

SMYLIE & VAN DUSEN

Attorneys at Law

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November 23, 2010

Via Email

State Water Resources Control Board
Office of Chief Counsel
Attn: Jeannette L. Bashaw, Legal Analyst
P.O. Box 100
Sacramento, CA 95812
Email: jbashaw@waterboards.ca.gov

Re: Short-form Petition of American Salvage, Inc. of San Diego Regional Water Quality Control Board Cleanup and Abatement Order R9-2010-0007, And Request for Abeyance & Request for Stay

Dear Ms. Bashaw:

On behalf of our client, American Salvage, Inc. ("ASI" or "Petitioner"), we submit this short-form petition ("Petition") to the State Water Resources Control Board ("State Board") pursuant to the requirements of California Water Code section 13320 and California Code of Regulations, Title 23, sections 2050 and 2050.5. This Petition challenges certain aspects of the above-referenced Cleanup and Abatement Order ("CAO", a copy of which is attached hereto as Exhibit "A" along with the Executive Officer's transmittal letter dated October 26, 2010, all of which are made a part hereof) and requests that the State Board amend the CAO, or direct the San Diego Regional Water Quality Control Board ("Regional Board") to do so, consistent with the arguments raised in this Petition.

The CAO was issued administratively by the Executive Officer of the Regional Board staff, rather than through a Regional Board action. Therefore, contemporaneously with this Petition, ASI is requesting that the Regional Board exercise its discretion to grant ASI's request for review before the entire Board. Petitioner is actively engaged in negotiations with the Regional Board to resolve the issues presented hereby. This Petition is intended to preserve Petitioner's right of appeal to the State Board; however, if our request for discretionary review is granted by the Regional Board, we request that the State Board hold this Petition in abeyance until notified by Petitioner that this matter cannot be resolved at the Regional Board level. Petitioner reserves its right to fully address before the State Board any and all matters and issues presented hereby, and to address any additional issues that may be presented to the Regional Board during the administrative process if such further process is granted by the Regional Board pursuant to ASI's request, and/or in any future submittals to or hearings before the State Board.

On October 27, 2010, via email, Petitioner received notice of the adoption of the CAO, which named Petitioner as a potentially responsible party (“PRPs” or “dischargers”) and identified soil and groundwater contamination in the vicinity of three (3) contiguous properties currently owned by Petitioner, to wit: (a) 665 Opper Street; (b) 655 Opper Street; and (c) 2250 Meyers, in Escondido, San Diego County, CA (the “Property”).

Petitioner is an innocent landowner. Although Petitioner currently owns the Property, it is undisputed that Petitioner has not initiated or contributed to the discharges at the Property nor has Petitioner permitted activities which led to the discharges. Neither has Petitioner violated any Order of the Regional Board.

In 1998, the Regional Board issued a Cleanup and Abatement Order against certain PRPs (“the 1998 CAO”). After years of remediation activities, Petitioner acquired title to the Property. Since acquiring title to the Property, Petitioner has fully cooperated with the Regional Board and the other PRPs in permitting access to the Property to facilitate the other PRPs site mitigation and remediation efforts. Petitioner continues to provide access and cooperation to this date. Petitioner has arranged for access to the Property for the PRPs consultants to conduct persulfate injection activities during the week of December 6, 2010. Attached hereto as Exhibit “B” and made a part hereof are true copies of emails from Camp, Dresser, & McKee’s (“CDM”) Project Manager, S. Sibel Tekce, to Petitioner’s legal counsel, confirming the presently continuing remediation activities of the originally named (and actual) PRPs, consisting of emails dated 7/30/2010, 8/18/2010, 8/20/2010, and 11/17/2010.

ASI petitions the State Board to address various actions and inactions of the Regional Board and its staff with respect to the CAO and the remediation of the Property, several of which are described herein. The information contained in this Petition is organized in accordance with the numbered list posted on the State Board’s website and set forth in California Code of Regulations, Title 23, section 2050(a)(1)-(9):

1. *Name, address, telephone number and email address (if applicable) of the petitioner.*

Correspondence should be directed to William B. Van Dusen of SMYLIE & VAN DUSEN, counsel for Petitioner, at the address, telephone number, and email address identified hereinabove in this Petition. The Petitioner named in the CAO is American Salvage, Inc., as the current owner of the Property. Petitioner’s contact information is:

American Salvage, Inc.
Howard Kimmel, President
81 Pine Court
Eagle Point, OR 97524
Telephone: (541) 830-5978
Email: howkimescondido@aol.com

2. *The action or inaction of the Regional Water Board being petitioned, including a copy of the action being challenged or any refusal to act, if available. If a copy of the regional board action is not available, the petitioner must explain why it is not included.*

Petitioner challenges the action of the Executive Officer in issuing the CAO as final, and naming Petitioner as one of the PRPs, and failing to identify Petitioner as a *secondarily responsible* party, without any action by, or approval of, the Regional Board. Petitioner further challenges the failure of the Regional Board to act in any meaningful way against the actual PRPs named in the 1998 CAO who caused or were active in causing the discharges to the Property, but whom instead has only looked to an artificial entity created by some of the PRPs - the so-called Meyer-Opper Trust ("the Trust") - to investigate, mitigate, and remediate the Property. Petitioner is informed and believes that the Trust was funded with insurance proceeds from a prior lawsuit between some of the *primary* PRPs. Petitioner has had no control whatsoever over the Trust or its expenditures nor any input in the selection or activities of the trustees of the Trust. Petitioner contends that the actual PRPs are *primarily responsible*, are currently continuing remediation activities at the Property, have the financial resources to comply with the CAO, and should have the primary obligation to meet the conditions of the CAO. Petitioner asserts that to require it to assume primary responsibility under these circumstances is unjust and would cause an unfair financial burden on Petitioner. Petitioner also challenges the erroneous finding that the actual PRPs are not conducting remediation activities at the Property and that therefore ASI is properly named as a *primarily responsible* party.

3. *The date the Regional Water acted, refused to act, or was requested to act.*

The Executive Officer of the Regional Board issued the CAO as final on October 26, 2010.

