discharge of diesel fuel into soil and groundwater at the Property and to the waters of Rocktree Creek and eliminate the threat of future discharges. Investigation and cleanup actions required under this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 *et seq.*), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.
3. **Property Description:** The discharge occurred at the property located at 7501 Hearst Road, in rural Mendocino County, outside of the City of Willits. The property is also identified as Mendocino County Assessor Parcel Number (APN) 037-310-62-00. Rocktree Creek flows through the Property, generally from west to east. Domestic water supplies at the Property and nearby area are generally from individual domestic water wells.
4. **Responsible Parties:** The Dischargers, as the Property owners with the legal ability to control the activities on the Property that resulted in the discharge, are responsible parties for purposes of this Order. This Order finds that Sanel Ljesnjanin and Uchenna Ukazim and Hearst Willits Properties LLC are the responsible parties and are all jointly and severally liable.²
 - a. Per records from the Mendocino County Assessor-Recorder's Office, Sanel Ljesnjanin and Uchenna Ukazim owned the Property during the time of the diesel spill in 2017 and subsequently deeded the property to Hearst Willits Properties LLC in September 2019. This Order was issued to add Hearst Willits Properties LLC as a responsible party.
 - b. The Regional Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.

"waters of the state." (Wat. Code § 13260). The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code § 13050 subd. (e)). All waters of the United States that are within the borders of California are also waters of the state for purposes of the Porter-Cologne.

² In an April 11, 2022, communication to the Regional Water Board, representatives for Sanel Ljesnjanin and Mr. Ukazim requested that Redwood Coast Fuels, Nick Barbieri Trucking, and North Bay Petroleum (collectively "Fuel Companies") be named as responsible parties on the Cleanup and Abatement Order. The Regional Water Board's decision to name Responsible Parties is a discretionary decision that must be supported by the evidence. Staff evaluated the claims in the letter, including the photograph of the AST as installed on the property, and find that insufficient evidence exists to name the Fuel Companies as Responsible Parties under this Order.

5. **Factual Basis of Order:** The Dischargers' activities and/or the conditions at the Property, as detailed below, created and threaten to create a condition of pollution in groundwater and in waters of the state by unreasonably impacting water quality and beneficial uses.
- a. On or about December 16, 2017, a 1,000-gallon aboveground storage tank (AST) installed on the Property failed and released diesel fuel on the Property.³
 - b. A property caretaker apparently attempted to fill buckets with as much diesel fuel that he could and then called Redwood Coast Fuels (parent company Nick Barbieri Trucking, LLC), the company that installed the tank and filled it with the diesel fuel.
 - c. On December 17, 2017, Redwood Coast Fuels came to the Property and pumped out any fuel remaining in the AST. The AST and its stand were reportedly removed by Redwood Coast Fuels. The Dischargers did not take further actions at that time to determine the extent of the spill.⁴
 - d. On an unknown later date, Clint Gerber, the Property owners' contractor, reportedly noted a fuel odor on the Property in the area where the AST was located. The contractor excavated and stockpiled impacted soil and backfilled the excavation with other soil from the Property.⁵
 - e. On January 18, 2018, a representative of the owner reported to the Mendocino County Environmental Health Division that a discharge occurred to the creek. On January 18, 2018, Mendocino County Environmental Health Division staff and Mr. Gerber set absorbent pads and booms in the creek to absorb the discharge.
 - f. On January 19, 2018, Regional Water Board staff and the California Department of Fish and Wildlife (CDFW) were notified of the spill and discharge to the creek. Regional Water Board staff and CDFW staff inspected the Property. An environmental consulting firm, LACO Associates, was contracted by the Dischargers and LACO Associates staff were present at the Property during the inspection. Based on observations by staff of the Regional Water Board, CDFW and LACO Associates, the discolored absorbent pads and booms were determined to be stained from the discharge of red diesel fuel.
 - g. Responsible parties Sanel Ljesnjanin and Uchenna Ukazim subsequently pled no contest to violations of Fish and Game Code § 5650(a)(1) (water pollution) and

³ The Property owners' agent, Clint Gerber reports that the tank fell over and ruptured. Mr. Gerber reports that the AST had been installed only recently and filled with 1000 gallons of red-dyed diesel fuel.

⁴ Based on in-person, telephone, and email conversations between Regional Water Board staff and either LACO Associates staff or Clint Gerber, owner representative.

⁵ Based on in-person, telephone, and email conversations between Regional Water Board staff and either LACO Associates staff or Clint Gerber, owner representative.

Government Code § 8670.25 (failure to clean up oil spill) on September 26, 2019. The Defendants were granted an 18-month deferred entry of judgment (DEJ) for these violations. The DEJ included (but was not limited to) payment of restitution to the CDFW; cleanup, abatement, and containment of above-ground excavated soil stockpiled onsite; implementing erosion control measures (such as planting native vegetation); periodic surface water monitoring; and compliance with Cleanup and Abatement Orders issued by the Regional Water Board.

- h. On January 12, 2021, Sanel Ljesnjanin and Uchenna Ukazim were sentenced and probation granted for 12 months. The terms of the probation order require both individuals to make restitution to CDFW in the amount of \$112,372.57, obey all laws and orders of the Court, pay an additional \$5,000 fine, and remain in compliance with Regional Water Board orders and directives, including allowing access to CDFW and Water Board staff for periodic inspection.
6. **Beneficial Uses:** The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference the plans and policies adopted by the Regional Water Boards.
 - a. The beneficial uses of areal groundwater include Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PRO), and Freshwater Replenishment (FRSH).
 - b. The Property includes Rocktree Creek, which is a tributary to Tomki Creek, which flows into the Eel River. The existing and potential beneficial uses of the Tomki Creek Hydrologic Subarea include Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PRO), Groundwater Recharge (GWR), Freshwater Replenishment (FRSH), Navigation (NAV), Hydropower Generation (POW), Water Contact Recreation (REC1), Non-contact Water Recreation (REC2), Commercial and Sport Fishing (COMM), Warm water Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare Threatened or Endangered Species (RARE), Migration of Aquatic Organisms (MIGR), Spawning, reproduction, and/or Early Development (SPWN), and Aquaculture (AQUA). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.
7. **State Water Board Resolutions 92-49:** State Water Board Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California* ("Resolution 68-16"). Resolution 92-49 requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to 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 such water; 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. Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

8. **Water Quality Objectives:** Water quality objectives in the Basin Plan are adopted to ensure protection of the beneficial uses of water. The most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions must evaluate the feasibility of, at a minimum: (1) cleanup to background levels; (2) cleanup to levels attainable through application of best practicable technology; and (3) cleanup to the level of water quality objectives for protection of beneficial uses. The most stringent water quality objective for diesel fuel in both groundwater and surface water is 100 µg/L, which is a numerical interpretation, based on published literature, of the narrative Tastes and Odors narrative water quality objectives in the Basin Plan.
9. **Legal Authority to Require Cleanup and Abatement:** Water Code section 13304, subdivision (a) states, in relevant part:

A person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or 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 causes, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts....Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

- a. "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either the waters for beneficial uses or the facilities which serve these beneficial uses.
- b. "Nuisance" is defined by Water Code section 13050, subdivision (m) to mean anything which meets all of the following requirements:

- i. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
 - ii. 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.
 - iii. Occurs during, or as a result of, the treatment or disposal of wastes.
10. **Cleanup and Abatement Action Necessary:** Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, background water quality, or the best water quality that can be attained is restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a priority violation and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with the policies of the Regional Water Board.
11. **Technical Reports Required:** Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any water of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The burden of preparing the reports required by this Order bear a direct relationship for the need for the reports and the benefits to be obtained from the reports. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to soil and groundwater and to ensure that cleanup complies with Basin Plan requirements. In accordance with Water Code section 13267(b), the findings in this Order provide the Discharger with a written explanation with regard to the need for investigation and reports and identifies the evidence that supports the requirement to implement clean up and abatement activities and submit the reports.
12. **Electronic Reporting Requirements:** Sampling data, reports, and plans shall be submitted to the Regional Water Board via the State Water Resources Control Board's Geographic Environmental Information Management System database (GeoTracker) as specified in Title 23, Division 3, Chapter 30, Article 2, Sections 3890-3895 of the California Code of Regulations.
13. **California Environmental Quality Act:** Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and, as such, is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section

21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup, abatement, and restoration activities at the Property. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Dischargers' proposed cleanup, abatement or restoration activities and possible associated environmental impacts. To the extent that the Order requires earth-disturbing and re-vegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan. The Dischargers will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Dischargers and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, that the Dischargers shall clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below and provide the following information. The Dischargers shall obtain all necessary permits for the activities required in this Order.

