CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER NO. R2-2011-0034

HYUNG KEUN SUN AND YEO NAM SUN

FOR THE PROPERTY LOCATED AT:
400 EAST SANTA CLARA STREET
SAN JOSE, SANTA CLARA COUNTY, CALIFORNIA

This Cleanup and Abatement Order is issued to HYUNG KEUN SUN and YEO NAM SUN (hereafter "Dischargers") based on provisions of California Water Code ("CWC") sections 13304 and 13267, which authorize the Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board") to issue a Cleanup and Abatement Order ("Order") where a discharger has caused or permitted waste to be discharged or deposited where it is or will likely be discharged into waters of the state and United States, and to require the submission of technical reports.

1. **Purpose of Order:** This Order requires the characterization and cleanup of petroleum and chlorinated hydrocarbon contamination at a dry cleaning facility, which was formerly an automotive sales facility, an automotive repair facility, and a retail gasoline station.

2. **Site Location and Description:** The Dischargers own the property at 400 East Santa Clara Street in the City of San Jose, Santa Clara County. The property is approximately 4,500 square feet, on the corner of East Santa Clara Street and South 9th Street (see attached Figure 1). The dry cleaning facility Art Cleaners operates at the Site. The Site is located in a mixed residential and commercial area located within a block of San Jose State University, with residences and other sensitive receptors in the immediate vicinity. Saint Patrick Elementary School is 0.1 mile northwest, and Horace Mann Elementary School is 0.2 mile west from the Site. Coyote Creek is approximately 0.5 miles northeast. The San Francisco Bay Basin Water Quality Control Plan ("Basin Plan") designates groundwater in this area as having municipal, industrial process/service water supply, and agricultural beneficial uses. There are eight active water supply wells within a one-mile radius of the Site.

3. **Responsible Parties:** The Dischargers, Mr. HYUNG KEUN SUN and Mrs. YEO NAM SUN, own the Site, having purchased it in 1995. Property records indicate they remain the current owners. The Santa Clara Valley Water District identified the Dischargers as property owners and dischargers for investigation and cleanup of the Site during the District's oversight of environmental activities from 2002 to 2005. The Regional Water Board took over regulatory oversight in 2005 and has since named the Dischargers as the responsible parties in Order No. R2-2010-0003 after an evidentiary hearing before the Regional Water Board.

4. **Basis of Order:** Pollution from activities on the Site requires further investigation, cleanup and abatement. The volatile organic compounds released on the Site are recalcitrant; they are not likely to diminish significantly due to the passage of time. Regulatory agencies have directed the Dischargers to investigate and characterize the pollution reported at the Site since 2002

without success. The pollutants on the Site are not yet characterized, require further investigation, and may require cleanup and abatement.

a. A *Phase I Environmental Site Assessment Report* identified that the Site was used for auto service, auto sales and a gasoline station from 1932-1965, and dry cleaner operations from 1967 to present. (*Phase I Environmental Site Assessment Report*, PIERS Environmental Service, Inc., September 11, 2002.)

b. A *Phase II Subsurface Investigation Report* noted the presence of pollutant chemicals associated with the historic land use. (*Phase II Subsurface Investigation Report*, PIERS Environmental Services, Inc., September 23, 2002). In addition, the report identified the possible presence of a buried underground storage tank at the Site.

   (1) Petroleum hydrocarbons are chemicals known to be associated with service stations and are present at the Site above screening levels. Gasoline, benzene, toluene, ethylbenzene and xylene were detected in groundwater samples collected from the Site at concentrations of 19,300 µg/L, 4.6 µg/L, 296 µg/L, 114 µg/L, 438 µg/L, respectively. These concentrations exceed (by up to two orders of magnitude) the Regional Water Board's 2008 Environmental Screening Levels (ESLs)[1] for groundwater in commercial/industrial settlings, and have the potential to threaten human health via an inhalation and/or ingestion exposure pathway.

   (2) Chlorinated hydrocarbons are known to be associated with dry cleaner operations and are present at the Site. Methylene chloride and tetrachloroethylene (PCE) were detected in soil samples at concentrations of 0.4 mg/kg and 2.6 mg/kg, respectively. These concentrations exceed ESLs for soils in commercial/industrial settings.

c. The burden, including costs, to the Dischargers to provide the technical reports required by this Order is substantially outweighed by the benefit the reports will provide in determining the nature and extent of pollution caused by the chemicals identified above, and in evaluating the risks to human and ecological health, and threats to water quality and the environment. The technical reports are critical in developing a cleanup work plan to remove the pollutant chemicals. The contents of this Order provide a written explanation and identifies the evidence for why the technical reports are necessary pursuant to CWC section 13267(b)(1).

