Appendix B

Public Comments

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CALIFORNIA REGIONAL WATER
OCT 18 2011
QUALITY CONTROL BOARD

October 17, 2011

California Regional Water Quality Control Board
1515 Clay St., Suite 1400
Oakland, CA 94612

Re: **File No. 07S0197 (BGS)**

Dear Ladies & Gentlemen:

This letter is in response to the Tentative Order for this subject's site. I am writing this letter on behalf of my father, Leonard A. Gross. My 93 year old father, because of his physical and mental disabilities cannot write this letter on his own, and he cannot appear at your hearing.

Leonard A. Gross Professional Corporation is not listed in Section 2.b. regarding land ownership, and as a matter of fact appears nowhere in the documents except under named dischargers where the document, without facts, states it was one of the owners. There is nothing showing that Leonard A. Gross Professional Corporation had any connection to the land in question.

Regarding Leonard A. Gross, you should note that he apparently came into title in 1981 when Contractors Capital Corp., Trustee, gave him a Trustee's Deed after a foreclosure sale. Contractors Capital Corp. held title as Trustee under a Deed of Trust and did not have actual title to the property. Clearly, Leonard A. Gross should come under an exemption for lenders and not be liable for any hazards.

At no time did he have knowledge of any discharge or activities causing a discharge on the property. He represented as much when he sold the property. No proof exists that he had any knowledge of the discharge or activities causing the discharge because he did not have such knowledge.

Clearly, neither Leonard A. Gross nor Leonard A. Gross Professional Corporation should be named as a discharger.

Very truly yours,

BARRY R. GROSS

BRG:ch

Contra Costa County
Flood Control
& Water Conservation District

Julia R. Bueren,
ex officio Chief Engineer
R. Mitch Avalon,
Deputy Chief Engineer

November 3, 2011

Barbara Sieminski
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

RE: Hamlin's Cleaner Dry Cleaning Facility
Our File: 3041-06 233-051-016

Dear Ms. Sieminski:

We have reviewed the fact sheet for the proposed environmental cleanup at the former Hamlin's Cleaner dry cleaning facility located at 3425 Golden Gate Way, Lafayette. We have also reviewed the transmittal of tentative order for the Hamlin Cleaners (former dry cleaner site) dated October 5, 2011. Our understanding is that the tentative order affects the property with the assessor parcel number of 233-051-016.

The Contra Costa County Flood Control & Water Conservation District (FC District) owns properties for Las Trampas Creek located approximately 200 feet downstream of the former dry cleaner's site. Most of these properties are for flood control and contain the flow areas of Las Trampas Creek, and there is an energy retarding structure near 4th Street and Creekwood Place, which is known as the Drop Structure Number 2.

From time to time, our crew performs maintenance activities, which could involve entering the waterway of Las Trampas Creek to repair or replace the drop structure and to clear debris and vegetation. On occasions, our staff, consultants, agents, and permittees may also enter the creek flow area for technical and environmental studies as well as for other activities. We are concerned about the health risks resulting from their exposure to contaminants that could reach those properties and our liabilities for accumulation of contaminants in those properties, if we need to repair or replace our flood control facilities.

We request that the Regional Board require the responsible parties to perform soil, surface water, and groundwater monitoring and sampling activities, which includes monitoring wells, adjacent to our properties to determine the extent of contamination. The investigations should be performed by competent consultants, and the results should be provided to us for review. The reports for these investigations should include recommendations for the duration by which the sampling and monitoring activities should be performed and the remedial actions for contamination. The FC District reserves the right to seek legal remedies if our properties have been contaminated.

If you have any questions, please contact me at (925) 313-2283 or at mcons@pw.cccounty.us.

Sincerely,

Mario A. Consolacion
Engineering Technician
Contra Costa County Flood Control
& Water Conservation District

MAC:cw
G:\fldctl\CurDev\CITIES\Lafayette\3041-06 3425 Golden Gate Way, Hamlin's Cleaner\RWQCB ltr.docx

c: Teri E. Rie, Flood Control
Tim Jensen, Flood Control
Jeanne Kay Stewart and Tony Lee Stewart
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November 14, 2011

VIA E-MAIL AND U.S. MAIL

Barbara Sieminski
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: ***Golden GateWay, LLC v. Stewart***
Our Client: Jeanne Stewart, Jeanne's Hamlin Cleaners, Jeanne Stewart dba Hamlin Cleaners and Tommy Lee Stewart
Case No.: C09-CV-04458-CW

Dear Ms. Sieminski:

Our office is in receipt of Draft Tentative Order No. R2-2011-00XX related to 3425 Golden Gate Way. On behalf of Jeanne Stewart, Jeanne's Hamlin Cleaners, Jeanne Stewart dba Hamlin Cleaners and Tommy Lee Stewart, we offer the following comment.

On page 2, bullet (a) of the draft reads: "Ronald Monroe purchased the business in 1978 from Henry and Doreen Stross. He operated and controlled the business from 1978 until 1986 when the business was sold to Jeanne K. Stewart. Ronald Monroe's sons (Scott Monroe and Matthew Monroe) worked in the business." On page 4, paragraph 3 in the section relating to Scott Monroe it indicates that he "owned the land between July 21, 1978 and November 10, 1981."

In order to be consistent with the portion on page 2, our office would suggest that the Regional Board insert the following language, or something substantially similar, so pages 2 and 4 provide the same information.

"Scott Monroe owned the land between July 21, 1978 and November 10, 1981. After selling his ownership interest in the Property, Mr. Monroe continued to operate at the Property, subject to a lease from Leonard Gross, until 1986."

We look forward to your comments and to our continued working relationship in this matter.

Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

By: _____
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OPPER & VARCO LLP
THE ENVIRONMENTAL LAW GROUP

November 10, 2011

Mr. Bruce H. Wolfe, Executive Officer
Mr. Chuck Headlee
Ms. Barbara Sieminski
Regional Water Quality Control Board
San Francisco Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

CALIFORNIA REGIONAL WATER
NOV 14 2011
QUALITY CONTROL BOARD

Re: Tentative Order No. R2-2011-00XX; 3425 Golden Gate Way
File No. 07S0197 (BGS)

Dear Mr. Wolfe:

On October 5, 2011, Mr. Headlee circulated a Tentative Order for the site located at 3425 Golden Gate Way, Lafayette, Contra Costa County. The Tentative Order proposes to name our client, Mr. Scott Vincent Monroe, as a discharger for the site. Enclosed please find the following documents:

1. Comments by Scott Monroe on Tentative Order for Hamlin Cleaners, 3425 Golden Gate Way, Lafayette, California;

2. Declaration of Scott Vincent Monroe in Support of Comments by Scott Monroe on Tentative Order for Hamlin Cleaners, 3425 Golden Gate Way, Lafayette, California;

3. Declaration of Linda Beresford in Support of Comments by Scott Monroe on Tentative Order for Hamlin Cleaners, 3425 Golden Gate Way, Lafayette, California.

We appreciate your consideration of these comments as you prepare for your presentation to the Board on December 14, 2011.

We also request that you provide us with copies of comments submitted by other parties on this Tentative Order.