1. Conduct all work under the direction of a California professional civil engineer or professional geologist experienced in surface water, soil, and groundwater investigation and remediation. All workplans and reports submitted to the Executive Officer of the Regional Water Board shall be signed and stamped by a licensed professional.
2. Properly dispose of the existing soil stockpiles on-site by either having them hauled off-site for proper disposal to a properly licensed facility, based on the most recent stockpile sampling results; or place the soil on-site in an upland area away from any waters of the state, including wetlands, or any other sensitive habitat areas. Soil

placed on site must be vegetated immediately and managed in such a way that no sediment will deposit into any waterways or sensitive areas.

3. By June 30, 2023, collect four rounds (one each quarter) of water samples from the installed monitoring wells. Analyze the water samples for TPHd. Provide quarterly monitoring reports, uploaded to Geotracker, within 30 days of collecting the samples.
4. During the quarterly sampling events, collect one sample upstream and one sample downstream and one sample from the area where visible sheen was first reported to provide baseline water quality data. Inspect Rocktree Creek in the area where diesel was observed seeping from the bank for evidence of current diesel impacts to the creek. Collect surface water sample(s) from the area(s) in the creek where the sheen was observed. Analyze these samples for TPHd and submit the results including photos and the sampling location with the quarterly sampling results
5. After four quarterly groundwater monitoring events, the Regional Water Board will evaluate the data and determine if additional monitoring, remediation or case closure is appropriate. If during the course of the year Regional Water Board determines that additional remediation is warranted, Regional Water Board staff will submit an executive directive and/or amend this CAO to complete the required remedial work.
6. If at the end of four quarters of sampling the Regional Water Board has determined that the case meets the criteria for case closure submit a No Further Action request which should include:
 - a. A detailed Property map accurately depicting topography, all graded/disturbed surfaces, roads, surface watercourses, surface water drainages, and water crossings.
 - b. Identification of all locations where fuel has discharged to soil, groundwater, and to waters of the state.
 - c. A sensitive receptor survey including: all water supply wells within 1000 feet of the release area, all water supply users of Rocktree Creek within one mile downstream from the release area and all wetland and sensitive species habitats within 1000 feet of the release area.
 - d. A report of the spill including nature, cause and circumstances, and all actions taken thus far to cleanup and abate the discharge and prevent future similar discharges.
 - e. All lab data from soil and ground water sampling events.
 - f. A trend analysis (i.e. Mann Kendall test) showing contaminant concentrations of TPHd in groundwater over time.
7. The Dischargers shall complete any additional work deemed reasonably necessary by the Executive Officer to abate and clean up the discharge of waste or threatened

discharge of waste, restore water quality in groundwater and surface water, and protect the beneficial uses of surface and groundwater, human health, and the environment.

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Dischargers shall provide documentation that workplans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Dischargers shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.
2. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Dischargers shall also state in the cover letter whether he/she will implement the recommendations/proposals provided in the report and the schedule for implementation. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
3. **Notice of Onsite Work:** The Dischargers, or a duly authorized agent, shall notify Regional Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Dischargers may contact the Regional Water Board using the general phone line at (707) 576-2220.
4. **Notice of Change in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Property's ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.

5. **Reasonable Access:** The Dischargers shall allow the Regional Water Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to enter at reasonable times to inspect the Property and any records that must be kept under the conditions of this Order for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code.
6. **Other Regulatory Requirements:** The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work.
7. **Cost Recovery:** Pursuant to Water Code section 13304, the State or Regional Water Board is entitled to all reasonable costs it actually incurs to investigate and abate the effects of unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other restoration action, required by this Order. The State Water Board's Site Cleanup Program Cost Recovery Program was established through the authorities of Water Code sections 13267, 13304, and 13365. The Dischargers shall pay all cost recovery invoices within 30 days of issuance of the invoice.
8. **Delayed Compliance:** If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and 5 days prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer.
9. **Potential Liability:** If the Dischargers fail to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or a complaint for administrative civil liability may be issued by the Regional Water Board. Failure to comply with this Order may result in the assessment of an administrative civil liability of up to \$10,000 per violation per day and \$10 per gallon when the violation results in the discharge of waste, pursuant to California Water Code sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including, but not limited to, violation of the terms and condition of this Order.
10. **No Limitation of Water Board Authority:** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the Property consistent with the Water Code. This Order may be revised as additional information becomes available.

11. **Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board or its delegated officer including any potential extension requests.
12. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et al. The State Water Board must receive the petition no later than 5:00 p.m., 30 days following the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

Ordered by: _____
Matthias St. John
Executive Officer

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EXHIBIT B

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

CLEANUP AND ABATEMENT ORDER NO. R1-2018-0012

FOR

SANEL LJESNJANIN
UCHENNA UKAZIM

7501 HEARST ROAD
WILLITS, CA
ASSESSOR PARCEL NUMBER 037-301-62-00
MENDOCINO COUNTY

CASE NUMBER 1NMC636

This Order is issued to Sanel Ljesnjanin and Uchenna Ukazim (hereafter referred to as the Dischargers) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order and Water Code section 13267 investigative order, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports (Order).

The Executive Officer finds, with respect to the Dischargers' acts, or failure to act, the following:

1. **Site Conditions:** The Dischargers caused or allowed a discharge and threatened discharge of waste to receiving waters through the release of diesel fuel from an aboveground storage tank to soil and groundwater at 7501 Hearst Road, Mendocino County, APN 037-301-62-0, (hereinafter "Property"). The discharged diesel fuel subsequently reached Rocktree Creek. Rocktree Creek is a water of the state, as well as a water of the United States.¹
2. **Purpose of the Order:** This Order requires the Dischargers to clean up and abate the discharge of diesel fuel into soil and groundwater at the Property and to the waters of Rocktree Creek, and eliminate the threat of future discharges. Investigation and

¹ The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those water as "waters of the United States." Waters of the United States has been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters and their tributaries (40 C.F.R. 122.2). The Porter-Cologne provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Wat. Code § 13260). The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code § 13050 subd. (e)). All waters of the United States that are within the borders of California are also waters of the state for purposes of the Porter-Cologne.

cleanup actions required under this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 *et seq.*), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.

3. **Property Description:** The discharge occurred at the property located at 7501 Hearst Road, in rural Mendocino County, outside of the City of Willits. The property is also identified as Mendocino County Assessor Parcel Number (APN) 037-310-62-00. Rocktree Creek flows through the Property, generally from west to east. Domestic water supplies at the Property and nearby area are generally from individual domestic water wells.
4. **Responsible Parties:** The Dischargers, as the Property owners with the legal ability to control the activities on the Property that resulted in the discharge, are responsible parties for purposes of this Order. This Order finds that Sanel Ljesnjanin and Uchenna Ukazim are the responsible parties and are all jointly and severally liable.
 - a. Per records from the Mendocino County Assessor-Recorder's Office, Sanel Ljesnjanin and Uchenna Ukazim own the Property.
 - b. The Regional Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.
5. **Factual Basis of Order:** The Dischargers' activities and/or the conditions at the Property, as detailed below, created and threaten to create a condition of pollution in groundwater and in waters of the state by unreasonably impacting water quality and beneficial uses.
 - a. On or about December 16, 2017, a 1000-gallon aboveground storage tank (AST) installed on the Property failed and released diesel fuel on the Property.²
 - b. A property caretaker apparently attempted to fill buckets with as much diesel fuel that he could and then called Redwood Coast Fuels (parent company Nick Barbieri Trucking, LLC), the company that installed the tank and filled it with the diesel fuel.
 - c. On December 17, 2017, Redwood Coast Fuels came to the Property and pumped out any fuel remaining in the AST. The AST and its stand were reportedly removed by Redwood Coast Fuels. The Dischargers did not take further actions at that time to determine the extent of the spill.³

² The Property owners' agent, Clint Gerber reports that the tank fell over and ruptured. Mr. Gerber reports that the AST had been installed only recently and filled with 1000 gallons of red-dyed diesel fuel.

