



May 16, 2012

VIA E-MAIL

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Re: Comments on Tentative Order for 622-630 Jackson Street, Fairfield CA

Dear Messrs. Wolfe and Aue:

This office represents Ann Lewczyk, as personal representative of the Michael McInnis Revocable Trust and Robert Dittmer with respect to the environmental matters that have arisen with respect to Mr. McInnis and Mr. Dittmer's ownership of 625 Jackson Street, Fairfield, CA ("Site"). This office is in receipt of the Tentative Order issued as against 622-630 Jackson Street, Fairfield, CA ("Site") by the California Regional Water Quality Control Board, San Francisco Bay Region, ("RWQCB"), with respect to the Site. Set forth below are my clients' comments to the Tentative Order for this Site. For ease of reference my clients' comments will be set forth after the enumerated headings. The enumerated headings, to which the following comments are applicable, are set forth below in the same manner in which they appear in the Tentative Order.

2.a. Business Operations

The Tentative Order states that: *"Currently available information indicates that Gillespie Cleaners used Stoddard solvent in their dry cleaning operations, because this was the predominant chemical used at similar businesses during this period".*

"Advertisements in the local paper stated that they would be using new equipment with state of the art methods at this new facility, suggesting a change to the use of PCE in their dry cleaning operations at the new location."

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Evidence cited by the RWQCB, i.e. local newspaper advertisements regarding "*state of the art equipment*" and "*state of the art methods*", are vague, ambiguous, and insufficient to rule out the fact that PCE and/or other VOCs may have been used in the operations of Gillespie Cleaners, as either spotting chemicals (pre-dry cleaning agents) or the dry cleaning solvent itself. To date, this office has not seen such an advertisement and would request that the RWQCB provide this information.

The RWQCB's conclusion that this advertisement, in fact, directly related to Bernard Gillespie Cleaner's change from Stoddard solvent operations to the use of PERC is mere speculation on the part of the RWQCB. In fact, in this time period various new changes to dry cleaning equipment and dry cleaning operations were taking place, other than the change from Stoddard solvent to PERC. For example, during this time period dry cleaners were making many changes in their operations, such as: (1) the introduction of a combination washer/extractor dry cleaning machines; (2) the introduction of PERC reclaimers; (3) the use of flat screen filters; (4) changing from TCE solvent use to carbon tetrachloride solvent use; and (5) switching from the use of carbon tetrachloride solvent to PERC solvent. Additionally, it is common knowledge that PERC was introduced as a dry cleaning agent in approximately 1934 and that as of 1940, 12 million pounds of PCE was being used in the U.S. by the dry cleaning industry per year. By 1940 annual carbon tetrachloride use by the U.S. dry cleaning industry was estimated to be 45 million pounds versus the 12 million pounds of PERC and 5 million pounds of trichloroethylene (Michelsen, 1957).

In short, evidence collected to date certainly cannot rule out the fact that Bernard Gillespie Cleaners may have used PCE, TCE, carbon tetrachloride and/or other chlorinated solvents at the Site for either spotting operations, dry cleaning operations, or both. For these reasons, the operations of Gillespie Cleaners cannot be ruled out as a source of the chlorinated solvent contamination that is present at the Site and any Order adopted by the RWQCB with respect this Site should require that all groundwater samples be analyzed by both EPA Method 8260 and EPA Method 8015.

The Tentative Order states that "[I]nformation provided in sworn depositions by the former operators of Solano Printers and Fairfield Printing Company indicates that only alcohol based cleaners were used in their operations." It is unknown where RWQCB obtained this information, however this statement is false and misstates the deposition testimony of a former owner of Solano Printers & Lithographers.

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To date not one operator of Fairfield Printing Company has been deposed. To date, not one operator of Solano Printers has been deposed. On November 3, 2011, a former owner, of Solano Printers & Lithographers, was deposed by this office. The former owner of Solano Printers & Lithographers testified that he, personally, never operated any of the printing presses at the Site during the time that he owned Solano Printers & Lithographers. He further testified that he had no role in the operations of Solano Printers & Lithographers. He testified that he was never involved in any of the cleaning operations of any of the presses during the time that Solano Printers & Lithographers operated at the Site. He testified that he had no knowledge regarding any of the chemicals, washes, or solvents used in the operations at the Site. Additionally, he testified that it was a Mr. Jack Whalley who was the person in charge of cleaning the presses and ordering solvents during the operations of Solano Printers & Lithographers.

The former owner of Solano Printers & Lithographers did testify that, in general, when one cleans an automatic feed press, similar to one of the presses that operated at the Site, *"You scoop the ink out, put it in a can, take material or solvent, and clean up the rollers."* The deponent also testified that based upon his understanding, and years of experience in the printing industry, solvents would have been used in the operations of Solano Printers and Lithographers. Although he did testify he did not recall whether solvents were used at the Site, he did testify that, *"it would be impossible to run a print shop without using some."* He further testified that although he didn't *"really recall"* if solvents were used, based upon his years of experience in the printing industry solvents would have been used during the operations of Solano Printers & lithographers at the Site.