Sincerely,

OPPER & VARCO LLP

Linda C. Beresford

Linda C. Beresford

Enclosures

ORIGINAL

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ATTORNEYS FOR ALLEGED DISCHARGER
SCOTT MONROE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

PROPOSED ADOPTION OF FINAL SITE CLEANUP REQUIREMENTS FOR: GOLDEN GATE WAY, LLC WILLIAM PEACOCK YOLANDA M. PEACOCK TOMMY LEE STEWART JEANNE'S HAMLIN CLEANERS JEANNE STEWART dba HAMLIN CLEANERS LEONARD A. GROSS LEONARD A GROSS PROFESSIONAL CORPORATION SCOTT MONROE FOR THE PROPERTY LOCATED AT 3425 GOLDEN GATE WAY LAFAYETTE CONTRA COSTA COUNTY	ORDER NO. R2-2011-00XX FILE NO. 07S0197(BGS) **COMMENTS BY SCOTT MONROE ON TENTATIVE ORDER FOR HAMLIN CLEANERS, 3425 GOLDEN GATE WAY, LAFAYETTE, CALIFORNIA**

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I.

INTRODUCTION

When Scott Monroe was 18 years old, his father, Ronald Monroe, asked Scott to take title to the property located at 3425 Golden Gate Way, Lafayette, CA (the "Property"). Scott Monroe was about to leave home for college, but he knew that his family was in financial dire straits. Ronald Monroe told his son that it would help his family if Scott would accept title to the Property. Scott agreed and he owned the Property for the next 2 ½ years. During that time, Scott's father Ronald operated a dry cleaner at the Property. But the Monroe family continued to experience financial problems and the Property was foreclosed on in December 1980.

This brief technical ownership of the Property by Scott Monroe from 1978 – 1980 is now the basis for the Regional Water Quality Control Board's naming of Mr. Monroe as a discharger. The Tentative Order for the Property seeks to name Scott Monroe as a discharger "because he owned the land between July 21, 1978 and November 10, 1981, at the time of the activity that resulted in the discharge, *had knowledge of the discharge* or the activities that caused the discharge, and *had the legal ability to prevent the discharge* and migration of contaminants." (Italics added.) However, Scott Monroe submits these comments on the Tentative Order because there is no evidence to support these allegations. Scott Monroe cannot legally be named as a discharger for the Property under California law.

II.

FACTUAL BACKGROUND

From 1956 – 1999, a dry cleaner operated at the property located at 3425 Golden Gate Way ("Property"). Records indicate that Mr. and Mrs. Stross owned and operated the dry cleaner from approximately 1956 – 1978. Ronald Monroe bought the dry cleaner in 1978 and operated it for about 7 years until his death in October 1985. (Declaration of Scott Monroe in Support of Comments on Tentative Order ("Monroe Decl."), ¶ 3, 7, 16, Ex. B.) Jeanne Stewart bought the dry cleaner in 1986 and operated it until it closed 13 years later in 1999. Scott Monroe, Ronald Monroe's son, <u>never owned or operated the dry cleaner</u> during its more than 40 years of operation.

In 1978, Ronald Monroe decided to buy the dry cleaning business and the Property. However, for purposes that he never articulated, Ron Monroe asked his 18-year-old son, Scott Monroe, to take title to the Property for a brief period of time. (Monroe Decl., ¶ 4.) The Monroe family was experiencing significant financial problems and Ron Monroe told his son that it would help the family if Scott accepted title to the Property. Scott agreed and executed the necessary documents to take title to the Property in July 1978. (Monroe Decl., ¶ 4.) Scott was never informed that any contamination existed at the Property. (Monroe Decl., ¶ 5.)

From 1978 – 1980, Ron Monroe operated a dry cleaning business at the Property. Scott was not an owner or operator of the dry cleaning business. (Monroe Decl., ¶ 5.) Scott did not have possession of the Property and did not believe he had any authority to evict his father's business (had there been reason to do so). (Monroe Decl., ¶ 11.) Scott did not pay any money for the Property and never received rental payments for use of the Property. (Monroe Decl., ¶ 6.)

From 1978 – 1980, Scott visited the Property occasionally and worked the front counter once or twice a week during the summer of 1979. (Monroe Decl., ¶ 8.) He did not operate the machinery; Ronald Monroe hired licensed individuals to operate the dry cleaning machinery. (Monroe Decl., ¶ 13.) During the times he visited the Property, Scott Monroe never saw any evidence of waste discharges, never knew that any waste discharges occurred, and never had reason to believe that discharges of waste might occur. (Monroe Decl., ¶ 12.)

In December of 1980, when Scott was 20 years old, the Property was foreclosed on; Scott owned the Property for approximately 30 months. (Monroe Decl., ¶ 10.) Ron Monroe continued to own and operate the dry cleaner until his death in 1985. (Monroe Decl., ¶ 16.) During that time Scott continued to attend college and also helped his family by working the front counter once or twice a week and signing checks when his father was ill, but Ron Monroe always had the final decision of who was paid and when. (Monroe Decl., ¶ 14-16.) Scott did not make day to day decisions regarding the operation of the business and he had no role in managing, disposing or handling of any solvents or other chemicals used by the dry cleaner. (Monroe Decl., ¶ 15.)

When Ron Monroe died in 1985, Scott again assisted his family by facilitating the sale of the business in order to pay off vendors and taxes owed to the Internal Revenue Service.

(Monroe Decl., ¶ 16.) Scott negotiated an agreement with Jeanne Stewart and the sale of the business was completed in September 1986. All of the sale documents were executed by Scott's younger brother, Matthew Monroe. (Monroe Decl., ¶ 17.) Scott did not receive any money from the sale and several payments went to the IRS to pay Ron Monroe's tax debt. (Monroe Decl., ¶ 18.) In 1986, Jeanne Stewart testified that the dry cleaner was operated by Ron Monroe and that Scott Monroe only acted as the realtor to sell the business. (Monroe Decl., ¶ 20.)

Jeanne Stewart operated the dry cleaner until it closed in 1999. William and Yolanda Peacock acquired the Property in 1987. In 1990 the Peacocks transferred title to Golden Gate Associates, which granted title to Golden Gate Way LLC in 2010. Counsel for Scott Monroe believes that William and Yolanda Peacock are the owners of both Golden Gate companies.

The Peacocks discovered contamination at the Property in 2008. The Regional Water Quality Control Board staff prepared a draft Order in July 2011 and now seeks approval of a final Order from this Board. The proposed Order seeks to name Scott Monroe as a discharger on the basis that waste discharges are alleged to have occurred during the time that Scott owned the Property. However, Scott Monroe only owned the Property for 2.5 years of the 44 years that a dry cleaner operated at the Property and there is no evidence that any discharge occurred during the time that Scott Monroe owned the Property. Even if there was a discharge, there is no evidence that Scott Monroe knew or should have known of such discharge, or that he had the legal ability to prevent the discharge. There is no reasonable basis to name Scott Monroe as a discharger for the Property.

III.