³ Based on in-person, telephone, and email conversations between Regional Water Board staff and either LACO Associates staff or Clint Gerber, owner representative.

- d. On an unknown later date, Clint Gerber, the Property owners' contractor, reportedly noted a fuel odor on the Property in the area where the AST was located. The contractor excavated and stockpiled impacted soil, and backfilled the excavation with other soil from the Property.⁴
 - e. On January 18, 2018, a representative of the owner reported to the Mendocino County Environmental Health Division that a discharge occurred to the creek. On January 18, 2018, Mendocino County Environmental Health Division staff and Mr. Gerber set absorbent pads and booms in the creek to absorb the discharge.
 - f. On January 19, 2018, Regional Water Board staff and the California Department of Fish and Wildlife were notified of the spill and discharge to the creek. Regional Water Board staff and California Department of Fish and Wildlife staff inspected the Property. An environmental consulting firm, LACO Associates, was contracted by the Dischargers and LACO Associates staff were present at the Property during the inspection. Based on observations by staff of the Regional Water Board, California Department of Fish and Wildlife, and LACO Associates, the discolored absorbent pads and booms were determined to be stained from the discharge of red diesel fuel.
6. **Beneficial Uses:** The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference the plans and policies adopted by the Regional Water Boards.
- a. The beneficial uses of areal groundwater include Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PRO), and Freshwater Replenishment (FRSH).
 - b. The Property includes Rocktree Creek, which is a tributary to Tomki Creek, which flows into the Eel River. The existing and potential beneficial uses of the Tomki Creek Hydrologic Subarea include Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PRO), Groundwater Recharge (GWR), Freshwater Replenishment (FRSH), Navigation (NAV), Hydropower Generation (POW), Water Contact Recreation (REC1), Non-contact Water Recreation (REC2), Commercial and Sport Fishing (COMM), Warm water Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare Threatened or Endangered Species (RARE), Migration of Aquatic Organisms (MIGR), Spawning, reproduction, and/or Early Development (SPWN), and Aquaculture (AQUA). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.
7. **State Water Board Resolutions 92-49:** State Water Board Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California* ("Resolution 68-16"). Resolution 92-49 requires the waste to be cleaned up

⁴ Based on in-person, telephone, and email conversations between Regional Water Board staff and either LACO Associates staff or Clint Gerber, owner representative.

in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to 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 such water; 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. Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

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A person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or 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 causes, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts....Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

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 - ii. 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.
 - iii. Occurs during, or as a result of, the treatment or disposal of wastes.

10. Cleanup and Abatement Action Necessary: Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, background water quality, or the best water quality that can be attained is restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a priority violation and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with the policies of the Regional Water Board.

11. Technical Reports Required: Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any water of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The burden of preparing the reports required by this Order bear a direct relationship for the need for the reports and the benefits to be obtained from the reports. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to soil and groundwater and to ensure that cleanup complies with Basin Plan requirements. In accordance with Water Code section 13267(b), the findings in this Order provide the Discharger with a written explanation with regard to the need for investigation and reports and identifies the evidence that supports the requirement to implement clean up and abatement activities and submit the reports.

12. Electronic Reporting Requirements: Sampling data, reports, and plans shall be submitted to the Regional Water Board via the State Water Resources Control Board's Geographic Environmental Information Management System database (GeoTracker) as

specified in Title 23, Division 3, Chapter 30, Article 2, Sections 3890-3895 of the California Code of Regulations.

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REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, that the Dischargers shall clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below and provide the following information. The Dischargers shall obtain all necessary permits for the activities required in this Order.

1. Conduct all work under the direction of a California professional civil engineer or professional geologist experienced in surface water, soil, and groundwater investigation and remediation. All workplans and reports submitted to the Executive Officer of the Regional Water Board shall be signed and stamped by a licensed professional.

2. Coordinate investigation and cleanup activities associated with soils, surface waters, and groundwater with Regional Water Board staff, Mendocino County Environmental Health staff, California Department of Fish and Wildlife, and other regulatory agencies involved in the cleanup.
 3. **By February 1, 2018**, the Dischargers shall have the surface water in the creek sampled: 1) above the release; 2) at the point of the discharge; and 3) points downstream to determine the extent of impacted surface water in the creek. The Dischargers shall submit the surface water sampling results **by February 15, 2018**.
 4. **By February 1, 2018**, the Dischargers shall submit an **Interim Cleanup and Abatement Plan** (hereafter "Interim Plan") that identifies interim measures to cleanup diesel impacted soils and groundwater and abate the discharge of diesel fuel to surface water. The Interim Plan shall include, but not be limited to, the following:
 - a. A detailed Property map accurately depicting topography, all graded/disturbed surfaces, roads, surface watercourses, surface water drainages, and water crossings.
 - b. Identification of all locations where fuel has discharged to soil, groundwater, and to waters of the state.
 - c. A sensitive receptor survey including all water supply wells within 1000 feet of the Property and all water supply users of Rocktree Creek within one mile downstream from the Property.
 - d. A report of the spill including nature, cause and circumstances, and all actions taken thus far to cleanup and abate the discharge and prevent future similar discharges.
 - e. Proposed actions and a schedule of implementation to perform the following:
 - i. Intercept and remove free-product diesel flowing to Rocktree Creek.
 - ii. Contain and remove all free-product diesel from surface waters.
 - iii. Cleanup diesel impacted soil.
 - iv. Contain all removed free-product diesel, diesel-impacted soil, and extracted water pending analytical characterization and authorized disposal at permitted waste management facilities.
- The Dischargers shall begin implementation of the Interim Plan within 24 hours of concurrence from the Regional Water Board Executive Officer or his delegate.
5. Submit a weekly report to Regional Water Board staff providing updates on the status of compliance with this Cleanup and Abatement Order No. R1-2018-0012. The first weekly report is due on **February 1, 2018**. The schedule for these update reports may be modified by the Executive Officer in writing.
 6. **Within 60 days from completion of the Interim Plan**, the Dischargers shall provide a report of completion of the Interim Plan to the Regional Water Board.

7. **By March 30, 2018**, the Dischargers shall submit an initial investigation workplan to define the extent of soil and groundwater contamination resulting from the spill. The workplan shall also include an implementation schedule. Implementation of the workplan shall begin within 30 days following concurrence of the workplan by the Executive Officer.
8. **By July 30, 2018**, submit a report summarizing findings of the initial investigation for review and approval by the Regional Water Board Executive Officer. If the results do not fully define the extent of groundwater and soil contamination, the report must contain recommendations and an implementation schedule for additional investigation. The Dischargers shall implement the additional investigation as approved by the Executive Officer. Within 60 days after the Regional Water Board Executive Officer concurs that the extent of groundwater and soil contamination is defined, the Dischargers shall submit a feasibility study for Executive Officer review and concurrence to identify and evaluate the effectiveness, feasibility, and relative costs of potential soil and groundwater cleanup alternatives for the remaining contamination. The feasibility study shall identify the recommended alternative(s). The Executive Officer may waive the requirement for a feasibility study dependent on the results of the soil and groundwater investigation and the results of the interim cleanup and abatement actions.
10. Within 90 days after Regional Water Board Executive Officer concurrence with the feasibility study, the Dischargers shall submit a final remedial action plan. The final remedial action plan shall include soil, soil vapor, and groundwater cleanup goals acceptable to the Executive Officer. If the Property and affected properties cannot be cleaned up to levels considered safe for unrestricted use or if the final remedial action plan contains permanent engineering controls, land use restrictions shall be incorporated into the final remedial action plan. The final remedial action plan must contain a schedule for implementation. The Executive Officer may waive the requirement for a final remedial action plan dependent on the results of the soil and groundwater investigation and the results of the interim cleanup and abatement actions.
11. Within 90 days after Regional Water Board Executive Officer approval of the final remedial action plan, the Dischargers shall begin implementation of the final remedial action plan according to the approved schedule.
12. Within 180 days after implementation of final remedial action, the Dischargers shall submit a report that evaluates the performance of final remedial actions and provides recommendations and an implementation schedule for expanding and/or modifying the remediation system, or other measures, for the Executive Officer's review and approval. The Dischargers shall implement and complete the approved system expansions and/or modifications, or other measures, per the approved schedule to abate and clean up the discharge of waste or threatened discharge of waste, restore water quality in

groundwater, and protect the beneficial uses of surface and groundwater, human health and the environment.