5. **Regulatory Status:** The Santa Clara Valley Water District maintained oversight of the Site until June 2005, when oversight was transferred to the Regional Water Board. Presently, the Dischargers remain subject to an investigative order issued in 2008, Administrative Civil Liability Order No. R2-2010-0003, and the Basin Plan.

   (1) The Santa Clara Valley Water District required the Dischargers to further investigate the Property in letters dated December 12, 2002, March 21, 2003, and March 25, 2004, based on data in the Phase II report. The Dischargers never complied.

[1] "Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater," San Francisco Bay Regional Water Quality Control Board, Interim Final, November 2007 (Revised May 2008).

(2) After informal requests, Regional Water Board staff issued a CWC section 13267 investigative order to the Dischargers on February 21, 2008 requiring a Site Investigation Work Plan by March 31, 2008, and a Site Investigation Completion Report by June 15, 2008. The investigative order was followed by a notice of violation on December 9, 2008, and Administrative Civil Liability Complaint No. R2-2009-0048 on October 15, 2009. After the evidentiary hearing attended by the Dischargers on January 13, 2010, the Regional Water Board issued Order No. R2-2010-0003 for $25,646 in administrative civil liability for failing to submit either report required in the investigative order. As of the date this Cleanup and Abatement Order is being issued, the Dischargers have not submitted either report, nor have they paid any part of the $25,646. The Dischargers continue to violate the investigative order and are now violating the Administrative Civil Liability Order.

(3) Basin Plan Prohibition number 6 prohibits any discharge of "[a]ll conservative toxic and deleterious substances, above those levels which can be achieved by a program acceptable to the Regional Board, to waters of the Basin." Paragraph 4.b.(1) and (2) above identifies the toxic and deleterious substances that exceed the Regional Water Board's 2008 Environmental Screening Levels (ESLs). The Dischargers are likely violating this Basin Plan Prohibition since the nature of the substances found in 2002 are such that they will have remained in the ground at the Site or migrated off-site, even over the passage of more than eight years.

(4) Basin Plan Prohibition number 13 prohibits any discharge of "[o]il or any residuary product of petroleum to the waters of the state, except in accordance with waste discharge requirements or other provisions of Division 7, California Water Code." The Dischargers are likely violating this Basin Plan Prohibition since the nature of the volatile organic compounds associated with petroleum hydrocarbons found at the Site in 2002 are such that they will have remained in the ground at the Site or migrated off-site, even over the passage of more than eight years.

6. **Adverse Impacts**: Pollutant chemicals detected at the Site exceed ESLs, and thus the Dischargers need to determine the nature and extent of pollution caused by the chemicals identified in paragraph 4.b.(1) and (2) to determine the risks to human and ecological health, and threats to water quality and the environment. Once these risks and threats are evaluated, then the Dischargers need to take corrective action, as appropriate. At present and until additional information is provided, the Regional Water Board has identified threats to the following:

   a. Groundwater: Pollutant chemicals detected in soil and groundwater at the Property threaten groundwater beneficial uses as identified in the Basin Plan.

   b. Indoor Air: Pollutant chemicals detected in soil and groundwater may migrate in a gas phase into surrounding buildings and threaten air quality. The buildings surrounding the Site are used for commercial businesses, residential housing, and schools.

   c. Surface Water: The pollutants may migrate to surface water, most notably Coyote Creek, located 0.5 miles to the northwest of the Property.

IT IS HEREBY ORDERED, pursuant to California Water Code sections 13267 and 13304, that the Dischargers, or their agents, successors, or assigns, shall submit technical reports and cleanup the waste discharges, abate its effects, and take other remedial corrective actions as follows.

A. PROHIBITIONS

1. The discharge of any wastes and/or hazardous substances in any manner that may degrade water quality or adversely affect beneficial uses of waters of the state is prohibited.

2. Migration of wastes and/or hazardous substances through subsurface transport to waters of the state is prohibited.

3. Activities associated with the subsurface investigation and cleanup that may cause migration of wastes and/or hazardous substances are prohibited.

4. It is prohibited to store, handle, treat, or dispose of polluted soil or groundwater in any manner that creates a nuisance as defined in California Water Code section 13050(m).