This deponent never testified that only "alcohol based" solvent was used. In fact, the only testimony provided by the deponent, in this respect, was his testimony regarding cleaning the roller train on one of the presses that operated at the Site.¹ He testified that in cleaning the hand press, *"You would take a chemical of some kind, a clear liquid. If I remember, it was kind of alcohol-based, had kind of a strong odor."*

Based upon a reading of the entirety of this deponent's testimony it is clear that, while the deponent could not identify what types of solvents were used, he did testify that, based upon his experience in the printing industry, solvents would have been used in the operations of Solano Printers & Lithographers.

¹ The deponent testified that the operations of Solano Printers & Lithographers at 622/630 Jackson Street utilized at least one letterpress, a hand press, "a hot metal machine or two", probably a Linotype machine, "one word and hot metal type setting cases". In addition to this testimony, there is additional evidence that an off- set press was used at this Site during both Solano Printers & Lithographers operations and the operations of Fairfield Printing Company.

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The statement that only alcohol based cleaners were used in the operations of Solano Printers and Fairfield Printing Company is false and not supported by the limited evidence collected to date. Thus, Fairfield Printing Company and Solano Printers & Lithographers should also be named as dischargers as the evidence does not support the RWQCB's statement that Solano Printers & Fairfield Printing Company, only used alcohol based cleaners in their operations. The RWQCB cannot rule out Solano Printers and Fairfield Printing Company as dischargers based upon this incomplete and misleading statements.

3. Named Dischargers

The Tentative Order states that no operators of the Site, subsequent to the Gillespie Cleaners' operators, used Stoddard Solvent.

The Tentative Order states: *"The previous operators of Solano Printers and Fairfield Printing Company are not named as dischargers because they used alcohol as a cleaning solvent and alcohol compounds are not contaminants of concern at the Site"*.

Again there has been no testimony provided by any of the operators of "Solano Printers". There has been no testimony provided by any of the operators of Fairfield Printing Company. Additionally, not one person has testified that alcohol was used as a cleaning solvent.

The only deponent who has testified on this subject testified that in general, in cleaning a hand press, *"You would take a chemical of some kind, a clear liquid. If I remember, it was kind of alcohol-based, had kind of a strong odor"*. Again, this deponent testified that he had no role in the operations of Solano Printers & Lithographers and was never involved in any of the cleaning operations of any of the presses during the time that Solano Printers & Lithographers operated at the 622-630 Jackson Street location,

The RWQCB cannot adopt an Order that extricates Solano Printers & Lithographers and Fairfield Printing Company, companies that, combined, operated at this Site for over a decade. The evidence, cited and relied upon by the RWQCB in support of its position to not name Solano Printers and Fairfield Printing Company as dischargers, is misleading, incomplete and completely misstates the testimony of this deponent.

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6. Remedial Investigations

The Tentative Order indicates that: “[D]iscontinuities in sewer lines have resulted in a release of contaminants to the environment.” It is unclear if this statement is merely a general statement regarding sewers in general or if this is a statement that is directed to the particular sewer lines at the Site. This ambiguity should be clarified prior to the adoption of any Order. If this statement is intended to reflect the conditions of any sewer lines (laterals and/or mains) at, or in the vicinity of the Site, please provide the factual information on which this statement is based.

The Tentative Order further states: “*The absence of VOCs in the soil, soil gas, and shallow groundwater samples, adjacent to the building but away from the sewer suggests that VOCs were not discharged at this Site.*”

To date, the only investigation that has taken place at the Site has been conducted by this office by way of the lawsuit my clients have filed. Our office demanded a site inspection of this Site in August of 2011 in order to collect a limited number of samples as an initial process for determining whether hazardous substances were present in soil, soil vapor and groundwater samples.

Additionally, several of the locations initially selected to collect shallow groundwater samples had to be relocated based upon the limited amounts of accessible groundwater, and the time constraints associated with this inspection. Further, the borings for this investigation were located outside of the current building on the easterly boundary of the property line. Additional information gathered to date, which has been provided to RWQCB upon RWQCB’s request, indicates that the former Gillespie’s dry cleaning building was demolished and was formerly located within what is now the footprint of the current building.

To date, no sampling has been conducted within or below the location of the actual building where it is suspected that dry cleaning operations occurred. As such, the RWQCB should require that these dischargers conduct a similar investigation as that that has been required for Fairfield Cleaners. Any Order issued with respect to this Site should require the installation of borings within the current building, at the approximate location of the Gillespie Dry Cleaning Building, in order to confirm or deny the presence of VOCs in shallow soil, soil gas and groundwater.

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SELF MONITORING PROGRAM

2. Monitoring

The Tentative Order states that shallow and intermediate groundwater samples from new wells shall be analyzed by EPA Method 8015. Based upon the locations and constrictions related to the previous limited site investigation, as well as the testimony of the former owner of Solano Printers & Lithographers, in conjunction with common knowledge regarding solvents used in the dry cleaning and printing operations, it is likely that VOCs are present at locations near the former Gillespie Dry Cleaning building, as well as other locations at the Site. As such, EPA Method 8015 is not sufficient to detect the presence of these chemicals and these named dischargers, like the other discharges should be required to perform EPA 8260 analysis as well. Additionally, any Order issued by the RWQCB with respect to this Site should require that chromatograms be included with all lab reports.

Please do not hesitate to contact me if you have any questions regarding any of the aforementioned comments to this Tentative Order.

Sincerely,

ISOLA LAW GROUP, LLP



Doyle Graham

DG/mdr