4. *A statement of the reasons the actions or inaction was inappropriate or improper.*

The Executive Officer's action in naming Petitioner as PRPs was improper (and unjust) because he failed to distinguish in the CAO in accordance with Water Code section 13304 [and, *Arthur Spitzer et al.*, Order No. WQ 89-8 (SWRCB 1989) (lessee who had not initiated discharge held secondarily liable even though it currently controlled the property); and *Wenwest, Inc. et al.*, Order No. WQ 92-13 (SWRCB 1992) (corporate party secondarily liable even though it may have contributed to the groundwater problem)] that Petitioner is properly identified as *secondarily responsible*, not a *primarily responsible* party, and based thereon that Petitioner need not comply with the CAO unless, and until, the other PRPs have failed to comply with the CAO, and in such event, that the other PRPs continued failure to comply resulted after meaningful enforcement of the CAO by the Regional Board. Further, as a matter of due process, the issuance of the CAO as final by the Executive Officer is improper because the CAO was not issued through, or approved by, the Regional Board. Moreover, the basis for the Executive Officer's failing to distinguish Petitioner as *secondarily responsible* is incorrect in that the Trust is continuing remediation activities at the Property (see, e.g., Exhibit "B").

5. *How the petitioner is aggrieved.*

Petitioner is aggrieved because it was improperly named in the CAO, the Executive Officer failed to distinguish Petitioner as *secondarily responsible* and order that based thereon Petitioner need not comply with the CAO unless, and until, the other PRPs have failed to comply with the CAO. Petitioner is also aggrieved by the Regional Board's failure to enforce its 1998 CAO (and subsequent amendments thereto) against the actual PRPs, as opposed to the Trust.

The CAO acknowledges that Petitioner purchased the Property after the discharges terminated, has not in any way violated previous Orders of the Regional Board, and in fact, has cooperated with the Regional Board, and has provided the actual PRPs and the Regional Board staff access to the Property for monitoring, containment, and remediation of the effects of the actual PRPs' previous discharges. Nevertheless, Petitioner was added to the CAO's PRPs list at the same level as the historical dischargers and property owners, and each of the PRPs are implied to have equal responsibility. The Regional Board and/or the State Water Board have the authority to distinguish in Orders issued in accordance with Water Code section 13304 between parties that are primarily responsible and those that are secondarily responsible. See, e.g., *Arthur Spitzer et al.*, Order No. WQ 89-8 (SWRCB 1989) (lessee who had not initiated discharge held secondarily liable even though it currently controlled the property); and *Wenwest, Inc. et al.*, Order No. WQ 92-13 (SWRCB 1992) (corporate party secondarily liable even though it may have contributed to the groundwater problem). Petitioner has not initiated or contributed to the discharges at the Property nor has Petitioner permitted activities which led to the discharges. Petitioner has not violated any Order of the Regional Board. Moreover, Petitioner caused to be recorded a restrictive environmental covenant with respect to any use of the Property that would cause a discharge. Petitioner is informed and believes that the discharges terminated prior to its purchase of the Property. Petitioner has fully cooperated with the Regional Board and the actual PRPs' and/or Trust in permitting access to the Property and caused to be recorded an easement so providing. Petitioner has permitted "pump and treat" equipment to be placed on the 655 Opper St. property to facilitate the actual PRPs' site mitigation and remediation efforts. Petitioner is informed and believes that the other named PRPs are *primarily responsible* for the discharges and have the financial resources to comply with the CAO and should have the primary obligation to meet the conditions of the CAO. Petitioner asserts that to require it to assume primary responsibility under these circumstances is unjust and would cause an unfair financial burden on Petitioner. The administrative record relied upon by the Executive Officer is replete examples of the Regional Board staff looking only to the Trust to comply with the 1998 CAO (and subsequent amendments thereto), while on the other hand, failing to look to enforce the 1998 CAO against the actual PRPs.

Petitioner is further aggrieved by the failure of the Executive Officer to find that the *primarily responsible* PRPs and/or Trust are continuing their remediation efforts at the Property. See, e.g., Exhibit "B" hereto.

Petitioner is further aggrieved by the failure of the administrative process in that the CAO was issued without any prior action by, or approval of, the Regional Board. See, e.g., Exhibit "A" hereto.

Petitioner is additionally aggrieved by the unilateral timelines imposed by the CAO as impracticable and unreasonable. The CAO schedule demands that Petitioner jump in at this stage and take equal responsibility for actions that Petitioner has not reviewed or approved. It will also require cooperation and coordination of the actual PRPs which heretofore had been handled by the Trust. The full extent of contamination is presently unknown to Petitioner. The CAO appears to indicate that the Regional Board wants further investigation of the extent of contamination and a revised health risk assessment. Petitioner submits that it is impracticable under the CAO's timelines to prescribe a remediation schedule that includes a completion date. Petitioner asserts that if a stay is not issued with respect to Petitioner, it will subject Petitioner to unfair regulatory obligations, expose it to unfair financial burdens as well as unconstitutional fines or penalties. Petitioner contends that a full-scale ISCO remediation is capital intensive, time consuming and experimental and that closure will ultimately be achieved by putting forth alternative cleanup levels

The CAO allows PRPs to request a hearing before the Regional Board within 30 days of the CAO's issuance, but also requires Petitioner to file any appeal to the State Board within the same 30-day time period, before Petitioner has been afforded any hearing or process at the Regional Board level. As previously stated, Petitioner is contemporaneously requesting that the Regional Board review the CAO.

6. *The action the petitioner requests the State Water Board to take.*

Petitioner requests that the State Board amend the CAO, or direct the Regional Board to do so, so that Petitioner is removed as a named responsible party, or, alternatively, that Petitioner is named as a *secondarily responsible* party whom need not comply with the CAO unless, and until, the other PRPs have failed to comply with the CAO, and in such event, that the other PRPs continued failure to comply resulted after meaningful enforcement of the CAO by the Regional Board, including without limitation, that such PRPs have reasonably demonstrated their respective financial inability to comply with the CAO. Petitioner requests that the State Board direct the Regional Board to schedule and hold evidentiary hearings, or, alternatively, that the State Board itself schedule and hold evidentiary hearings, and extend all deadlines under the CAO until a reasonable time following such hearings as may be practicable under the circumstances and as justice may require. Accordingly, Petitioner requests a stay of the CAO, including all deadlines listed therein, pursuant to the California Water Code, including without limitation, section 13321. Petitioner further requests that the State Board grant all other orders or relief that is just and proper.