B. CLEANUP AND ABATEMENT TASKS

For the following tasks, pending the establishment of site-specific cleanup standards, the Dischargers shall use the following preliminary cleanup levels to determine the necessary extent of remedial investigation, interim remedial action, and the draft remedial action plan.

Groundwater: Applicable screening levels, such as those contained in the Regional Water Board's ESLs document. Groundwater screening levels shall incorporate at least groundwater ingestion and vapor intrusion to indoor air exposure pathways. For groundwater ingestions, the Dischargers shall use applicable water quality objectives (e.g., lower of primary and secondary maximum contaminant levels ("MCLs")) or, in the absence of a chemical-specific objective, equivalent drinking water levels based on toxicity, taste, and odor concerns.

Soils: Applicable screening levels such as those contained in the Regional Water Board's ESLs document. Soil screening levels are intended to address a full range of exposure pathways, including direct exposure, nuisance, and leaching to groundwater. The Dischargers shall assume that groundwater is a potential source of drinking water.

Soil Gas: Applicable screening levels such as the Regional Water Board's ESLs document. Soil gas screening levels are intended to address the vapor intrusion to indoor air pathway.

1. SOURCE IDENTIFICATION AND REMEDIAL INVESTIGATION WORK PLAN

COMPLIANCE DATE: OCTOBER 1, 2011

The Dischargers shall submit a work plan acceptable to the Executive Officer to:

a. Inventory chemicals presently used on the Site (by name and volume).

b. Identify all pollution sources on the Site, including chemical storage areas, sumps, underground tanks, utility lines, and related facilities.

c. Define the vertical and lateral extent of soil, soil gas, and groundwater pollution. The work plan shall specify investigation methods and a proposed time schedule. Work may be phased to allow the pollutant characterization to proceed efficiently.

2. IMPLEMENT AND COMPLETE SOURCE IDENTIFICATION AND REMEDIAL INVESTIGATION WORK PLAN; SUBMIT TECHNICAL REPORT

COMPLIANCE DATE: JANUARY 31, 2012

The Dischargers shall submit a technical report acceptable to the Executive Officer documenting that they have completed the tasks identified in Source Identification and Remedial Investigation Work Plan. The technical report shall identify confirmed and possible sources of pollution, and shall define the lateral extent of pollution down to concentrations at or below typical cleanup standards, such as ESLs, for soil, soil gas, and groundwater.

3. INTERIM REMEDIAL ACTION WORK PLAN

COMPLIANCE DATE: MARCH 31, 2012

The Dischargers shall submit a work plan acceptable to the Executive Officer to evaluate interim remedial action alternatives, and to recommend implementing one or more of the alternative plans. The Interim Remedial Action Work Plan shall specify a proposed time schedule. Work may be phased to allow the pollutant characterization to proceed efficiently. If groundwater extraction is selected as an interim remedial action, then the Dischargers shall complete a National Pollutant Discharge Elimination System ("NPDES") permit application to discharge extracted, treated groundwater to waters of the United States. The application shall demonstrate that neither reclamation nor discharge to the sanitary sewer is technically or economically feasible pursuant to Regional Water Board Resolution No. 88-160.[2]

4. IMPLEMENT AND COMPLETE INTERIM REMEDIAL ACTIONS; SUBMIT TECHNICAL REPORT

COMPLIANCE DATE: SEPTEMBER 30, 2012

The Dischargers shall submit a technical report acceptable to the Executive Officer documenting that they have completed the tasks identified in the Interim Remedial Action Work Plan. For ongoing actions, such as soil vapor extraction or groundwater extraction, the report shall document when the actions were started, and that the actions are on-going.

5. REMEDIAL ACTION PLAN INCLUDING CLEANUP STANDARDS

COMPLIANCE DATE: MARCH 31, 2013

The Dischargers shall submit a technical report acceptable to the Executive Officer containing:

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[2] Available at: http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/res/res_88-160.pdf

a. Summary of remedial investigation;

b. Summary of risk assessment, if applicable;

c. Evaluation of the installed interim remedial actions;

d. Feasibility study evaluating alternative final remedial actions, including cost projections, effectiveness, benefits, and impact on public health, welfare, and the environment for each alternative action,;

e. Recommended final remedial actions and cleanup standards, considering the preliminary cleanup goals for soil, soil gas, and groundwater identified in paragraph B. Cleanup and Abatement Tasks; and

f. Implementation tasks and time schedule.