13. The Dischargers shall complete any additional work deemed reasonably necessary by the Executive Officer to abate and clean up the discharge of waste or threatened discharge of waste, restore water quality in groundwater and surface water, and protect the beneficial uses of surface and groundwater, human health, and the environment.

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Dischargers shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Dischargers shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.
2. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Dischargers shall also state in the cover letter whether he/she will implement the recommendations/proposals provided in the report and the schedule for implementation. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
3. **Notice of Onsite Work:** The Dischargers, or a duly authorized agent, shall notify Regional Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Dischargers may contact the Regional Water Board using the general phone line at (707) 576-2220.

4. **Notice of Change in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Property's ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.
5. **Reasonable Access:** The Dischargers shall allow the Regional Water Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to enter at reasonable times to inspect the Property and any records that must be kept under the conditions of this Order for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code.
6. **Other Regulatory Requirements:** The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work.
7. **Cost Recovery:** Pursuant to Water Code section 13304, the State or Regional Water Board is entitled to all reasonable costs it actually incurs to investigate and abate the effects of unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other restoration action, required by this Order. The State Water Board's Site Cleanup Program Cost Recovery Program was established through the authorities of Water Code sections 13267, 13304, and 13365. The Dischargers shall pay all cost recovery invoices within 30 days of issuance of the invoice.
8. **Delayed Compliance:** If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and 5 days prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer.
9. **Potential Liability:** If the Dischargers fail to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or a complaint for administrative civil liability may be issued by the Regional Water Board. Failure to comply with this Order may result in the assessment of an administrative civil liability of up to \$10,000 per violation per day and \$10 per gallon when the violation results in the discharge of waste, pursuant to California Water Code sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including, but not limited to, violation of the terms and condition of this Order.

10. **No Limitation of Water Board Authority:** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the Property consistent with the Water Code. This Order may be revised as additional information becomes available.
11. **Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board or its delegated officer including any potential extension requests.
12. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et al. The State Water Board must receive the petition no later than 5:00 p.m., 30 days following the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

Ordered by: _____
Matthias St. John
Executive Officer

January 25, 2018

EXHIBIT C

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April 11, 2022

Via email: **Matt.St.John@waterboards.ca.gov**
 tom.magney@waterboards.ca.gov

Re: CAO No. R1-2018-0012 (Sanel Ljesnjanin/Uchenna Ukazim)

Mattias St. John, Executive Officer
Tom Magney
North Coast Regional Water Quality Control Board
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403

Dear Mr. St. John and Mr. Magney:

This firm represents Sanel Ljesnjanin and Uchenna Ukazim who were named as responsible parties in Cleanup and Abatement Order No. R1-2018-0012. Mr. Ljesnjanin and Mr. Ukazim were the former owners of the property located at 7501 Hearst Road, Willits, California (“Property”). Since 2019, the Property has been owned by Hearst Willits Properties, LLC.

As described below, a release of diesel fuel from an improperly installed aboveground storage tank (AST) occurred on the Property on or about December 17, 2017. The release was the result of the improper installation of the AST by Redwood Coast Fuels. Redwood Coast Fuel Company is owned by Nick Barbieri Trucking who also owns North Bay Petroleum.¹ The purpose of this letter is to request that Nick Barbieri Trucking, Redwood Coast Fuels, and North Bay Petroleum (“the Fuel Companies”) be named as responsible parties on the CAO as the entities that caused the release. The California Department of Fish & Wildlife issued its own Cleanup and Abatement Order on September 27, 2018, naming the Fuel Companies as dischargers responsible for the release. It is undisputable that the Fuel Companies are responsible for the release.

Mr. Ljesnjanin and Mr. Ukazim were the former owners of the property who leased the AST, but that is their only connection to the discharge. They never operated the AST, and they did not contribute in any way to the actual discharge.

¹ North Bay Petroleum serves Sonoma, Marin and Napa Counties; Redwood Coast Fuels serves Mendocino, Lake, Humboldt, Trinity and Del Norte Counties.

This letter also requests that the order be amended to add Hearst Willits Properties, LLC as a responsible party and remove Mr. Ljesnjanin and Mr. Ukazim as they are no longer the owners of the Property.

I. Background

In December of 2017, Mr. Ljesnjanin and Mr. Ukazim contacted Redwood Coast Fuels (Redwood) and requested that Redwood install a 1000-gallon AST on the Property. The AST was owned by Redwood and leased to Mr. Ljesnjanin and Mr. Ukazim and it contained diesel fuel. Mr. Ljesnjanin and Mr. Ukazim never used the tank. Shortly after the installation, on December 17, 2017, the tank fell over and diesel was released and some of the diesel impacted Rocktree Creek. The release was discovered by a caretaker at the Property who tried to recover as much of the diesel as possible and place it into buckets. The caretaker then called Redwood who came out to pump any remaining fuel out of the AST. On January 18, 2018, a representative of Mr. Ljesnjanin and Mr. Ukazim reported the discharge to the Mendocino county Environmental Health Division. The next week, the RWQCB named Mr. Ljesnjanin and Mr. Ukazim as responsible parties in the CAO on January 25, 2018.

After the release was discovered, Redwood came out to the Property and assumed responsibility for the cleanup. They conducted the initial corrective action measures as they rightfully should have. Redwood pumped the diesel out of the buckets and pumped the remaining fuel out of the UST. Mr. Ljesnjanin and Mr. Ukazim were out of state at the time and never operated the tank.

Below is a photo of the AST as it was installed on the Property.



The Fuel Companies installation of the AST was deficient for the following reasons:

- (1) The AST that was delivered to the Property was in poor condition when it was delivered.
- (2) The AST stand was inadequate to support the weight of the fully loaded tank and one of the struts or cross-pieces was bent (see red circle in photo).
- (3) The AST was placed on soil and cement that was not adequate to support the AST and did not have secondary containment.
- (4) The Fuel Companies chose the location where the AST was placed which was too close to the Rocktree Creek.

The Regional Board named Mr. Ljesnjanin and Mr. Ukazim as dischargers, but declined to name the Fuel Companies. This was improper because as the entities that caused and permitted the discharge, they should also be named in the CAO. The California Department of Fish & Wildlife has acknowledged the responsibility of the Fuel Companies by naming them in a separate CAO.

II. Discussion

A. Companies that Supply Defective Equipment Should be Named as Dischargers Under § 13304

The CAO was issued pursuant to Water Code § 13304(a) which states:

A person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, **or 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 condition of pollution or nuisance**, shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.

Generally, the State Water Resources Control Board (SWRCB) has broadly interpreted the scope of liability under § 13304. (See Manaster & Selmi, *California Environmental Law and Land Use Practice*, § 32.31 (Matthew Bender)). This interpretation is consistent with the policy that because cleanups are expensive, liability must be imposed to broadly assure that funding for cleanup is available, and the SWRCB considers fairness, especially when private individuals and small companies are involved. (*Id.*, citing *U.S. Cellulose et al.*, Order No. WQ 92-4 (SWRCB 1992)).

Under California law, because the Fuel Companies supplied and installed a defective AST, they should be named as dischargers under § 13304. There are two related cases arising

out of contamination from dry cleaning equipment that address this issue, and the courts held that a manufacturer that designs equipment that results in a release is a discharger under § 13304.