If a stay is not granted, Petitioner will suffer substantial harm because it will be required to expend enormous amounts of money on consultants and processes in order to comply with the ambitious timelines set forth in the CAO in order to avoid the imposition of penalties. Petitioner has not had any involvement in the remediation of the site to date, has not caused or contributed to the problems at the Property, and must spend huge sums to begin to address the requirements of the CAO. On the other hand, there will be no substantial harm to the other interested parties and/or to the public interest if the stay is granted. First, the Trust and/or the actual PRPs are continuing their remediation activities and have indicated that persulfate injection activities are to commence on December 6, 2010. Following such injection activities, results therefrom will need to be analyzed before proceeding further. Moreover, the discharges at issue occurred long ago and approximately 12 years of remediation work has been conducted at the Property. In addition, there are substantial questions of law and fact in that the CAO is contrary to the State Board policy and supporting California law of distinguishing between *primary* and *secondarily responsible* parties, and the findings ignore the fact of the Trust's and/or the actual PRPs' continuing remediation activities. Further, the Petition raises the legal and factual question of whether the Regional Board has failed in its legal duty to proceed in good faith with meaningful enforcement against the originally named (and actual) PRPs. See, accompanying Declaration of William B. Van Dusen dated November 23, 2010, attached as Exhibit "C" hereto and made a part hereof.

7. *A statement of points and authorities for any legal issues raised in the petition, including citations to documents or hearing transcripts that are referred to.*

The Regional Board and/or the State Board have the authority to distinguish in orders issued in accordance with Water Code section 13304 between parties that are *primarily responsible* and those that are *secondarily responsible*. See, e.g., *Arthur Spitzer et al.*, Order No. WQ 89-8 (SWRCB 1989) (lessee who had not initiated discharge held secondarily liable even though it currently controlled the property); and *Wenwest, Inc. et al.*, Order No. WQ 92-13 (SWRCB 1992) (corporate party secondarily liable even though it may have contributed to the groundwater problem).

Petitioner will supplement the citations herein provided with a more comprehensive statement of points and authorities, and cite to evidence in reports and other documents, if and when it becomes clear that Petitioner's concerns cannot be resolved at the Regional Board level. At that time, Petitioner will request that the abeyance of this Petition be lifted.

8. *A statement that copies of the petition have been sent to the Regional Water Board and to the discharger, if different from the petitioner.*

Copies of the Petition and the exhibits hereto are being sent concurrently with the filing hereof to the Executive Officer of the Regional Board and the mailed to the dischargers. See, Service List attached hereto and made a part hereof.

9. *A statement that the issues raised in the petition were presented to the regional board before the regional board acted, or an explanation of why the petitioner could not raise those objections before the regional board.*

The issues raised in this Petition were presented to the Regional Board through its Executive Officer who issued the CAO without any formal action by the Regional Board. Concurrently with the filing of this Petition, Petitioner is requesting that the Regional Board exercise its discretion and review the Executive Officer's CAO.

Please contact me if you have any questions or need additional information.

Very truly yours,



SMYLIE & VAN DUSEN
William B. Van Dusen

Encls. (as described herein)

- c: See attached service list (via mail)
Cris Carrigan, Senior Staff Counsel, RWQCB (via email)
Kelly E. Richardson, L & W, Counsel for CED & NPI (via email)

EXHIBIT "A"

**IN SUPPORT OF
SHORT-FORM PETITION OF AMERICAN SALVAGE, INC.
OF
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD CLEANUP AND
ABATEMENT ORDER R9-2010-0007, AND REQUEST FOR ABEYANCE
& REQUEST FOR STAY**

Transmittal letter & Revised CAO R9-2010-007 dated 10/26/2010



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

In reply refer to:

SL209304205: vrodriguez

October 26, 2010

Mr. Raymond and Mrs. Valerie Grimsinger
31663 Palos Verdes Drive
Escondido, CA 92026
Certified Mail—Return Receipt Requested
7009 1410 0002 2000 0521

Consolidated Electrical Distributors, Inc.¹
c/o Mr. David T. Bradford, Esq.
31356 Via Colinas, Suite #106
Westlake Village, CA 91362
Certified Mail—Return Receipt Requested
7009 1410 0002 2000 0637

Mr. Joseph and Mrs. Hope Hebdon
15459 Roundtree Road
Valley Center, CA 92082
Certified Mail—Return Receipt Requested
7009 1410 0002 2000 0576

Northbrook Properties, Inc.
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017
Certified Mail—Return Receipt Requested
7009 1410 0002 2000 0620

Mr. John Niccoli
1425 Hamilton Lane
Escondido, CA 92029
Certified Mail—Return Receipt Requested
7009 1410 0002 2000 0569

American Salvage, Inc.
c/o Mr. William Van Dusen, Esq.
2878 Camino del Rio South, Suite #200
San Diego, CA 92108
Certified Mail—Return Receipt Requested
7009 1410 0002 2000 0613

Mr. John Billings
3261 Ocean Front Walk
San Diego, CA 92109
Certified Mail—Return Receipt Requested
7009 1410 0002 2000 0552

Mr. Kenneth G. McCord
176 South Shadow Pines Road
Orange, CA 92869-6566
Certified Mail—Return Receipt Requested
7009 1410 0002 2000 0606

Mr. Kevin Bove
134 Whisper Way
Boerne, TX 78006-2953
Certified Mail—Return Receipt Requested
7009 1410 0002 2000 0545

Mr. James Robert Dennis
12526 High Bluff Drive, Suite 300
San Diego, CA 92130-2067
Certified Mail—Return Receipt Requested
7009 1410 0002 2000 0590

Ms. Victoria Hebdon
445 Estrelita Drive
Vista, CA 92084-7833
Certified Mail—Return Receipt Requested
7009 1410 0002 2000 0538

¹ No known address exists for Consolidated Electrical Distributors, Inc.

Dear Responsible Parties for the Former Hebdon Electronics Site:

**SUBJECT: REVISED CLEANUP AND ABATEMENT ORDER NO. R9-2010-0007
FOR THE FORMER HEBDON ELECTRONICS SITE, ESCONDIDO,
CALIFORNIA**

Enclosed is Revised Cleanup and Abatement Order No. R9-2010-0007 which supercedes all previous Cleanup and Abatement Orders (CAO's) for this site, including CAO R9-2010-0007 dated February 1, 2010, and CAO No. 98-58 and Addenda No. 1, 2, and 3.

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) issued Cleanup and Abatement Order No. R9-2010-0007 (CAO) on February 1, 2010. On February 26, 2010, Consolidated Electrical Distributors, Inc. (CED) and Northbrook Properties, Inc. (NPI) collectively requested a hearing on the CAO. Also on February 26, 2010, American Salvage, Inc. (ASI) requested a hearing on the CAO. CED/NPI and ASI petitioned the State Water Resources Control Board to review the CAO, and both petitions are being held in abeyance pending the outcome of the San Diego Water Board's hearing.