SCOTT MONROE'S OWNERSHIP OF THE PROPERTY IS NOT A BASIS TO NAME HIM AS A DISCHARGER

The draft Tentative Order states that Scott Vincent Monroe is named as a discharger, "because he owned the land between July 21, 1987, and November 10, 1981, at the time of the activity that resulted in the discharge, had knowledge of the discharge or the activities that caused the discharge, and had the legal ability to prevent the discharge and migration of contaminants." (Tentative Order, p. 4.)

California Water Code § 13304(a) provides that the Regional Water Quality Control Board may issue an order to, "Any person who has . . . caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance . . . ." In order to name Scott Monroe as a discharger under section 13304, there must be evidence that Mr. Monroe "caused or permitted" waste to be discharged. However, there is no evidence that Scott Monroe "caused or permitted" waste to be discharged during the time he allegedly owned the Property.

For the reasons explained below, Scott Monroe asserts that he should not be named as a discharger based on his former limited ownership of the Property because:

1) Scott Monroe did not cause or contribute to the condition of nuisance or pollution and he did not engage in any affirmative or active conduct that caused the discharge.

2) There is no evidence that Scott Monroe knew of any discharges of waste during the time that he owned the Property and there is no evidence that he should have known of any such discharges.

3) There is no evidence that Scott Monroe knew of the "activity that resulted in the discharge" – that is the actual activity that caused the discharge. Under the law, knowledge of the operation of a lawful business is insufficient to establish liability under the Water Code.

4) There is no evidence that Scott Monroe had the legal ability to prevent the discharge and migration of contaminants, to the extent that any existed.

5) There is no evidence that a waste discharge occurred during the time that Scott Monroe owned the Property.

A. <u>As a former property owner, Scott Monroe is not liable under the Water Code or the law of nuisance for harm caused by a third party operating at the property.</u>

Documents indicate that Scott Monroe owned the real Property from July 21, 1978 to December 5, 1980. (Monroe Decl., ¶ 4, Ex. A.) Allegations that Scott Monroe owned the Property until November 1981 appear to be incorrect. Therefore, based on the documents, it appears that Scott Monroe owned the Property a mere 30 months. Scott Monroe was 18 years old when his father asked him to take title to the Property, and only 20 at the time the Property was foreclosed upon. (Monroe Decl., ¶ 4, 10, Ex. C.)

There is no evidence that a waste discharge occurred during the 30 months that Scott Monroe owned the real Property. (Declaration of Linda Beresford in Support of Comments ("Beresford Decl."), ¶ 2.) However, even if a discharge occurred during that time – a fact that Mr. Monroe does not admit and for which there is no evidence – Scott Monroe still would not have liability as a discharger under the Water Code. Liability under the Water Code follows liability under the law of nuisance. *City of Modesto Redevelopment Agency v. Superior Court* (2004) 119 Cal.App.4th 28, 37. Furthermore, "liability for nuisance does not hinge on whether the defendant owns, possesses or controls the property, nor on whether he is in a position to abate the nuisance; the critical question is whether the defendant created or assisted in the creation of the nuisance." *Id.* at 38 (citation omitted; underline added).

This issue was evaluated in *Resolution Trust Corp. v. Rossmoor Corp.* (1995) 34 Cal.App.4th 93, 100, where the Court held that the property owner was not liable under nuisance for contamination caused by its tenant. The Court stated, "[W]e have found no case holding a lessor landowner liable for [nuisance] where the landlord was not an active participant in causing the fuel leak and contamination." *Id.* at 99-100 (citing six contamination cases where the defendants were liable because they either caused the contamination or owned or operated the businesses that caused the contamination). Absent evidence that the property owner actively caused or contributed to the contamination, a property owner is not liable for nuisance contamination created by a third party operating on the property. "Where the nuisance is attributable solely to the tenant's improper acts, the landlord is not liable." Witkin, Summary of California Law (10th ed. 2005), 12 Real Property § 648, p. 760. As discussed below, there is no evidence that Mr. Monroe actively caused or contributed to the contamination.

However, even if this Board determined it could name a former property owner as a discharger based on his former ownership, knowledge of the actual harm is required in order for a prior landowner to be liable for nuisance conditions on his property. In reaching its decision that a landowner is not liable for contamination caused by its tenant, the *Resolution Trust* Court relied on *Uccello v. Laudenslayer*, which stated that "[I]f a landlord has such a degree of control over the premises that it may fairly be concluded that he [or she] can obviate the presence of the

dangerous [condition] **and he has knowledge thereof**, an enlightened public policy requires . . . imposition of a duty of ordinary care." *Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 512 (emphasis added). As discussed below, Mr. Monroe had no knowledge of the contamination and did not have control over the premises; he therefore is not liable under the Water Code.

These same principles were recently reiterated in *Redevelopment Agency of the City of Stockton v. BNSF Railway Co.* (9th Cir. 2011) 643 F.3d 668, where the Court held that BNSF did not have liability as a discharger under Water Code § 13304 or nuisance when contamination migrated through a french drain located on its property. The Court reached this finding because BNSF did not know, and had no reason to know, that the french drain contributed to the migration of the contamination. *Id.* at 675-678. "Because the Railroads' conduct with regard to the specific nuisance condition – the contamination – was not active, affirmative, or knowing, the Railroads simply did not "create or assist in the creation" of the nuisance on the Property." *Id.* at 674. There is simply no liability under the Water Code unless the defendant actively or affirmatively contributed to, or knew about, the discharge.

Similarly, in *City of Los Angeles v. San Pedro Boat Works* (9th Cir. 2011) 635 F.3d 440, 452-53, the Ninth Circuit held that California nuisance law follows the Restatement approach to private nuisance (citing *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal. 4th 893). As discussed in both *City of Los Angeles* and *BNSF Railway*, the Restatement says:

> A possessor of land upon which a third person carries on an activity that causes a nuisance is subject to liability for the nuisance if it is otherwise actionable and,
>
> (a) The possessor knows or has reason to know that the activity is being carried on and that it is causing or will involve an unreasonable risk of causing the nuisance, and
>
> (b) He consents to the activity or fails to exercise reasonable care to prevent the nuisance.

City of Los Angeles v. San Pedro Boat Works, 635 F.3d at 452-453 citing Restatement (Second) of Torts § 838 (1979).

In *City of L.A.*, the City alleged that a tenant (Pacific American) was liable under nuisance when the tenant allowed a third company (San Pedro Boat Works) to conduct business at a berth at the Port of Los Angeles and the Boat Works company caused contamination during

its operations. The Ninth Circuit held that even though Pacific American had possession of the land, it was not liable for a nuisance because there was no evidence that it knew or had reason to know that the activity was causing a nuisance. *City of L.A.*, 635 F.3d at 453-454.

1. Scott Monroe did not cause or contribute to the contamination.

Mr. Monroe does not have liability Water Code § 13304 based solely on his former ownership of the Property. Scott Monroe did not cause or contribute to the contamination. Scott Monroe was not an owner of the dry cleaner, did not operate the dry cleaner, had no role in the day to day management of the business, and had no management responsibility for the use and disposal of any chemicals that may have been used by the dry cleaning business. (Monroe Decl., ¶ 7, 15; Beresford Decl., ¶ 5, Ex. C.) There is no evidence to the contrary. Scott Monroe did not cause or contribute to the creation of the nuisance.