Items a. through d. shall be consistent with the guidance provided by Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300); Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") guidance documents with respect to remedial investigations and feasibility studies; California Health and Safety Code section 25356.1(c); and State Water Resources Control Board ("State Water Board") Resolution No. 92-49 as amended ("Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304").[3]

6. IMPLEMENT AND COMPLETE REMEDIAL ACTIONS; SUMBIT TECHNICAL REPORT

COMPLIANCE DATE: SEPTEMBER 30, 2013

The Dischargers shall submit a technical report acceptable to the Executive Officer documenting that they have completed the tasks identified in the Remedial Action Work Plan. For ongoing actions, such as soil vapor extraction or groundwater extraction, the report shall document when the actions were started, and that the actions are on-going.

C. NOTIFICATIONS & PROVISIONS

1. **Cost Recovery:** The Dischargers are and shall be liable, pursuant to California Water Code section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board and associated agencies to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. Such costs include, but are not limited to, staff time for investigation of the discharger, preparation of this Order, review of reports and correspondence submitted pursuant to this Order, work to complete the directives specified in this Order, and communications between Regional Water Board staff and parties associated with the cleanup and abatement of the discharges wastes, including the Dischargers, interested members of the public, and other regulatory agencies. If the Site Order is enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and

[3] Available at: http://www.waterboards.ca.gov/water_issues/programs/land_disposal/resolution_92_49.shtml

according to the procedures established in that program. Any disputes raised by the discharger over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.

2. **Contractor/Consultant Qualifications:** The Dischargers' reliance on qualified professionals promotes proper planning, implementation, and long-term cost-effectiveness of investigation, and cleanup and abatement activities. Professionals shall be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgment be performed by or under the direction of licensed professionals.

3. **Lab Qualifications:** All samples shall be analyzed by state-certified laboratories or laboratories accepted by the Regional Water Board using approved U.S. Environmental Protection Agency methods for the type of analysis to be performed. This provision does not apply to analyses that can only reasonably be performed on-site (e.g., temperature).

4. **Report Any Changes in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Site's ownership or occupancy. This report shall be filed with the Regional Water Board within 30 days following a change.

5. **Delayed Compliance:** The Dischargers shall notify the Regional Water Board Executive Officer if they are delayed, interrupted, or prevented from meeting any of the compliance dates specified in this Order or a key milestone in their approved Corrective Action Plans. The Dischargers may request in writing an extension for compliance dates, stating the basis for their request and what new compliance dates they are requesting.

6. **Good Operation and Maintenance (O&M)**: The discharger shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.

7. **Electronic Reporting:** In addition to print submittals, all reports submitted pursuant to this Order must be submitted as electronic files in PDF format pursuant to California Water Code section 13196. The Dischargers shall upload reports and submit groundwater analytical data, surveyed locations of monitoring wells, and other data to the State Water Board's GeoTracker database.[4]

8. **Reporting of Hazardous Substance Release:** If any hazardous or toxic substance is discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, the Dischargers shall report such discharge to the Regional Water Board (in addition to reporting to the California Emergency Management Agency, pursuant to the California Health and Safety Code). To report, call (510) 622-2369 during regular office hours, and file a written report within five working days.

9. **California Environmental Quality Act (CEQA):** This enforcement action is being undertaken by a regulatory agency to enforce a water quality law. Such action is categorically exempt from

[4] Information on how to submit electronic information may be found at http://geotracker.waterboards.ca.gov/

provisions of the California Environmental Quality Act ("CEQA") according to Guidelines section 15321 in Article 19, Division 3, Title 14 of the California Code of Regulations. This Order requires the submittal of detailed work plans that address cleanup activities. The proposed activities under the work plans are not yet known, but implementation of the work plans may result in significant physical impact to the environment that must be evaluated under CEQA. The appropriate lead agency will address the CEQA requirements prior to implementing any work plan that may have a significant impact on the environment.

10. **Enforcement:** If, in the opinion of the Executive Officer, the Dischargers fail to comply with the requirements of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of administrative civil liability up to $1,000 per day for each day the report is not received under CWC section 13268 and up to $5,000 for each day of violation under CWC sections 13350. This Order does not supersede or alter the investigative order issued February 21, 2008, nor does it have any effect on Administrative Civil Liability Order No. R2-2010-0003. The Regional Water Board reserves its right to take any enforcement actions authorized by law.

11. **State Water Board Petition:** Any person aggrieved by this action may petition the State Water Board to review the action in accordance with California Water Code section 13320 and Title 23, California Code of Regulations, section 2050 et al. The State Water Board, Office of Chief Counsel, must receive the petition by 5:00 p.m. 30 days after the date this Order becomes final (if the thirtieth day falls on a weekend or State holiday, the petition must be received by the next business day).[5] This Order is effective upon the date of signature.