In *City of Modesto Redevelopment Agency v. Superior Court* (2004) 119 Cal. App. 4th 28 (“*Modesto I*”), the court considered whether parties could be found liable under Water Code § 13304 if they designed and installed the equipment (and made recommendations on its operation) that resulted in the leak. The court looked to the law of nuisance and found that the companies could be dischargers under § 13304 if they took affirmative steps that led to the discharge, such as by manufacturing a system designed to dispose of waste improperly, or by improperly instructing users of the system (See also *City of Modesto v. Dow Chemical Co.* (2018) 19 Cal. App. 5th 130, 147 (“*Modesto II*”))

Under this standard, the court found manufacturers of dry-cleaning equipment could be dischargers under § 13304. The Court disagreed with the contention that only those who are physically engaged in a discharge, or have the ability to control waste disposal activities, are liable under 13304. *Id.* at 41. The Court said in construing §13304 in light of the common law principles bearing upon nuisance, those who took affirmative steps directed toward the improper discharge of solvent wastes – by manufacturing a system designed to dispose of waste improperly or by instructing users to dispose of waste improperly – may be liable under §13304.

Based on the reasoning articulated in the *Modesto* cases, the Fuel Companies are dischargers under § 13304. They improperly designed and installed the AST knowing that it could result in a discharge. They created the nuisance and is it appropriate to name them in the CAO. Furthermore, they took steps to cleanup the discharge and acknowledged their responsibility. Their failure to properly install the AST caused the discharge, and their insufficient efforts to remediate it allowed the contamination to migrate.

B. The Fuel Companies Should be Responsible Parties as they Caused the Release

The SWRCB has determined that direct dischargers should be named when the burden of cleanup otherwise would fall on a party solely because it holds an ownership interest in the property. In *In the Matter of the Petition of Alvin Bacharach and Barbara Borsuk*, (WQ 91-07) the State Water Board held that it would be unfair for a cleanup order to place all responsibility on a landowner where substantial evidence existed to name the operator of the tanks.

In *In the Matter of the Petition of Exxon Company, U.S.A, et al*, WQ 85-7, the SWRCB found:

Generally speaking it is appropriate and responsible for a Regional Board to name all parties for which there is reasonable evidence of responsibility, even in cases of disputed responsibility. However, there must be a reasonable basis on which to name each party. There must be substantial evidence to support a finding of responsibility for each party named. This means credible evidence which indicates the named party has responsibility.

The SWRCB has found that even a relatively minor contribution to a discharge may support a finding of responsibility under §13304. In *In re County of San Diego* (WQ 96-2), the SWRCB ruled that the Regional Board had properly treated a city as a discharger, solely because the city had an easement over and authority to control a street that overlay part of a landfill, and subsidence of landfill material beneath the roadway was contributing to runoff coming from the street to the landfill surface, which in turn was adversely affecting water quality beneath the site.

In this case, the Fuel Companies had more than a minor role and in fact had the only role in creating the release. Neither Mr. Ljesnjanin nor Mr. Ukazim ever operated the tank and never even were present on the Property when the tank was there. On the other hand, it is clear that the Fuel companies improperly installed the AST which caused the release, and they failed to properly remediate the contamination. The Fuel Companies are under a Fish & Wildlife CAO and this is undeniably credible evidence of their responsibility.

C. Hearst Willits Properties, LLC should be Named as the Responsible Party and Mr. Ljesnjanin and Mr. Ukazim should be Removed

Hearst Willits Properties, LLC is the current owner of the Property. Mr. Lesnjanin and Mr. Ukazim have not owned the Property since 2019. Accordingly, Hearst Willits Properties, LLC should be named in the order replacing Mr. Ljesnjanin and Mr. Ukazim.

III. Conclusion

The Fuel Companies had complete control over the activities that led to discharge and should be named in the CAO. This is justified under § 13304 and is consistent with California law and SWRCB decisions. We respectfully request that the Fuel Companies be added as responsible parties. We also request that Hearst Willits Properties, LLC be named as the responsible party and that Mr. Ljesnjanin and Mr. Ukazim be removed from the Order.

Please let me know if you have any questions regarding the above.

Very truly yours,

SILICON VALLEY LAW GROUP
A Law Corporation

/s/ Laurie Berger
Laurie Berger

Cc: clients

EXHIBIT D

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lb@svlg.com

Attorneys for
Petitioners Uchenna Ukazim and Sanel Ljesnjanin

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of the North Coast Regional Water
Quality Control Board's Failure to Name Nick
Barbieri Trucking, LLC, Redwood Coast Fuels and
North Bay Petroleum As Responsible Parties for
the Fuel Release at 7501 Hearst Road Willits,
California

UCHENNA UKAZIM'S AND SANEL
LJESNJANIN'S PETITION FOR REVIEW AND
REQUEST FOR STAY (Water Code § 13320)

REQUEST FOR HEARING
(Cal. Code Reg., Title 23 § 2052)

I. INTRODUCTION

Uchenna Ukazim and Sanel Ljesnjanin ("Petitioners") hereby petition the State Water Resources Control Board ("State Board") under California Water Code § 13320 and Cal. Code Regs., Title 23 § 2050 to review: (1) the North Coast Regional Water Quality Control Board's ("RWQCB") failure to name Nick Barbieri Trucking, LLC, Redwood Coast Fuels, and North Bay Petroleum ("the Fuel Companies") as responsible parties on Cleanup and Abatement Order No. R1-2018-0012 ("Order") relating to a release from the property located at 7501 Hearst Road, Willits, California ("Property"); (2) the RWQCB's failure to add Hearst Willits Properties, LLC as a responsible party on the Order; and (3) the RWQCB's failure to remove Mr. Ukazim and Mr. Ljesnjanin from the Order. On behalf of Petitioners, a letter, dated April 11, 2022, was submitted to the RWQCB requesting the above on April 12, 2022. A true and correct copy of this letter is attached as Exhibit A. The RWQCB has not responded

1 to Petitioners' request. This Petition is timely because it is filed within sixty days of the April 11, 2022,
2 letter sent to the RWQCB on April 12, 2022.

3
4 Petitioners are filing this Petition to preserve their right to challenge the RWQCB's failure to
5 name the Fuel Companies as responsible parties, however Petitioners reserve their rights to revise, amend
6 and or supplement this Petition as they acquire additional information.

7 Additionally, Petitioners request a hearing before the State Board to consider testimony, other
8 evidence and argument. If necessary, Petitioners will submit an amended petition containing a summary
9 of contentions to be addressed or evidence to be introduced, as well as a showing of why the contentions
10 or evidence could not have been previously presented. Included with this Petition is the Declaration of
11 Uchenna Ukazim. The facts of this matter are undisputed, however if necessary, Petitioners will submit
12 additional declarations in support of this Petition.

13 Petitioners also request a stay of enforcement of the Order pending resolution of this Petition.

14 **II. PETITION FOR REVIEW**

15 16 **(1) Name, Address, Telephone Number and Email Addresses of the Petitioners**

17 Petitioners are the individuals named in the Order as they were the owners of the Property at the
18 time the Order was issued. Below is the contact information for the Petitioners:

19 Uchenna Ukazim
20 1521 Alton Rd # 426
21 Miami Beach, FL 33139-3301.
22 Tel: 561.901.3471
Email: uukazim@gmail.com

23 Sanel Ljesnjanin
24 306 Gold Street, 15G
25 Brooklyn, New York 11201-3028
26 Tel: 347.784.0316
27 Email: sanell306@gmail.com

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1 **(2) The Specific Action or Inaction of the Regional Board which the State Board is Requested**
2 **to Review**

3
4 Petitioners request the State Board review the following:

- 5 (i) The RWQCB's failure to name the Fuel Companies as responsible parties on the Order.
6 (Petitioners request that the Fuel Companies be named as responsible parties.)
7 (ii) The RWQCB's failure to name Hearst Willits Properties, LLC as a responsible party on
8 the Order. (Petitioners request that Hearst Willits Properties, LLC be named as a
9 responsible party.)
10 (iii) The RWQCB's failure to remove Mr. Ukazim and Mr. Ljesnjanin from the Order as they
11 are no longer the owners of the Property. (Petitioners request that Mr. Ljesnjanin and Mr.
12 Ukazim be removed from the Order.)