A paper hearing was conducted, with all parties submitting principal and rebuttal briefs as well as the administrative record. Executive Officer David W. Gibson reviewed and gave full consideration to all documents submitted by the San Diego Water Board, CED/NPI, and ASI. After his review, he issued this Revised CAO, which makes the following amendments: (1) removed CED and NPI as Responsible Parties but finds that if further evidence demonstrates that contamination occurring on the CED/NPI property necessitates remediation, CED and NPI may be added as Responsible Parties; and (2) denies ASI's request to be named as a secondarily liable Responsible Party. The cleanup requirements, including any deadlines, remain from the February 1, 2010, CAO.

October 26, 2010

If you have any questions, or require additional assistance, please contact Mr. Vicente Rodriguez of my staff at (858) 627-3940 or vrodriguez@waterboards.ca.gov.

Respectfully,



David W. Gibson
Executive Officer

DWG:jmn:jme

Attachments:

Revised Cleanup and Abatement Order No. R9-2010-0007

Attachment 1 to Revised CAO No. R9-2010-0007, Summary of Regional Board Enforcement History for the Former Hebdon Electronics Facility

cc via email with attachments:

Mr. S. Foulkes, Trustee, Meyers/Opper Trust

Mr. Cristian M. Carrigan, Esq. State Water Board Office of Enforcement (OE)

Ms. Ann K.B. Carroll, Esq. State Water Board OE

Mr. Kelly E. Richardson, Esq. Latham & Watkins, LLP

Ms. S. Sibel Tekce, Camp, Dresser & McKee Inc.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

REVISED CLEANUP AND ABATEMENT ORDER NO. R9-2010-0007

AN ORDER DIRECTING RAYMOND GRIMSINGER, VALERIE GRIMSINGER, JOSEPH HEBDON, VICTORIA HEBDON, JOHN NICCOLI, THOMAS MYERS, HOPE HEBDON, JOHN BILLINGS, KEVIN BOVE, KENNETH MCCORD, JAMES DENNIS, AND AMERICAN SALVAGE, INC. TO CLEANUP AND ABATE THE EFFECTS OF WASTE AND SUBMIT TECHNICAL REPORTS PERTAINING TO CORRECTIVE ACTIONS

AT THE

**FORMER HEBDON ELECTRONICS FACILITY
2250 MEYERS AVENUE, 655 OPPER STREET, 665 OPPER STREET
ESCONDIDO, CALIFORNIA 92069**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board) finds that:

- 1. Legal and Regulatory Authority.** This Order implements policies and requirements of the Porter-Cologne Water Quality Control Act (Division 7, commencing with Water Code section 13000) including (1) sections 13267 and 13304; (2) all applicable provisions of the Statewide Water Quality Control Plans adopted by the State Water Resources Control Board (State Board) and the *Water Quality Control Plan for the San Diego Basin (Basin Plan)* including beneficial uses, water quality objectives, and implementation plans; (3) State Board policies and Regulations, including Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*), and Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under California Water Code Section 13304*); California Code of Regulations (CCR) Title 23, section 3890 et. seq.; (4) applicable State and federal regulations, standards, and advisories.
- 2. Cleanup and Abatement Order No. R9-2010-0007.** The findings and directives in this Cleanup and Abatement Order (CAO) supersede the directives in CAO No. 98-58 and Addenda 1, 2, and 3 for the Former Hebdon Electronics Facility. **CAO No. 98-58** is superseded by this Order as of the date of this Order—October 26, 2010.
- 3. Definition of Site.** Three contiguous properties where printed circuit board manufacturing and plating activities (including wastewater treatment and/or

chemical storage) from 1971 to 1992 caused or permitted discharges of industrial wastes to waters of the state, comprise the Former Hebdon Electronics Facility (Facility) for purposes of this Order. These three properties are located at 2250 Meyers Avenue, 655 Opper Street, and 665 Opper Street, Escondido. The corresponding Assessor's Parcel Numbers (listed south to north) are: 228-420-3000; 228-420-1900; and 228-420-2900. The "Site" includes the Facility and the full lateral and vertical extent of the groundwater plume(s) of contamination beyond Facility property boundaries.¹

4. **Regulatory Background.** Attachment One outlines the San Diego Water Board enforcement history for this Site from CAO No. 97-46 (rescinded) through CAO No. 98-58 and addenda, and compliance responses by the Responsible Party leading up to the issuance of CAO No. R9-2010-0007. Preliminary site investigations and source removals initiated between 1992-1995 at one or all of the Facility properties, during the period when the San Diego County Hazardous Materials Management Division (HMMD) was the lead regulatory agency, are not included in this Attachment. The administrative record for this Facility is a matter of public record and may be reviewed for more information upon request to the San Diego Water Board.
5. **Beneficial Uses of Ground Water.** The Site is located in the Escondido Creek Hydrologic Subarea (HSA 904.62) of the Carlsbad Hydrologic Unit (HU 904.00). The Basin Plan designates beneficial uses for waters of the state, and has designated groundwater in the Escondido Creek HSA with beneficial uses for municipal and domestic supply (including current and potential future uses as drinking water), agricultural and industrial service supply (Basin Plan, Table 2-5).
6. **Water Quality Objectives.** The Basin Plan contains numeric water quality objectives (WQOs) needed to support beneficial uses and establishes implementation policies to achieve those WQOs. The WQOs are derived from primary Maximum Contaminant Levels (MCLs) established by the California Department of Public Health (CDPH) in Title 22 of the California Code of Regulations for the protection of public drinking water supplies.
7. **Unauthorized Discharges of Waste.** Historically, unauthorized discharges of wastes from industrial activities by owners and/or operators at the Facility caused a condition of pollution in the groundwater aquifer that resulted in the San Diego Water Board enforcement action described in CAO No. 98-58. Volatile organic compounds (VOCs), inorganic compounds, and petroleum hydrocarbon contamination were reported in groundwater above their respective MCLs in violation of Water Code section 13304. Remedial efforts to date (see Attachment One) are insufficient, however, to bring the cleanup at this Site to closure. According to the most recent groundwater monitoring

¹ In the Matter of Zoecon Corporation, Order No. 86-2 (State Board 1986).

report² two metals and seven VOCs were detected above their individual MCLs in wells within Facility boundaries: total chromium; nickel; 1,1-DCA; 1,2-DCA; 1,1-DCE; cis-1,2-DCE; 1,1,1-TCA; and vinyl chloride. Hexavalent chromium was also detected in one well above the practical quantitation limit (PQL) of 0.025 mg/L; this most toxic form of chromium does not have an MCL. The contaminant 1,4-dioxane also does not have an MCL but was detected in every Facility well sampled, above its California Department of Public Health (CDPH) Notification Level of 3.0 µg/L. These Facility wastes (summarized in the following table) impair the beneficial uses of groundwater as designated in the Basin Plan and continue to create a condition of pollution in violation of Water Code section 13304.

