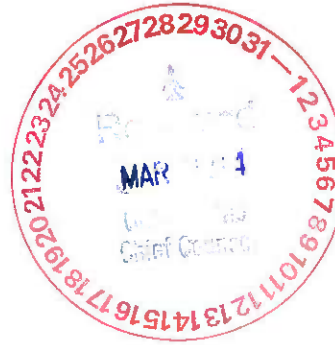


PAUL HASTINGS

(415) 856-7033
christophermooney@paulhastings.com



March 27, 2014

75559.00002

VIA EMAIL AND UPS OVERNIGHT

State Water Resources Control Board
Office of Chief Counsel
Jeannette L. Bashaw, Legal Analyst
1001 I Street, 22nd Floor
Sacramento, CA 95814

Re: **Petition for Review of Action by North Coast Regional Water Quality Control Board dated February 27, 2014 – Issuance of Cleanup and Abatement Order No. R1-2014-0018 (Stony Point Cleaners, 469 Stony Point Road, Santa Rosa, Case. No. 1NS0898)**

Dear Ms. Bashaw:

This Firm represents Pacific Development Group and Pacific Investors Group (collectively, "Pacific") located at One Corporate Plaza, Newport Beach, CA 92660. On behalf of Pacific, we petition the State Water Resources Control Board to review the North Coast Regional Water Quality Control Board's issuance, on February 27, 2014, of a final Cleanup and Abatement Order in connection with the Stony Point Cleaners site located at 469 Stony Point Road in Santa Rosa, California. The Regional Board's CAO, transmittal letter, and Technical Memorandum are attached as Exhibit 1 to this petition.

Based on the complete absence of any evidence of any release or discharge of perchloroethylene ("PCE") during the period Pacific owned the subject property, Pacific objects to the CAO and finds that the Regional Board's action is without basis and in error. The CAO and Technical Memorandum state, in no uncertain terms, that the Regional Board "does not have the data to date the release[s]" and merely speculates that "standard practices *may have* resulted in a release." Citing no evidence of releases prior to 1987 – the exclusive period in which Pacific owned the site – it simply recites that "there is no evidence that there was not a release." This is not the proper legal standard for naming additional dischargers, and Pacific respectfully requests that the State Board reverse the Regional Board's action and amend the CAO to remove the Pacific entities as dischargers. Pacific is concurrently petitioning the Regional Board for reconsideration and has sent this petition to the Regional Board. We respectfully request that the State Board hold the appeal in abeyance while Pacific seeks reconsideration with the Regional Board.

BRIEF SITE HISTORY AND CASE OVERVIEW

Stony Point Cleaners is located at 469 Stony Point Road in Santa Rosa, California. It has been in continuous operation since 1981. The current operators, Stanley Kim and Do W. Lee, began operating the cleaners in April 1996. The current owner of the property, Dr. David Paslin (dba Ben Brett), took ownership in May 1985.

Prior to Dr. Paslin's current ownership, there were two prior owners: (1) Pacific, from May 1981 to February 1984, and (2) Stony Point Associates ("SPA"), from February 1984 to May 1985. Thus, there are **three total confirmed owners** of the Site, inclusive of the current owner Dr. Paslin.

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Prior to Mr. Kim and Ms. Lee's current operation of the cleaners, there were four prior operators: (1) Vicki A. Maffei (dba M.A.F., Inc.), from May 1981 to October 1981, (2) Elmer Knapp, from October 1981 to September 1984, (3) Tim Hahn, from September 1984 to October 1989, and (4) Helen T. Suk and Peter J. Suk, from October 1989 to April 1996. Thus, there are **five total confirmed owners** of the Site, inclusive of the current operators Mr. Kim and Ms. Lee.

In 2006, Dr. Paslin attempted to sell the shopping center housing Stony Point Cleaners, however, the sale fell through when environmental investigations identified PCE contamination in the soil and groundwater under the cleaners. The results of the site investigation were forwarded to the Regional Board, and in 2007 the Board named Dr. Paslin as a responsible party and required him to develop an investigation work plan to determine the extent of contamination and appropriate remedial measures.

Over the next six years, Dr. Paslin submitted **three separate requests** to the Regional Board seeking to have all prior owners and operators named as responsible parties. On the first two occasions – once in October 2009 and again in April 2011 – the Regional Board found **“insufficient evidence . . . to determine the date of the discharge, and consequently identify the facility owner(s)/operator(s) responsible for the discharge.”** See Exh. 3.A (Oct. 29, 2009 Letter from B. Lamb to Dr. Paslin); see also Exh. 3.B (Apr. 29, 2011 Letter from B. Lamb to Dr. Paslin) (citing “no information” or “documentation for naming additional responsible parties”).¹ Suddenly, without any hearing or request for evidentiary submissions from any of the prior owners or operators, on December 6, 2013, the Regional Board reversed course and issued a draft CAO naming all owners and operators as “dischargers” and requiring them to submit and implement workplans for the installation of interim remedial measures and indoor air monitoring. See Exh. 2 (Draft CAO).

The timing of the Regional Board's sudden reversal and issuance of the CAO is notable for several reasons. First, the draft CAO was issued in apparent response to Dr. Paslin's third written request dated November 11, 2013, which was not copied to Pacific or any other party. Thus, Pacific had no opportunity to present its case before the Board issued its order. Second, the Regional Board was aware that the parties were engaged in a lengthy related litigation in state court. That state court case was set for trial on January 3, 2014, and multiple defendants, including Pacific, had filed motions for summary judgment that were pending to be heard on December 12, 2013. Given the Regional Board's release of its draft CAO on December 6, 2013 – just weeks before trial and **on the same day the parties were meeting for a court-ordered settlement conference** – the timing of the Regional Board's decision is curious. Despite **five years of litigation**, Dr. Paslin was unable to produce any evidence of the dates of alleged releases. Indeed, Defendants' motions for summary judgment were never ruled upon by the Court, because **Dr. Paslin voluntarily dismissed his lawsuit immediately prior to the hearing**. The state court case never went to trial, and Pacific paid no settlement monies, fees or costs to Dr. Paslin.

THE REGIONAL BOARD'S ACTION WAS IMPROPER AND NOT SUPPORTED BY ANY EVIDENCE

The Regional Board's Technical Memorandum and CAO contain no information or evidence regarding the dates of alleged discharges at the site, and certainly not as far back as the early 1980s when Pacific owned the property. There is therefore no factual basis for naming Pacific a “discharger” or a

¹ Exhibit 3 to this petition contains Pacific's full submission to the Regional Board in response to its draft CAO issued December 6, 2013. The exhibits accompanying that submission were lettered A through P. Thus, a reference to “Exhibit 3.A” is intended to direct the State Board to Tab A behind Exhibit 3.

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"responsible party" under relevant statutes and regulations. In response to specific comments and affirmative evidence submitted by Pacific demonstrating that responsibility for any releases or discharges lies with the current operators Ms. Lee and Mr. Kim, the Regional Board's cursory responses are deficient and improperly shift the burden to Pacific to prove an *absence* of discharges.

The practical effect of the CAO is to require Pacific and similar owners to prove a negative, namely, that releases *did not* occur under its watch. This places an insurmountable burden on Pacific and other owners. Under the Regional Board's construct, any owner or operator of a dry cleaning business dating back 30-plus years may be named as a "discharger" without *any* actual proof – even the slightest tangible evidence – of a discharge. Mere inference or speculation of discharge is sufficient. This construct defies logic, and, more importantly, runs afoul of the legal standard applicable to naming dischargers under the relevant statutes. This action merits State Board review.

SPECIFIC FINDINGS BY THE REGIONAL BOARD WARRANTING REVIEW AND REVERSAL

In issuing the final CAO, the Regional Board attributed discharges to each and every owner that has ever worked at or owned Stony Point Cleaners. The CAO concludes that discharges of PCE occurred as far back as 1981 when the cleaners first opened. In fact, no such evidence of discharges exists.

Indeed, the first mention of *any* site inspection or other evidence even implying a discharge at the site is an inspection by the Santa Rosa Fire Department in 1987. The CAO does not state that the 1987 inspection is evidence that unlawful discharges occurred,² but even assuming the inspection could be construed as such evidence, this inspection took place **over three years after Pacific sold the property**. Further, while operator testimony by Tim Hahn provided in the state court litigation could arguably be construed as evidence of discharge, Mr. Hahn began operating the cleaners **seven months after Pacific sold the property**.³ Absent the 1987 inspection and Mr. Hahn's testimony – which concerns events long after Pacific sold the property – there is no evidence tying any discharge or release of PCE to the time period Pacific owned the property (May 1981 to February 1984). **There is no operator testimony, inspection report, environmental testing, photograph, notice of violation from any regulatory agency, or any other evidence of a discharge or release from 1981 to early 1984 at Stony Point Cleaners. None.**

Despite this undisputed fact – one that is compelling enough for Dr. Paslin to have voluntarily dismissed his state court action – the Regional Board has named Pacific a "discharger" and issued a final CAO. Pacific addresses each of the Regional Board's unsupported findings from the CAO below and requests the State Board closely review each finding for error:

² The 1987 inspection merely directed the operator at the time, Mr. Hahn, to "secondarily contain perchlorethylene containers." See Exh. 4 (Santa Rosa Fire Department Inspection Form). The inspection did not identify any violations such as a "discharge," "release," or "improper disposal" of PCE.

³ In his November 11, 2013 submission to the Regional Board, Dr. Paslin included selected excerpts from Mr. Hahn's deposition that were liberally edited and taken out of context, and which gave the misleading impression that Mr. Hahn's actions caused PCE releases at the site. When read in its entirety, however, Mr. Hahn's testimony relates to his general experience as a dry cleaner over a 30-year career, not to any specific recollection of events during his time at Stony Point Cleaners.

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Finding One: "All former operators of the Stony Point Dry Cleaner facility used a dry cleaning solvent containing PCE and therefore are suspected of discharging PCE to the subsurface. Landowners are also responsible for discharges on their property whether or not they personally caused the discharge." Technical Memorandum, at 2.

The Regional Board's finding that an operator's mere use of PCE means that he or she is "suspected of discharging PCE to the subsurface" defies logic and is not based on any evidence. See Exh. 1 (Technical Memo., at 2). Under the Regional Board's formulation, every dry cleaning operator in the State of California that uses or has ever used PCE, past or present, is a *de facto* "discharger" responsible for any prior, current, or future contamination found at a dry cleaning site. This standard is untenable and inconsistent with what the law requires for formally naming dischargers. See Cal. Water Code § 13304(c)(1); *Santa Clara Valley Water Dist. v. Olin Corp.*, 655 F. Supp. 2d 1048, 1064 (N.D. Cal. 2009) ("Section 13304 must be construed in a light of common law nuisance, which requires a showing of causation"); see also *City of Modesto Redevelopment Agency v. Superior Court*, 119 Cal. App. 4th 28, 37-38 (2004) (same); see also Cal. Water Code § 13267(b)(1) (requiring the Board to "identify the evidence that supports requiring [an alleged discharger] to provide [mandated] reports."). Simply put, "use" of a substance does not equate with "discharge" of a substance, and the Regional Board has no evidence that discharges of PCE occurred during the time Pacific owned the property (pre-1984).

Finding Two: "There is no evidence to show that prior to the first inspection [in 1987] that earlier operators were not using the same practices which led to a release to the subsurface." Technical Memorandum, at 3.

This finding, in response to comments submitted by subsequent owner SPA, does not constitute evidence of a release at the site prior to 1987. See Exh. 1 (Technical Memo., at 3). The Regional's Board finding implies (without citation to evidence) that the 1987 inspection turned up evidence of improper dry cleaning practices and possible PCE discharges. Even if this fact was established (it is not), in 1987 the property was under the ownership of Dr. Paslin and the operation of Tim Hahn, who ran Stony Point Cleaners exclusively **after** Pacific had sold the property. Thus, even if releases could be attributed to Mr. Hahn's dry cleaning practices, those practices occurred **months or years after Pacific sold the property**, and the Board cannot simply infer or imply that releases occurred prior to Mr. Hahn's tenure beginning in September 1984 without any evidence confirming that fact.

Finding Three: "[F]ormer owners and operators of the Stony Point Dry Cleaner facility used a dry cleaning solvent containing PCE and therefore are suspected of discharging PCE to the subsurface." Technical Memorandum, at 3.

This finding, like Finding No. 1, is in error. The Regional Board's oversimplification and misstatement of the proper test for naming dischargers under the Water Code relies on nothing more than mere speculation. If the mere fact that an owner or operator uses PCE is sufficient for the Board to determine that he or she is "suspected of discharging [that] PCE to the subsurface," then the Board would be required to issue a CAO for every dry cleaning site in the State of California that uses, or has ever used, PCE in its operations. This impracticable result is unrealistic and unfair to dry cleaning businesses that are permitted to use PCE so long as they comply with applicable storage and disposal regulations.

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Finding Four: “There is evidence that there were multiple sources for soil and groundwater contamination. It is not possible to date the age of all the releases. Standard dry cleaning operations prior to enforcement of regulations were known to have impacted soil and groundwater.” Technical Memorandum, at 4.

Here, in response to comments submitted by Pacific to the Regional's Board draft CAO, the Board acknowledged that it cannot “date the age of all the releases.” See Exh. 1 (Technical Memo., at 4). Twice previously, this lack of evidence pinpointing the date of releases was sufficient for the Regional Board to conclude that it could not name additional dischargers or responsible parties other than the current site owner Dr. Paslin. Now, however, without citation to any specific evidence or proof of discharge by the operators in business during the time Pacific owned the property (M.A.F., Inc. and Elmer Knapp), the Regional Board has concluded that those operators are “dischargers” and that Pacific bears ownership liability. This finding is completely unsupported by the record in this case.

Finding Five: “There is no evidence that there was not a release. Most dry cleaners of this age had releases to the subsurface.” Technical Memorandum, at 4.

In response to Pacific's comment that there is a lack of evidence of PCE release during its period of ownership (May 1981 – February 1984), the Regional Board improperly shifted the burden to Pacific to prove there was not a release. See Exh. 1 (Technical Memo., at 4). The Regional Board's response is effectively no response at all. It does not rebut the overwhelming evidence showing that all PCE releases at the site are attributable to the current operators Mr. Kim and Ms. Lee, see Exhs. 3 and 3.D-3.J, nor does it constitute evidence that releases occurred under M.A.F., Inc.'s or Mr. Knapp's tenures as operators. See Cal. Water Code § 13267(b)(1) (requiring the Board to “identify the evidence that supports requiring [an alleged discharger] to provide [mandated] reports.”).

Finding Six: “The first inspection at this site was conducted in 1987 by the Santa Rosa Fire department. However, prior to that time standard practices may have resulted in a release at the site either through improper or proper use of chemicals. The fact that in 2002 there was evidence of improper disposal does not preclude the fact that these practices were a continuation of earlier practices. Staff does not have the data to date the release or more likely releases to the subsurface.” Technical Memorandum, at 4.

This finding in response to Pacific's comments is the strongest indication that the Regional Board has no evidence justifying its naming of pre-1987 owners or operators as “dischargers” at Stony Point Cleaners. Using hedging language, the Board finds that “standard practices *may have* resulted in a release” and concludes that evidence of a release in 2002 – a cease and desist order issued to current operator Stanley Kim (see Exh. 3.D) – “does not *preclude*” a finding of previous releases. See Exh. 1, (Technical Memo., at 4) (emphasis added). Further, **the Board again admits it does not have the data to date any releases of PCE at the site.** *Id.* Without this data or other corroborating evidence, the Board has no basis to name Pacific a “discharger” at Stony Point Cleaners. There is simply no evidence that discharges occurred during Pacific's ownership, or that Pacific – a distant, hands-off investment company located 400 miles from the cleaners – “caused or permitted” any discharge at Stony Point Cleaners that justifies entry of a CAO against it. Cal. Water Code §13304(a); see also *City of Modesto Redevelopment Agency*, 119 Cal. App. 4th at 37-43 (construing §13304 in light of common law principles bearing on nuisance and finding that those who take affirmative steps toward improper discharge of waste may be held liable, but those who merely place solvents in stream of commerce may not).

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CONCLUSION

Pacific invites the State Board to review its entire submission to the Regional Board, which includes ample evidence that PCE discharges occurred during current operations by Stanley Kim and Do W. Lee, who began at Stony Point Cleaners in 1996. These materials include:

- Cease and desist order from the City of Santa Rosa dated April 29, 2002 finding Mr. Kim in violation of the Sewer Use Ordinance and Wastewater Discharge Permit by discharging wastewater containing PCE into the sanitary sewer. See Exh.3.D.
- Two citations from the Bay Area Air Quality Management District to Mr. Kim from 2002 and 2006 for violations involving vapor leaks from the dry cleaning machine. See Exh. 3.E.
- Various customer complaints of chemical smells at Stony Point Cleaners from the mid-2000s and correspondence from owner D. Paslin admonishing Mr. Kim's operations. See Exhs. 3.F-3.I.
- Photographs from a site inspection of Stony Point Cleaners conducted on November 20, 2013 showing an unkempt tenant space with old, corroded equipment and cracks throughout the concrete floor. See Exh. 3.J.

By contrast, Pacific is aware of **no violations, cease and desist orders, or inspections** by any state or local regulatory body at Stony Point Cleaners during the period Pacific owned the property (May 1981 to February 1984). Taken together, the overwhelming evidence discovered during site investigations weigh against the Regional Board's action of naming all former owners and operators of Stony Point Cleaners as dischargers. The Regional Board was correct six years ago when it named only the current owner, Dr. Paslin, as a responsible discharger. It was also correct when it subsequently affirmed that decision twice and refused to name additional dischargers because the evidence does not support a conclusion that discharges of PCE occurred any time before the current operator's tenure. While the evidence supports the additional naming of current operators Stanley Kim and Do W. Lee as dischargers – and possibly operators as far back as Tim Hahn based on the Regional Board's vague reference to the 1987 site inspection – there is absolutely no basis for naming Pacific or the operators in business during its ownership as dischargers. The Regional Board has cited no evidence, and none exists, establishing a release – or even suspected release – prior to February 1984.

We appreciate the opportunity to petition the State Board for review of the Regional Board's CAO. I am available to discuss any of these matters with you and may be reached at (415) 856-7033.

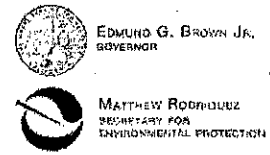
Very truly yours,



Christopher M. Mooney
for PAUL HASTINGS LLP

Attachments (via UPS delivery only)

EXHIBIT 1



North Coast Regional Water Quality Control Board

February 27, 2014

Pacific Development Group (PDG)
c/o Denis Berryman, Partner
One Corporate Plaza # 250
Newport Beach, CA 92660

M.A.F. Inc
c/o Vicki A. Maffei
46 El Bonito Way
Benicia, CA 94510-2215

Pacific Investors Group (PIG)
c/o Dennis Berryman, President
One Corporate Plaza
Newport Beach, CA 92660

Elmer B. (Pat) Knapp and
Jeanette Herron aka Jeanette (Jan) Knapp:
5227 California Way
Paradise, CA 95969

Stony Point Associates (SPA)
c/o James Hawley, Esq.
Hoge, Fenton et al
60 S. Market Street, Suite 1400
San Jose, CA 95113

Seung Ui (Tim) and Young Hahn
Creekside Dry Cleaners
1511 Sycamore Avenue, # G
Hercules, CA 94557

Dr. David Paslin
dba Ben Brett
ManAff (Management Affiliates)
2287 Cobblehill Place
San Mateo, CA 94402

Peter Suk
3515 Kendall Hill Drive
Santa Rosa, CA 95404

Stanley Kim and Do W Lee
Stony Point Cleaners
469 Stony Point Road
Santa Rosa, CA 95401-5969

Dear Ladies and Gentlemen:

Subject: Transmittal of Cleanup and Abatement Order No. R1-2014-0018

File: Stony Point Cleaners, 469 Stony Point Road, Santa Rosa,
Case No. 1NS0898

Enclosed is Cleanup and Abatement Order No. R1-2014-0018 (Order) issued by the California North Coast Regional Water Quality Control Board (Regional Water Board) for Stony Point Cleaners, 469 Stony Point Road in Santa Rosa, California. The Order requires

DAVID M. NOREN, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

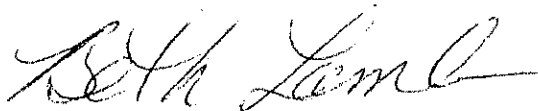
5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403 | www.waterboards.ca.gov/northcoast

you, as the named dischargers, to submit and implement workplans for: 1) the installation of interim remedial measures and 2) indoor air monitoring.