13 The above requests are set forth in the April 11, 2022, letter attached as Exhibit A.

14
15 **(3) The Date on which the Regional Board Acted or Refused to Act or on Which the Regional**
16 **Board was Requested to Act.**

17 Petitioners requested that the RWQCB name the Fuel Companies as responsible parties on April
18 12, 2022. The letter dated April 11, 2022, attached as Exhibit A was emailed to the RWQCB on April 12,
19 2022.

20 **(4) A full and complete statement of the reasons the action or failure to act was inappropriate**
21 **or improper.**

22 The failure of the RWQCB to act by failing to name the Fuel Companies on the Order, failing to
23 name Hearst Willits Properties, LLC on the Order, and failing to remove Mr. Ukazim and Mr. Ljesnjanin
24 from the Order was unreasonable, arbitrary and capricious, unlawful and not supported by the record for
25 the reasons set forth below.

26 ///

27 ///

28 ///

Petitioners, Mr. Ukazim and Mr. Ljesnjanin, are the former owners of the Property. In 2019, Petitioners transferred the Property into Hearst Willits Properties, LLC who is the current owner of the Property. (Ukazim ¶ 1)

The California Department of Fish & Wildlife issued its own Cleanup and Abatement Order on September 27, 2018, naming only the Fuel Companies as dischargers responsible for the release. It is undisputable that the Fuel Companies are responsible for the release as described below.

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Below is a photo of the AST as it was installed on the Property (Uzakim ¶ 4):



The Fuel Companies' installation of the AST was deficient for the following reasons:

- (1) The AST that was delivered to the Property was in poor condition when it was delivered.
- (2) The AST stand was inadequate to support the weight of the fully loaded tank and one of the struts or cross-pieces was bent (see red circle in photo).
- (3) The AST was placed on soil and cement that was not adequate to support the AST and did not have secondary containment.
- (4) The Fuel Companies chose the location where the AST was placed which was too close to the Rocktree Creek.

(b) Why the Failure to Act was Inappropriate

The RWQCB named Mr. Ukazim and Mr. Ljesnjanin as dischargers but declined to name the Fuel Companies. This was improper because as the entities that caused and permitted the discharge, the Fuel Companies should also be named in the Order. The California Department of Fish & Wildlife has acknowledged the responsibility of the Fuel Companies by naming them in a separate order. Petitioners did not cause the release because they never owned or operated the AST. Hearst Willits Properties, LLC should be named on the Order because it is the current owner of the Property. Finally, Mr. Ukazim and Mr. Ljesnjanin should be removed from the order as they are no longer the owners of the Property.

1 **(5) The Manner in which the Petitioners are Aggrieved.**

2
3 Petitioners are aggrieved in that they are currently the only parties named in the Order and are
4 therefore solely responsible for the costs of remediation. They have incurred consultant's costs and
5 attorneys' fees and will continue to do so until the RWQCB closes the site. The Fuel Companies should
6 also be named in the Order and should be primarily responsible for remediating the contamination they
7 created.

8 **(6) The Specific Action by the State or Regional Board which Petitioners Request.**

9 Petitioners request that the State Board direct the RWQCB to: (1) name the Fuel Companies as
10 responsible parties as the owners of the AST; (2) name Hearst Willis, LLC as a responsible as the current
11 owner; and (3) remove Petitioners as responsible parties since they are no longer the owners of the
12 Property.

13 **(7) A Statement of Points and Authorities in Support of Legal Issues Raised in the Petition,**
14 **Including Citations to Documents or the Transcript of the Regional Board Hearing if it is**
15 **Available.**

16 **A. The Fuel Companies Should be Named as Responsible Parties as they Caused the**
17 **Release**

18 The State Board has determined that direct dischargers should be named when the burden of
19 cleanup otherwise would fall on a party solely because it holds an ownership interest in the property. In
20 *In the Matter of the Petition of Alvin Bacharach and Barbara Borsuk*, (WQ 91-07) the State Board held
21 that it would be unfair for a cleanup order to place all responsibility on a landowner where substantial
22 evidence existed to name the operator of the tanks.

23 In *In the Matter of the Petition of Exxon Company, U.S.A, et al*, WQ 85-7, the State Board found:
24 Generally speaking **it is appropriate and responsible for a Regional Board to name all parties**
25 **for which there is reasonable evidence of responsibility**, even in cases of disputed
26 responsibility. However, there must be a reasonable basis on which to name each party. There
27 must be substantial evidence to support a finding of responsibility for each party named. This
28 means credible evidence which indicates the named party has responsibility. *Id.* (Emphasis
added.)

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1 The State Board has found that even a relatively minor contribution to a discharge may support a
2 finding of responsibility under Water Code §13304. In *In re County of San Diego* (WQ 96-2), the State
3 Board found that a Regional Board had properly treated a city as a discharger, solely because the city had
4 an easement over (and authority to control) a street that overlay part of a landfill, and subsidence of
5 landfill material beneath the roadway was contributing to runoff coming from the street to the landfill
6 surface, which in turn was adversely affecting water quality beneath the site.

7
8 In this case, the Fuel Companies had more than a minor role, and in fact had the only role, in
9 creating the release. Neither Mr. Ukazim or Mr. Ljesnjanin ever operated the tank and were never present
10 on the Property when the tank was there. On the other hand, it is clear that the Fuel Companies
11 improperly installed the AST which caused the release, and they failed to properly remediate the
12 contamination. The Fuel Companies are named in the Fish & Wildlife Order, and this is undeniably
13 credible evidence of their responsibility.

14 **B. Companies that Supply Defective Equipment Should be Named as Dischargers**
15 **Under § 13304**

16 The Order was issued pursuant to Water Code § 13304(a) which states:

17 A person who has discharged or discharges waste into the waters of this state in violation of any
18 waste discharge requirement or other order or prohibition issued by a regional board or the state
19 board, **or who has caused or permitted, causes or permits, or threatens to cause or permit**
20 **any waste to be discharged or deposited where it is, or probably will be, discharged into the**
21 **waters of the state and creates, or threatens to create, a condition of pollution or nuisance,**
22 shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in
the case of threatened pollution or nuisance, take other necessary remedial action, including, but
not limited to, overseeing cleanup and abatement efforts. (Emphasis added.)

23 Generally, the State Board has broadly interpreted the scope of liability under § 13304. (See
24 Manaster & Selmi, *California Environmental Law and Land Use Practice*, § 32.31 (Matthew Bender)).
25 This interpretation is consistent with the policy that because cleanups are expensive, liability must be
26 imposed broadly to assure that funding for cleanup is available, and the State Board considers fairness,
27 especially when private individuals and small companies are involved. (*Id.*, citing *U.S. Cellulose et al.*,
28 Order No. WQ 92-4 (SWRCB 1992)).

1 Under California law, because the Fuel Companies supplied and installed a defective AST, they
2 should be named as dischargers under § 13304. There are two related cases arising out of contamination
3 from dry cleaning equipment that address this issue, and the courts held that a manufacturer that designs
4 equipment that results in a release is a discharger under § 13304.

5 In *City of Modesto Redevelopment Agency v. Superior Court* (2004) 119 Cal. App. 4th 28
6 (“*Modesto I*”), the court considered whether parties could be found liable under Water Code § 13304 if
7 they designed and installed the equipment (and made recommendations on its operation) that resulted in
8 the leak. The court looked to the law of nuisance and found that the companies could be dischargers
9 under § 13304 if they took affirmative steps that led to the discharge, such as by manufacturing a system
10 designed to dispose of waste improperly, or by improperly instructing users of the system (See also *City*
11 *of Modesto v. Dow Chemical Co.* (2018) 19 Cal. App. 5th 130, 147 (“*Modesto II*”))
12

13 Under this standard, the court found manufacturers of dry-cleaning equipment could be
14 dischargers under § 13304. The court disagreed with the contention that only those who are physically
15 engaged in a discharge, or have the ability to control waste disposal activities, are liable under 13304. *Id.*
16 at 41. The court said in construing §13304 in light of the common law principles bearing upon nuisance,
17 those who took affirmative steps directed toward the improper discharge of solvent wastes – by
18 manufacturing a system designed to dispose of waste improperly or by instructing users to dispose of
19 waste improperly – may be liable under §13304.