2. Scott Monroe did not know, and had no reason to know, that discharges occurred.

There is no evidence that Scott Monroe knew that any discharge of waste occurred during the time of his ownership. (Monroe Decl., ¶ 12.) In fact, there is no evidence that any discharges of waste occurred at all during this time. (Beresford Decl., ¶ 2.) Furthermore, during his visits to the Property, Scott Monroe never saw any chemical spills. (Monroe Decl., ¶ 12.) There is also no evidence that Mr. Monroe should have known that any discharges of waste occurred during the time of his ownership. (Monroe Decl., ¶ 13.) Unlike *Leslie Salt Co. v. San Francisco Bay Conservation & Dev. Comm.* (1984) 153 Cal.App.3d 605, 621, where the current property owner was liable because it "should know [of] the existence of several hundred tons of detritus and other fill materials on its land," this case involves subsurface contamination, a condition that is not apparent to the naked eye, and there is no requirement for a landowner to perform extraordinary subsurface testing. *See Resolution Trust Corp.*, 34 Cal.App.4th at 104. There is simply no evidence that Scott Monroe knew or should have known that discharges occurred during the 30 months he owned the Property. There is also no evidence that contamination existed prior to his ownership; that any contamination migrated or caused conditions of pollution or nuisance during his ownership; or that he knew or should have known of such contamination requiring him to take any action to prevent such migration.

3. Scott Monroe's knowledge that a dry cleaner operated at the Property is insufficient to establish liability.

Scott Monroe's knowledge that a dry cleaner operated at the Property during the time of his ownership is insufficient to establish liability under Water Code § 13304. As discussed in Section III.B. below, "knowledge of the activity that caused the discharge" must be knowledge of the discharge, or a reasonable basis to know that the activity caused a discharge. Knowledge of the operation of a lawful activity does not create liability under either the law of nuisance or Water Code § 13304. *See Redevelopment Agency v. BNSF Railway*, 643 F.3d at 674 (BNSF's knowledge of french drain did not establish liability under § 13304); *City of L.A.*, 635 F.3d at 452 – 454 (knowledge that sublessee operated a boat works operation was not sufficient to establish liability under nuisance without knowledge of the discharge); *Resolution Trust Corp.*, 34 Cal.App.4th at 103 (unreasonable to require property owner to refuse to rent to gas station to avoid liability); *Salinas v. Martin* (2008) 166 Cal.App.4th 404, 412 (liability for dangerous condition on land does not attach to property owner unless landlord had actual knowledge of the dangerous condition plus the right and ability to cure the condition) (citations omitted).

4. Scott Monroe did not have the legal ability to prevent the discharge.

There is no evidence that Scott Monroe "had the legal ability to prevent the discharge and migration of contaminants" as alleged in the Tentative Order. Scott Monroe did not have possession of the Property during the time of his ownership; the Property was possessed by Ronald Monroe and his dry cleaning business. (Monroe Decl., ¶ 11.) There is no evidence that Scott Monroe had any authority to inspect the Property, require any changes at the Property, or to evict the dry cleaning business for any specific reason. (Monroe Decl., ¶ 11.) There is also no evidence that Scott Monroe would have or could have identified any discharges of waste if he had inspected the Property more than what he did. In the absence of such evidence, Scott Monroe does not have liability under Water Code § 13304. *See Laico v. Chevron U.S.A., Inc.* (2004) 123 Cal.App.4th 649, 663-665 (when there is no evidence that landowner had right of access or right to inspect, and no evidence of what landowner would find if it had inspected, landowner was not liable for hazardous conditions at the property).

There is no legal or reasonable basis to name Scott Monroe as a discharger under § 13304. He did not "cause or permit" any discharges of waste at the Property. He did not cause or assist in the creation of the nuisance or pollution and his conduct was not active, affirmative, or knowing as he did not own or operate the dry cleaners and had no role in the use or disposal of any chemicals. Scott Monroe did not know of any waste discharges during his ownership and there is no evidence that he should have known of any discharges (if any occurred). Scott Monroe also did not have the legal ability to prevent any discharge or migration of contaminants (if any contaminants existed at that time). The law is clear: absent evidence of knowledge of a waste discharge, mere ownership of property does not result in liability under the Water Code. Mr. Monroe should not be named as a discharger for the Property.

B. Prior State Water Resources Control Board Orders and the law on which they rely do not support naming Scott Monroe as a discharger for the Property.

Prior Orders issued by the State Water Resources Control Board do not support naming Scott Monroe as a discharger for the Property. The Tentative Order relies on *In the Matter of Zoecon Corporation*, Order No. WQ 86-2, and *In the Matter of the Petition of Arthur Spitzer et. al.,* Order No. WQ 89-8, as a basis to name all of the parties, including Scott Monroe, as dischargers. But these Orders do not discuss liability of former property owners.

Both *Zoecon* and *Spitzer* state that current property owners can be named as dischargers (even if the owner was not involved with the activity that caused the contamination) because if a current property owner "knows of a discharge on his property and has sufficient control of the property to correct it, he should be subject to a cleanup order under Water Code Section 13304." *Spitzer*, p. 9; *Zoecon*, p. 10-12; *see also In the Matter of Vallco Park, Ltd.* (WQ 86-18). *Zoecon* also relied on *Rowland v. Christian* (1968) 69 Cal. 2d 108 and *Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, cases where the courts held current landowners liable for injuries caused by conditions that were known to the landowners. But neither *Zoecon* nor *Spitzer*, nor the law on which they rely, stand for the proposition that a former property owner, who had no knowledge of a discharge, should be liable under § 13304.

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We are unaware of any Orders naming a former property owner as a discharger when the property owner was not an owner or operator of the business that caused the discharge and when there was no evidence that the property owner knew that a discharge occurred during the time of his ownership. In fact, *In the Matter of the Petitions of Wenwest, Inc. et al.* (WQ 92-13), the State Board held that the same policy and legal arguments that apply to current owners do not necessarily apply to former landowners. Mr. Monroe's case is similar to that of Wendy's in *Wenwest*, who was not named as a discharger because it owned the property for a short period of time and had nothing to do with the activity that caused the leaks. Mr. Monroe also owned the Property for a short time and had nothing to do with the activity that caused the alleged discharges. In fact, Mr. Monroe had no knowledge of any discharges, while Wendy's did in fact have knowledge of such discharges, but still was not named as a discharger.