Regional Water Board staff issued a draft version of this Order on December 6, 2013, and received several comments regarding the naming of dischargers. Attached to this letter is a Technical Memorandum with our response to these comments. Cleanup and Abatement Order No. R1-2014-0018 is being issued as the draft as written, except for minor edits to Attachment A. All dischargers have the option of petitioning to the State Water Board to review this action.

If you have any question please contact me by email at Beth.Lamb@waterboards.ca.gov or call me at (707) 543-2669.

Sincerely,



Beth Lamb, C.E.G.
Engineering Geologist

140227_BML_et.Stony Point CAO final cover

Enclosures: Technical Memorandum
CAO Order No. R1-2014-0018

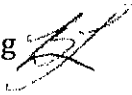
Certified - Return Receipt Requested

cc: Brian Kelleher, bkellehr@ix.netcom.com
Gregg S. Garrison, gsgarrison@garrisonlawcorp.com
James Gribi, JGribi@gribiassociates.com

**REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

Technical Memorandum

Date: February 25, 2014

From: Beth Lamb, C.E.G., CHG 

Subject: Response to Comments for Draft Cleanup and Abatement Order
No. R1-2014-0018 for Stony Point Cleaners

File: Stony Point Cleaners, 469 Stony Point Road, Santa Rosa
Case No. 1NS0898

Background

On December 6, 2013, a draft of Cleanup and Abatement Order (CAO) Order No. R1-2014-0018 was transmitted by the California North Coast Regional Water Quality Control Board (Regional Water Board) for Stony Point Cleaners at 469 Stony Point Road in Santa Rosa, California (Site). The Draft Order requires the dischargers to submit workplans for: 1) installation of interim remedial measures and 2) indoor air monitoring.

Comments were received from the following:

1. Christopher M. Mooney, Paul Hastings LLP, on behalf of Pacific Development Group and Pacific Investors Group (Pacific) letter received January 10, 2014.
2. Jesse A Boyd, Buty & Curliano LLP, on behalf of Stony Point Associates (SPA), letter received on January 13, 2014.
3. Jeffrey M. Curtiss, Stanzler Law Group, on behalf of Peter Suk, letter received January 10, 2014.
4. Vicki Maffei, M.A.F. Inc, letter received January 22, 2014.
5. Gregg Garrison, Garrison Law Corporation, on behalf of Ben Brett/ManAff, letter received February 10, 2014.

Staff's General Response to Comments:

As stated in the CAO, past practices at the Site resulted in a release or releases of dry cleaning solvents to the subsurface. Specifically, concentrations of tetrachloroethene (PCE) have been detected in soil, soil vapor and groundwater at the Stony Point Shopping Center in Santa Rosa with the highest concentrations being detected near the boiler at the back of the active dry cleaning facility. It has been established in numerous technical documents that dry cleaners discharged PCE to the subsurface through a variety of mechanisms including dry cleaning equipment leakage, improper operation and maintenance, poor solvent storage and disposal practices, and permitted and unpermitted discharges to

Response to Comments
Stony Point Cleaners

sanitary sewers or storm sewers. All former operators of the Stony Point Dry Cleaner facility used a dry cleaning solvent containing PCE and therefore are suspected of discharging PCE to the subsurface. Landowners are also responsible for discharges on their property whether or not they personally caused the discharge.

The CAO names all former property owners and all dry cleaner operators as dischargers without apportioning responsibility. Apportioning responsibility is not a function of the Regional or State Water Boards. Responsibility for cleanups under the Porter-Cologne Water Quality Control Act is joint and several. (See In the Matter of the Petition of Union Oil Company of California, (SWRCB Order No. WQ 90-2).) The landowner is responsible for discharges on their property, regardless of whether that person caused or contributed to the discharge. (See e.g. In the Matter of the Petition of Wenwest (SWRCB Order No. WQ 92-13).)

Summarized Comments:

- 1) M.A.F., Inc. – First owner/operator of dry cleaner from March 1981 to October 1981.
 - Comment – They were the first operator, only operated the facility for 3 months until sold in October 1981, and that they only bought 90 gallons of solvent to use in the machines.

Response – Improper use and disposal of 90 gallons of solvent in the time period M.A.F., Inc. operated could be sufficient to create the soil and groundwater impacts seen on this property.

- 2) SPA - Building owner from February 1, 1984 to May 24, 1985.
 - Comment – No evidence of PCE discharges during SPA tenure 1984 to 1985 (16 months).

Response – There is evidence that there were multiple sources for soil and groundwater contamination. It is not possible to date the age of all the releases. Standard dry cleaning operations prior to enforcement of regulations were known to have impacted soil and groundwater.

- Comment – The contamination plume is not older than 20 years based on the lateral and vertical extent combined with the calculated groundwater velocity and relatively low concentrations of chemicals.

Response – There is insufficient data to come to this conclusion. The plume is not completely defined and groundwater velocity is unknown. It is unknown what quantity of solvent was discharged, where the discharge occurred, or what biological and chemical degradation processes control this plume.

Response to Comments
Stony Point Cleaners

- Comment – Contamination was caused by the current operator.

Response – The first inspection of the property was in 1987 when City of Santa Rosa Fire Department inspected the facility. There is no evidence to show that prior to the first inspection that earlier operators were not using the same practices which led to a release to the subsurface. Soil sampling shows that there may have been multiple sources of contamination including sewer discharges, dripping or spills inside the building, disposal into the dumpster, and a discharge to the planter outside the dry cleaner.

- Comment – No legal basis to name SPA on the CAO because a showing of causation is required under Water Code 13304 and 13267.

Response – Under Water Code section 13267, the Regional Water Board may require technical or monitoring reports from “any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region...” Under Water Code section 13304, “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 waters of the state...shall upon order of the regional board, clean up the waste or abate the effects of the waste...” As stated above, former owners and operators of the Stony Point Dry Cleaner facility used a dry cleaning solvent containing PCE and therefore are suspected of discharging PCE to the subsurface. Landowners are also responsible for discharges on their property whether or not they personally caused the discharge because they “permit” or threaten to permit discharges. This is sufficient for the Regional Water Board to exercise its authorities under these code sections.

3) Peter Suk – Dry cleaner operator from 1989 to 1996.

- Comment – No evidence that there was a release during time Mr. Suk operated the dry cleaner from 1989 to 1996.

Response – The operator used a solvent containing PCE. Standard dry cleaning operations, poor housekeeping and accidental releases prior to enforcement of regulations were known to have impacted soil and groundwater. There is evidence that there were multiple sources for soil and groundwater contamination. While it is not possible to date the age of all the releases, there is sufficient evidence to conclude that any operator using PCE caused or threatened to cause discharges.

Response to Comments
Stony Point Cleaners

4) Pacific - Property owner from 1981 to 1984.

- Comment – There was evidence of PCE release during current ownership and operations.

Response – There is evidence that there were multiple sources for soil and groundwater contamination. It is not possible to date the age of all the releases. Standard dry cleaning operations prior to enforcement of regulations were known to have impacted soil and groundwater. Even after regulations were put in place, an unauthorized release can occur which is evidence by the finding in 2002 that wastewater containing PCE was found in the sewer lateral at Stony Point Cleaners.

- Comment – There is a lack of evidence of PCE release during prior ownership and operations.

Response – There is no evidence that there was not a release. Most dry cleaners of this age had releases to the subsurface. Some standard operating procedures like disposing of condensate water into bathroom sinks were common but were later found to have caused soil and groundwater contamination.

- Comment – Historical operations and onsite testing and sampling results refute Dr. Paslin's claims of pre-1987 releases.

Response – Staff does not agree. The first inspection at this site was conducted in 1987 by the Santa Rosa Fire department. However, prior to that time standard practices may have resulted in a release at the site either through improper or proper use of chemicals. The fact that in 2002 there was evidence of improper disposal does not preclude the fact that these practices were a continuation of earlier practices. Staff does not have the data to date the release or more likely releases to the subsurface.

5) Ben Brett - Current property owner.

- Comment – All parties that owned the facility from 1981 to May 1985 are jointly and severally liable for the PCE contamination based on Federal and State Court rulings.

Response – Staff concurs.

- Comment – Owners and operators were out of compliance with Resource Conservation and Recovery Act (RCRA) regulations which required cradle to grave management of hazardous materials.

Response – There is no evidence of any compliance with RCRA until the site was first inspected by Santa Rosa Fire Department in 1987.

Response to Comments
Stony Point Cleaners

The CAO is being issued as the draft was written. All named dischargers have the option of petitioning to the State Water Board, as stated in the CAO:

“Any person affected by this action of the Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If the Dischargers choose to appeal the Order, the Dischargers are advised that they must comply with the Order while the appeal is being considered.”

California Regional Water Quality Control Board
North Coast Region

CLEANUP AND ABATEMENT ORDER No. R1-2014-0018

For

DAVID PASLIN (DBA BEN BRETT),
MANAFF (MANAGEMENT AFFILIATES),
PACIFIC DEVELOPMENT GROUP
PACIFIC INVESTORS GROUP
STONY POINT ASSOCIATES
M.A.F. ENTERPRISES INC.,
ELMER B. (PAT) KNAPP AND JEANNETTE (JAN) HERRON KNAPP
SEUNG UI (TIM) HAHN AND YOUNG HAHN
PETER SUK AND HELEN SUK
AND
STANLEY KIM AND DO W LEE
STONY POINT CLEANERS
469 STONY POINT ROAD
SANTA ROSA CALIFORNIA

Sonoma County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Stony Point Cleaners is located at 469 Stony Point Road, in Santa Rosa California, Sonoma County Assessor's Parcel No. 146-040-027-000 (Site). David Paslin (dba Ben Brett) is the current property owner, and Stanley Kim and Do W Lee are the current operators of Stony Point Cleaners.
2. Stony Point Cleaners has been in operation since June 1981. The initial facility operator was M.A.F. Enterprises Inc. In October 1981, the business was sold to Elmer B. (Pat) Knapp and Jeannette (Jan) Herron Knapp. Mr. and Mrs. Knapp operated Stony Point Cleaners until September 5, 1984 when the business was sold to Seung Ui (Tim) Hahn and Young Hahn. The Hahns operated the business until October 19, 1989. The Hahns sold Stony Point Cleaners to Peter and Helen Suk who operated the cleaners until April 18, 1996 when it was sold to the current owners.
3. In May 1981, when Stony Point Cleaners started operation, the property was owned by the Pacific Development Group. On February 22, 1982, Pacific Development group sold the property to Pacific Investment Group. On February 1, 1984, Pacific Investment Group sold the commercial property to Stony Point Associates who, in May 31, 1985, sold the property to the current owner.
4. All former operators and owners of the property are hereinafter collectively referred to as "the Dischargers."

5. Past practices at the Site resulted in a release or releases of dry cleaning solvents to the subsurface. In July 2006, subsurface borings installed adjacent to Stony Point Cleaners detected tetrachloroethene (PCE) in soil and groundwater. Since that time numerous soil, soil vapor, and groundwater samples have been collected and analyzed to determine the vertical and lateral extent of contamination associated with a release of the dry cleaning solvent PCE.
6. The highest concentrations of PCE have been detected near the boiler at the back of the Stony Point Cleaners facility. Soil vapor sampling has detected concentrations of PCE at 4,565,094 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) in a sample taken at 4 feet below the floor of the dry cleaner. This indicates that there is a potential for worker exposure to elevated concentrations of PCE in the indoor air. An evaluation of the indoor air quality is now needed.
7. Groundwater sampling from both shallow (between 5 and 15 feet below ground surface, bgs) and deep (25 to 30 feet bgs) monitoring wells show that the highest concentrations of PCE are from wells constructed inside the building. Specifically, during the most recent monitoring event (March 28, 2013), a groundwater sample from shallow well MW-1S detected concentrations of PCE at 8,700 parts per billion (ppb) and groundwater from deep monitoring well MW-1 detected concentrations of PCE at 1,100 ppb. Both wells are located inside the dry cleaner building.
8. The chemical PCE is a human carcinogen, and is listed by the State of California, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, as a chemical known to the State to cause cancer. PCE degrades to trichloroethene (TCE), cis and trans -1,2-dichloroethene (1,2-DCE), and vinyl chloride (VC). These breakdown products are also human carcinogens.
9. Interim remedial measures (IRMs) were proposed in *Revised Report of Remedial Investigation and Workplan for IRMs and Shallow Soil Gas and Groundwater Monitoring*, dated June 10, 2011, prepared by the environmental consulting firm Gribi Associates. Since that time additional characterization of the source area inside the dry cleaners has been conducted and now revisions to the proposed remedial measures are needed prior to begin cleanup of this property.
10. The Water Quality Control Plan for the North Coast Region (Basin Plan) designates beneficial uses of the waters of the State, establishes water quality objectives to protect those uses, and establishes implementation policies to attain water quality objectives. The beneficial uses of areal groundwater include domestic, agricultural, and industrial supply.
11. The site is located within 1,500 feet of Santa Rosa Creek which is a tributary to the Laguna de Santa Rosa which flows into the Russian River. The existing and potential beneficial uses of the Laguna de Santa Rosa and the Russian River include:

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- a. municipal and domestic supply
- b. agricultural supply
- c. industrial process supply
- d. groundwater recharge
- e. navigation
- f. water contact recreation
- g. non-contact water recreation
- h. commercial and sport fishing
- i. warm freshwater habitat
- j. cold freshwater habitat
- k. wildlife habitat
- l. migration of aquatic organisms
- m. spawning, reproduction, and/or early development
- n. fresh water replenishment
- o. estuarine habitat
- p. rare, threatened or endangered species.

12. The Dischargers have caused or permitted, cause or permit, or threaten to cause or permit 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. Continuing discharges are in violation of the Porter-Cologne Water Quality Control Act and provisions of the Water Quality Control Plan for the North Coast Region (Basin Plan).

13. The California Water Code, and regulations and policies developed thereunder apply to the Site and require cleanup and abatement of discharges and threatened discharges of waste to the extent feasible. Discharge prohibitions contained in the Basin Plan also apply to this site. Specifically, the Basin Plan incorporates State Water Resources Control Board (State Water Board) Resolutions No. 68-16, No. 88-63, and No. 92-49.

- a. Water Code section 13267(b) authorizes the Regional Water Board to require dischargers and suspected dischargers to provide technical or monitoring program reports.
- b. Water Code section 13304 authorizes the Regional Water Board to require dischargers to cleanup and abate the effects of discharged waste.
- c. State Water Board Resolution No. 68-16 ("State of Policy with Respect to Maintaining High Quality Waters in California") protects surface and ground waters from degradation. It provides that high quality waters shall be maintained unless any change will be consistent with the maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial uses and will not result in water quality less than that prescribed in the policies.

- d. State Water Board Resolution 88-63 requires Regional Water Boards to protect the beneficial use of groundwater as a source of drinking water. The Basin Plan establishes the beneficial use of groundwater as a source of drinking water for all areas within the North Coast Region. The Basin Plan identifies water quality objectives for petroleum constituent levels in groundwater to protect its beneficial use as a source of drinking water.
 - e. State Water Board Resolution No. 92-49 ("Policies and Procedures for the Investigation and Cleanup of Discharges Under Section 13304 of the California Water Code") specifies that alternative cleanup levels greater than background concentration shall be permitted only if the discharger demonstrates that: it is not feasible to attain background levels; the alternative cleanup levels are consistent with the maximum benefit to the people of the State; alternative cleanup levels will not unreasonably affect present and anticipated beneficial uses of such water; and they will not result in water quality less than prescribed in the Basin Plan and Policies adopted by the State and Regional Water Board.
14. Water quality objectives in the Basin Plan are adopted to ensure protection of the beneficial uses of water. The most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions must evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to the level of water quality objectives for protection of beneficial uses. A table of applicable Water Quality Objectives for groundwater is incorporated in this Order as Attachment A.
15. The Regional Water Board will ensure adequate public participation at key steps in the remedial action process, and shall ensure that concurrence with a remedy for cleanup and abatement of the discharges at the site shall comply with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). Because the Regional Water Board is unable, pursuant to Water Code section 13360, to direct the manner and method of compliance, the Regional Water Board will not have any plan for actual cleanup of the Site until the responsible parties have identified in a draft remedial action plan the proposed method of cleaning up the Site. Once the discharger has submitted a remedial action plan, the Regional Water Board will ensure that prior to granting concurrence with the final remedial action plan, it has complied with the requirements of CEQA. Until the Site has been investigated and a remedial action plan has been proposed, it is impossible for the Regional Water Board to identify and mitigate potentially significant adverse impacts associated with the cleanup of the Site. Because of the need to initiate investigation of the contamination of the Site before the Regional Water Board is able to identify how the Site will be cleaned up and any potentially significant impacts that could result to the environment from the cleanup, this CAO only requires immediate investigation of the Site, and defers actual cleanup until the Regional Water Board has concurred with a final remedial action plan and has complied with the requirements of CEQA.

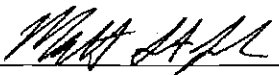
16. Any person affected by this action of the Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If the Dischargers choose to appeal the Order, the Dischargers are advised that they must comply with the Order while the appeal is being considered.
17. This Cleanup and Abatement Order (CAO) in no way limits the authority of this Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the Site consistent with California Water Code. This CAO may be revised by the Executive Officer, as additional information becomes available.
18. Failure to comply with the terms of this Order may result in enforcement under the California Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.
19. Reasonable costs incurred by Regional Water Board staff in overseeing cleanup or abatement activities are reimbursable under Water Code section 13304 (c) (1).

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 (b) and 13304, the Dischargers shall clean up and abate the discharge and threatened discharge forthwith and shall comply with the following provisions of this Order:

- A. Submit in a format acceptable to the Executive Officer a revised IRM Workplan within 45 days of the date of this order.
- B. Implement IRMs within 90 days of Executive Officer concurrence with the IRM Workplan revisions.
- C. Within 60 days of construction of IRMs, submit an installation and first remedial operational status report.

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- D. Submit quarterly IRMs status reports within 30 days of the end of each calendar quarter.
- E. Submit an indoor air testing workplan to determine the human health risks to workers inside the building within 45 days of the date of this order.
- F. Upon completion of indoor air testing issue a public notice of all the results to all tenants, business owners, and property owners in the Stony Point Shopping Center.
- G. Conduct all work in accordance with all applicable local ordinances and under the direction of a California Professional Geologist or Civil Engineer experienced in soil and groundwater pollution investigations and remediation projects including chlorinated hydrocarbons. All work plans and reports must be signed and stamped by the licensed professional in responsible charge of the project. All necessary permits shall be obtained prior to conducting work.
- H. Comply with the requirements specified in Monitoring and Reporting Program Order No. R1-2013-0082.
- I. The Dischargers shall pay all cost recovery invoices within 30 days of issuance of the invoice.
- J. If, for any reason, the Dischargers are unable to perform any activity or submit any documentation in compliance with the work schedule contained in this Order or submitted pursuant to this Order and approved by the Executive Officer, the Dischargers may request, in writing, an extension of time. The extension request must be submitted a minimum of five business days in advance of the due date sought to be extended and shall include justification for the delay and a demonstration of a good faith effort to achieve compliance with the due date. The extension request shall also include a proposed time schedule with a new performance date for the due date in question and all subsequent dates dependent on the extension. An extension may be granted for good cause by written concurrence from the Executive Officer.
- K. Violations of any of the terms and conditions of this Order may subject Dischargers to possible enforcement action, including civil liability under applicable provisions of the Water Code.