20 Based on the reasoning articulated in the *Modesto* cases, the Fuel Companies are dischargers
21 under § 13304. They improperly designed and installed the AST knowing that it could result in a
22 discharge. They created the nuisance, and it is appropriate to name them in the Order. Furthermore, they
23 took steps to clean up the discharge thereby acknowledging their responsibility. The Fuel Companies’
24 failure to properly install the AST caused the discharge, and their insufficient efforts to remediate it
25 allowed the contamination to migrate.

26 ///
27 ///
28 ///

1 **C. Hearst Willits Properties, LLC should be Named as the Responsible Party and Mr.**
2 **Ljesnjanin and Mr. Ukazim should be Removed**

3 Hearst Willits Properties, LLC is the current owner of the Property. Mr. Lesnjanin and Mr.
4 Ukazim have not owned the Property since 2019. Accordingly, Hearst Willits Properties, LLC should be
5 named in the order replacing Mr. Ljesnjanin and Mr. Ukazim.

6 **D. Conclusion**

7 The Fuel Companies had complete control over the activities that led to the discharge and should
8 be named in the Order. This is justified under § 13304 and is consistent with California case law and
9 State Board decisions. We respectfully request that the Fuel Companies be added as responsible parties.
10 We also request that Hearst Willits Properties, LLC be named as the responsible party and that Mr.
11 Ljesnjanin and Mr. Ukazim be removed from the Order.

12
13 **(8) A Statement that the Petition has been Sent to the Appropriate Regional Board and to the**
14 **Discharger, if not the Petitioner.**

15 A copy of this Petition has been sent to the Fuel Companies and the RWQCB.

16 **(9) A Statement that the Substantive Issues or Objections Raised in the Petition were Raised**
17 **Before the Regional Board, or an Explanation of why the Petitioners Were Not Required or**
18 **were Unable to Raise These Substantive Issues or Objections before the Regional Board**

19 The substantive issues raised in this Petition were raised in the April 11, 2022, letter to the
20 RWQCB attached as Exhibit A.

21
22 **III. REQUEST FOR STAY**

23 Petitioners request a stay of enforcement of the Order pending resolution of the issues raised in
24 this Petition. This stay request is based on the information set forth in this Petition and the
25 accompanying declaration that demonstrates the following: (1) substantial harm to Petitioners if the stay
26 is not granted; (2) a lack of substantial harm to other interested persons or the public interest if a stay is
27 granted; and (3) substantial questions of law or fact regarding the disputed action.

28 ///

1 **(1) Substantial Harm to Petitioner if a Stay is not Granted.**

2 If the stay is not granted, Petitioners will continue to be solely responsible for compliance with
3 the Order, and they will continue to incur additional consultants' costs and additional attorneys' fees. The
4 costs of remediation should be shared with the Fuel Companies based on their responsibility for the
5 release as described above.

6 **(2) Lack of Substantial Harm to Other Interested Persons and or the Public Interest if a Stay is**
7 **Granted.**

8 The Fuel Companies should be named as responsible parties. They will not be harmed if the stay
9 is granted as they are not currently bound by the Order. There will be no substantial harm to the public
10 interest if the stay is granted as there is no imminent threat to public health or the environment.

11 **(3) Substantial Questions of Law or Fact Regarding the Disputed Action.**

12 There are substantial questions of law regarding the naming of the Fuel Companies in the Order.
13 As set forth above, the Fuel Companies' improper installation of the AST resulted in the release, and they
14 should be named in the Order. (Ukazim ¶¶2-3) Naming the Fuel Companies is consistent with California
15 case law and the State Board's interpretation of Water Code § 13304. There are significant issues of fact
16 and law that are sufficient to warrant the granting of the stay. If a stay is not granted, the Petitioners will
17 continue to incur costs while this Petition is pending. Petitioners should not be solely responsible for the
18 remediation of this release - these costs should be shared with the Fuel Companies.
19

20 **IV. CONCLUSION**

21 For the foregoing reasons, Petitioners respectfully submit that the actions and inactions of the
22 RWQCB complained of above were improper, inappropriate, unlawful and not supported by substantial
23 evidence. Petitioners respectfully request that the State Board grant a stay and a hearing on this matter.
24

25 Dated: May 11, 2022

Respectfully submitted,

26 SILICON VALLEY LAW GROUP

27 /s/

28 Lauren Berger, SBN 136149
Counsel for Petitioners

EXHIBIT A

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April 11, 2022

Via email: **Matt.St.John@waterboards.ca.gov**
 tom.magney@waterboards.ca.gov

Re: CAO No. R1-2018-0012 (Sanel Ljesnjanin/Uchenna Ukazim)

Mattias St. John, Executive Officer
Tom Magney
North Coast Regional Water Quality Control Board
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403

Dear Mr. St. John and Mr. Magney:

This firm represents Sanel Ljesnjanin and Uchenna Ukazim who were named as responsible parties in Cleanup and Abatement Order No. R1-2018-0012. Mr. Ljesnjanin and Mr. Ukazim were the former owners of the property located at 7501 Hearst Road, Willits, California (“Property”). Since 2019, the Property has been owned by Hearst Willits Properties, LLC.

As described below, a release of diesel fuel from an improperly installed aboveground storage tank (AST) occurred on the Property on or about December 17, 2017. The release was the result of the improper installation of the AST by Redwood Coast Fuels. Redwood Coast Fuel Company is owned by Nick Barbieri Trucking who also owns North Bay Petroleum.¹ The purpose of this letter is to request that Nick Barbieri Trucking, Redwood Coast Fuels, and North Bay Petroleum (“the Fuel Companies”) be named as responsible parties on the CAO as the entities that caused the release. The California Department of Fish & Wildlife issued its own Cleanup and Abatement Order on September 27, 2018, naming the Fuel Companies as dischargers responsible for the release. It is undisputable that the Fuel Companies are responsible for the release.

Mr. Ljesnjanin and Mr. Ukazim were the former owners of the property who leased the AST, but that is their only connection to the discharge. They never operated the AST, and they did not contribute in any way to the actual discharge.

¹ North Bay Petroleum serves Sonoma, Marin and Napa Counties; Redwood Coast Fuels serves Mendocino, Lake, Humboldt, Trinity and Del Norte Counties.

This letter also requests that the order be amended to add Hearst Willits Properties, LLC as a responsible party and remove Mr. Ljesnjanin and Mr. Ukazim as they are no longer the owners of the Property.

I. Background

In December of 2017, Mr. Ljesnjanin and Mr. Ukazim contacted Redwood Coast Fuels (Redwood) and requested that Redwood install a 1000-gallon AST on the Property. The AST was owned by Redwood and leased to Mr. Ljesnjanin and Mr. Ukazim and it contained diesel fuel. Mr. Ljesnjanin and Mr. Ukazim never used the tank. Shortly after the installation, on December 17, 2017, the tank fell over and diesel was released and some of the diesel impacted Rocktree Creek. The release was discovered by a caretaker at the Property who tried to recover as much of the diesel as possible and place it into buckets. The caretaker then called Redwood who came out to pump any remaining fuel out of the AST. On January 18, 2018, a representative of Mr. Ljesnjanin and Mr. Ukazim reported the discharge to the Mendocino county Environmental Health Division. The next week, the RWQCB named Mr. Ljesnjanin and Mr. Ukazim as responsible parties in the CAO on January 25, 2018.

After the release was discovered, Redwood came out to the Property and assumed responsibility for the cleanup. They conducted the initial corrective action measures as they rightfully should have. Redwood pumped the diesel out of the buckets and pumped the remaining fuel out of the UST. Mr. Ljesnjanin and Mr. Ukazim were out of state at the time and never operated the tank.

Below is a photo of the AST as it was installed on the Property.



The Fuel Companies installation of the AST was deficient for the following reasons:

- (1) The AST that was delivered to the Property was in poor condition when it was delivered.
- (2) The AST stand was inadequate to support the weight of the fully loaded tank and one of the struts or cross-pieces was bent (see red circle in photo).
- (3) The AST was placed on soil and cement that was not adequate to support the AST and did not have secondary containment.
- (4) The Fuel Companies chose the location where the AST was placed which was too close to the Rocktree Creek.