Detected Contaminant	MCL (µg/L) (unless otherwise stated)	Maximum Concentration at the Site (µg/L)
1,1-DCA	5.0	520
1,2-DCA	0.5	39
1,1-DCE	6.0	930
cis-1,2-DCE	6.0	280
1,1,1-TCA	200	240
1,4-Dioxane	3	2400
Vinyl Chloride	0.5	1.6
TCE	5.0	120
Nickel	.10	0.210
Total Chromium	.05	.15

² Second Quarter Groundwater Monitoring and Remediation Progress Report for the Meyers-Opper Site Escondido California; October 17, 2007, Camp, Dresser, McKee (CDM).

Detected Contaminant	MCL (µg/L) (unless otherwise stated)	Maximum Concentration at the Site (µg/L)
Hexavalent Chromium	0.025	0.032

1. Notification Levels are health-based advisory levels for drinking water ingestion established by CDPH for those chemicals that do not have an MCL.
2. No MCL exists for 1,4-dioxane. The number in the table is the CDPH notification level.
3. No MCL exists for hexavalent chromium. The number in the table is the practical quantitation limit (PQL) from lab analysis. Hexavalent chromium is a known human carcinogen.

8. Migration of Waste Discharges. The leading edge of the shallow groundwater plume of 1,4-dioxane is approximately 350 feet from the northern property boundary of 665 Opper Street, according to data collected in 2009.³ 1,4-dioxane was reported in downgradient groundwater samples at a maximum level of 290 µg/L. The sub-surface migration of 1,4-dioxane from the Facility continues to create a condition of pollution in the groundwater aquifer and has the potential to spread further if unabated, due to the high mobility of this contaminant. Levels of trichloroethene (TCE) and tetrachloroethene (PCE) in 2009 were found in downgradient wells at 200 µg/L and 230 µg/L, respectively, which are both above their MCLs of 5.0 µg/L for TCE and 5.0 µg/L for PCE. These VOCs migrating from the Facility exceed WQOs, further degrade groundwater quality, and continue to create a condition of pollution in violation of Water Code section 13304.

9. History of Ownership and Operations by Property:

Owners of 2250 MEYERS AVENUE:	Time Period
CHARLES H. MEYERS CONSTRUCTION	unknown-1970
RCK PROPERTIES INC.	1971-1987
NORTHBROOK PROPERTIES INC.	1987-2001
CORDITA LLC OF ILLINOIS	2001-2003
AMERICAN SALVAGE, INC.	2003-present

³ *Down-gradient Plume Characterization Activities-Former Hebdon/Meyers Opper Site in Escondido, CA; March 3, 2009, CDM.*

Tenants/Businesses at 2250 MEYERS AVENUE:

CONSOLIDATED ELECTRICAL DISTRIBUTORS	1971-1987
AEROLITE GLASS MANUFACTURE	1982-1985
HEBDON ELECTRONICS, INC.	1988-1995
USL, INC.	Oct. 1991-Dec 1992

Owners of 655 OPPER STREET:

Time Period

MR. RAYMOND AND MRS. VALERIE GRIMSINGER	1972-2003
KIMMEL FAMILY FOUNDATION	2003-2005
AMERICAN SALVAGE INC.	2005-present

Tenants/Businesses at 655 OPPER STREET:

RAYMOND AND VALERIE GRIMSINGER: RG CIRCUITS	1972-1981
JOSEPH HEBDON, JOHN NICCOLI: RG CIRCUITS	1981-1982
JOSEPH HEBDON, JOHN NICCOLI, VICTORIA HEBDON, THOMAS MYERS: HEBDON ELECTRONICS INC. (HEI)	1982-1991
JOHN BILLINGS, KEVIN BOVE, KENNETH McCORD, JAMES DENNIS: USL, INC. (dba TRUST PRINTED CIRCUITS)	1991-1992

Owners of 665 OPPER STREET:

SAM I. LEWIS AND MARJORIE H. LEWIS	1975-1985
BARON GOLF INC.	1985-1988

JOSEPH HEBDON, HOPE L. HEBDON	April 1988-August 1988
JOSEPH HEBDON, JOHN NICCOLI	August 1988-Dec. 1990
JOSEPH HEBDON, JOHN NICCOLI TRUST	Dec. 1990-1992
OMNI RESOURCES LTD: A Nevada partnership comprised of TEKE INC. (JOHN NICCOLI) and OHANA ENTERPRISES, INC. (JOSEPH L. HEBDON and HOPE L. HEBDON)	1992-1999
AMERICAN SALVAGE INC.	1999-present

Tenants/Businesses at 665 OPPER STREET:

PALOMAR ELECTRONICS	1978-1990
PACIFIC RADIO COMMUNICATIONS	1982-1985
RANGE MASTER	1986-1989
HEBDON ELECTRONICS, INC.	1988-1991
USL/Trust Printed Circuits	1991-1992
U.S. FILTERS	1999-2003

Note: HEI and USL operated across all three Facility properties.

- Parties Responsible for the Discharge of Wastes.** Pursuant to the California Water Code, the California Health and Safety Code, and applicable law, the following persons were properly named as dischargers in Cleanup and Abatement Order No. 98-58: Raymond and Valerie Grimsinger; Joseph Hebdon; John Niccoli; Thomas Myers; Victoria Hebdon and John Billings; Kevin Bove; Kenneth McCord; and James Dennis. **In addition to the forenamed, this CAO expands the list of Responsible Parties to include the following persons and entities: Hope L. Hebdon; and American Salvage, Inc.**

Hope L. Hebdon was a co-owner of 665 Opper Street from April 1988-August 1988 as co-principle in the company Omni Resources, Ltd. Omni Resources Ltd. owned 665 Opper Street from 1992-1999. The San Diego Water Board has discretion to hold landowners accountable for discharges which occur or have occurred on the landowner's property based on possession of the land. Therefore Hope L. Hebdon is properly named as an additional Responsible Party.