12. **Periodic SCR Review:** The Regional Water Board may review this Order periodically and may revise it when necessary.

Digitally signed by Bruce Wolfe
Date: 2011.08.30 11:51:30 -07'00'

Bruce H. Wolfe
Executive Officer

Attachment: Figure 1: Site Plan

[5] Instructions for petitioning will be provided upon request or you may view them at: www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml
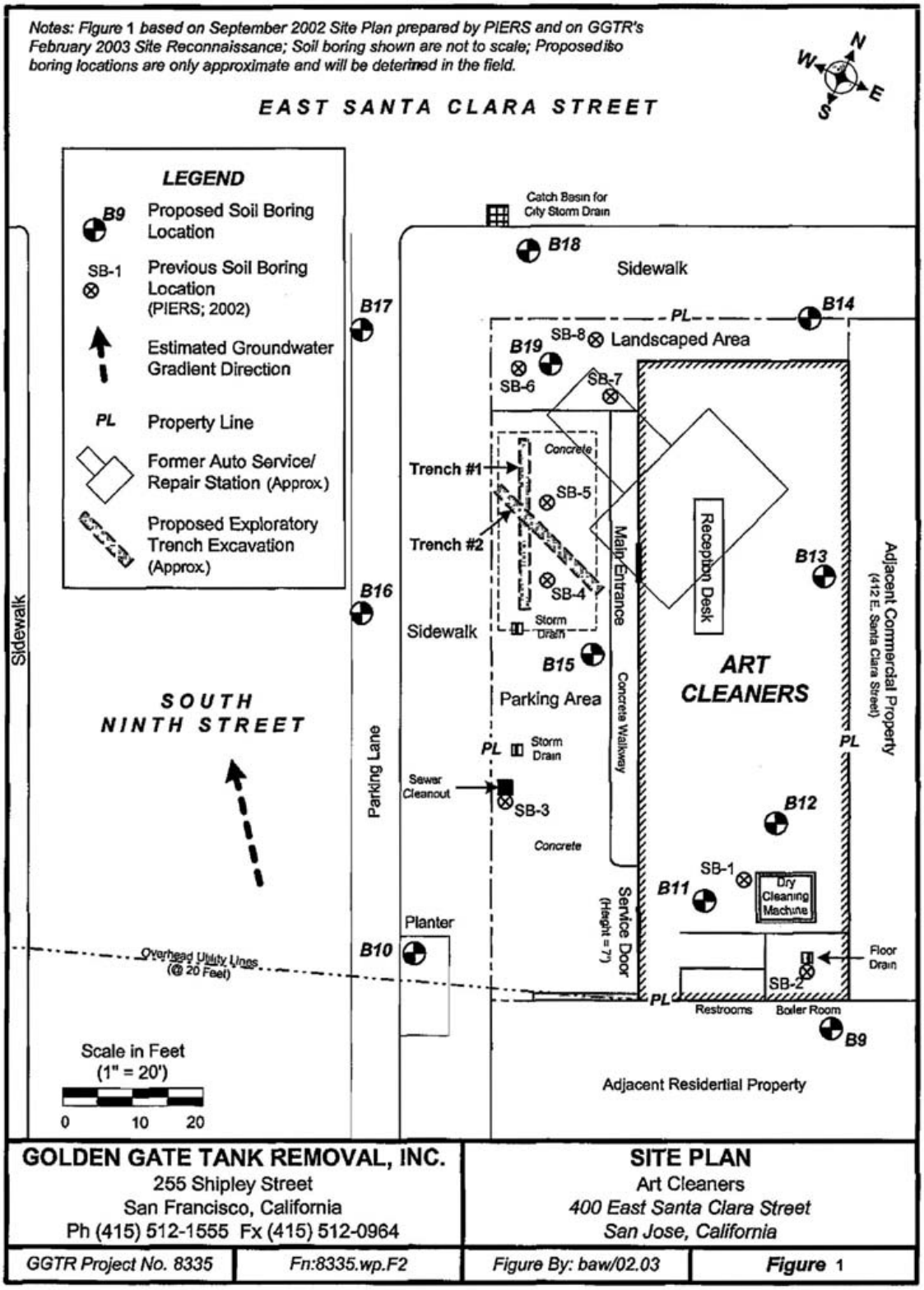
Figure 1: Site Plan