The Regional Board named Mr. Ljesnjanin and Mr. Ukazim as dischargers, but declined to name the Fuel Companies. This was improper because as the entities that caused and permitted the discharge, they should also be named in the CAO. The California Department of Fish & Wildlife has acknowledged the responsibility of the Fuel Companies by naming them in a separate CAO.

II. Discussion

A. Companies that Supply Defective Equipment Should be Named as Dischargers Under § 13304

The CAO was issued pursuant to Water Code § 13304(a) which states:

A person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, **or 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 condition of pollution or nuisance**, shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.

Generally, the State Water Resources Control Board (SWRCB) has broadly interpreted the scope of liability under § 13304. (See Manaster & Selmi, *California Environmental Law and Land Use Practice*, § 32.31 (Matthew Bender)). This interpretation is consistent with the policy that because cleanups are expensive, liability must be imposed to broadly assure that funding for cleanup is available, and the SWRCB considers fairness, especially when private individuals and small companies are involved. (*Id.*, citing *U.S. Cellulose et al.*, Order No. WQ 92-4 (SWRCB 1992)).

Under California law, because the Fuel Companies supplied and installed a defective AST, they should be named as dischargers under § 13304. There are two related cases arising

out of contamination from dry cleaning equipment that address this issue, and the courts held that a manufacturer that designs equipment that results in a release is a discharger under § 13304.

In *City of Modesto Redevelopment Agency v. Superior Court* (2004) 119 Cal. App. 4th 28 (“*Modesto I*”), the court considered whether parties could be found liable under Water Code § 13304 if they designed and installed the equipment (and made recommendations on its operation) that resulted in the leak. The court looked to the law of nuisance and found that the companies could be dischargers under § 13304 if they took affirmative steps that led to the discharge, such as by manufacturing a system designed to dispose of waste improperly, or by improperly instructing users of the system (See also *City of Modesto v. Dow Chemical Co.* (2018) 19 Cal. App. 5th 130, 147 (“*Modesto II*”))

Under this standard, the court found manufacturers of dry-cleaning equipment could be dischargers under § 13304. The Court disagreed with the contention that only those who are physically engaged in a discharge, or have the ability to control waste disposal activities, are liable under 13304. *Id.* at 41. The Court said in construing §13304 in light of the common law principles bearing upon nuisance, those who took affirmative steps directed toward the improper discharge of solvent wastes – by manufacturing a system designed to dispose of waste improperly or by instructing users to dispose of waste improperly – may be liable under §13304.

Based on the reasoning articulated in the *Modesto* cases, the Fuel Companies are dischargers under § 13304. They improperly designed and installed the AST knowing that it could result in a discharge. They created the nuisance and is it appropriate to name them in the CAO. Furthermore, they took steps to cleanup the discharge and acknowledged their responsibility. Their failure to properly install the AST caused the discharge, and their insufficient efforts to remediate it allowed the contamination to migrate.

B. The Fuel Companies Should be Responsible Parties as they Caused the Release

The SWRCB has determined that direct dischargers should be named when the burden of cleanup otherwise would fall on a party solely because it holds an ownership interest in the property. In *In the Matter of the Petition of Alvin Bacharach and Barbara Borsuk*, (WQ 91-07) the State Water Board held that it would be unfair for a cleanup order to place all responsibility on a landowner where substantial evidence existed to name the operator of the tanks.

In *In the Matter of the Petition of Exxon Company, U.S.A, et al*, WQ 85-7, the SWRCB found:

Generally speaking it is appropriate and responsible for a Regional Board to name all parties for which there is reasonable evidence of responsibility, even in cases of disputed responsibility. However, there must be a reasonable basis on which to name each party. There must be substantial evidence to support a finding of responsibility for each party named. This means credible evidence which indicates the named party has responsibility.

The SWRCB has found that even a relatively minor contribution to a discharge may support a finding of responsibility under §13304. In *In re County of San Diego* (WQ 96-2), the SWRCB ruled that the Regional Board had properly treated a city as a discharger, solely because the city had an easement over and authority to control a street that overlay part of a landfill, and subsidence of landfill material beneath the roadway was contributing to runoff coming from the street to the landfill surface, which in turn was adversely affecting water quality beneath the site.

In this case, the Fuel Companies had more than a minor role and in fact had the only role in creating the release. Neither Mr. Ljesnjanin nor Mr. Ukazim ever operated the tank and never even were present on the Property when the tank was there. On the other hand, it is clear that the Fuel companies improperly installed the AST which caused the release, and they failed to properly remediate the contamination. The Fuel Companies are under a Fish & Wildlife CAO and this is undeniably credible evidence of their responsibility.

C. Hearst Willits Properties, LLC should be Named as the Responsible Party and Mr. Ljesnjanin and Mr. Ukazim should be Removed

Hearst Willits Properties, LLC is the current owner of the Property. Mr. Lesnjanin and Mr. Ukazim have not owned the Property since 2019. Accordingly, Hearst Willits Properties, LLC should be named in the order replacing Mr. Ljesnjanin and Mr. Ukazim.

III. Conclusion

The Fuel Companies had complete control over the activities that led to discharge and should be named in the CAO. This is justified under § 13304 and is consistent with California law and SWRCB decisions. We respectfully request that the Fuel Companies be added as responsible parties. We also request that Hearst Willits Properties, LLC be named as the responsible party and that Mr. Ljesnjanin and Mr. Ukazim be removed from the Order.

Please let me know if you have any questions regarding the above.

Very truly yours,

SILICON VALLEY LAW GROUP
A Law Corporation

/s/ Laurie Berger
Laurie Berger

Cc: clients

EXHIBIT E

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State Water Resources Control Board

July 11, 2022

[via email only]

Edward A. Kraus, Esq.
Lauren Berger, Esq.
Silicon Valley Law Group
1 North Market Street, Suite 200
San Jose, CA 95113
ekraus@svlg.com | lberger@svlg.com

Dear Mr. Kraus and Ms. Berger:

PETITION OF UCHENNA UKAZIM AND SANEL LJESNJANIN FOR REVIEW OF NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD'S FAILURE TO ACT ON PETITIONERS' APRIL 11, 2022 LETTER REQUESTING AMENDMENTS TO CLEANUP & ABATEMENT ORDER NO. R1-2018-0012 FOR 7501 HEARST ROAD, WILLITS, CALIFORNIA: NO REVIEW OF PETITION SWRCB/OCC FILE A-2789

The State Water Resources Control Board (State Water Board) will not accept for review the petition you filed on May 11, 2022. Water Code section 13320 and State Water Board regulations require that a petition for State Water Board review of an action by a regional water quality control board be filed with the State Water Board within 30 days of the action. (Cal. Code Regs., tit. 23, § 2050, subd. (b).)

The underlying basis for the petition is Cleanup and Abatement Order R1-2018-0012, issued by the North Coast Regional Water Quality Control Board (North Coast Water Board) on January 25, 2018. Your petition was characterized as a petition for review of the North Coast Water Board's failure to act on a request to amend Order R1-2018-0012, but there were no material changes in the factual circumstances regarding Order R1-2018-0012 that are relevant to the issues in your petition that would appropriately give rise to a new 30-day statute of limitations to file a petition for review of the North Coast Regional Board's action in issuing Order R1-2018-0012. Accepting petitions for review under such circumstances would render the statute of limitations a nullity.

In this case, the deadline for filing the petition for review of Order R1-2018-0012 with the State Water Board was February 26, 2018. Your petition was received by the State Water Board on May 11, 2022. The petition is therefore not timely. The State Water Board does not accept untimely petitions for review. Please be advised that failure to timely exhaust this administrative remedy precludes judicial review of a regional board's action or inaction.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Edward A. Kraus, Esq.
Lauren Berger, Esq.

- 2 -

July 11, 2022

If you have any questions regarding the legal basis for this decision, please call me at (916) 341-5178.

Sincerely,

A handwritten signature in blue ink, appearing to read 'P. Wyels', with a stylized flourish at the end.

Philip G. Wyels
Assistant Chief Counsel

cc: See next page

cc: **[All via email only]**

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