Ordered By: 
Matthias St. John
Executive Officer
February 27, 2014

Attachment A: Water Quality Objectives

Attachment A

Table of Water Quality Objectives

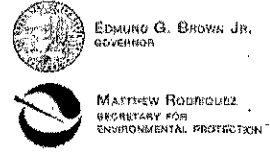
STONY POINT CLEANERS
 469 STONY POINT ROAD
 SANTA ROSA CALIFORNIA
 Case No. 1NS0898

The California Water Code, and regulations and policies developed thereunder require cleanup and abatement of discharges and threatened discharges of waste to the extent feasible. Cleanup and abatement activities are to provide attainment of background levels of water quality or the highest water quality that is reasonable if background levels of water quality cannot be restored. Alternative cleanup levels greater than background concentration shall be permitted only if the discharger demonstrates that: it is not feasible to attain background levels; the alternative cleanup levels are consistent with the maximum benefit to the people of the State; alternative cleanup levels will not unreasonably affect present and anticipated beneficial uses of such water; and they will not result in water quality less than prescribed in the Basin Plan and Policies adopted by the State and Regional Water Board (State Water Resources Control Board Resolutions Nos. 68-16 and 92-49).

Water quality objectives in the Basin Plan are adopted to ensure protection of the beneficial uses of water. The Basin Plan provides that "whenever several different objectives exist for the same water quality parameter, the strictest objective applies". Accordingly, the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions must evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. The table below sets out the water quality objectives for waters of the State impacted by discharges from the identified constituents of concern:

Constituent of Concern	Practical Quantitation Limit µg/L	Water Quality Objective µg/L	Reference for Objectives
Trichloroethene	< 0.5	1.7	California Public Health Goal (PHG) in Drinking Water (Office of Environmental Health Hazard Assessment) applied to GENERAL water quality objective in the Basin Plan
Tetrachloroethene	< 0.5	0.06	California Public Health Goal (PHG) in Drinking Water (Office of Environmental Health Hazard Assessment) applied to GENERAL water quality objective in the Basin Plan
Cis-1,2-Dichloroethene	< 0.5	6	California Department of Health Services Maximum Contaminant Level applied to the CHEMICAL CONSTITUENTS water quality objective in the Basin Plan
Trans-1,2-dichloroethene	< 0.5	10	California Department of Health Services Maximum Contaminant Level applied to the CHEMICAL CONSTITUENTS water quality objective in the Basin Plan
1,1-Dichloroethene	< 0.5	6	California Department of Health Services Maximum Contaminant Level applied to the CHEMICAL CONSTITUENTS water quality objective in the Basin Plan
1,1,1-Trichloroethane	< 0.5	200	California Department of Health Services Maximum Contaminant Level applied to the CHEMICAL CONSTITUENTS water quality objective in the Basin Plan
Vinyl Chloride	< 0.5	0.05	California Public Health Goal (PHG) in Drinking Water (Office of Environmental Health Hazard Assessment) applied to GENERAL water quality objective in the Basin Plan

EXHIBIT 2



North Coast Regional Water Quality Control Board

December 6, 2013

Pacific Development Group (PDG)
c/o Denis Berryman, Partner
One Corporate Plaza # 250
Newport Beach, CA 92660

Pacific Investors Group (PIG)
c/o Dennis Berryman, President
One Corporate Plaza
Newport Beach, CA 92660

Stony Point Associates (SPA)
c/o James Hawley, Esq.
Hoge, Fenton et al
60 S. Market Street, Suite 1400
San Jose, CA 95113

Dr. David Paslin
dba Ben Brett
ManAff (Management Affiliates)
2287 Cobblehill Place
San Mateo, CA 94402

M.A.F. Inc
c/o Vicki A. Maffei
46 El Bonito Way
Benicia, CA 94510-2215

M.A.F. Inc
c/o Christian J. Maffei
5356 Hidden Glen Drive
Rocklin, CA 95677
(916)415-9262

Elmer B. (Pat) Knapp and
Jeanette Herron aka Jeanette (Jan) Knapp:
5227 California Way
Paradise, CA 95969

Seung Ui (Tim) and Young Hahn
Creekside Dry Cleaners
1511 Sycamore Avenue, # G
Hercules, CA 94557

Peter and Helen Suk
3515 Kendall Hill Drive
Santa Rosa, CA 95404

Stanley Kim and Do W Lee
Stony Point Cleaners
469 Stony Point Road
Santa Rosa, CA 95401-5969

Dear Dischargers:

Subject: Transmittal of Draft Cleanup and Abatement No. R1-2014-XXXX

File: Stony Point Cleaners, 469 Stony Point Road, Santa Rosa
Case No. 1NS0898

DAVID M. NOREN, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403 | www.waterboards.ca.gov/northcoast

Enclosed is a draft of Cleanup and Abatement Order (CAO) Order No. R1-2014-00XX (Draft Order) issued by the California North Coast Regional Water Quality Control Board (Regional Water Board) for Stony Point Cleaners, 469 Stony Point Road in Santa Rosa, California. The Draft Order requires the dischargers to submit workplans for: 1) installation of interim remedial measures and 2) indoor air monitoring.

Regional Water Board staff is transmitting a copy of the Draft Order to give you the opportunity to review and comment prior to our issuance. If you wish to discuss the Draft Order, please contact us at your earliest convenience prior to January 10, 2014. We intend to issue a final version of the Order on or about January 30, 2014.

Written comments can be submitted by mail to North Coast Regional Water Quality Control Board, Attention Beth Lamb, 5550 Skylane Blvd., Suite A, Santa Rosa CA 95403 or by email at beth.lamb@waterboards.ca.gov. If you have any question please contact me at (707) 543-2669.

Sincerely,



Beth Lamb, C.E.G.
Engineering Geologist

131206_BML_er_Stony Point draft CAO coverltr

Enclosures: Draft CAO Order No. R1-2014-00XX

cc: Brian Kelleher, bkellehr@ix.netcom.com
Gregg S. Garrison, gsgarrison@garrisonlawcorp.com
James Gribi, JGribi@gribiassociates.com

California Regional Water Quality Control Board
North Coast Region

DRAFT

CLEANUP AND ABATEMENT ORDER No. R1-2014-XXXX

For

DAVID PASLIN (DBA BEN BRETT)
MANAFF (MANAGEMENT AFFILIATES)
PACIFIC DEVELOPMENT GROUP
PACIFIC INVESTORS GROUP
STONY POINT ASSOCIATES
M.A.F. ENTERPRISES INC.,
ELMER B. (PAT) KNAPP AND JEANNETTE (JAN) HERRON KNAPP
SEUNG UI (TIM) HAHN AND YOUNG HAHN
PETER SUK AND HELEN SUK
AND
STANLEY KIM AND DO W LEE
STONY POINT CLEANERS
469 STONY POINT ROAD
SANTA ROSA CALIFORNIA

Sonoma County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Stony Point Cleaners is located at 469 Stony Point Road, in Santa Rosa California, Sonoma County Assessor's Parcel No. 146-040-027-000 (Site). David Paslin (dba Ben Brett) is the current property owner, and Stanley Kim and Do W Lee are the current operators of Stony Point Cleaners.
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4. All former operators and owners of the property are hereinafter collectively referred to as "the Dischargers."
5. Past practices at the Site resulted in a release or releases of dry cleaning solvents to the subsurface. In July 2006, subsurface borings installed adjacent to Stony Point Cleaners

detected tetrachloroethene (PCE) in soil and groundwater. Since that time numerous soil, soil vapor, and groundwater samples have been collected and analyzed to determine the vertical and lateral extent of contamination associated with a release of the dry cleaning solvent PCE.

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11. The site is located within 1,500 feet of Santa Rosa Creek which is a tributary to the Laguna de Santa Rosa which flows into the Russian River. The existing and potential beneficial uses of the Laguna de Santa Rosa and the Russian River include:
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 - f. water contact recreation

- g. non-contact water recreation
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12. The Dischargers have caused or permitted, cause or permit, or threaten to cause or permit 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. Continuing discharges are in violation of the Porter-Cologne Water Quality Control Act and provisions of the Water Quality Control Plan for the North Coast Region (Basin Plan).
13. The California Water Code, and regulations and policies developed thereunder apply to the Site and require cleanup and abatement of discharges and threatened discharges of waste to the extent feasible. Discharge prohibitions contained in the Basin Plan also apply to this site. Specifically, the Basin Plan incorporates State Water Resources Control Board (State Water Board) Resolutions No. 68-16, No. 88-63, and No. 92-49.
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 - b. Water Code section 13304 authorizes the Regional Water Board to require dischargers to cleanup and abate the effects of discharged waste.
 - c. State Water Board Resolution No. 68-16 ("State of Policy with Respect to Maintaining High Quality Waters in California") protects surface and ground waters from degradation. It provides that high quality waters shall be maintained unless any change will be consistent with the maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial uses and will not result in water quality less than that prescribed in the policies.
 - d. State Water Board Resolution 88-63 requires Regional Water Boards to protect the beneficial use of groundwater as a source of drinking water. The Basin Plan establishes the beneficial use of groundwater as a source of drinking water for all areas within the North Coast Region. The Basin Plan identifies water quality objectives for petroleum constituent levels in groundwater to protect its beneficial use as a source of drinking water.
 - e. State Water Board Resolution No. 92-49 ("Policies and Procedures for the Investigation and Cleanup of Discharges Under Section 13304 of the California Water Code") specifies that alternative cleanup levels greater than background

concentration shall be permitted only if the discharger demonstrates that: it is not feasible to attain background levels; the alternative cleanup levels are consistent with the maximum benefit to the people of the State; alternative cleanup levels will not unreasonably affect present and anticipated beneficial uses of such water; and they will not result in water quality less than prescribed in the Basin Plan and Policies adopted by the State and Regional Water Board.

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15. The Regional Water Board will ensure adequate public participation at key steps in the remedial action process, and shall ensure that concurrence with a remedy for cleanup and abatement of the discharges at the site shall comply with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). Because the Regional Water Board is unable, pursuant to Water Code section 13360, to direct the manner and method of compliance, the Regional Water Board will not have any plan for actual cleanup of the Site until the responsible parties have identified in a draft remedial action plan the proposed method of cleaning up the Site. Once the discharger has submitted a remedial action plan, the Regional Water Board will ensure that prior to granting concurrence with the final remedial action plan, it has complied with the requirements of CEQA. Until the Site has been investigated and a remedial action plan has been proposed, it is impossible for the Regional Water Board to identify and mitigate potentially significant adverse impacts associated with the cleanup of the Site. Because of the need to initiate investigation of the contamination of the Site before the Regional Water Board is able to identify how the Site will be cleaned up and any potentially significant impacts that could result to the environment from the cleanup, this CAO only requires immediate investigation of the Site, and defers actual cleanup until the Regional Water Board has concurred with a final remedial action plan and has complied with the requirements of CEQA.
16. Any person affected by this action of the Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If the Dischargers choose to appeal the Order, the Dischargers are advised that they must comply with the Order while the appeal is being considered.

17. This Cleanup and Abatement Order (CAO) in no way limits the authority of this Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the Site consistent with California Water Code. This CAO may be revised by the Executive Officer, as additional information becomes available.
18. Failure to comply with the terms of this Order may result in enforcement under the California Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.
19. Reasonable costs incurred by Regional Water Board staff in overseeing cleanup or abatement activities are reimbursable under Water Code section 13304 (c) (1).

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 (b) and 13304, the Dischargers shall clean up and abate the discharge and threatened discharge forthwith and shall comply with the following provisions of this Order:

- A. Submit in a format acceptable to the Executive Officer a revised IRM Workplan within 45 days of the date of this order.
- B. Implement IRMs within 90 days of Executive Officer concurrence with the IRM Workplan revisions.
- C. Within 60 days of IRMs construction submit an installation and first remedial operational status report.
- D. Submit quarterly IRMs status reports within 30 days of the end of each calendar quarter.
- E. Submit an indoor air testing workplan to determine the human health risks to workers inside the building within 45 days of the date of this order.
- F. Upon completion of indoor air testing issue a public notice of all the results to all tenants, business owners, and property owners in the Stony Point Shopping Center.
- G. Conduct all work in accordance with all applicable local ordinances and under the direction of a California Professional Geologist or Civil Engineer experienced in soil and groundwater pollution investigations and remediation projects including chlorinated hydrocarbons. All work plans and reports must be signed and stamped by the licensed professional in responsible charge of the project. All necessary permits shall be obtained prior to conducting work.

- H. Comply with the requirements specified in Monitoring and Reporting Program Order No. R1-2013-0082.
- I. The Dischargers shall pay all cost recovery invoices within 30 days of issuance of the invoice.
- J. If, for any reason, the Dischargers are unable to perform any activity or submit any documentation in compliance with the work schedule contained in this Order or submitted pursuant to this Order and approved by the Executive Officer, the Dischargers may request, in writing, an extension of time. The extension request must be submitted a minimum of five business days in advance of the due date sought to be extended and shall include justification for the delay and a demonstration of a good faith effort to achieve compliance with the due date. The extension request shall also include a proposed time schedule with a new performance date for the due date in question and all subsequent dates dependent on the extension. An extension may be granted for good cause by written concurrence from the Executive Officer.
- K. Violations of any of the terms and conditions of this Order may subject Dischargers to possible enforcement action, including civil liability under applicable provisions of the Water Code.

Ordered By: _____
Matthias St. John
Executive Officer
Date

Attachment A: Water Quality Objectives

Attachment A

Table of Water Quality Objectives

STONY POINT CLEANERS
469 STONY POINT ROAD
SANTA ROSA CALIFORNIA
Case No. 1NS0898

The California Water Code, and regulations and policies developed thereunder require cleanup and abatement of discharges and threatened discharges of waste to the extent feasible. Cleanup and abatement activities are to provide attainment of background levels of water quality or the highest water quality that is reasonable if background levels of water quality cannot be restored. Alternative cleanup levels greater than background concentration shall be permitted only if the discharger demonstrates that: it is not feasible to attain background levels; the alternative cleanup levels are consistent with the maximum benefit to the people of the State; alternative cleanup levels will not unreasonably affect present and anticipated beneficial uses of such water; and they will not result in water quality less than prescribed in the Basin Plan and Policies adopted by the State and Regional Water Board (State Water Resources Control Board Resolutions Nos. 68-16 and 92-49).

Water quality objectives in the Basin Plan are adopted to ensure protection of the beneficial uses of water. The Basin Plan provides that "whenever several different objectives exist for the same water quality parameter, the strictest objective applies". Accordingly, the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions must evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels.

The table below sets out the water quality objectives for waters of the State impacted by discharges from the identified constituents of concern:

Cleanup and Abatement
 Order No. R1-2014-XXXX
 Stony Point Cleaners

Constituent of Concern	Practical Quantitation Limit µg/L	Water Quality Objective µg/L	Reference for Objectives
Trichloroethene	< 0.5	1.7	California Public Health Goal (PHG) in Drinking Water (Office of Environmental Health Hazard Assessment) applied to GENERAL water quality objective in the Basin Plan
Tetrachloroethene	< 0.5	0.06	California Public Health Goal (PHG) in Drinking Water (Office of Environmental Health Hazard Assessment) applied to GENERAL water quality objective in the Basin Plan
Cis-1,2-Dichloroethene	< 0.5	6	California Department of Health Services Maximum Contaminant Level applied to the GENERAL water quality objective in the Basin Plan
Trans-1,2-dichloroethene	< 0.5	10	California Department of Health Services Maximum Contaminant Level applied to the GENERAL water quality objective in the Basin Plan
1,1-Dichloroethene	< 0.5	0.06	US EPA Health Advisory applied to the GENERAL water quality objective in the Basin Plan
1,1,1-Trichloroethane	< 0.5	200	California Department of Health Services Maximum Contaminant Level applied to the GENERAL water quality objective in the Basin Plan
Vinyl Chloride	< 0.5	0.05	California Public Health Goal (PHG) in Drinking Water (Office of Environmental Health Hazard Assessment) applied to GENERAL water quality objective in the Basin Plan

EXHIBIT 3

PAUL HASTINGS

(415) 856-7033
christophermooney@paulhastings.com

January 9, 2014

75559.00002

VIA UPS OVERNIGHT

Beth Lamb
Engineering Geologist
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Re: Stony Point Cleaners Site – Case No. 1NS0898

Dear Ms. Lamb:

I write in response to your letter of December 6, 2013 attaching a draft Cleanup and Abatement Order (CAO) for the Stony Point Cleaners site located at 469 Stony Point Road, Santa Rosa. On behalf of recipients Pacific Development Group and Pacific Investors Group (collectively, "Pacific"), we respectfully object to the draft CAO and offer the following specific comments for consideration by the North Coast Regional Water Quality Control Board ("the Board").

The draft CAO purports to name Pacific as a responsible "discharger" at the Stony Point Cleaners site ("the Site"). See Draft CAO, ¶ 4. Yet, other than explaining that Pacific owned the property from May 1981 to February 1984, the draft CAO contains no information and cites no evidence supporting the conclusion that Pacific "caused or permitted" waste to be discharged at the Site. *Id.* ¶¶ 3, 12. Indeed, there is no evidence supporting this statement, as Pacific has previously explained to the Board and to the court in related litigation in Sonoma County Superior Court. That litigation was voluntarily dismissed by the plaintiff Dr. David Paslin (dba Ben Brett) on December 12, 2013 – the same day the Court was scheduled to hear Pacific's motion for summary judgment and just three weeks before trial was set to commence. Pacific is confident that it would have prevailed and been absolved of any liability had the court reached a ruling on the merits. Dr. Paslin dismissed his case after five years of litigation on the eve of trial, with no payment from Pacific of settlement monies, fees or costs, because there is no evidence of a discharge by Pacific.

Dr. Paslin's efforts before the Board suffer from the same evidentiary deficiencies that plagued his state court case. The Board's draft CAO appears to have been prompted by a November 11, 2013 letter sent by Gregg Garrison, attorney for Dr. Paslin. That letter represented the *third written request* by Mr. Garrison to have the Board name all prior owners and operators of Stony Point Cleaners as responsible parties for contamination at the Site. On the prior two occasions – once in October 2009 and again in April 2011 – the Board found "insufficient evidence . . . to determine the date of the discharge, and consequently identify the facility owner(s)/operator(s) responsible for the discharge." See Ex. A (Oct. 29, 2009 Letter from B. Lamb to Dr. Paslin); see also Ex. B (Apr. 29, 2011 Letter from B. Lamb to Dr. Paslin) (citing "no information" or "documentation for naming additional responsible parties"). The Board's latest letter and draft CAO similarly contain no new information or evidence regarding the dates of discharges, particularly as far back as the early 1980s when Pacific briefly owned the property. There is therefore no factual basis for naming Pacific a "discharger" or a "responsible party" under relevant statutes and regulations.

PAUL HASTINGS

Beth Lamb
January 9, 2014
Page 2

In our last written communication to you, in January 2011, we noted how soil vapor and groundwater sampling results showed elevated PCE concentrations at the Site, but that no evidence had been procured regarding the cause of these elevated readings or the timeframe of responsible releases. See Exh. C (Jan. 11, 2011 Letter from C. Mooney to B. Lamb). In the intervening three years, new evidence has come to light indicating that the PCE discharges are more recent and occurred well after Pacific sold its interest in the property in February 1984. As set forth below, this evidence supports a CAO that names only the current owner, Dr. Paslin, and the current operators, Mr. Stanley Kim and Do W. Lee, as responsible parties for contamination at the Site. Dr. Paslin has owned the property since May 1985 and Mr. Kim and Ms. Lee have operated the dry cleaners since April 1996.