Former property owners have been named as dischargers when the evidence clearly showed that they knew a discharge had occurred on their property. In *In the Matter of the Petition of Harold and Joyce Logsdon* (WQ 84-6), Mr. and Mrs. Logdson owned property for at least seven years during which time they leased the property to a wood treatment facility. Relying on *Uccello v. Laudenslayer*, the State Board stated that "public policy requires that a landlord owes a duty of care to correct a dangerous condition created by a tenant, where the landlord has actual knowledge of the condition and an opportunity and the ability to obviate it." *Logdson*, p. 14. The State Board listed several facts showing Mr. Logdson's knowledge of the discharge at his property, including his role as an officer in another wood treatment company and that Mr. Logdson had been a defendant in a lawsuit brought by a Regional Board to correct discharge problems at that company's facility. *Logdson*, p. 16. The State Board also noted the terms of the lease, which required the tenant to obey all laws and permitted the Logdsons to enter the premises if the tenant failed to perform its obligations under the lease. *Logdson*, p. 17-18. Based on their knowledge of the discharges at the property during the time of their ownership, and their ability to access the property to correct the discharge conditions, the State Board named the Logdsons as dischargers under Water Code § 13304. *See also In the Matter of the Petition of Stinnes-Western Chemical Corp.* (WQ 86-16) (successor to former property owner was a

discharger because the evidence showed that the predecessor corporation operated at the property and caused the discharge during the time of its ownership); *In the Matter of the Petition of the BOC Group, Inc.* (WQ 89-13) (former property owner was a discharger because evidence showed it operated at the property during its ownership and caused the discharges).

None of these facts exist in this case. Scott Monroe did not own or operate the dry cleaner that operated at the Property. (Monroe Decl., ¶ 7.) There is no evidence that a discharge occurred during the 30 months that Scott Monroe owned the Property. (Beresford Decl., ¶ 2.) If a discharge did occur during that time, there is no evidence that Mr. Monroe knew about it. (Monroe Decl., ¶ 12.) There is also no evidence that Mr. Monroe should have or even could have known that a discharge occurred. He didn't see any indications of a discharge when he visited the Property (Monroe Decl., ¶ 13) and unlike *Leslie Salt,* 153 Cal.App.3d at 621, where the current property owner was liable because it should have known of several hundred tons of debris on its land, this case involves subsurface contamination, which is not reasonably noticeable during a site inspection. *California did not even identify tetrachloroethylene (PCE) as a carcinogen until 1988* and contamination at dry cleaners was not commonly recognized until the late 1980s – almost a decade after Scott Monroe owned the Property. (Beresford Decl., ¶ 3, 4, Ex. A, B.) There is no evidence that Scott Monroe knew or should have known of waste discharges during the 30 months he may have owned the Property.

Furthermore, neither the law nor prior State Board Orders support naming a former property owner as a discharger based on "knowledge of the activity" that resulted in the discharge. In *Spitzer* (WQ 89-8), issued on May 16, 1989, the Order was clearly based on the argument that if a landowner "knows of a discharge on his property and has sufficient control of the property to correct it, he should be subject to a cleanup order under Water Code Section 13304." *Spitzer*, p. 9. Shortly thereafter, on August 17, 1989, the State Board issued an Order for *In the Matter of the Petition of San Diego Unified Port District* (WQ 89-12) which stated, "This Board has consistently taken the position that a landowner who has knowledge of the activity taking place and has the ability to control the activity, has "permitted" the discharge within the meaning of Section 13304." *Port District*, p. 7 (underline added).

In support of this assertion, the State Board cited eight prior Orders. In five of those orders (WQ 86-18, 86-2, 89-1, 87-5, and 87-6), the current property owner was named as the discharger and the owner had knowledge of the discharge and the ability to abate it. In two of the orders (WQ 86-15 and 81-6) the discharger was either the current sublessor or the current operator of the property, both of whom had knowledge of the discharge and an interest in the property. And in the last order (WQ 86-16), the former owner of the property was also the former operator who caused the discharge. None of these Orders suggest that a former property owner that did not operate the business that caused the discharge, need only have "knowledge of the activity" that caused the discharge. These Orders direct that a property owner named as a discharger must either know, or should have known, of the discharge – not simply have knowledge of a legal activity that, unbeknownst to the property owner, resulted in a discharge.[1]

Naming a former property owner as a discharger based only on knowledge that a lawful business operated at the property is also not supported by the law. The cases on which the State Board has relied in naming property owners as dischargers under Water Code § 13304 – and their progeny – all state that in order for a property owner to have liability, the property owner must know, or should have known, of the dangerous condition, and also have sufficient control over the property in order to abate the condition. *See Rowland v. Christian* (1968) 69 Cal.2d 108 (current property owner liable because it knew of broken faucet); *Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504 (current property owner liable because it knew of dangerous dog); *Leslie Salt Co. v. San Francisco Bay Cons. & Dev. Comm.* (1984) 153 Cal.App.3d 605 (current landowner

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[1] The *Port District* Order also referenced a May 8, 1987 Memorandum from William R. Attwater, Chief Counsel, to Regional Board Executive Officers, entitled "Inclusion of Landowners in Waste Discharge Requirements and Enforcement Orders." This document states that "Enforcement orders can be issued to a landowner only if the cleanup involves something about which the landowner knew or should have known and over which he or she had some measure of control" and that "Findings of each element of a landowner's responsibility must be supported by substantial evidence." (Underline added.) A similar guidance document called "Findings for Waste Discharge Requirements Applicable to Non-Culpable Property Owners" dated March 22, 1988, also authored by William R. Attwater, Chief Counsel, suggests that former owners should not be named unless "Owner, during the time [he] owned the Property, knew or should have known of the existence of the discharge or threat of discharge. . . . [And] during the time [he] owned the Property, Owner had some measure of control over the Property."

liable because it should have known of tons of debris on property); *Redevelopment Agency v. BNSF Railway Co.* (9th Cir. 2011) 643 F.3d 668 (railroad not liable under the Water Code because it did not know and had no reason to know that french drain would contribute to contamination). None of these decisions rest on whether the property owner had knowledge of the business that resulted in the discharge and in fact the cases direct the exact opposite. *See City of Los Angeles v. San Pedro Boat Works* (9th Cir. 2011) 635 F.3d 440 (tenant not liable because it did not know and had no reason to know that subtenant was discharging waste; knowledge of boat works company insufficient for liability); *Resolution Trust Corp. v. Rossmoor Corp.* (1995) 34 Cal.App.4th at 103 (property owner not liable based on operation of gas station).

Scott Monroe did not cause or contribute to the creation of the nuisance or pollution: he did not own or operate the dry cleaner, did not operate the machinery, and did not direct the use or disposal of any chemicals. Scott Monroe had no active role in causing the discharge and there is no evidence that a discharge even occurred during the time that he owned the Property. Mr. Monroe did not know of any discharges, nor did he have reason to know of any discharges. Knowledge of the operation of a dry cleaner during the time he owned the Property is insufficient to establish liability under Water Code § 13304. Scott Monroe also did not have the legal ability to abate any discharges during his brief ownership. There is no legal or reasonable basis to name Scott Monroe as a discharger and he should not be named a discharger under Water Code § 13304 based on his ownership of the Property from July 1978 to December 1980.

C. <u>The Tentative Order violates due process.</u>

The Tentative Order alleges that Scott Monroe owned the land "at the time of the activity that resulted in the discharge, [and] had knowledge of the discharge or the activities that caused the discharge . . . ." (Page 4.) The Tentative Order does not specify what alleged "activity" or "activities" resulted in the discharge about which Mr. Monroe allegedly knew. It is unclear if the alleged "activity" or "activities" is the operation of a dry cleaning business, a physical spill, a type of disposal method, or something entirely different. Furthermore, the Tentative Order provides no evidence in support of these allegations.