American Salvage, Inc. (ASI) is the *current* owner of all three Site properties. An Environmental Restriction and Covenant (Covenant) for 2250 Meyers Avenue, 655 Opper Street, and 665 Opper Street, Escondido, was recorded on November 25, 2003 between ASI and the previous landowners. This Covenant describes ASI's knowledge of soil and groundwater pollution on the three Site properties at the time of purchase. Yet indemnification agreements among private parties are non-binding on the San Diego Water Board and cannot be used in this case to shield ASI from liability under the Water Code. ASI is therefore properly named as an additional Responsible Party in this Order.

ASI does not dispute that it is properly named as a Responsible Party, but requests that the San Diego Water Board name ASI as a secondarily responsible party. At this time, the primary/secondary distinction is inapplicable, as the cleanup at the Sites is not currently progressing. Since the San Diego Water Board issued CAO No. R9-2010-0007 on February 1, 2010, the Responsible Parties have not met cleanup deadlines, and the Responsible Parties (with the exception of ASI) have stated that they cannot afford to and will not perform the cleanup. The State Board has found that it is reasonable for regional boards not to distinguish primary and second liability when the parties are not fulfilling their obligations under the CAO. (*In the Matter of Petition of Wenwest, Inc. et al. (Wenwest)* Order No. WQ- 92-13, p. 3, fn. 2) Therefore, ASI is properly named as a primarily responsible party.

Raymond Grimsinger, Valerie Grimsinger, Joseph Hebdon, Victoria Hebdon, John Niccoli, Hope Hebdon, Thomas Myers, John Billings, Kevin Bove, Kenneth McCord, James Dennis, and ASI comprise the list of Responsible Parties for the Site as of the date of this Order.

11. **Other Parties with Potential Cleanup Liability.** Consolidated Electrical Distributors, Inc. (CED) and Northbrook Properties, Inc. (NPI) are former owners and lessees of the 2250 Meyers Avenue parcel who sub-leased that property to Joseph Hebdon. The State Water Board has made it clear that former landowners and lessees can be named as responsible parties.

To name NPI as a responsible party, the Regional Board must show: (1) a significant ownership interest in the property at the time of the discharge; (2) knowledge of the activities that resulted in the discharge; and (3) the legal ability to prevent the discharge. (*Wenwest, supra*, p. 4.) NPI owned the 2250 Meyers Avenue parcel from 1987 to 2001, including the time period from 1988 to 1992 when HEI subleased the parcel. It is undisputed that HEI discharged chemicals onto the 2250 Meyers Avenue parcel between 1988 and 1992. A landowner has sufficient knowledge of a discharge even when informed of the contamination on the property after the fact. (See *In the Matter of the Petition of Arthur Spitzer et al. (Spitzer)* Order No. WQ 89-8, p. 8.) This is because the discharge continues as long as pollutants remain in the soil and groundwater, and so if the landowner learns of the discharge while impacted soil and water remain, the landowner has sufficient knowledge of a discharge of pollutants to be named as a responsible party. (*Id.*) NPI had knowledge of HEI's discharges to the parcel by 1992 at the latest, when it received a letter from the County of San Diego Department of Health Services. Since the impacted soil and groundwater remained on or around the parcel in 1992, NPI has the requisite knowledge of the discharge. NPI also had the legal ability to prevent the discharge. The State Board has held that standard lease provisions, including the owner's right to enter and inspect the leasehold, or a requirement that the tenant abide by state and federal laws and/or not maintain a condition of nuisance of the property (if subject to lease termination) are sufficient to establish the element of "ability to prevent or control a discharge" for purposes of naming a landowner as a responsible party. (*Spitzer, supra*, p. 9; *In the Matter of the Petition of San Diego Unified Port District* Order No. WQ 89-12, pp. 8-9.) NPI had these standard lease provisions in its lease with CED. Therefore, NPI is a responsible party for discharges that occurred on or from 2250 Meyers Avenue

CED is a responsible party if it "permitted" the discharge by HEI by failing to take action despite having "the ability to obviate the condition." (*Spitzer, supra*, p. 13-14; *In the Matter of the Petition of Stuart Petroleum*, Order No. WQ 86-15, p. 6.) Like NPI, CED learned of the discharges to the 2250 Meyers Avenue parcel no later than 1992, and so had the ability to control or prevent the discharge at that point. The lease terms between CED and HEI would also allow CED to obviate the condition. Therefore, CED is a responsible party for discharges that occurred on or from 2250 Meyers Avenue.

It is appropriate for the San Diego Water Board to name CED and NPI as responsible parties for discharges that occurred on the 2250 Meyers Avenue parcel that need to be remediated. While there is currently pollution on the 2250 Meyers Avenue parcel, it is unclear whether the pollution is the result of activities that occurred on the 2250 Meyers Avenue parcel or as a result of migration from 655 Opper Street. If evidence demonstrates that pollution necessitating remediation on the 2250 Meyers Avenue parcel is a result of

activities on the 2250 Meyers Avenue parcel or that it is otherwise appropriate to hold CED and NPI responsible for pollution migrating under or through 2250 Meyers Avenue, then the Revised CAO may be revised to include CED and NPI as responsible parties for cleanup of the 2250 Meyers Avenue parcel.

- 12. Basis for Cleanup and Abatement Order.** Water Code section 13304 empowers the San Diego Water Board with the authority to enforce cleanup and abatement of waste discharge(s). Specifically, section 13304 requires a person or entity to cleanup waste and/or abate the effects of waste discharge if so ordered by the San Diego Water Board in the event there has been a discharge in violation of waste discharge requirements, or if a person or entity has caused or permitted waste to be discharged or deposited into the waters of the State, thereby creating or threatening to create a condition of pollution. In the case of the Facility, the San Diego Water Board is authorized to order the Responsible Parties (as described in Findings 7 and 8) to cleanup and abate the effects of waste discharge for all contaminants of concern. This includes wastes that were discovered after CAO No. 98-58 was written based upon new information pertaining to the Site, such as the emerging contaminant and probable human carcinogen 1,4-dioxane.
- 13. Basis for Requiring Reports.** Water Code section 13267 provides that the San Diego Water Board may require responsible parties to furnish technical and/or monitoring reports as the San Diego Water Board requires. The burden (costs) of these reports must bear a reasonable relationship to both the need for the information in the reports and also the benefits to be obtained from the reports. In requiring the reports, the San Diego Water Board is obliged to provide a written explanation explaining the need for the reports, and identify evidence that supports requiring the responsible party to provide the reports.
- 14. Need for Technical and Monitoring Reports.** Technical reports and Monitoring reports are needed to provide information to the Regional Board regarding (a) the nature and extent of the discharge, (b) the nature and extent of pollution conditions in State waters created by the discharge, (c) the threat to public health posed by the discharge, and (d) appropriate cleanup and abatement measures. The reports will enable the Regional Board to determine the vertical and lateral extent of the discharge, ascertain if the condition of pollution poses a threat to human health in the vicinity of the Site, and provide technical information to determine what cleanup and abatement measures are necessary to bring the Site into compliance with applicable water quality standards. Based on the nature and possible consequences of the discharges (as described in Findings No. 7 and 8, above) the Regional Board's request and Responsible Parties' burden of providing the required reports bears a reasonable relationship to the need for the reports, the costs, and the benefits to be obtained from the reports.