EVIDENCE OF PCE RELEASES DURING CURRENT OWNERSHIP AND OPERATIONS

- The current dry cleaning operator Stanley Kim was issued a cease and desist order from the City of Santa Rosa Utilities Department on April 29, 2002. In the order, the Utilities Department found Stony Point Cleaners in violation of the Sewer Use Ordinance and Wastewater Discharge Permit by discharging wastewater containing PCE into the sanitary sewer. See Exh. D (Apr. 29, 2002 Cease and Desist Order).
- The Bay Area Air Quality Management District has twice cited Mr. Kim for violations involving vapor leaks from the dry cleaning machine used at Stony Point Cleaners. The notices of violation were issued in June 2002 and June 2006. See Exh. E (BAAQMD Notices of Violation).
- By comparison, Pacific is aware of no violations or cease and desist orders involving contaminating releases issued by any state or local regulatory body to Stony Point Cleaners during the period Pacific owned the property (May 1981 to February 1984).
- Documents produced during the state court litigation include recent customer complaints of chemical smells at Stony Point Cleaners and correspondence from owner Dr. Paslin admonishing the practices of current operator Stanley Kim.
 - On January 3, 2005 – a year before PCE contamination was first discovered at the Site – Dr. Paslin wrote to Mr. Kim that “the discarded dry cleaning equipment **still** has not been removed by you and taken to the dump. Far too much time has passed. Please explain and promptly correct this problem.” See Exh. F (Jan. 3, 2005 Letter from B. Brett to S. Kim and D. Lee).
 - On November 7, 2006, Dr. Paslin’s onsite supervisor Terry Meckstroth forwarded an anonymous letter from a customer stating “I have used this facility for a long time and whenever I walk into the area, I am able to smell chemicals. To my discovery, I found the ground contaminated with cleaning solution. The smell was too strong to bear.” See Exh. G (Nov. 7, 2006 Fax from T. Meckstroth to Dr. Paslin).
 - On November 13, 2006 – one week later – Ms. Meckstroth, who occupied a leased space near Stony Point Cleaners, tendered her resignation as site supervisor, citing “serious concerns for Rob [Ms. Meckstroth’s husband] and myself personally, as well as concerns for our staff and patients.” See Exh. H (Nov. 13, 2006 Letter from T. Meckstroth to B. Brett).

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Beth Lamb
January 9, 2014
Page 3

- o On December 4, 2006, Ms. Meckstroth forwarded another anonymous letter from a customer noting that "many of my clothing have been returned smelling distinctively of their cleaning chemical perc," and "as I walk by [the shopping center] I am hit by the strong smell of chemicals." See Exh. I (Dec. 4, 2006 Fax from T. Meckstroth to B. Brett).
- The parties to the now-dismissed state court litigation conducted a site inspection of Stony Point Cleaners on November 20, 2013. Pursuant to that inspection, Pacific took several photographs of the tenant space as it currently exists. The photographs show the tenant space as unkempt, with old and rust-laden machinery, large collections of dust and debris, and numerous cracks throughout the concrete floor. See Exh. J (Nov. 20, 2013 Photos of Stony Point Cleaners).

LACK OF EVIDENCE OF PCE RELEASES DURING PRIOR OWNERSHIP AND OPERATIONS

- By contrast, prior operators Tim Hahn (September 1984 – October 1989) and Peter Suk (October 1989 – April 1996) have testified under oath that their operations at Stony Point Cleaners were clean and orderly, and that the crack in the concrete floor in the boiler room constituting the "primary" PCE discharge point *did not exist* during their tenures as operator. See Exh. K (Sept. 23, 2013 Depo. of T. Hahn, at 37-38, 54-55) (confirming that the building and tenant space were in "good condition" and that there were no cracks in the concrete floor); see also Exh. L (Oct. 24, 2013 Declaration of P. Suk, ¶¶ 5-7) (confirming that the boiler room cracks "did not exist" and that boiler room "was in much better condition" during tenure).
- Prior to Tim Hahn, Stony Point Cleaners was operated by Elmer Knapp. Mr. Knapp operated the cleaners from approximately October 1981 to September 1984 during the period Pacific owned the property.¹ He was a named defendant in the state court litigation but did not appear or provide sworn testimony. Within documents produced during the litigation, however, is Mr. Knapp's handwritten response to various questions seeking information regarding his dry cleaning practices. In that document, Mr. Knapp writes the following: "11 Method of disposal – Hazard Waste Company – cannot remember name"; "12 Spills or discharges (none)"; and "13 Discharge in City of Santa Rosa sewer (NONE)." See Exh. N (Handwritten Responses of E. Knapp).² This firsthand account from Mr. Knapp confirms the absence of discharges during Pacific's ownership and lends further support for the Board's prior refusal to name Mr. Knapp or Pacific as responsible parties. Moreover, as the shopping center was constructed in 1981, the newly constructed concrete floors and subsurface utility piping in the leased space occupied by Stony Point Cleaners would be free of cracks and other defects.

¹ The draft CAO states that the "initial facility operator was M.A.F. Enterprises Inc." See Draft CAO ¶ 2. According to Dr. Paslin's environmental consultant Brian Kelleher, however, M.A.F. never actually operated the dry cleaners, but rather "just set it up." See Exh. M (Oct. 4, 2013 Depo. of B. Kelleher, at 36). Regardless, there are no documents or other evidence regarding the dry cleaning practices of M.A.F. Inc. or its purported owners the Maffeis, and absolutely no evidence of PCE releases during their alleged operations.

² It is unclear to whom Mr. Knapp's responses are directed, but it is possible the information was sought by the Board. The second page of the document contains a hand drawn map of the Stony Point Cleaners tenant space, and the document is stamped "NCRWQCB" on the top right corner. See Exh. N.

PAUL HASTINGS

Beth Lamb
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Page 4

HISTORICAL OPERATIONS AND ONSITE TESTING AND SAMPLING RESULTS REFUTE DR. PASLIN'S CLAIMS OF PRE-1987 RELEASES

- The draft CAO's PCE concentration readings are taken from the September 4, 2013 *Report of PCE Source Area Investigation* prepared by Dr. Paslin's site geologist, James Gribi, and transmitted to the Board by Dr. Paslin's consultant Brian Kelleher. Unlike Mr. Gribi's prior submissions to the Board, the September 4, 2013 Report contains several conclusory statements and purported "facts" that are unsubstantiated and lack any evidentiary foundation. Indeed, testimony elicited in the state court litigation confirms that the "conclusions" in this report are attorney- and consultant-generated, and not based on sound science or information from people with firsthand knowledge of historical activities. In any event, the findings do not implicate Pacific in "causing or permitting" any discharges of PCE. For example,
 - The September 4, 2013 Report identifies the "primary PCE discharge point" as "the floor crack immediately southwest from the boiler room floor drain/sink." See Exh. O (Sept. 4, 2013 Report, at 6). There is direct testimonial evidence that this crack did not exist during the time Pacific owned the property. Indeed, all evidence points to the contrary. Pacific was the first owner of the property over 30 years ago when the building was new and unlikely to have developed any cracks. Two dry cleaning operators who operated **well after Pacific sold the property have testified that the boiler room crack did not exist** during their tenures at Stony Point Cleaners (covering the years 1984 to 1996). See Exhs. K and L. There are also no photos, descriptions, or testimony of a boiler room crack prior to 1984.
 - Any boiler room crack likely developed during substantial tenant improvements that occurred in the 1990s. In or around 1992, Stony Point Cleaners underwent substantial changes to the tenant space, including moving interior walls to decrease the square footage and installing new dry cleaning equipment including a dry cleaning machine, boiler and water heater. See Exh. L (Oct. 24, 2013 Declaration of P. Suk, ¶ 3); see also Exh. P (Oct. 7, 2013 Depo. of Dr. Paslin, at 100-105).
 - The September 4, 2013 Report concludes that "by operator accounts, PCE discharges to the subsurface within the boiler room occurred approximately weekly . . . [from] 1981 through approximately 1987." See Exh. O (Sept. 4, 2013 Report, at 7). Beyond being hearsay, these "operator accounts" are based on nothing more than an "interview" held by Mr. Kelleher with operator Tim Hahn in March 2013. See Exh. P (Sept. 5, 2013 Affidavit of B. Kelleher). The statements are contradicted by Mr. Hahn's more reliable testimony taken under oath at deposition, where he confirmed that when he discarded condensate water from the dry cleaning machine "most, if not all" of the water went down the floor drain into the sanitary sewer – a permitted method of disposal at the time. See Exh. K (Sept. 23, 2013 Depo. of T. Hahn, at 99-100). Regardless, however, **Mr. Hahn began operating Stony Point Cleaners seven months after Pacific sold the property and never operated during Pacific's ownership**, and therefore any actions or alleged discharges occurring during his tenure cannot be imputed to Pacific. Mr. Hahn's statements alone cannot provide a basis for naming Pacific a "discharger" or a "responsible party."

PAUL HASTINGS

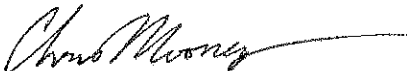
Beth Lamb
January 9, 2014
Page 5

- o The "water pour testing" of the floor crack itself arguably constitutes a new release of contamination sufficient to name Messrs. Gribi and Rossman as responsible parties. See Exh. O (Sept. 4, 2013 Report, at 6). Mr. Gribi's decision to pour "4 to 5 gallons of water onto the boiler room floor" is ill-advised given the known elevated concentrations of PCE in the subsurface near the floor drain. PCE concentrations of up to 170,000 micrograms/kilogram in subsurface soil samples and up to 4,565,094 micrograms/cubic meter in soil vapor samples were found near the floor drain. PCE concentrations of this magnitude are suggestive of the presence of PCE as a dense non-aqueous liquid (DNAPL). Concentrations of PCE in groundwater samples collected from nearby Well MW-1S of up to 9,600 micrograms/liter further suggest that PCE is present as a DNAPL. Despite these known results, Gribi Associates discharged up to 5 gallons of water through this suspected DNAPL source zone thereby dissolving up to 2,838,750 grams of PCE.³ This quantity of PCE is sufficient to contaminate up to 150,000 gallons of water⁴ with a PCE concentration at the maximum contaminant level of 5 micrograms/liter.

Taken together, the overwhelming evidence discovered during the Site investigation and state court litigation weigh against the Board's contemplated action of naming all former owners and operators of Stony Point Cleaners as dischargers or responsible parties. The Board was correct six years ago when it named only the current owner, Dr. Paslin, as a responsible party. It was also correct when it subsequently affirmed that decision twice and refused to name additional responsible parties because the evidence does not support a conclusion that discharges of PCE occurred any time before the current operator's tenure. At best, the evidence supports the additional naming of current operators Stanley Kim and Do W. Lee, but no other owners or operators.

We appreciate the opportunity to respond to your letter and the Board's draft CAO. I am available to discuss any of these matters with you and may be contacted at the number above.

Very truly yours,



Christopher M. Mooney
for PAUL HASTINGS LLP

Attachments

LEGAL_US_W # 77329665.2

³ Assumes PCE aqueous solubility of 150,000 micrograms/liter.

⁴ Roughly equivalent to ¼ the volume of an Olympic-sized swimming pool.

EXHIBIT 3.A



**California Regional Water Quality Control Board
North Coast Region
Bob Anderson, Chairman**



Linda S. Adams
Secretary for
Environmental Protection

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Arnold
Schwarzenegger
Governor

October 29, 2009

Dr. David Paslin
Dba Ben Brett
ManAff (Management Affiliates)
2287 Cobblehill Place
San Mateo, CA 94402

Dear Dr. Paslin:

Subject: March 7, 2008 Garrison Law Corporation Letter

File: Stony Point Cleaners, 469 Stony Point Road, Santa Rosa
Case No. 1NSO898

North Coast Regional Water Quality Control Board (Regional Water Board) staff reviewed the March 7, 2008 letter prepared by Garrison Law Corporation, submitted on your behalf. In the letter Mr. Garrison requested the following:

- The Regional Water Board name all past owners and operators of the site as responsible parties based on the history of ownership and operation of the Site provided by Mr. Garrison,
- All responsible parties participate in financing the necessary site investigations and cleanup activities,
- All responsible parties provide relevant historical information concerning site operations to help identify source(s) of contamination, and
- All responsible parties provide any evidence of insurance policies.

Thank you for submitting a detailed history of owners and operators of Stony Point Cleaners. Although the information provided in this document helps complete owner/operator historical records, this information alone is not sufficient to name additional responsible parties. In order for the Regional Water Board to name additional responsible parties (other than the current property owner), we need evidence that the owner or operator either was in possession of the property when the discharge was occurring or caused the discharge to occur. There is insufficient evidence available at this time to determine the date of the discharge, and consequently identify the facility owner(s)/operator(s) responsible for the discharge.

Since receiving Mr. Garrison's letter, the Regional Water Board staff has attempted to contact former owners and operators to collect additional information on historical business operations to better evaluate evidence of when a discharge occurred, in order

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to be able to name additional responsible parties. Letters were sent out to the following people:

- Mr. Dennis Berryman of the Pacific Development Group former facility owner,
- Mr. and Mrs. Suk former operators of Stony Point Cleaners,
- Young and Seung Hahn of Creekside Dry Cleaners, former operators of the Stony Point Cleaners.

There was only a response from Mr. Berryman stating that he had no records or any other relevant information since he sold the property about 25 years ago.

Although the Regional Water Board staff will continue to try to obtain evidence to support naming additional responsible parties, as the current landowner, you are a responsible party. See *In the matter of the Petitions of Wenwest, Inc., Susan Rose, Wendy International, Inc. and Phillips Petroleum Company*, Order No. WQ 92-13, at p. 7.

Although you provided a *Soil and Groundwater Investigation Workplan* on October 12, 2007, we never received your responses to the Regional Water Board's January 3, 2008 comments on the Workplan. A response to those comments was due on March 3, 2008. Accordingly, please provide a respond to staff comments by December 15, 2009, and provide us with a time schedule to conduct the approved scope of work. As the investigation of the release continues, it is likely that additional evidence will be found to support naming additional parties. You may, through an action brought in civil court, be able to request contribution for the expenses of the investigation and cleanup from other parties determined to be responsible for the discharge.

If you have any questions, please contact me at (707) 576-2669.

Sincerely,

Beth Lamb, C.E.G.
Engineering Geologist

BML: 102909_Stony Point Cleaners1.doc

cc: Mr. Brian Kelleher, 812 S. Winchester Drive, Suite 103, #109, San Jose, CA 95128
Mr. Gregg S. Garrison, Attorney at Law, Garrison Law Corporation, 1525 State Street, Suite 100, Santa Barbara, CA 93101
Gribi Associates, 1090 Adams Street, Suite K, Benicia, CA 94510
Ms Kim Niemeyer, Office of Chief Counsel State Water Resources Control Board
P.O. Box 100 Sacramento, CA 95812-0100

California Environmental Protection Agency

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EXHIBIT 3.B



California Regional Water Quality Control Board
North Coast Region

Geoffrey M. Hales, Chairman



Linda S. Adams
Acting Secretary for
Environmental Protection

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Edmund G. Brown Jr.
Governor

April 29, 2011

Dr. David Paslin
dba Ben Brett
ManAff (Management Affiliates)
2287 Cobblehill Place
San Mateo, CA 94402

Dear Dr. Paslin:

Subject: Request for Naming Primary and Secondary Responsible Parties

File: Stony Point Cleaners, 469 Stony Point Road, Santa Rosa
Case No. 1NSO898 (CR 201-0089)

North Coast Regional Water Quality Control Board (Regional Water Board) staff received a letter from your lawyer Mr. Gregg Garrison regarding *Request for Naming Primary and Secondary Responsible Parties*, dated December 31, 2010. As we transmitted to Mr. Garrison in an email dated April 18, 2011, there was no information contained in this letter that provided us with the documentation for naming additional responsible parties.

You also need to be advised that Regional Water Board orders do not name primary and secondary responsible parties. All parties named on an order are considered jointly and severally liable. If you have any questions, please contact me by email blamb@waterboards.ca.gov or call me at (707) 576-2669.

Sincerely,

Beth Lamb, C.E.G.
Engineering Geologist

110429_BML_StonyPointCleaners5

cc: Mr. Brian Kelleher, 5655 Silver Creek Valley Road, PMB 281, San Jose, CA 95138
Mr. Gregg S. Garrison, Attorney at Law, Garrison Law Corporation,
161 Cortez Avenue, Half Moon Bay, CA 94019-5325
Mr. James Gribi, Gribi Associates, 1090 Adams Street, Suite K, Benicia, CA 94510

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EXHIBIT 3.C

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1(415) 856-7033
christophermooney@paulhastings.com

January 11, 2011

75559.00002

VIA ELECTRONIC MAIL AND U.S. MAIL

Beth Lamb, C.E.G.
Engineering Geologist
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Re: Stony Point Cleaners Site – Case No. 1NS0898

Dear Ms. Lamb:

On behalf of Pacific Investors Group, Inc. (“Pacific”), we write in response to Dr. David Paslin’s December 31, 2010 request to name Pacific and other past owners and operators as responsible parties for contamination at the Stony Point Cleaners site located at 469 Stony Point Road in Santa Rosa, CA (“the Site”). As explained more fully below, the Board should deny Mr. Paslin’s request because he has failed to produce any conclusive evidence of when Stony Point Cleaners operated, when toxic discharges took place (if any), and who owned the Site during the period of alleged discharges. Just as the Board refused Dr. Paslin’s request to name additional responsible parties in October 2009 due to “insufficient evidence . . . to determine the date of the discharge, and . . . the facility owner(s)/operator(s) responsible for the discharge[.]” it should deny his request now because nothing has changed. *See* October 29, 2009 Letter from Beth Lamb (“Lamb Letter”) at 1.

Dr. Paslin’s letter provides a detailed history of the ownership of the Site from 1980 to 1985. As the Board has previously noted, however, owner/operator historical records “alone [are] not sufficient to name additional responsible parties.” Lamb Letter at 1. To be clear, Pacific does not dispute the ownership history of the Site. As the partnership and deed documents attached as Exhibit A to Dr. Paslin’s letter show, Pacific owned certain parcels in the Stony Point Shopping Center from May 1981 to February 1984. They did not conduct any operations at the Site.

What remains unknown is when Stony Point Cleaners came into operation, and who owned the Site at that time. More importantly, Dr. Paslin has produced no evidence showing when discharges from the cleaners allegedly took place, and whether those discharges account for the elevated PCE readings measured at the Site. His latest request therefore suffers the same deficiency as his prior requests: a failure to link any specific discharge to any particular owner or operator. The Board has no new basis, therefore, to

Beth Lamb, Engineering Geologist
January 11, 2011
Page 2

name additional responsible parties. Again, nothing has changed since October 2009 on this point.