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However, Mr. Monroe has been advised that if he wishes to challenge the Board's action on this matter through a petition to the State Water Board under Water Code § 13320, he will be limited to raising only those issues or objections that were raised at the public hearing or in written correspondence submitted by November 14, 2011, and that the Board will only consider comments submitted by November 14, 2011. But since the "activity" is not defined, and the evidence in support of this allegation is not stated in the Order, it is impossible for Mr. Monroe to fully respond to these allegations. Failing to identify the alleged "activity" or "activities", failing to state the evidence in support of these allegations, or failing to allow further objections if the Board defines these terms or provides such evidence, violates due process.

Both the United States and the California Constitutions provide that the State of California may not deprive any person of life, liberty, or property without due process of law. U.S. Const. Amend. XIV, § 1; U.S. Const. Amend. V, Cal. Const., art. I, §7. The exercise of a quasi-judicial power requires that an agency must satisfy at least minimal requirements of procedural due process. *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612. Minimum due process requires some form of notice and an opportunity to respond. *Id.* Due process includes "the right to present legal and factual issues in a deliberate and orderly manner." *White v. Board of Medical Quality Assurance* (1982) 128 Cal.App.3d 699, 705. It also includes a reasonable opportunity to know the claims of the adverse party and to present their objections. *Ryan v. California Interscholastic Federation – San Diego Section* (2001) 94 Cal.App.4th 1048, 1072. An agency decision based on information of which the parties were not apprised and which they had no opportunity to controvert amounts to a denial of a hearing. *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1172.

The vague and ambiguous use of the term "activity" without further definition, and the failure to provide any evidence in support of this allegation, does not advise Mr. Monroe of the RWQCB's claims against him. Without such information, Mr. Monroe is deprived of the ability to present legal and factual issues in response. The Tentative Order as drafted, the lack of evidence, and the limitation on Mr. Monroe's ability to respond, violates the due process requirements of the United States and California Constitutions.

IV.

SCOTT MONROE SHOULD NOT BE NAMED AS A DISCHARGER AS AN OWNER OR OPERATOR OF THE DRY CLEANING BUSINESS

In a draft version of this Order circulated by RWQCB staff in July 2011, staff suggested that Scott Monroe should be named as a discharger because he "worked in father['s] dry cleaning business, and had control over the disposal and handling of solvents." On August 25, 2011, counsel for Scott Monroe submitted comments on the draft Order, stating that this allegation was incorrect and without factual basis; the comments demonstrated that he did not own or operate the dry cleaner and did not have control over the disposal and handling of solvents.

In response, it appears that staff agrees that Scott Monroe should not be named as a discharger on the basis of any alleged ownership of the dry cleaning business, or responsibility for operations of the dry cleaning business, as Scott Monroe has not been named as a discharger in the Tentative Order on that basis. However, if this issue is raised in comments by other parties or at the hearing, we submit these comments to preserve any arguments that may be required in the future and incorporate these arguments in support of the fact that there is no evidence that Mr. Monroe knew of any discharges at the Property.

A. <u>Scott Monroe did not control the management, disposal or handling of any solvents.</u>

Scott Monroe did not control the management, disposal or handling of any solvents or other chemicals associated with the dry cleaner. (Monroe Decl., ¶ 15.) Mr. Monroe occasionally worked at the front counter to receive or distribute orders and occasionally signed checks when his father was ill. (Monroe Decl., ¶ 8, 14.) However, Ron Monroe, Scott Monroe's father, decided when and who should be paid, and also hired a licensed individual to operate the dry cleaning machinery. (Monroe Decl., ¶ 13, 15.) Scott Monroe simply did not make decisions relating to the operation of the business and had no role in managing, directing, or conducting operations relating to the order, use, storage or disposal of any chemicals that may have been used by the business. (Monroe Decl., ¶ 15, Beresford Decl., ¶ 5, Ex. C.)

The parties named in the Tentative Order are litigating who has responsibility for the contamination at the Property. (*Golden Gate Way, LLC v. Stewart*, Northern District of

California Case No. C09-CV-0448-DMR). Throughout the litigation, the Peacocks, Golden Gate Way, and the Stewart Defendants have asserted that Scott Monroe operated the dry cleaning business, but no party has produced any facts or documents that demonstrate that Scott Monroe either owned or operated the dry cleaning business. And no party has produced any facts or documents that demonstrate that Scott Monroe controlled the management, disposal or handling of any solvents at the Property.

The mere statement by another named discharger that Scott Monroe had control over the management, disposal or handling of solvents, without any supporting facts or documents, is insufficient to name him as a discharger for the Property on that basis. And in fact there is no evidence to support this claim because it simply isn't true.

B. Scott Monroe was not an owner or operator of the dry cleaner.

As noted in Scott Monroe's declaration, Scott Monroe was never an owner or operator of the dry cleaner. (Monroe Decl., ¶ 7, 15, Ex. B.) During the litigation, the other parties have asserted that Scott Monroe owned and operated the dry cleaning business. But again, no party has produced actual facts or documents that support this allegation, and the mere fact that another named discharger says that Scott Monroe was the owner or operator of the dry cleaning business doesn't make it so. There is simply no evidence that Scott Monroe either owned or operated the dry cleaner.

The Stewart Defendants have asserted that Scott Monroe was an owner of the dry cleaning business because he was listed as the transferor in the Bulk Transfer Escrow documents dated March 24, 1986, that he requested that Ms. Stewart enter into a covenant not to complete for three years and in a two mile radius, and that he was paid a sum of $45,000 for the dry cleaning business and associated fixtures. However, neither the bulk transfer escrow instructions nor the covenant not to compete are signed. (Beresford Decl., ¶ 6, Ex. D (unsigned bulk transfer instructions and covenant not to compete).) These are not the final sale documents; the final sale documents are all signed by Matthew Monroe, not Scott Monroe. (Monroe Decl., ¶ 17, Ex., E.) Furthermore, there is no evidence that Scott Monroe received any payment from the sale of the business. The installment note in the amount of $35,000 is made payable to Matthew Monroe

(Monroe Decl., ¶ 17, Ex. E) and the other payments were made by Jeanne Stewart to the IRS to pay off Ronald Monroe's tax debt. (Monroe Decl., ¶ 18 Ex. F.)

When testifying in a case in May 1986 (immediately after she started business at the Property), Ms. Stewart testified that the previous owner was Ron Monroe and that Scott Monroe was only the realtor assisting with the sale. (Monroe Decl., ¶ 20, Ex. G (copies of the deposition transcript).) A copy of the signed and recorded bulk transfer instructions originally transferring the business from Mr. Stross to Ron Monroe in 1978 are provided at Exhibit B to Scott Monroe's Declaration. Other documents demonstrating that Ronald Monroe owned and operated the dry cleaner are provided at Exhibit D to Scott Monroe's Declaration. These documents show that Ron Monroe was the owner and operator of the dry cleaner.