15. **Cost Recovery.** Pursuant to Water Code section 13304, the San Diego Water Board is entitled to, and will seek reimbursement for, all reasonable costs incurred by the San Diego Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
16. **Failure to Comply.** If the Responsible Parties fail to comply with this Order, the Executive Officer may request of the Attorney General to petition the California Superior Court for the issuance of an injunction.
17. **Order Violation.** If the Responsible Parties violate this Order, they may be liable civilly for a monetary amount identified in the Water Code.
18. **State Water Board Policies.** The State Water Board adopted Resolution No. 92-49 the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304*. This Resolution requires that cleanup levels be consistent with State Board Resolution No.68-16, the *Statement of Policy with Respect to Maintaining High Quality of Waters in California*.
19. **Cleanup Levels.** Resolution No. 92-49 requires that waste be cleaned up to background (zero), or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, CCR section 2550.4. Any alternative cleanup level greater than background must (1) be consistent with the maximum benefit for the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board.
20. **California Environmental Quality Act (CEQA) Exemption.** The issuance of this Order is an enforcement action taken by a regulatory agency and is categorically exempt from the provisions of CEQA pursuant to section 15321(a) (2), Chapter 3, Title 14 of the California Code of Regulations. The Order requires submittal of a corrective action plan (CAP) that proposes cleanup activities. The proposed activities under the CAP are not yet known and so are speculative, but implementation of the CAP may result in significant physical impacts to the environment that must be evaluated under CEQA. The appropriate lead agency will address the CEQA requirements prior to implementing any CAP that may have a significant impact on the environment.
21. **Qualified Professionals.** The Responsible Parties' reliance on qualified professionals supports long-term cost effectiveness and proper planning and implementation of cleanup and abatement activities at this site. California Business and Professions Code Sections 6735, 7835 and 7835.1 require that

engineering and geologic evaluations be performed by or under the direction of licensed professionals.

- 22. Procedural History.** The Assistant Executive Officer of the Regional Board issued Cleanup and Abatement Order No. R9-2010-0007 on February 1, 2010. On February 26, 2010, CED and NPI collectively requested a hearing on the CAO. Also on February 26, 2010, ASI requested a hearing on the CAO. CED/NPI and ASI petitioned the State Water Board to review the CAO, and both petitions are being held in abeyance pending the outcome of the Regional Board's hearing. A paper hearing was conducted, with all parties submitting principal and rebuttal briefs as well as the administrative record. Executive Officer David W. Gibson reviewed and gave full consideration to all documents submitted by the San Diego Water Board, CED/NPI, and ASI. After his review, he issued this Revised CAO, which makes the following amendments: (1) removed CED and NPI as Responsible Parties but finds that if further evidence demonstrates that contamination occurring on the CED/NPI property necessitates remediation, CED and NPI may be added as Responsible Parties; and (2) denies ASI's request to be named as a secondarily liable Responsible Party. The cleanup requirements, including any deadlines, remain from the February 1, 2010, CAO.

IT IS HEREBY ORDERED, pursuant to sections 13267 and 13304 of the Water Code, that the Responsible Parties must comply with the following directives:

- 1. Implement the Interim Remedial Action for Persulfate Injection with Additional Monitoring Requirement for Metals.** Implementation of the *Proposed In-Situ Chemical Oxidation (ISCO)-Phase 2 Treatment Program, Former Hebdon/Meyers Oppen Site in Escondido* workplan submitted by the Responsible Parties on May 22, 2009, must begin by **March 1, 2010** according to the conditions described in the San Diego Water Board reply letter of October 13, 2009. Enrollment in the general Waste Discharge Requirement (WDR) No. R9-2008-0081 is required. Since this Phase 2 ISCO treatment has the potential to mobilize metals in groundwater due to displacement from fluid injection and creation of an anaerobic subsurface environment, post-injection groundwater monitoring must also analyze for metals by the following methods: EPA Method 6010 to analyze for arsenic, lead, copper, chromium, nickel, and thallium based upon site history; bromine analysis to screen for bromate (the most carcinogenic form of bromine) using EPA 321.8 or an acceptable alternative test method. *All analytes from all test methods must be reported.*
- 2. Submit a Corrective Action Plan (CAP) within 60 days of completion of the final round of post-injection groundwater monitoring.** The CAP must present and interpret the soil and groundwater results from the Interim Remedial Action in Directive One and discuss the current impacts based on

these results. The CAP must include a Feasibility Study to evaluate site remediation and mitigation alternatives. The Feasibility Study must:

- a. evaluate the effectiveness and cost of a minimum of two remedial action alternatives that may be implemented to cleanup the VOC, SVOC, and metals wastes released by the Facility to cleanup levels consistent with Directive 3. One of these alternatives must include an analysis of the feasibility to cleanup all COPCs—including 1,4-dioxane—to background;
- b. evaluate methods to control the continued off-site migration of Facility contamination;
- c. propose a time schedule, including interim milestone dates, for completion of each recommended alternative within a reasonable time frame;
- d. provide the rationale for the method of choice; and
- e. update the human health risk assessment using current data.

3. Determination of Cleanup Levels. The CAP shall evaluate applicable cleanup levels consistent with the following requirements:

a. **Groundwater Cleanup Levels.** The Responsible Parties shall cleanup and abate the effects of the discharge in a manner that promotes the attainment of either background water quality or the best water quality that is reasonably attainable if background levels of water quality cannot be restored, considering all the demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. Any alternative cleanup level(s) less stringent than background water quality shall:

- i. Be consistent with maximum benefit to the people of the state;
- ii. Not unreasonably affect present and anticipated beneficial use of such water;
- iii. Not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State Water Board and San Diego Water Board.