To support his request, Dr. Paslin attaches soil gas sample results from his own consultants and an academic study on groundwater contamination prepared by the Santa Clara Valley Water District ("SCVWD"). A brief review of these documents reveals a pronounced lack of evidence supporting the naming of additional responsible parties:

Exhibit B – Results of Soil Gas Sampling by Gribi Associates and Optimal Technology

The memoranda attached as Exhibit B to Dr. Paslin's letter contain soil gas sampling results produced by Dr. Paslin's consultants, Gribi Associates and Optimal Technology. The results show elevated PCE soil gas concentrations at various locations of the Site, but absent are conclusions about the cause of these elevated readings or the timeframe of responsible releases. In particular, the October 22, 2010 memorandum from Gribi Associates contains numerous equivocations that render assigning responsibility for the soil conditions impossible:

- Referring to elevated PCE concentrations around the trash enclosure at the west end of the Site, the memorandum speculates that "[h]istoric dry cleaning practices *may have* included the disposal of spent PCE-laden filters and other PCE-laden items in the trash area, which *could have* resulted in releases to the ground surface and to underlying shallow soils in this area." (emphasis added).¹
- In describing elevated PCE concentrations in the parking lot areas south of the Site, the memorandum acknowledges "[t]he source of these impacts is not readily apparent."
- The memorandum provides that elevated PCE soil gas at the east end of the Site "*could* indicate either a nearby PCE source or vapor migration along the sewer backfill from a westerly source (*perhaps* the dry cleaners itself)." (emphasis added).
- The memorandum concludes by noting that "[a]dditional soil gas sampling is needed to attempt to fill in data gaps between the PCE areas of concern summarized above."

Contrary to Dr. Paslin's assertions, the October 22, 2010 memorandum and accompanying soil vapor survey data fail to establish that "extensive contamination occurred over a prolonged period of time dating back to 1980-1981." See Letter from Gregg Garrison dated December 31, 2010 ("Garrison Letter") at 2. Combined, the documents only tend to prove one thing: that some areas of the Site contain elevated PCE

¹ Pacific notes that groundwater concentrations of PCE in samples from boring locations closer to the strip mall are higher than those from boring locations further away, indicating that PCE releases may be more recent or ongoing.

Beth Lamb, Engineering Geologist
January 11, 2011
Page 3

concentrations. The documents provide no dates of suspected releases or names of responsible parties, even though the documents were created by Dr. Paslin's own consultants. Likewise, the Board should not read anything further into Dr. Paslin's "evidence." His request should be denied.

Exhibit C – SCVWD Study of Potential for Groundwater Contamination from Past Dry Cleaner Operations in Santa Clara County

Dr. Paslin's final submission is a "landmark report" on groundwater contamination from dry cleaner operations in Santa Clara County. See Garrison Letter at 5, Exh. C. Dr. Paslin asserts that the SCVWD report "makes it clear that pre-secondary containment owners and operators are those most appropriately named as Responsible Parties when subsurface PCE contamination problems associated with this unfortunate legacy ultimately surface[,]” citing to page iii of the report. *Id.* at 5. But the report states no such thing on page iii, or on any other page for that matter. Indeed, the report makes no representations about secondary containment systems or their impacts on determining responsible parties for contamination, nor does it mention Pacific, Stony Point Cleaners, or the Site by name. The report is simply an academic study that chronicles the history of dry cleaning operations in Santa Clara County and the "potential" impacts to groundwater quality from PCE releases. See Exh. C at 6. The report contains numerous disclaimers that foreclose its use as a reference for contamination levels or causes of contamination at various sites:

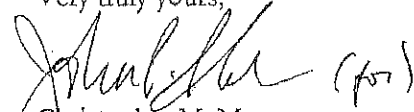
All of the information presented in this document is for the purpose of evaluating the potential threat to groundwater quality posed by historic dry cleaning operations. Data presented in map and tabular form is not intended to be a reliable record of past dry cleaning activity. Sites listed in tables and maps may have been drop-off locations, without dry cleaning plant operations. Records may be incomplete and errors may be present. Available records may have been overlooked. Due to street renumbering, street name changes, parcel divisions, and redevelopment, mapped locations may be erroneous. For these and many other reasons, *data from this report should not be used to make a final determination of whether a given property is potentially contaminated, whether dry cleaners operated at a particular location, or that a particular property did not have a dry cleaning operation on it. . . . Interpretations regarding whether a facility operated at a given location, whether the potential for a release is high or low, and whether a release poses a risk to a water supply well are matters of professional judgment best left to experienced regulatory officials and environmental consultants.*

Beth Lamb, Engineering Geologist
January 11, 2011
Page 4

Id. at 8 (emphasis in original). The Board has already documented that insufficient evidence exists to name additional responsible parties for contamination at the Site. *See* Lamb Letter at 1. Nothing Dr. Paslin submits with his latest request – least of all an academic study that disclaims citation as authority for where dry cleaning facilities operated, what they discharged, and when they discharged it – can justify naming Pacific - a company that works in the financial industry – a responsible party for contamination that allegedly occurred over 25 years ago.

In conclusion, Dr. Paslin's request falls short of the requirements the Board requires to name responsible parties for contamination. There is simply no evidence to confirm or deny that some or all of the detected PCE at the Site originated from an offsite source, including other businesses in the strip mall, a larger shopping area, or other surrounding area. And, even if Dr. Paslin could establish that dry cleaning releases were responsible for elevated PCE levels at the Site (which he cannot), he cannot show which parties owned or operated the dry cleaners at the time the discharges allegedly took place. His effort to attribute the entirety of Site contamination to pre-secondary containment releases, and to implicate every pre-1985 owner and operator involved with the Site (conveniently, before he took ownership), is not supported by science or fact and is, frankly, nothing more than unsupported "theory" created by a party pursuing litigation. The Board should affirm its October 2009 decision and deny Dr. Paslin's request to name additional responsible parties.

Very truly yours,


Christopher M. Mooney
for PAUL, HASTINGS, JANOFSKY & WALKER LLP
CMM/jmk

cc: Gregg S. Garrison, Esq.
Herman L. Kalfen, Esq.
Madeline L. Buty, Esq.
Angel L. Lewis, Esq.

EXHIBIT 3.D

RECEIVED

MAY 01 2002

SANTA ROSA FIRE DEPT

H1 ✓



CITY OF SANTA ROSA

UTILITIES DEPARTMENT
SUBREGIONAL WATER RECLAMATION SYSTEM
4300 Llano Road
Santa Rosa, CA 95407
707-543-3350
Fax: 707-543-3399

April 29, 2002

File

STANLEY KIM
STONY POINT CLEANERS
469 STONY POINT ROAD
SANTA ROSA CA 95401

*
* CEASE AND DESIST ORDER
*

LEGAL AUTHORITY

The following findings are made and Order issued pursuant to the authority vested in the City of Santa Rosa's Environmental Services Superintendent under the Santa Rosa City Code Title 15-Sewers, Chapter 15-08.090 B(3). This Order is based on findings of violation under the Santa Rosa City Code Title 15 - Chapter 15-24.040 G.

FINDINGS

1. STONY POINT CLEANERS discharges non-domestic wastewater containing pollutants into the Laguna Subregional Reclamation Facility.
2. STONY POINT CLEANERS was issued a Wastewater Discharge Permit #SR-NR2078 on May 8, 1998 which contains prohibitions, restrictions, limitations, and special requirements related to the discharge of wastewater to the sanitary sewer.
3. During an inspection on April 26, 2002, STONY POINT CLEANERS was found to be in violation of the Sewer Use Ordinance and Wastewater Discharge Permit #SR-NR2078 in the following manner:
 - a. Samples taken by this office on April 24, 2002 found wastewater containing Perchloroethylene (PCE) in a private sewer lateral connected to STONY POINT CLEANERS.
 - b. An inspection by City of Santa Rosa Industrial Inspector Chris Murray confirmed the Perchloroethylene (PCE) source to be a Vic Hydrosorb Carbon Filter used to treat condensate at STONY POINT CLEANERS.
 - c. It appears the Vic Hydrosorb Carbon Filter is not being replaced on a consistent basis and resulting in Perchloroethylene (PCE) to break through and discharge to the sanitary sewer.
 - d. PART 1, PAGE 3, PROVISION #7 of STONY POINT CLEANERS Wastewater Discharge Permit states Perchloroethylene, PCE is prohibited from being discharged to the sanitary sewer. Any water separator condensate or any other waste containing Perchloroethylene (PCE) shall be collected, stored and disposed of as hazardous waste.

CEASE AND DESIST
STONY POINT CLEANERS
April 29, 2002
Page 2

NOTICE

THEREFORE, BASED ON THE ABOVE FINDINGS, STONY POINT CLEANERS IS HEREBY NOTIFIED THAT:

1. It is in violation of City of Santa Rosa City Code Title 15-Sewers, and Wastewater Discharge Permit #SR-NR2078.
2. Due to the serious nature of this illegal discharge, the City of Santa Rosa has ordered you to cease any discharge of treated condensate water or any other Perchloroethylene (PCE) related compounds to the sanitary sewer.
3. STONY POINT CLEANERS is hereby required to start collecting condensate water for off-site disposal by a licensed hauler.
4. STONY POINT CLEANERS shall obtain prior approval from this office before resumption of any condensate treatment.
5. Failure to comply with this order will constitute a further violation of the Santa Rosa City Codes Chapter 15 Sewers and may subject STONY POINT CLEANERS to civil or criminal penalties or such other enforcement response as may be appropriate up to and including immediate termination of services.
6. This Notice, entered this the 29th day of April, 2002 will be effective upon receipt by STONY POINT CLEANERS. Pending further investigation, additional enforcement action may be initiated by the City of Santa Rosa.

Your cooperation is greatly appreciated. If you have any questions or comments please call me or Chris Murray at (707)543-3369.

Chris Murray
For

LYNN M. SMALL
Environmental Services Superintendent

LMS:td

cc: Scott Stinebaugh, Deputy Director Utilities Operations
Joan Fleck, North Coast Regional Water Quality Control Board
Jim Frank, Santa Rosa Fire Department
Mark Mahre, Santa Rosa Police Department

(Sue Warner)

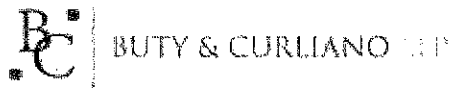
EXHIBIT 3.E

Mooney, Christopher

From: Jesse A. Boyd <jboyd@butycurliano.com>
Sent: Monday, December 16, 2013 3:55 PM
To: Mooney, Christopher
Subject: FW: 2013-11-0250
Attachments: 469 Stony Point Road, Santa Rosa.pdf

Fyi.

Jesse Boyd



555 12th Street, Ste.1280
Oakland, CA 94607
(510) 267-3000 wk#
(510) 267-0117 fx#
www.butycurliano.com

NOTICE: The information contained in, and attached to, this message is intended for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and as such is privileged and confidential. The information contained herein is protected by disclosure under applicable law. This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. 2510. If you are not the intended recipient, you are hereby notified that you have received this email in error and that any review, dissemination, distribution or copying of this message, or any attachment, is strictly prohibited and may subject you to a criminal or civil penalty. If you receive this communication in error, please immediately notify the sender by reply e-mail and permanently delete this message, along with any attachment from your computer system(s), and destroy any hard copy you may have printed.

From: Rochelle Reed [<mailto:publicrecords@baaqmd.gov>]
Sent: Wednesday, December 11, 2013 12:33 PM
To: Jesse A. Boyd
Subject: 2013-11-0250

Hello,

Enclosed are the records you requested. If you have any questions or concerns, please call or e-mail me. Thank you.

Sincerely,

Rochelle Reed
Public Records Section
BAAQMD
415-749-4784

Plant number 4905 A4905
Business name Stony Point Cleaners
Location address 469 Stony Point Road
City Santa Rosa, CA 95401
Telephone (707) 544-2536
Mailing address 469 Stony Point Road
City Santa Rosa, CA 95401
Principal product Dry Cleaning
SIC 7216
NAICS 812320
Contact S P Kim/D W Lee
Title owner
Address 469 Stony Point Road
City Santa Rosa, CA 95401
Telephone (707) 544-2536
Permit engr, Current ... Marc A Nash (1019)
Former Scott A Comiso (625)
Registered sources only
Ownership type Private
Inside city limits Yes
Ceased operation Dec 1, 2010 ,

Plant #: 4905
Company name: Stony Point Cleaners
Location: 469 Stony Point Road, Santa Rosa, CA 95401

Application #: 17548
Project title: Dry Cleaning Machine
Engineer: Marc A Nash [1019]
Received: 03/14/08
Final disposition: Exempt, 04/18/08

Application #: 29104
Project title: Not available
Engineer: Brian F Bateman [341]
Received: 01/24/83
Final disposition: A/C granted, 05/25/83

Application #: 9821
Project title: Dry Cleaning Machine
Engineer: Michael J Hovermale [614]
Received: 09/24/92
Final disposition: A/C granted, 12/16/92

NOV #:	A10368
Issue Site:	A4905 Stony Point Cleaners 469 Stony Point Road, Santa Rosa, CA 95401 707 544-2536
Contact:	S P Kim/D W Lee 469 Stony Point Road, Santa Rosa, CA 95401
Issuance:	Jun 14, 2002 Jorge Franco 451
Violation #:	A10368A Comments: 1100 PPM Vapor Leak On Lint Trap Gasket
Violated:	11-16-309.2
Final disposition:	Resolution, Mutual Settlement, Mar 19, 2003

NOV #:	A46620
Issue Site:	A4905 Stony Point Cleaners 469 Stony Point Road, Santa Rosa, CA 95401 707 544-2536
Contact:	S P Kim/D W Lee 469 Stony Point Road, Santa Rosa, CA 95401
Issuance:	Jun 21, 2006 Jeremy Kimball 606
Violation #:	A46620A Comments: 2 leaks > 1000 ppm - door & cylinder back
Violated:	11-16-309.2.4
Final disposition:	Resolution, Mutual Settlement, Oct 11, 2006

EXHIBIT 3.F

ManAff (Management Affiliates)

PMB # 24, 205 De Anza Blvd
San Mateo, CA 94402
Tel & Fax 650-522-8806

January 3, 2005

Stanley P. Kim
Do W. Lee
Stony Point Cleaners
469 Stony Point Road
Santa Rosa, CA 95401

Dear Mr. and Mrs. Kim,

Please find enclosed your copy of the new lease and addendum. ManAff's accountant has been updated on the new lease terms. I have continued to pursue Ralph's Supermarket chain at their headquarters in Los Angeles in an attempt to persuade them to reduce the shopping center CAM costs. They have been very slow in responding to my insistence on a reduction in costs. They are still "fact finding." For example, they charge each parcel for a security service which seems either non-existent or ineffective. I've tried to cajole reductions in landscaping and sweeping costs as well, but so far no luck. I continue to try. I believe Mrs. Meckstroth is doing a good job as on-site manager. She is a good resource with respect to building issues.

It has been a pleasure working with you in good times and in bad. Let us hope over the next 10 years, the good times will be common and bad times rare. Best wishes to you both.

Sincerely,

Ben

Ben Brett

Post script: Mr. Kim, I spoke with Mrs. Meckstroth tonight. She informs me that the discarded dry cleaning equipment ~~still~~ has not been removed by you and taken to the dump. Far too much time has passed. Please explain and promptly correct this problem. If we are forced to do the removal for you, it will be an abuse of our time and it will be much more expensive for you. I will look for your letter of explanation which should be faxed to me at 510-652-5156. Thanks.

EXHIBIT 3.G

ManAff BATES 00001817 11152013
478 Stony Point Road
Santa Rosa, CA 95401
(707) 575-9200
Fax: (707) 575-4548

**Stony Point Dental
Care**

Fax

To: David Paslin	From: Terry Meckstroth
Fax: (510)652-5156	Pages: 2
Phone: (650) 522-8806	Date: November 7, 2006
Re: Letter Re: Cleaners	CC:

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

• **Comments:**

ManAff BATES 00001818 11152013

Dear Mr. Jones,

This letter is about the chemical smells. I have thought about this matter for a good amount of time and I think this is a good time to bring it up. I believe, you as the manager, are the right person to talk to about this problem. I hope to discuss this problem with the landlord directly, maybe. I have used this facility for a long time and whenever I walk into the area, I am able to smell chemicals. To my discovery, I found the ground contaminated with cleaning solution. The smell was too strong to bear. I am sure that the ground is contaminated with a great amount of solution. Having worked with many chemicals in the cleaning business, I have heard that this chemical causes many health problems including cancer. This will not only be a big problem for the landlord, but also for me. Right now, I care about not only the smell, but also for my health and also the health of my employees and neighbors. As the manager, I am confident that you can do something about this matter. Thank you

Sincerely,

ManAff BATES 00001818 11152013

EXHIBIT 3.H

ManAff BATES 00001816 11152013

November 13, 2006

VIA FACSIMILE & CERTIFIED MAIL
(650-522-8806)

Ben Brett
ManAff (Management Affiliates)
PMB # 24, 205 De Anza Blvd.
San Mateo, CA 94402

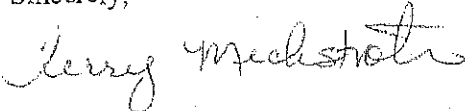
Dear Mr. Brett:

Due to expanding personal obligations, I find it necessary to terminate my role as site supervisor at your office building located at 479 Stony Point Road, effective immediately.

Further, I have enclosed an anonymous letter, apparently from one of your Tenants, expressing concern that the office complex is a toxic site. The receipt of this letter has caused serious concerns for Rob and myself personally, as well as concerns for our staff and patients.

We look forward to your immediate response to clarify this inquiry.

Sincerely,



Terry Meckstroth

Enclosure

ManAff BATES 00001816 11152013

EXHIBIT 3.I

ManAff BATES 00001803 11152013

479 Stony Point Road
Santa Rosa, CA 95401
(707) 575-9200
Fax: (707) 575-4546

**Stony Point Dental
Care**

Fax

To: Ben Brett	From: Terry Meckstroth
Fax: (650)522-8806	Pages: 3
Phone: (650)522-8806	Date: December 4, 2006
Re: Letter from neighbor	CC:
Insurance Endorsement	

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

• **Comments:**

I am forwarding a copy of an anonymous letter we received over the weekend along with the ManAff insurance endorsement.

ManAff BATES 00001803 11152013

As a previous customer of the Stony Point Cleaners I must admit that I was very dissatisfied with their so called "quality services." Here is a list of my complaints:

1. The store hours are never precise and many times I had to forgo with clean clothing on my business trips.
2. I've also noticed that many of my clothing have been returned smelling distinctively of their cleaning chemical perc. I have noted this to them and they had failed to fix the problem.
3. I take regular walks around the local neighborhood and every time I pass the shopping center I see that there is not back door for the cleaners and as I walk by I am hit by the strong smell of chemicals.
4. The biggest problem I have noticed is that on one of my walks I saw the owner carrying in a can of perc. I heard that the owner had obtained the can in an illegal way. I have also heard they had spilled perc many times around the cleaning machines. I emphasize this point because the chemical is highly dangerous. If spilt its fumes are toxic to humans, and a contamination to the environment.

With all of these negative attributes I do not think that this dry cleaner's services is not acceptable in this shopping center. I am not the only one in my complaints, many of the local people have complained and we all agree that this store should not be in this shopping center.