When Ron Monroe died in October of 1985, Scott Monroe assisted the estate in resolving his father's tax debt and selling the dry cleaning business. (Monroe Decl., ¶ 16 - 18.) However, Scott Monroe never took ownership of the business and never had any role in the handling or disposal of any solvents. There are no documents to support any assertion to the contrary, and none of the other parties have stated any facts or produced any evidence showing that Scott Monroe owned or operated the dry cleaner. If anything, Ms. Jeanne Stewart has stated, under oath, that the prior owner was Ron Monroe – not Scott Monroe. Scott Monroe should not be named as a discharger as an owner or operator of the dry cleaning business or as someone who had control over the management, disposal or handling of any solvents or other chemicals associated with the dry cleaner.

V.

CONCLUSION

There is no legal or reasonable basis to name Scott Monroe as a discharger for the property located at 3425 Golden Gate Way. Scott Monroe may have owned the Property for a brief 30 months as a favor to his father to help his family during significant economic difficulty. However, Scott Monroe never owned or operated the dry cleaning facility at the Property, and he never took any action that caused or contributed to the creation of nuisance or pollution. There is no evidence that any discharge of waste occurred during the time that he owned the Property.

There is no evidence that Scott Monroe knew of any discharges of waste during that time or that he should have known of any discharges of waste during that time. Knowledge of the operation of a dry cleaner during the period of his ownership is insufficient to establish liability under Water Code § 13304. There is also no evidence that Scott Monroe possessed the Property or had the legal ability to prevent any discharges or migration of contaminants, to the extent that they existed. Mr. Monroe should not be named as a discharger for this Property and we request that he be removed from the Order for this Property.

Respectfully submitted,

Dated: November 10, 2011

OPPER & VARCO LLP

By: Linda C. Beresford

LINDA C. BERESFORD
Attorneys for Alleged Discharger
Scott Monroe

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ATTORNEYS FOR ALLEGED DISCHARGER
SCOTT MONROE

ORIGINAL

CALIFORNIA REGIONAL WATER
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QUALITY CONTROL BOARD

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

PROPOSED ADOPTION OF FINAL SITE CLEANUP REQUIREMENTS FOR: GOLDEN GATE WAY, LLC WILLIAM PEACOCK YOLANDA M. PEACOCK TOMMY LEE STEWART JEANNE'S HAMLIN CLEANERS JEANNE STEWART dba HAMLIN CLEANERS LEONARD A. GROSS LEONARD A GROSS PROFESSIONAL CORPORATION SCOTT MONROE FOR THE PROPERTY LOCATED AT 3425 GOLDEN GATE WAY LAFAYETTE CONTRA COSTA COUNTY	ORDER NO. R2-2011-00XX FILE NO. 07S0197(BGS) **DECLARATION OF SCOTT VINCENT MONROE IN SUPPORT OF COMMENTS BY SCOTT MONROE ON TENTATIVE ORDER FOR HAMLIN CLEANERS, 3425 GOLDEN GATE WAY, LAFAYETTE, CALIFORNIA**

I, SCOTT VINCENT MONROE, hereby declare as follows:

1. I am a resident of the State of California and reside in Tustin, California. The following declarations are of my own personal knowledge and, if sworn as a witness, I could and would competently testify thereto.

2. In the summer of 1978 I was eighteen (18) years old. I had just graduated high school and was preparing to attend the University of Oregon that fall.

3. During that time my family was suffering from significant financial hardship. My father, Ronald Monroe, had a company that managed a few pieces of real estate. In the summer of 1978 he decided to acquire the property located at 3425 Golden Gate Way in Lafayette, California (the "Property"). The owners of the Property were Mr. and Mrs. Stross. However, they would not sell the Property unless my father purchased both the Property and the dry cleaning business located at the Property. My father agreed.

4. Shortly after I graduated high school, my father asked if he could put the title to the real Property in my name. He told me that it would help the family. Considering the financial difficulties facing my family, I agreed to accept title to the Property in order to help my family out. I was 18 and had never owned any property before. I signed the necessary paperwork at my father's request. A copy of the document that appears to show my acquisition of the Property in July 1978 is attached as Exhibit A to this declaration. (I have no documents relating to the Property. All of the documents attached to this declaration were produced by Jeanne Stewart in the related litigation of Golden Gate Way, LLC v. Jeanne Stewart, et al., Case no. 09-CV-04458. I believe that all documents attached hereto are true and correct copies.)

5. When I signed the documents accepting title to the real Property, I had no reason to suspect that there were any concerns about the Property. Mr. and Mrs. Stross never disclosed the existence of any contamination from the operation of the dry cleaning business.

6. My father's business was responsible for the payment of all mortgages, taxes and other costs associated with the Property. I never made any payments towards the ownership of the Property and I never received any payment from my father for the use of the Property by the dry cleaning business. As I stated above, my family was experiencing serious financial hardship.

I never received any financial benefit associated with the ownership of the Property.

7. My father was the sole purchaser of the dry cleaning business. Documents showing that my father was the sole purchaser of the dry cleaning business are attached to this declaration as Exhibit B. I was never an owner or operator of the dry cleaning business and was never an owner or partner in my father's business that operated the dry cleaning business.

8. From the fall of 1978 to the summer of 1980 I attended the University of Oregon. From September 1978 through June 1979 and September 1979 through June 1980 I visited the Property approximately once every six months. In the summer of 1979 I came home from college for the summer. I was 19 years old and during that time my family continued to suffer financial hardship. I helped out at the front counter at the dry cleaners at the Property approximately once or twice a week to help my family out. I do not recall being paid for this time; if I received any payment, it was a small amount.

9. In the fall of 1980 I transferred from the University of Oregon to California State University at Hayward because I was no longer able to pay the tuition at the University of Oregon.

10. In December 1980 the Property was foreclosed on. Attached as Exhibit C to this declaration is a true and correct copy of a document showing that on November 10, 1981, Contractors Capital Corp. granted the Property to Leonard A. Gross. This document also states:

> "This conveyance is made pursuant to the powers conferred upon first party [Contractors Capital Corp.] by that certain Deed of Trust between Scott Vincent Monroe, a single man, to Contractors Capital Corp., a California corporation, as Trustee, and Laurel Blum, a married woman as Beneficiary, dated December 5, 1980, and recorded January 7, 1981 in the Office of the County Record of Contra Costa County, State of California . . . ."

Based on this document, I believe my ownership of the Property ended on December 5, 1980 when I was 20 years old. I owned the Property for approximately 2 ½ years, or 30 months.

11. During the short time that I owned the Property, I never personally occupied or possessed the Property. The dry cleaning business owned by my father occupied, possessed and operated at the Property. I never believed I had any authority to evict my father from the Property.

12. During the short time that I owned the Property, I never had any knowledge that any spills, releases or discharges of any type of waste occurred at the Property. During the times that I visited the Property, I never saw any evidence of any spills, releases or discharges of any type of waste at the Property. I never saw anyone pouring any chemicals on the ground. I am not aware of any evidence that a spill, release, or discharge actually occurred during the time I owned the Property.