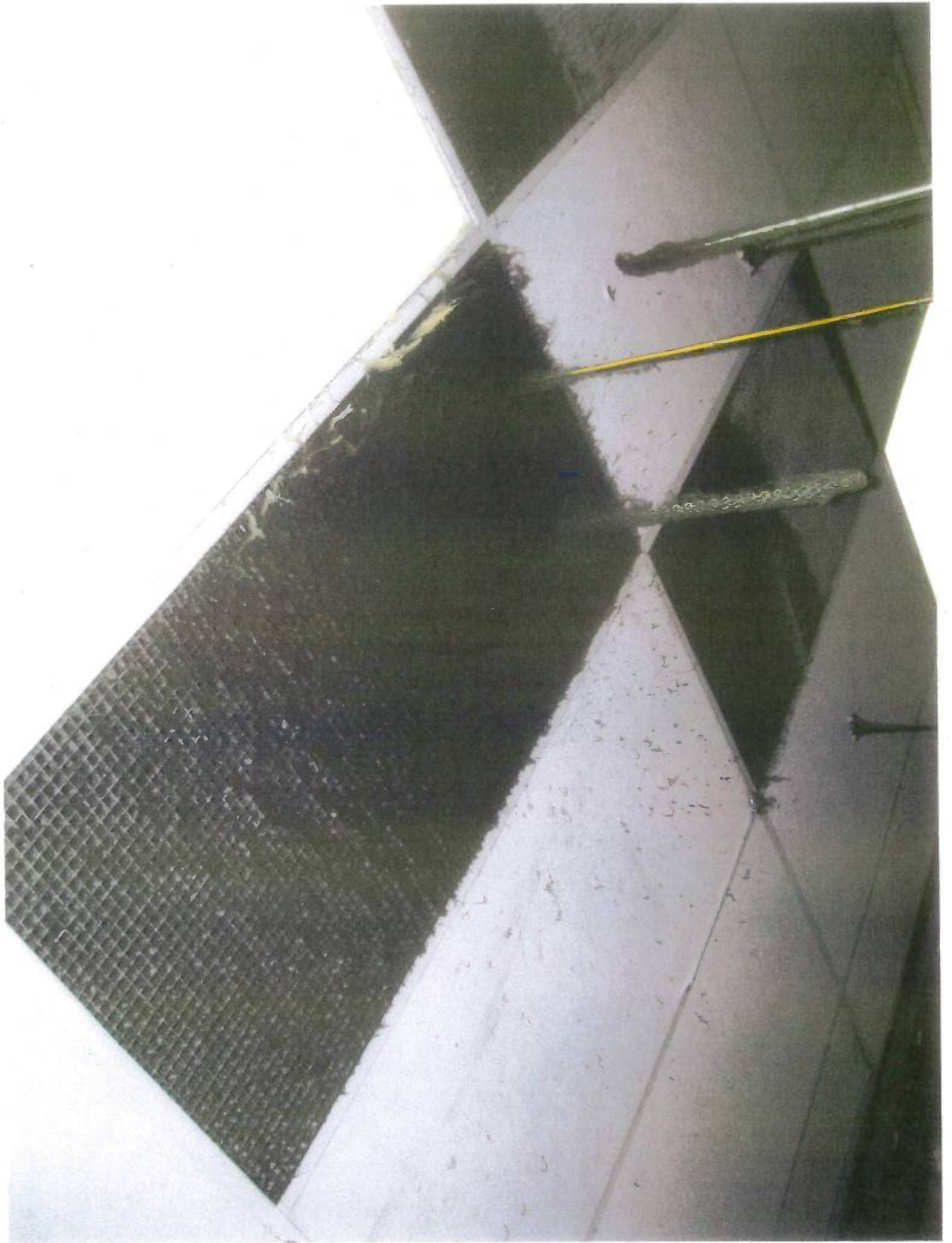
Thank you for your time and patience

EXHIBIT 3.J



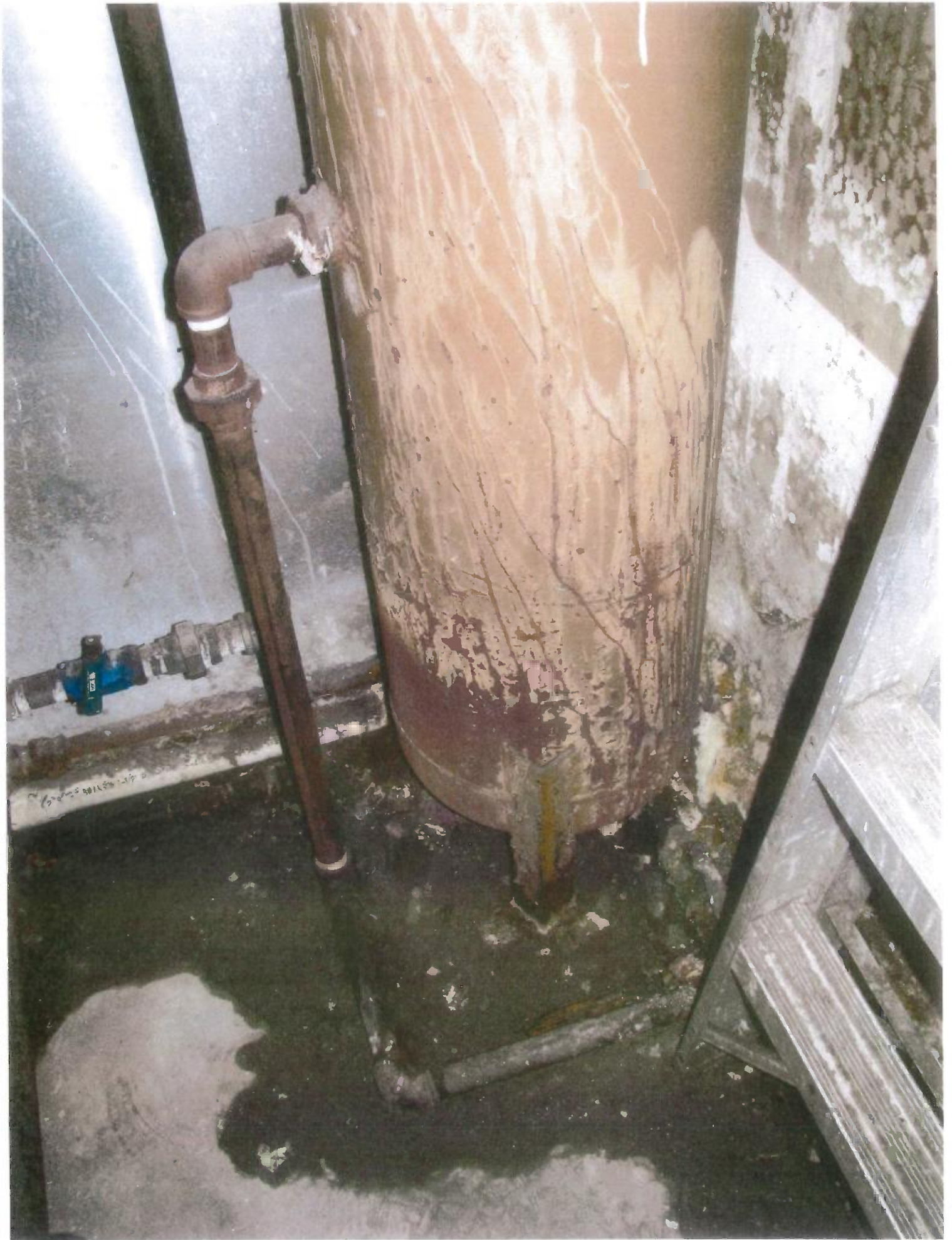












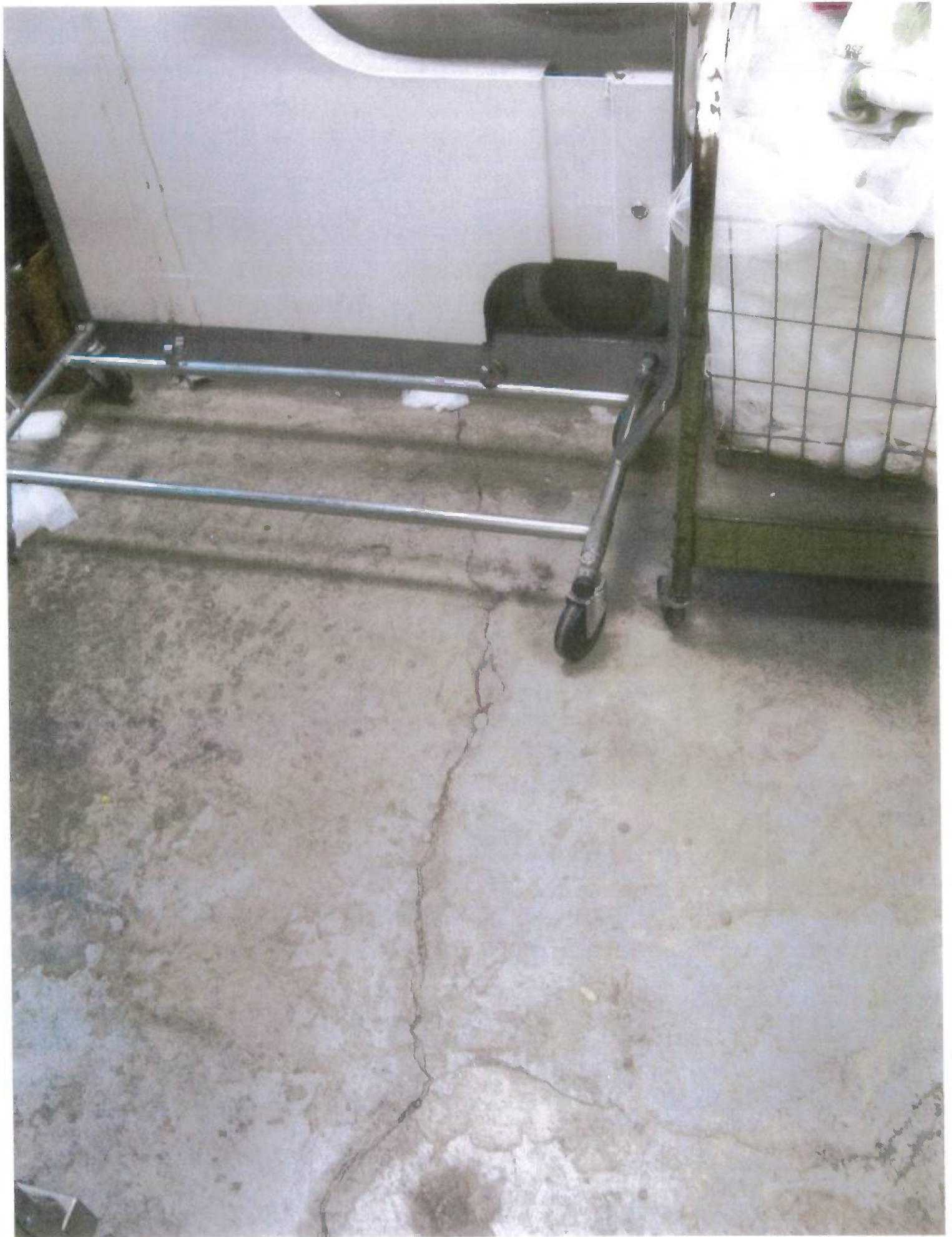




EXHIBIT 3.K

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

MANAGEMENT AFFILIATES (ManAff)
& BEN BRETT dba for DAVID
PASLIN, an individual,

CERTIFIED

Plaintiff(s),

vs.

Case No. SCV 244318

ELMER B. KNAPP, an individual; and
YOUNG P. HAHN, an individual; and
U.L. HAHN aka TIM HAHN, an
Individual; and DAVID J. HOFFMAN; an
individual; and PHILLIP M. STEINBOCH,
an individual; and PETER J. SUK, an
individual; and HELEN SUK, an
individual; and PACIFIC INVESTMENT
GROUP, INC.; and STONY POINT
ASSOCIATES; and Does 1 to 99,

Defendants.

AND ALL RELATED CROSS ACTIONS.

DEPOSITION OF TIM HAHN

Volume I, Pages 1 to 257

September 23, 2013

Reported by: DEBBY CLARK CSR NO. 9705

Registered Report Reporter

GROSSMAN & COTTER
CERTIFIED COURT REPORTERS

117S. California Avenue, #D-201 • Palo Alto, CA 94306
Phone 650.324.1181 Fax 650.324.4609

1 Q. And the one person you remember is Jackie.
2 Anybody else?

3 A. No.

4 Q. Okay. Now, I'm going to go back to Stony Point
5 Cleaners and the actual operation of the business, okay?
6 And maybe this is --

7 MR. BOYD: How long have we been on the record?

8 THE REPORTER: I think we started about --

9 MR. MOONEY: 45 minutes.

10 THE WITNESS: Excuse me. Can I go back to that
11 insurance company, the person I talked to. I'm not sure
12 her name's Jackie or not.

13 BY MR. BOYD:

14 Q. Okay. Going back to the dry cleaner when you
15 started, would you say that it was a relatively new
16 business when you purchased it?

17 A. If I remember correctly, it should be in four
18 years since they start the new business. Whoever built
19 it, start it, it was four years old.

20 Q. Okay. That was your understanding at the time
21 when you purchased it?

22 A. Yes.

23 Q. Would you call that relatively young compared
24 to the other businesses you were involved with?

25 A. Yes.

1 Q. Would you say that the building that the
2 business was in was in good condition when you took it
3 over?

4 A. Yes.

5 Q. Would you say the same about the actual space
6 where the dry cleaner was, was that in good condition
7 when you took over the business?

8 A. Yes.

9 Q. I'm going to pass around some exhibits.

10 Okay, sir --

11 MR. MOONEY: Just for the record, what are we
12 marking this exhibit?

13 MR. BOYD: This will be -- oh, wait, that's --
14 I'm sorry, let's take care of exhibits first. Thank
15 you, Chris.

16 So we are going to mark the check stubs as
17 Exhibit B.

18 Q. Sir, do you mind if we mark these directly as
19 Exhibit B and keep the original or do you want the
20 originals back?

21 A. Whichever is easier for you because this is not
22 good for me no more.

23 Q. Okay. Well --

24 MR. KALFEN: Maybe we should just make copies.

25 MR. BOYD: Yeah, we'll make copies. And I

1 Q. And there were racks for clothes, correct?

2 A. Yes.

3 Q. And there was the dry cleaning machine,
4 correct?

5 A. Yes.

6 Q. And the restroom?

7 A. Yes.

8 Q. In that area behind the counter, aside from
9 this carpeting that was along the west wall, was the
10 rest of the floor concrete?

11 A. Yes.

12 Q. Okay. And when you acquired the business, was
13 that concrete in good condition?

14 A. Yes.

15 Q. And were there any cracks -- putting aside the
16 boiler room -- in the rest of the facility, were there
17 any cracks in the concrete that you remember?

18 A. No.

19 Q. Okay. Now, looking back at what we've marked
20 as Exhibit D, can you see extending from the corner of
21 the floor drain, do you see that?

22 A. Yes.

23 Q. There is a crack that's diagramed there and
24 it's labeled "floor crack" in blue. Do you see that?

25 A. Yes.

1 Q. Stretching from the floor drain to the boiler.
2 Do you see that?

3 A. Yes.

4 Q. Okay. Was that crack there when you owned the
5 business?

6 A. No.

7 Q. Okay. Did you move any of the equipment in the
8 boiler room while you owned the business?

9 A. No.

10 Q. Did you have installed any new equipment in the
11 boiler room when you owned the business?

12 A. No.

13 Q. Okay. Sir, I'm going to give you another --
14 and mark this as next in line.

15 (WHEREUPON, DEFENDANTS' EXHIBIT F
16 WAS MARKED FOR IDENTIFICATION.)

17 BY MR. BOYD:

18 Q. I'm going to give you what is marked as
19 Exhibit F, and it's a series of pictures. It is three
20 pages. Going ahead and looking at photo No. 1 on the
21 first page of that exhibit. And I'll read the bottom,
22 and you just tell me if I'm reading it correctly, okay,
23 Mr. Hahn?

24 A. Yes.

25 Q. "View of three soil borings in boiler room.

1 separate in the separator tank on the bottom would then
2 be recycled by the machine back into the
3 perchloroethylene tank, right?

4 A. Yes.

5 Q. So the bucket that contained the water that
6 came out of the perchloroethylene tank, what did you do
7 with that?

8 A. I explained to Mr. Kellerher that I dump it
9 through the drainage right here, like this picture shows
10 here, where the drainage here.

11 MR. KALFEN: Let the record reflect the
12 deponent's pointing to Exhibit F, the bottom photo, into
13 the drain.

14 MR. BOYD: Okay.

15 THE WITNESS: But I don't think this is the
16 same drainage. I'm not sure, because he remodeled, you
17 know, the boiler room, so I'm not sure if it's the same.
18 But it's, if it's not same, it's similar like this
19 drainage, we dump it in.

20 BY MR. BOYD:

21 Q. Okay. And is it your understanding that that
22 went, that floor drain went into the sanitary sewer?

23 A. Yes.

24 Q. Okay. When you would dump the bucket of water,
25 you tried to put it mostly in the drain, correct?

1 A. Yes.

2 Q. You tried not to spill it all over the place;
3 is that right?

4 A. Yes.

5 Q. And would you say that the majority of the time
6 you did that, most, if not all of the water, went down
7 the drain?

8 A. Most of them, if not all of them, yes.

9 Q. Okay. Did the water that you took to the drain
10 smell like dry cleaning fluid?

11 A. No.

12 Q. Was it pretty clean water?

13 A. It's, I would say more than 99 percent it's
14 water.

15 Q. Okay. Could you tell by looking at it that it
16 had any perchloroethylene in the water?

17 A. No, but, you know, being a long cleaner
18 operator, you know, perc is expensive. You know, when,
19 last time I purchase the gallon of perc it is \$16. If
20 you lose perc, you know, so much, you losing a lot of
21 money. So we watch, I watch, you know, how much the
22 perc is used every, you know, week or every month. If
23 it, the water separator contain a little bit solvent
24 every day like that, I mean it will be noticeable. But
25 it's, most of them is pure water.

1 I, DEBBY CLARY, duly authorized to administer
2 oaths pursuant to Section 2093(b) of the California Code
3 of Civil Procedure, do hereby certify: That the witness
4 in the foregoing deposition was by me duly sworn to
5 testify the truth in the within-entitled cause; that
6 said deposition was taken at the time and place therein
7 cited; that the testimony of the said witness was
8 reported by me and was hereafter transcribed under my
9 direction into typewriting; that the foregoing is a
10 complete and accurate record of said testimony; and that
11 the witness was given an opportunity to read and correct
12 said deposition and to subscribe the same.

13 Should the signature of the witness not be
14 affixed to the deposition, the witness shall not have
15 availed him or herself of the opportunity to sign or the
16 signature has been waived.

17 I further certify that I am not of counsel, nor
18 attorney for any of the parties in the foregoing
19 deposition and caption named, nor in any way interested
20 in the outcome of the cause named in said caption.

21 DATED: October 1, 2013

22
23
24
25 DEBBY CLARY, CSR. NO. 9705



EXHIBIT 3.L

DECLARATION OF PETER SUK

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I, Peter Suk, hereby declare as follows:

1. I have not been offered any reward or inducement for the execution of this declaration. I have personal knowledge of the facts set forth below, and if called upon to do so, I would testify consistently with them.

2. From November 11, 1989 through February 17, 1996, I owned and operated Stony Point Cleaners, located at 469 Stony Point Road in Santa Rosa, California. I was involved in and oversaw the day-to-day operations on-site.

3. In 1992 I upgraded the equipment at Stony Point Cleaners. This involved: Replacement of the cleaning machine and boiler, and the installation of a water heater. There was no water heater on site when I purchased the business.

4. The separator water of the drycleaning machine installed in 1992 was collected in a drum and hauled away by a company called Safety Kleen. The drum was not located in the boiler room.

5. The crack shown in the photos attached as Exhibit A to this declaration did not exist during my tenure at Stony Point Cleaners.

6. The crack indicated in the diagram attached as Exhibit B to this declaration did not exist during my tenure at Stony Point Cleaners.

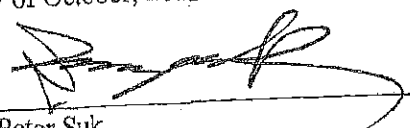
7. The boiler room shown in the photos attached hereto as Exhibit A was in much better condition during my tenure at Stony Point Cleaners.

8. During my tenure, there were only two pipes entering the floor drain in the boiler room – one from the boiler, and one from the water heater.

\\ \\ \\
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\\ \\ \\

1 9. When I purchased Stony Point Cleaners, and throughout my tenure, the boiler
2 room was in good condition. There was no water damage to the walls or equipment and the
3 walls were completely covered with undamaged sheetrock.

4 I declare under the penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct. Executed this 24 day of October, 2013 in Oakland, California.

6 
7 _____
8 Peter Suk

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EXHIBIT 3.M

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

MANAGEMENT AFFILIATES (ManAff)
& BEN BRETT dba for DAVID
PASLIN, an individual,

CERTIFIED

Plaintiff(s),

vs.

Case No. SCV 244318

ELMER B. KNAPP, an individual; and
YOUNG P. HAHN, an individual; and
U.L. HAHN aka TIM HAHN, an
Individual; and DAVID J. HOFFMAN; an
individual; and PHILLIP M. STEINBOCH,
an individual; and PETER J. SUK, an
individual; and HELEN SUK, an
individual; and PACIFIC INVESTMENT
GROUP, INC.; and STONY POINT
ASSOCIATES; and Does 1 to 99,

Defendants.

AND ALL RELATED CROSS ACTIONS.

DEPOSITION OF BRIAN KELLEHER

October 4, 2013

Reported by: DEBBY CLARY, CSR NO. 9705

Registered Merit Reporter



GROSSMAN & COTTER
CERTIFIED COURT REPORTERS

117 S. California Avenue, #D-201 • Palo Alto, CA 94306
Phone 650.324.1181 Fax 650.324.4609

1 Q. Okay. So you had these -- after having these
2 insurance conversations with Mr. Hahn, I take it you
3 didn't talk to Mr. Hahn for a while; is that right?

4 A. That's correct.

5 Q. Did you have any conversations during this
6 initial phase with any other operators other than
7 Mr. Hahn?

8 A. Mr. Kim.

9 Q. You know what I'll make this, I'll walk through
10 this chronologically. Why don't we start with, who was
11 the initial operator at Stony Point Cleaners, if you
12 know?

13 A. Maffai, M-a-f-f-a-i, I believe is the spelling
14 for the last name.

15 Q. Do you recall the first name?

16 A. I don't.

17 Q. Okay. And what year or years did Mr. or
18 Mrs. Maffai operate Stony Point Cleaners?

19 A. Approximately 1981 or 1982. But my conclusion
20 was that they never actually operated. I think they
21 just set it up.

22 Q. Did you ever speak with any Maffai that you
23 believe operated the, or owned Stony Point Cleaners?

24 A. I remember tracking them down to Pleasant Hill.
25 I think I finally figured out that the family was in

1 I, DEBBY CLARY, duly authorized to administer
2 oaths pursuant to Section 2093(b) of the California Code
3 of Civil Procedure, do hereby certify: That the witness
4 in the foregoing deposition was by me duly sworn to
5 testify the truth in the within-entitled cause; that
6 said deposition was taken at the time and place therein
7 cited; that the testimony of the said witness was
8 reported by me and was hereafter transcribed under my
9 direction into typewriting; that the foregoing is a
10 complete and accurate record of said testimony; and that
11 the witness was given an opportunity to read and correct
12 said deposition and to subscribe the same.

13 Should the signature of the witness not be
14 affixed to the deposition, the witness shall not have
15 availed him or herself of the opportunity to sign or the
16 signature has been waived.

17 I further certify that I am not of counsel, nor
18 attorney for any of the parties in the foregoing
19 deposition and caption named, nor in any way interested
20 in the outcome of the cause named in said caption.

21 DATED: October 11, 2013



22
23
24 DEBBY CLARY, CSR. NO. 9705
REGISTERED MERIT REPORTER

25

EXHIBIT 3.N

CHMR 10/29/07 AUG 27 2007

<input type="checkbox"/> EO	<input type="checkbox"/> WMgmt	<input type="checkbox"/> Admin
<input type="checkbox"/> AEO	<input type="checkbox"/> Timber	<input type="checkbox"/> Legal
<input type="checkbox"/> Rec/AFS	<input type="checkbox"/> Cleanups	<input type="checkbox"/> Date
<input type="checkbox"/> Other		

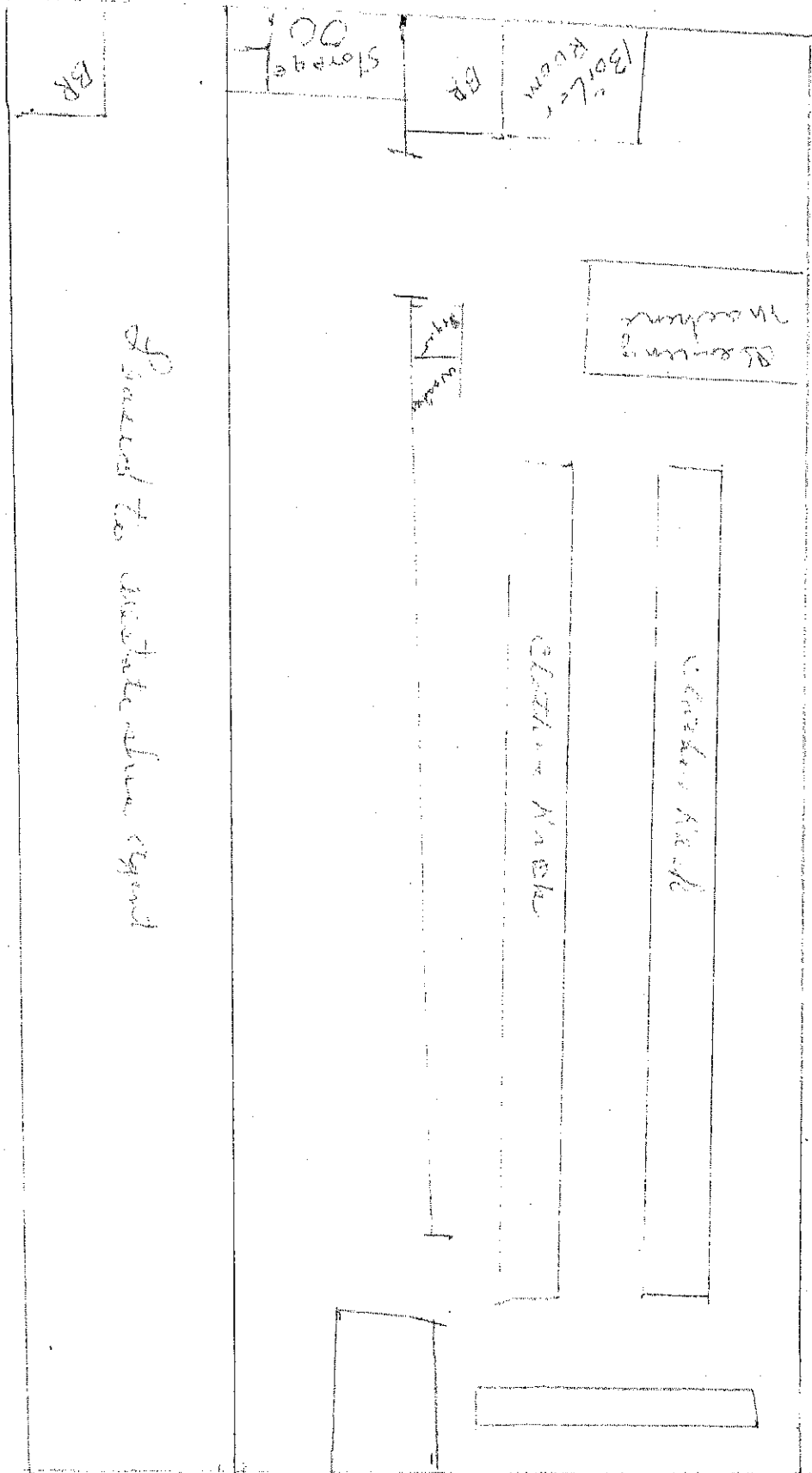
- # 1 They only ran the cleaners 2 1/2 months
We purchased from ~~three~~ ^{two} brothers + one sister
They purchased a laundry in Tanfuld Ca ^{near} (AFB)
- 2 Purchased from - Fast Records (mark 80's)
Sold to - Jim Haun 6564 Drake Ct. Magalia, Ca
Haun's last address - we sold 3 1/2 years after purchase
- 3 Type of equipment - just the type of equip. needed to operate a dry cleaners.
- 4 Purchased equipment with purchase the business.
- 5 Perchloroethylene and standard spotting board chemicals.
- 6 Map drawer - attached
- 7 In separate room - shown on map
- 8 Metal air tight drum for spent felters cabinet for other chemicals below storage area
- 9 Shown on Map
- 10 Storage of waste, air tight drum
- 11 Method of disposal - Hazard Waste Company - cannot remember name
- 12 Spills or discharge (None)
- 13 Discharge in city of Santa Rosa, some (None)
- 14 Business partner (wife) Jeanette Knapp (Devoritt)
Do not know where she lives, last name now is Must grave
- 15 If had insurance - to cover environmental damage if don't know.

Thank You
To Knapp

This is as near as I can remember about the cleaners.

When I showed to Paradise - I fell from a tree + broke my back + had bad head and wrist memory loss

ManAff BATES 00001925 11152013

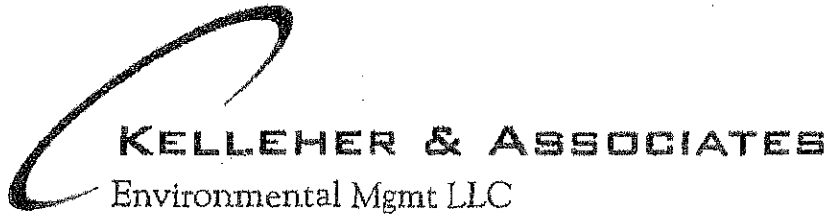


Placed to maintain clean

ManAff BATES 00001925 11152013

ManAff BATES 00001925 11152013

EXHIBIT 3.0



5655 Silver Creek Valley Road
PMB 281
San Jose, CA 95138
408-677-3307 (P)
408-677-3272 (F)
bkellehr@ix.netcom.com

September 4, 2013

Beth Lamb
North Coast Regional Water Quality Control Board
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403

In Reference To: Stony Point Cleaners: 469 Stony Point Road, Santa Rosa, CA unauthorized
PCE release site ("Site"); Case No. 1NS0898.
Subject: Technical Report Submittal: *Report of PCE Source Area Investigation*,
September 4, 2013.

Dear Ms. Lamb:

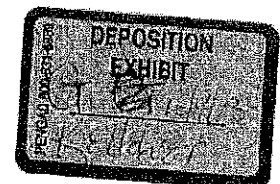
Via Geotracker and US Mail, please find enclosed herewith in connection with the above-referenced property (Site) a copy of the above-referenced technical report prepared by Gribi Associates, Benicia, CA (Gribi). On behalf of the responsible parties, I declare under penalty of perjury that I have reviewed the information contained in the enclosed document and believe that it is true and correct to the best of my knowledge.

The report describes and documents the collection of eleven soil gas samples and seven soil samples from three shallow borings in the boiler room area at the north end of the Stony Point Cleaners facility. The source area investigation was recommended in the semi-annual groundwater monitoring report submitted to the Regional Board in April 2013 and was considered an extension of the remedial investigation (RI) work in progress under a June 18, 2010 RI workplan. At the Regional Board's request, a detailed scope of work was submitted to the Regional Board on August 1, 2013, by way of notification. The investigation results were needed for a mandatory settlement conference held on August 12, 2013, in connection with the ongoing litigation over liability.

According to a prior owner/operator of Stony Point Cleaners, during the early and mid 1980s (prior to enforcement of current hazardous waste management and hazardous materials storage regulations) contact water from the PCE machine's water separator was collected in 5-gallon buckets, hand-carried into the boiler room, and discharged to the sanitary sewer system via a floor drain.

With this information in hand, Gribi conducted investigations to determine if this prior waste management practice resulted in subsurface PCE discharges. They found the floor drain in a difficult to reach location with access to the top obstructed by numerous pipes discharging wastewater from various sources.

On the basis of the investigation results, Gribi concluded that the primary PCE discharge point to the subsurface was at a low spot in the concrete slab floor just in front of the floor drain at the point most prone to receiving spillage during the manual discharge of contact water to the drain. In particular they discovered there was a crack in the 4-inch thick concrete slab floor crossing the low spot that acted as a preferential pathway for contaminant migration. The soil gas sample collected at 4 feet directly below the crack contained 4,565,094 ug/m³ PCE and the soil sample collected at 1.5 feet contained 170 ppm PCE and had a strong solvent odor. As part of the investigation, Gribi



North Coast Regional Water Quality Control Board
September 4, 2013
Page 2 of 2

measured the width of the crack as it passed through the low spot at 7 mm and tested the rate of gravity drainage into the subsurface via the crack at 10 ml/sec.

On the basis of the above, Gribi is recommending that currently-proposed IRMs be more focused on remediating the identified primary discharge point in the boiler room, to include removal and replacement of a portion of the rear wall to facilitate access to the boiler room and focused removal of contaminated soil in the area of the identified primary PCE discharge point. Toward that end, Gribi is recommending an addendum to the June 2010 IRM workplan.

Anticipating Regional Board approval of the recommendation to amend the IRM workplan, we have authorized Gribi to complete this task.

We appreciate the Regional Board's patience in this matter.

Please do not hesitate to contact me at 408-677-3307 with any questions you may have. Thank you for your ongoing courtesy and cooperation.

Sincerely,


Brian Kelleher
Project coordinator

Cc w partial enclosures or no enclosures via e-mail and/or US mail

Ben Brett;
Gregg S. Garrison, R.E.A. & C.E.I, Attorney at Law;
Pacific Investments, /Pacific Development, c/o Paul, Hastings, Janofsky, & Walker;
Stony Point Associates, c/o Buty & Curliano LLP;
Elmer B (Pat) Knapp and Jeanette Herron aka Jeanette (Jan) Knapp;
Tim, Seoung and Young Hahn, Creekside Dry Cleaners;
Maffee (former operator dba Stony Point Cleaners);
Tom Scott, General Manager, Oliver's Market;
CVS Caremart, c/o Diana Boiselle, Lease Administrator;
Jim Gribi, Gribi Associates (cover letter only).



September 4, 2013

Ben Brett/Manaff
c/o Brian Kelleher
Kelleher & Associates Environmental Mgmt LLC
5655 Silver Creek Valley Road PMB 281
San Jose, CA 95138

Subject: Report of PCE Source Area Investigation
Stony Point Cleaners, 469 Stony Point Road, Santa Rosa, California
NCRWQCB Case No. INSO898, Geotracker Global ID No. SL0609767669

Dear Mr. Brett:

Gribi Associates is pleased to submit this *Report of PCE Source Area Investigation* on behalf of Ben Brett/Manaff and other parties of interest for the property located at 469 Stony Point Road in Santa Rosa, California (Site) (see Figure 1 and Figure 2). This report describes and documents the collection of eleven soil gas samples and seven soil samples from three shallow borings in the boiler room area at the north end of the Stony Point Cleaners facility. The source area investigation was recommended in the semi-annual groundwater monitoring report submitted to the Regional Board in April 2013 and was considered an extension of the remedial investigation (RI) work in progress under a June 18, 2010 RI workplan. At the Regional Board's request, a detailed scope of work was submitted to the Regional Board on August 1, 2013, by way of notification. The investigation results were needed for a mandatory settlement conference held on August 12, 2013, in connection with the ongoing litigation over liability.

1.0 BACKGROUND AND PROJECT APPROACH

Previous Site investigations revealed elevated concentrations of tetrachloroethylene (PCE, or "perc") in shallow soil, groundwater, and soil vapor emanating from the north end of the Stony Point Cleaners facility. Based on information provided to the project coordinator during a March 2013 interview with a former Stony Point Cleaners operator, there is evidence that prior to approximately 1987, water condensate from the dry cleaning machine (contact water) was collected in 5-gallon buckets approximately once per week, hand carried into the boiler room and poured into a floor drain. This recollection of events by the former operator is substantiated by Santa Rosa Fire Department records showing that in February 1987 the facility was visited by a hazardous material storage inspector who first informed the operator of his obligations to comply with the City of Santa Rosa hazardous materials storage ordinance adopted in the mid 1980s. The hazardous material storage ordinance required compliance with all hazardous waste regulations subject to permitting and annual inspections, including the need to segregate and

treat contact water prior to discharge into the sewer. Considering the encumbered location of the drain coupled with the presence of multiple pipes entering it from the top obstructing access, some degree of spillage onto the boiler room floor was inevitable, particularly considering the absence of any awareness of the consequences.

In order to assess potential PCE subsurface releases from floor drain spillage within the boiler room, we adopted a project approach which included conducting detailed inspections of the boiler room both before and after sampling, then collecting shallow soil gas samples at the north end of the dry cleaning facility to attempt to identify sub-slab PCE "hot spots," and finally, conducting soil sampling in identified "hot spot" areas.

2.0 DESCRIPTION OF SOIL VAPOR AND SOIL SAMPLING ACTIVITIES AND RESULTS

On July 31, 2013, Gribi Associates conducted a detailed inspection of the boiler room and the north end of the dry cleaning facility. During this inspection, we noted one southwest-trending floor crack in the boiler room beginning at the southwest corner of the floor drain, and one east-west trending crack south of the boiler room adjacent to the dry cleaning machine. It was also noted that the floor drain in the boiler room is raised 1.5 inches above the surrounding concrete slab flooring, with a raised concrete skirt surrounding the metal drain and drain sump. There were several pipes entering the drain delivering waste water from various locations, including the boiler itself. The floor drain does not receive drainage from the floor and, because it is raised, is more appropriately called a floor sink.

2.1 Soil Vapor Sampling

Gribi Associates contracted Optimal Technologies to conduct soil vapor sampling and mobile lab analysis at eleven locations (SG-A through SG-D, SG-F through SG-H, and SG-J through SG-N) on August 2, 2013 (see Figure 3). Soil gas sampling consisted of advancing a hollow soil gas sampling rod with retractable screened sampling tip to the desired depth, and then retracting the tip to allow for soil gas sampling. Sampling depth was determined individually at each sampling point based on flow, with sampling conducted only if sufficient flow was attainable. Vapor sampling depths ranged from 3.0 feet to 5.0 feet below ground surface. After allowing the sample train to equilibrate for several minutes, the soil gas sample was collected after purging approximately three times the internal volume of the sample train. Soil gas samples were collected in clean, glass syringes and injected directly into Optimal Technology's mobile lab equipment for gas chromatographic analysis. Soil gas samples were analyzed for halogenated volatile organic compounds (HVOCs) by EPA Method 8021B. During sampling, a tracer gas, isobutane in shaving cream, was placed adjacent to the sampling apparatus, and isobutane was included in the lab analysis for each sample. A more detailed description of field methods is contained in the Optimal Technology sampling and laboratory data reports, included in Attachment A.

Results of the soil gas survey are summarized on Figure 4. Vapor PCE concentrations ranged from 2,022 ug/m³ at SG-0, located just outside the rear wall of the boiler room, to 4,565,094

ug/m³ at SB-D, located directly in front of the floor drain and intercepting an open crack in the floor. The median concentration for the eleven samples was 341,534 ug/m³. Relative to the median, the following results indicated three possible points of discharge:

- **2 feet southwest of the floor sink/drain:** SG-D at 4,565,094 ug/m³, adjacent to the crack in the floor;
- **6 feet west of boiler room floor sink/drain:** SG-B at 1,641,386 ug/m³); and.
- **1 foot west of the floor sink/drain:** SG-C, at 804,984 ug/m³ located just a few feet north of SG-D.

2.2 Shallow Soil Sampling

On August 9, 2013, Gribi Associates collected soil samples from three shallow borings (B-A, B-B, and B-C) located at or near the three possible points of discharge identified via soil vapor sampling (see Figure 3). Soil sampling consisted of, first, coring through the concrete using a coring machine, and then digging to the desired depth using hand tools (digging bar and hand auger). Photos 1 and 2 in Attachment B collectively show the obstructed floor sink/drain and the three boring locations. Two soil samples were collected from borings B-A and B-B, and three samples were collected from boring B-C. All soil samples were preserved in the field utilizing EPA Method 5035 (Close-System Purge and Trap and Extraction). This method involves using a specialized soil sampler to collect a known amount of soil (approximately 5 grams) and placing this soil in a VOA containing a pre-measured amount a liquid solvent (for each sample, two VOAs with methanol and one VOA with sodium bisulfate). The VOA is then quickly sealed, labeled, and placed in cold storage for transport to the laboratory.