13. I also never had any reason to know of any discharges of waste that could possibly impact any water during the time I owned the Property. To the best of my recollection, my father hired people who were trained and licensed to handle the dry cleaning machinery. I never operated the dry cleaning machinery myself. From 1978 – 1980, I was not aware of anyone that knew that dry cleaning businesses could be a risk or a source of contamination. Looking back now, I still am not aware of anyone who knew at that time that dry cleaning businesses could potentially present an environmental risk.

14. From approximately 1980 – 1985, while I was attending school at California State University at Hayward, I helped out at the front counter of the dry cleaning business for approximately 1 – 2 times per week for no more than 10 hours each week. I received and distributed orders to and from customers. I occasionally put clothes in the plastic cover bags after the clothes were pressed and occasionally signed checks if my father was ill. However, my assistance at the business decreased even further in 1982 when I began a job at Computer Sciences Corporation located in Oakland, California.

15. I did not make decisions relating to the day to day operations of the business; my father made such decisions including who was paid and when. I did not financially benefit from the operation of the business. I had no role in managing, directing, or conducting operations relating to the ordering, use, storage or disposal of any chemicals that may have been used by the dry cleaning business. My father was the sole operator of the business. Copies of additional documents showing his operation of the business are attached to this declaration as Exhibit D.

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16. My father, Ronald Monroe, owned and operated the dry cleaning business from 1978 until his death in October 1985. During the time that he was sick, his girlfriend, Sharon Clifton, may have assisted him in running the business. Following my father's death, I again attempted to help my family by facilitating the sale of the dry cleaning business. At the time of his death, I recall that my father owed money to several vendors as well as to the Internal Revenue Service. In order to protect my mother, my goal in negotiating a final price for the dry cleaning business was to cover my father's debts as much as possible.

17. In approximately March 1986 I began negotiations to sell the dry cleaning business to Ms. Jeanne Stewart. I believe the sale became final in September 1986. True and correct copies of what I believe to be the final sale documents transferring the dry cleaning business to Ms. Jeanne Stewart are attached to this declaration as Exhibit E. These final sale documents are signed by my brother, Matthew Monroe, who is now deceased.

18. I never owned the dry cleaning business following my father's death and I received no financial proceeds from the sale of the business. Copies of payments made by Jeanne Stewart to the IRS to pay off my father's tax debt are attached to this declaration as Exhibit F.

19. I understand that Ms. Stewart's attorneys informed this body that I operated the dry cleaning business based on the fact that some of the early draft sale documents contained my name as the seller of the business. However, none of those draft documents, which appear to have been prepared in March 1986, were ever signed, and I believe they were prepared in error. The final sale documents, executed in September 1986, were signed by my brother.

20. When testifying in an unrelated case in May 1986 (shortly after she started business at 3425 Golden Gate Way), Ms. Stewart testified that the previous owner of the dry cleaning business was Ron Monroe and that I, Scott Monroe, was only the realtor assisting with the sale. A copy of the relevant portions of the deposition transcript are attached to this declaration as Exhibit G.

21. I never had any knowledge that any spills, releases, or any discharges of any type of waste occurred at the Property from any time from 1978 – 1986.

22. Based on the facts stated above, I ask that the Regional Water Quality Control Board find that I did not cause or permit any discharges of waste to the waters of the State of California, and agree that I should not be named a discharger for this Property.

I declare, subject to penalty of perjury under the laws of the state of California, that the foregoing is true and correct.

Executed this 7th day of November, 2011, at Jackson, California.

Scott Vincent Monroe

22. Based on the facts stated above, I ask that the Regional Water Quality Control Board find that I did not cause or permit any discharges of waste to the waters of the State of California, and agree that I should not be named a discharger for this Property.

I declare, subject to penalty of perjury under the laws of the state of California, that the foregoing is true and correct.

Executed this 7th day of November, 2011, at Alameda, California.

Scott Vincent Monroe

ORIGINAL

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ATTORNEYS FOR ALLEGED DISCHARGER
SCOTT MONROE

CALIFORNIA REGIONAL WATER
NOV 14 2011
QUALITY CONTROL BOARD

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

PROPOSED ADOPTION OF FINAL SITE CLEANUP REQUIREMENTS FOR: GOLDEN GATE WAY, LLC WILLIAM PEACOCK YOLANDA M. PEACOCK TOMMY LEE STEWART JEANNE'S HAMLIN CLEANERS JEANNE STEWART dba HAMLIN CLEANERS LEONARD A. GROSS LEONARD A GROSS PROFESSIONAL CORPORATION SCOTT MONROE FOR THE PROPERTY LOCATED AT 3425 GOLDEN GATE WAY LAFAYETTE CONTRA COSTA COUNTY	ORDER NO. R2-2011-00XX FILE NO. 07S0197(BGS) **DECLARATION OF LINDA BERESFORD IN SUPPORT OF COMMENTS BY SCOTT MONROE ON TENTATIVE ORDER FOR HAMLIN CLEANERS, 3425 GOLDEN GATE WAY, LAFAYETTE, CALIFORNIA**

I, LINDA C. BERESFORD, hereby declare as follows:

1. I am a partner in the law firm of Opper & Varco LLP and am counsel for Scott Vincent Monroe in the above-referenced matter. The following declarations are of my own personal knowledge and, if sworn as a witness, I could and would competently testify thereto.

2. On August 4, 2011, I spoke with Ms. Barbara Sieminski, a staff member of the Regional Water Quality Control Board, regarding draft Tentative Orders for the property located at 3425 Golden Gate Way, Lafayette, California ("Property"). I asked Ms. Sieminski if the Regional Water Quality Control Board had evidence that a discharge of waste had occurred during the time Scott Monroe owned the Property. Ms. Sieminski informed me that the Regional Water Quality Control Board did not have direct evidence that a waste discharge occurred during the time that Scott Monroe owned the Property.

3. The State of California identified tetrachloroethylene ("PCE") as a chemical known to the State to cause cancer or reproductive toxicity on or about April 1, 1988. A true and correct copy of a table that I downloaded from a website operated by the State of California Environmental Protection Agency showing the date that PCE was identified as a chemical known to the State to cause cancer is attached to this declaration as Exhibit A.

4. A true and correct copy of a document called "A Chronology of Historical Developments in Drycleaning" is attached to this declaration as Exhibit B. I downloaded this document from a website operated by the State Coalition for Remediation of Drycleaners at www.drycleancoalition.org. The State Coalition for Remediation of Drycleaners is an organization established in 1998 with support from the U.S. EPA Office of Superfund Remediation and Technology Innovation. The "Chronology of Historical Developments in Drycleaning" indicates that: 1) in 1986 approximately 86% of dry cleaning facilities used PCE; and 2) the first significant case detecting PCE in groundwater occurred in 1989.

5. A true and correct copy of Scott Monroe's responses to Interrogatories propounded by the Stewart Defendants is attached hereto as Exhibit C.

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6. A true and correct copy of documents produced by the Stewart Defendants called "bulk transfer escrow instructions" and "covenant not to compete" dated March 1986, which are not signed, are attached hereto as Exhibit D.

I declare, subject to penalty of perjury under the laws of the state of California, that the foregoing is true and correct.

Executed this 10th day of November, 2011, at San Diego, California.

Linda C. Beresford

Linda C. Beresford