The slab itself was 4 inches thick and was underlain by a layer of plastic sheeting (membrane) that comprised a moisture barrier. Due to the coring, Gribi personnel could not tell the condition of the membrane at the boring locations. It is assumed, however, that the moisture barrier membrane was breached during the installation of the nearby floor drain slab if not by chronic exposure to the solvent properties of liquid or vapor phase PCE.

Soils beneath the concrete slab flooring generally consisted of approximately 4 inches of medium-grained sand, followed by silty coarse gravel to total depths investigated. Moderate to strong solvent odors were noted in boring B-C in the silty gravel (below the sub-slab sand), starting at about 10 inches below the floor. No solvent odors were noted in soils in borings B-A or B-B.

Soil laboratory analytical results are summarized in Table 1 and on Figure 4. The laboratory data report is contained in Attachment C.

SUMMARY OF SOIL LABORATORY ANALYTICAL RESULTS Stony Point Cleaners						
Sample ID	Sample Depth	Concentration, in milligrams per kilogram (mg/kg)				
		PCE	TCE	c-1,2-DCE	t-1,2-DCE	VC
B-A-0.5'	0.5 ft	0.038	<0.0050	<0.0050	<0.0050	<0.0050
B-A-1.0'	1.0 ft	0.520	0.012	<0.0050	<0.0050	<0.0050
B-B-1.0'	1.0 ft	0.820	<0.0087	<0.0087	<0.0087	<0.0087
B-B-1.5'	1.5 ft	10	0.014	<0.0044	<0.0044	<0.0044
B-C-0.5'	0.5 ft	0.063	<0.0093	<0.0093	<0.0093	<0.0093
B-C-1.0'	1.0 ft	85	0.031	<0.0050	<0.0050	<0.0050
B-C-1.5'	1.5 ft	170	0.056	<0.0050	<0.0050	<0.0050

PCE = Tetrachloroethylene
 TCE = Tetrachloroethylene
 c-1,2-DCE = cis-1,2-Dichloroethylene
 t-1,2-DCE = trans-1,2-Dichloroethylene
 VC = Vinyl Chloride
 <0.0050 = Not detected above the expressed value

Highly elevated PCE concentrations were encountered in soil samples collected at 1.0 foot and 1.5 feet below ground surface in boring B-C, located at the floor crack just southwest of the sink/drain. A moderate PCE concentration was encountered at 1.5 feet in depth in boring B-B, located immediately west of the floor sink/drain. Boring B-B is little more than a foot away from B-C and from the floor crack, and the PCE contamination at B-B is considered to be associated with the same discharges via the crack.

3.0 DESCRIPTION AND ASSESSMENT OF FLOOR DRAIN AND FLOOR CRACKS

3.1 Initial Assessment, August 9, 2013

During soil sampling on August 9, 2013, Gribi Associates inspected the floor drain and associated floor crack in the northeast corner of the boiler room. Photo 1 in Attachment B shows boring B-C intercepting the crack. The crack radiates from the southwest corner of the floor sink/drain and extends southwesterly about six feet toward the boiler.

The crack was carefully inspected before and after the coring. It was observed to penetrate the 4-inch-thick slab from top to bottom. The portion of the crack where it was intercepted by the boring was observed to be greater than 2 millimeter (mm) wide.

3.2 Detailed Assessment, August 23, 2013

On August 23, 2013, Gribi Associates conducted a detailed assessment of the floor drain and cracks in the boiler room. This assessment included: (1) Thorough inspection of all floor areas



in the boiler room; (2) Measurement of floor crack widths; (3) Elevation survey of the concrete floor to delineate drainage patterns; and (4) Water pour testing to assess actual flow into floor cracks.

3.2.1 Inspection of Floor Areas

A thorough inspection of the floor area revealed the presence of a seam in the concrete enclosing a rectangular area measuring approximately 6 feet by 2.5 feet and which surrounds the floor sink and drain and the water heater area. The width of this seam is variable, generally ranging from 4 to 8 mm, and the seam appears to have been sealed. This rectangular area appears to have been cut out of the main concrete floor when the floor sink/drain was installed and connected to the main sewer line at the inception of the dry cleaning business. As shown on Figure 3, the main sewer line for the Site building runs beneath the north side of the Site building, just south of the sink/drain location, which accounts for the large size of the rectangular cut out.

The sink/drain area is raised approximately 1.5 inches above the surrounding floor surface. The sink/drain is constructed of metal, and a fairly significant gap is present at the southwest corner of the sink, where the concrete lip appears to have degraded away from the metal sink. The crack that propagates southwest from the southwest edge of the metal sink begins where this concrete degradation has occurred. This crack appears to end at the sealed concrete seam and moves "en-echelon" approximately four inches southward before again beginning to propagate southwestward.

3.2.2 Measurement of Floor Crack Widths

Widths of the southwesterly floor crack, which are shown on Figure 5, vary from 0.5 millimeter (mm) to approximately 7 millimeters. The crack is widest, at about 7 mm, just southwest of the sink/drain and generally decreases in width away from the sink/drain area. A feeler gauge was extended into the cracks and generally extended more than two inches into the crack in the thickest locations. Also, the photos of the B-C boring location, taken on August 9 after coring through the concrete, clearly show that the crack extends fully through the 4-inch thick slab. The measured crack widths, which are typically greater than 2 mm, are classified by U.S. General Services Administration (GSA) standards as wide.¹ Crack widths increase moving toward the floor sink/drain.

3.2.3 Measurement of Floor Elevations

Relative floor elevations were measured to the nearest millimeter using a laser level. These measurements, which are shown on Figure 5, indicate a low spot in the floor between the compressor and the sink/drain area, just northwest of the floor crack. Also, the southeast side of the floor crack is approximately 1 mm higher than the northwest side of crack. The overall elevation differences in the boiler room are generally less than 5 mm.

¹ *Types of Cracks in Concrete and Typical Causes*, US General Services Administration, Procedure Code 0373202S, 02/24/2012.

Given the presence of the boiler, compressor, and water heater, all of which are very heavy, and stemming from the fact that the crack emanates from the corner of the floor sink/drain saw cut and runs diagonally away from the cut, the crack is presumed to fall under the category of tension cracking according to GSA classification. Thus, we conclude that the crack was caused by cutting out sections of rebar in an area of heavy load in installing the floor drain/sink and connecting it to the sanitary sewer line that runs under the building. This crack was observed to contain water, even though the surrounding floor was dry, clearly indicating that a nearby upstream section of the crack is actively draining the water currently leaking on the boiler room floor (see Attachment B Photo 1).

The crack is at its widest in proximity to the drain in the very area that was most prone to receiving spillage associated with haphazardly pouring 5-gallon buckets full of water into the only accessible area. In particular, there is a conspicuous low point in the area of most concern, where the crack in the floor is widest.

3.2.4 Water Pour Testing

Photos 3 through 8 in Attachment B were taken during the pour testing.

The initial pour test involved constructing a small (6-inch length) basin over the crack using modeling clay, then pouring 200 to 300 milliliters (ml) of water into the basin, and timing the water discharge into the crack. Results of this test were that the water discharged into the crack almost immediately and that, upon addition of more water, the crack continued to accept water. In this case, 300 ml of water discharged into the crack in less than 30 seconds.

The second pour test involved pouring 4 to 5 gallons of water onto the boiler room floor at the southwest edge of the sink/drain, and tracking flow and discharge visually. Results of this test were that water entered the section of the crack between the water heater and boring B-C, as well as the area of the crack just southwest from B-C, rapidly and steadily. In this case, most of the 4 to 5 gallons of water were absorbed into the floor crack within 3 to 4 minutes.

It is clear from these results that the majority of contact water spilled on the boiler room floor in the vicinity of the sink/drain would readily enter the subsurface via the floor crack immediately southwest of the sink/drain. Water from the pour test entered the crack so quickly that accidental spillage of contact water in the past would presumably have been unnoticed by the operator because it disappeared quickly, with minimal puddling on the floor.

4.0 CONCLUSIONS

Results of this investigation clearly identified a primary PCE discharge point into the floor crack immediately southwest from the boiler room floor drain/sink, which was a primary containment area for PCE waste handling. In particular, it is concluded that:

1. The specific section of the transverse crack identified as the discharge point is the exact area that provided obstructed access to the obstructed top of the floor drain/sink. This is

identified as a breach in a hazardous waste handling primary containment area as well as a classic preferential contaminant migration pathway to the subsurface.

2. Using a U.S. government slab construction classification system, the crack is considered wide and is tentatively identified as a tension crack that was caused by breaching the rebar in installing the floor drain/sink in an area of very heavy load. On this basis, it is assumed to date to the time of dry cleaning tenant improvements.
3. Given the absence of any particular concern by the previous operators about spilling contact water on the boiler room floor in the early and mid 1980s, coupled with the obstructed access to the sink/drain and the inherent susceptibility to spillage using 5-gallon buckets to accomplish the discharge, it is concluded that, with each discharge to the sink/drain, there was some degree of spillage onto the floor in the exact area of the crack and, as such, many occasions of substantial spillage.
4. There was sufficient PCE in the spilled contact water to account for much of the PCE distribution discovered in the subsurface during the course of remedial investigations. According to published sources, PCE contact water typically contains PCE levels that approach or exceed the saturation point (150 milligrams per liter) and, upon cooling, typically form some dense separate phase.
5. By operator accounts, PCE discharges to the subsurface within the boiler room occurred approximately weekly during the period from when PCE dry cleaning operations commenced in 1981 through approximately 1987 when the operator was compelled to get a hazardous material storage permit and comply with applicable regulatory requirements for hazardous waste management, including segregation and treatment of the contact water.
6. The PCE discharges occurred when a portion of the spilled contact water puddled or otherwise wetted the floor in the area of the preferential migratory pathway and then drained/seeped by gravity into the subsurface after traveling a mere 4 inches through the concrete floor.
7. Once the PCE-contaminated water entered the subsurface, the liquid phase rapidly percolated into the permeable strata underlying the slab and ultimately entered the perched water zone, creating the recalcitrant shallow and deeper groundwater plumes depicted in Figures 6 and 7. In addition, vapor phase PCE emanating from impacted soil and groundwater migrated vertically and laterally via preferential pathways, creating much of the recalcitrant PCE vapor plume depicted in Figure 8.
8. The contact water was intended to be discharged entirely to the sanitary sewer rather than to the subsurface, and the primary containment area was presumed tight. On this basis, the repeated small volume PCE discharges to the subsurface were unintended/accidental.
9. Upon the contact water entering the crack, the aqueous phase PCE discharges to the subsurface occurred quickly via gravity drainage/seepage. Due to the infiltration of contaminated water into the pores of the concrete and to the retention of minor amounts of contaminated water in the crack after the spill event ended, there was presumably a gradual diffusive vapor phase component associated with the escape of PCE from the contaminated concrete.

Mr. Ben Brett/Manaff
September 4, 2013
Page 8

10. The unintended discharges resulted from the failure to seal the boiler room floor before dry cleaning operations commenced in 1981, followed by repeated exposure to the same harmful conditions. The discharges could have been prevented by sealing the floor with a thick coat of epoxy resin.

RECOMMENDATIONS

On the basis of the above conclusions, we recommend that currently-proposed IRMs be more focused on remediating the identified primary discharge point in the boiler room, to include removal and replacement of a portion of the rear wall to facilitate access to the boiler room and focused removal of contaminated soil in the area of the identified primary PCE discharge point. Toward that end, we propose to prepare an addendum to the June 2010 IRM workplan.

We appreciate this opportunity to provide this report for your review. Please contact us if there are questions or if additional information is required.

Very truly yours,



Matthew A. Rosman
Project Engineer

Enclosure



James E. Gribi
Professional Geologist
California No. 5843



EXHIBIT 3.P

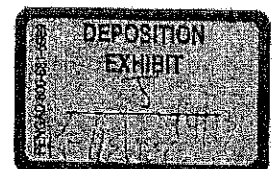
AFFIDAVIT OF Brian T. Kelleher

Name: Brian T. Kelleher

Occupation: Principal, Kelleher & Associates Environmental Mgmt, LLC, 2099 Wendover Lane,
San Jose, CA 95121

I, Brian T Kelleher, swear or affirm:

1. That I am currently retained as an environmental project coordinator by the owner of a commercial strip mall type shopping center in Santa Rosa California which includes a unit at 469 Stony Point Road that is leased to a retail dry cleaning business named Stony Point Cleaners.
2. That I am aware from my own research at the Sonoma County recorder's office that the leased premises at 469 Stony Point Road were constructed in 1980 and have been owned by my client since 1985 and that Stony Point Cleaners was the first and only tenant.
3. That on March 15, 2013, I drove from my current place of business in San Jose, California to Hercules, California where I interviewed Mr. Tim Hahn at his current place of business.
4. That during the course of the interview, Mr. Hahn confirmed that he was the principal of a group that purchased the Stony Point Cleaners business in 1984 from a Mr. Elmer Knapp and operated the business until selling it to another group in 1989.
5. That during the course of the interview, Mr. Hahn further explained that he took over lease of the dry cleaning machine that Mr. Knapp was using in 1984, that the machine used perchloroethylene (perc) as the dry cleaning solvent, and that he used this same machine during the period of his ownership.
6. That during the course of the interview, Mr. Hahn further explained that approximately once per week from 1984 to 1988, he would drain about 4 gallons of condensate water from the perc machine into a 5-gallon bucket, carry the bucket into the boiler room, and pour the contents into the sewer via a floor drain without knowledge or concern that the water contained high levels of dissolved phase perc. He explained that in approximately 1988, he was advised by an inspector from the local fire department, that he was not allowed to discharge the untreated condensate water to the sewer via the drain and therefore stopped doing so.
7. That during the course of the interview, Mr. Hahn further explained that up until approximately 1988 he disposed of various dry cleaning wastes into the dumpster located outside the building including spent filters from the perc machine and that there was some minor spillage of perc onto the floor in the vicinity of the machine during filter changes that he promptly mopped up. He explained that in approximately 1988, he was advised by an inspector from the local fire department, that he was not allowed to dispose of perc containing material in the dumpster and therefore stopped doing so.
8. That during the course of the interview, Mr. Hahn further explained that in pouring condensate water into the sewer via a floor drain and placing spent filters and the like into the dumpster, he had no intent of discharging perc onto or into the ground and was



following the accepted waste management practices that had been in effect since he first became involved with the dry cleaning business in the 1970s. He explained that he complied with all applicable environmental protection regulations as soon as he became aware of them commencing in approximately 1988.

Further affiant saith not.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

Sept 5, 2013

Date

Brian T. Kelleher

Brian T. Kelleher

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

I, the undersigned Notary Public, do hereby affirm that Brian T. Kelleher personally appeared before me on the 5 day of September 2013, and signed the above Affidavit as his free and voluntary act and deed.

Lalena Jones

Notary Public

California All-Purpose Acknowledgement

State of California

County of Santa Clara

On 9/5/2013 before me, LaVinski Jones, Notary Public

personally appeared BRIAN THOMAS KELLEN
Name of Notary Public, Title
Name of Signer (1)

Name of Signer (2)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

LaVinski Jones
Signature of Notary Public



Seal

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgement to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgement is attached to a document title/for the purpose of AFFIDAVIT OF BRIAN T. KELLEN

containing, 2 pages, and dated 9/5/2013

The signer(s) capacity or authority is/are as:

Individual Attorney-in-fact Corporate Officer(s)

Guardian/Conservator Partner - Limited/General Trustee(s)

Other: _____

EXHIBIT 4

Santa Rosa Fire Dept.

INSPECTION FORM

Address 469 STONY PT. RD. Occupancy STONY POINT CLEANERS
 Owner/Mgt. _____ Phone (Bus.) _____ (Home) _____
 Alternate _____ Phone (Bus.) _____ (Home) _____
 Bldg. Owner & Address _____
 Conditions Discussed with _____ Type of Business DRY CLEANING

AN INSPECTION OF YOUR FACILITY REVEALED THE FOLLOWING VIOLATIONS:

1- SECONDARILY CONTAIN PERCHLORETHYLENE CONTAINERS. (NEGL AND WASTE)

Completed 9/30/87 J. Zamz

YOU ARE HEREBY NOTIFIED THAT THE ABOVE CONDITIONS MUST BE CORRECTED AS SOON AS POSSIBLE.

A REINSPECTION WILL BE CONDUCTED ON OR ABOUT MAY 30 1987

7-29 Date 1987 Inspecting Officer J. Zamz Received By [Signature]

SHIFT A B C FP COMPANY _____ OFFICE CODE _____
 Reinspection _____ 19____ Insp. Officer _____ Items Corrected Yes No
 Refer to F.P. _____ 19____ Refer to other _____ 19____

BUILDING:	Authority		
Address Numbers	U.F.C.	SEC.	10,206
Exits & Signs	U.F.C.	SEC.	12,101
Fire Doors	U.F.C.	SEC.	10,402
Attic Access Covers	U.F.C.	SEC.	11,406
Attic Separations	U.F.C.	SEC.	10,401
Aisles	U.F.C.	SEC.	12,103
Fire Wall Separations	U.F.C.	SEC.	10,402
Enclosed Stairwells	U.F.C.	SEC.	12,109
Elevators	U.B.C.	CHPT.	51
Open Stairways	U.F.C.	SEC.	12,106
Vertical Openings	U.B.C.	SEC.	4306
Emergency Lighting	U.F.C.	SEC.	12,113

FIRE EQUIPMENT:	Authority		
Alarm Systems	U.F.C.	SEC.	10,307
Dry Standpipes	U.F.C.	SEC.	10,302
Sprinkler System	U.F.C.	SEC.	10,302
Fire Dept. Connection	U.F.C.	SEC.	10,302
Wet Standpipes/Hose	U.F.C.	SEC.	10,302
Fixed Systems	U.F.C.	SEC.	10,315
Fire Extinguishers	U.F.C.	SEC.	10,302
Control Valves - Signs	U.F.C.	SEC.	10,302
Tests	U.F.C.	SEC.	10,302

ELECTRICAL:	Authority		
Wiring	U.F.C.	SEC.	85,101
Fixtures	U.F.C.	SEC.	85,101
Appliances	U.F.C.	SEC.	85,101
Extension Cords	U.F.C.	SEC.	85,101
Cover Plates	U.F.C.	SEC.	85,101
Fuses/Breakers	U.F.C.	SEC.	85,101
Clearances	U.F.C.	SEC.	85,101

FLAMMABLE LIQUIDS:	Authority		
Containers	U.F.C.	ART.	79
Dispensing	U.F.C.	ART.	79
Handling	U.F.C.	ART.	79
Spray Painting	U.F.C.	ART.	45
Storage Areas	U.F.C.	ART.	79
Quantity	U.F.C.	ART.	79

HOUSEKEEPING:	Authority		
Storage	U.F.C.	SEC.	11,203
Weeds-Grass-Shrubs	U.F.C.	SEC.	11,201
Kitchen Hoods	U.F.C.	SEC.	11,406
Rubbish & Debris	U.F.C.	SEC.	11,201

HEATING EQUIPMENT:	Authority		
Appliances	U.F.C.	SEC.	11,404
Pipes & Valves	U.F.C.	SEC.	11,404
Vents	U.F.C.	SEC.	11,404
Clearances	U.F.C.	SEC.	11,404

CHEMICALS:	Authority		
Storage	U.F.C.	ART.	80