Alternative cleanup levels less stringent than background water quality that are proposed by the Responsible Parties are subject to San Diego Water Board review and approval.

b. **Soil Cleanup Levels.** The Responsible Parties shall propose a range of site-specific soil cleanup levels based upon a technical evaluation of risks from residual soil contaminants and analytic results from contaminant leachability tests performed on an adequate number of significantly contaminated soil samples collected from the Facility. In addition, if no completed exposure pathway exists but contaminated soils remain in place, an estimate of the volume and distribution of those soils must be made from recent sampling data and an accurate site map and cross-sections to scale must be provided.

Soil cleanup levels shall not result in water quality less than the approved groundwater cleanup level, and shall not pose an unreasonable risk to human health and the environment. Soil cleanup levels proposed by the Responsible Parties are subject to San Diego Water Board review and approval.

4. **Implement a Public Participation Plan prior to Implementing the CAP.** This directive is to comply with Water Code section 13307.5 (Notifications). An updated Fact Sheet must be created and distributed to any location affected by a Site release. A public hearing may be necessary based upon public interest.
5. **Implement the Corrective Action Plan (CAP).** The Responsible Parties shall implement the CAP in accordance with the action schedule approved by the San Diego Water Board. The CAP implementation shall begin no later than **September 30, 2010**.
6. **Completion of Soil and Groundwater Cleanup.** Soil and groundwater cleanup goals shall be achieved no later than **October 1, 2015**.
7. **Implement Corrective Action Evaluation Monitoring.** The Responsible Parties shall conduct verification monitoring of all available wells to evaluate corrective action effectiveness in both shallow and deep aquifers and make adjustments to the implementation of the CAP as necessary. This verification monitoring must start by **October 1, 2015** and be performed on a quarterly basis for a minimum of one year. Reduced "key well" plans for groundwater analyses are not acceptable for this purpose. Of the 30 existing monitoring wells, only 8 were used for the second quarter groundwater monitoring round in 2007; new wells may need to be installed with appropriate screen intervals to fill data gaps as indicated. Soil data must also be collected. The approach must provide sufficient data to demonstrate plume stability and/or mass destruction. Computer modeling may also be employed to support plume trends, provided site-specific input parameters are used. A technical report must be submitted to the San Diego Water Board no later than **December 15, 2016** presenting the results of soil and groundwater confirmation sampling and certifying that cleanup levels have been achieved. A petition to the San Diego Water Board for site closure is contingent upon this certification.
8. **Recording of a Deed Restriction.** The Responsible Parties shall cause a deed restriction to be recorded within the County of San Diego on the properties located at 2250 Meyers Avenue, 655 Opper Street, and 665 Opper Street, Escondido if verification monitoring shows that pollutant releases to groundwater on any or all of the above-named properties continue to exceed applicable WQO's post-remediation. A copy of the deed, reflecting this restriction, shall be provided to the San Diego Water Board Executive Officer

within 60 days of its recording. The purpose of this deed restriction is to limit subsurface activities to prevent any inadvertent future exposures to workers or occupants unaware that contaminated soils and/or groundwater at the Facility may present a potential hazardous exposure risk. Present or future owners of these properties may request that the Executive Officer authorize removal of the deed restriction at such time as they are able to demonstrate, with adequate and verifiable data from the groundwater monitoring program or other means, that the pollutant levels in groundwater have stabilized either below WQO's and/or to background conditions.

9. Compliance Schedule. The following is a summary of the due dates for activities described in the preceding directives:

DIRECTIVE	ACTION REQUIRED	DUE DATE
1	Begin Implementation of the Interim Remedial Action (IRA) For Persulfate Injection	March 1, 2010
2	Submit a Corrective Action Plan (CAP)	60 days post-IRA
3	Begin Implementation of Public Participation Plan	Must be completed prior to CAP Implementation
4	Begin Implementation of CAP	September 30, 2010
5	Complete Soil and Groundwater Cleanup	No later than October 1, 2015
6	Begin Implementation of Quarterly Corrective Action Evaluation Monitoring	Begin monitoring No later than October 1, 2015
7	Submit Results of Soil and Groundwater Evaluation and Certification of Achievement Of Cleanup Goals	December 15, 2016

DIRECTIVE	ACTION REQUIRED	DUE DATE
8	Record Deed Restriction	If groundwater data post-remediation continue to exceed WQO's

PROVISIONS

- A. NO POLLUTION, CONTAMINATION, OR NUISANCE:** The storage, handling, treatment, or disposal of soil containing VOC waste or polluted groundwater must not create conditions of pollution, contamination, or nuisance as defined in Water Code section 13050(m). The Responsible Parties must properly manage, treat and dispose of wastes and polluted groundwater in accordance with applicable federal, state, and local regulations.
- B. PERMITS FOR WASTE DISCHARGE:** The discharge of any low-volume, non-hazardous waste or waste constituents which are generated as the result of any cleanup and abatement action or interim remedial actions at this site is prohibited, unless the discharge is permitted under the National Pollution Discharge Elimination System (NPDES) or by issuance of Waste Discharge Requirements (WDRs) by the San Diego Water Board under section 13260 of the Water Code.
- C. OPERATION AND MAINTENANCE:** The Responsible Parties shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with this Order.
- D. CONTRACTOR/CONSULTANT QUALIFICATIONS:** All reports, plans and documents required under this Order shall be prepared under the direction of appropriately qualified professionals. A statement of qualifications and license numbers, if applicable, of the responsible lead professional and all professionals making significant and/or substantive contributions shall be included in the report submitted by the Responsible Parties. The lead professional performing engineering and geologic evaluations and judgments shall sign and affix their professional geologist or civil engineering registration stamp to all technical reports, plans or documents submitted to the Regional Board.
- E. LABORATORY QUALIFICATIONS:** Unless otherwise permitted by the San Diego Water Board, all analyses shall be conducted at a laboratory certified for such analyses by the California Department of Health Services. The

Responsible Parties must use a laboratory capable of producing and providing quality assurance/quality control (QA/QC) records for San Diego Water Board review. The director of the laboratory whose name appears on the certification shall supervise all analytical work in his/her laboratory and shall sign all reports submitted to the San Diego Water Board.

- F. LABORATORY ANALYTICAL REPORTS:** Any report presenting new analytical data is required to include the complete Laboratory Analytical Report(s). The Laboratory Analytical Report(s) must be signed by the laboratory director and contain:
- iv. Complete sample analytical report;
 - v. Complete laboratory quality assurance/quality control (QA/QC) report;
 - vi. Discussion of the sample and QA/QC data; and
 - vii. A transmittal letter that shall indicate whether or not all the analytical work was supervised by the director of the laboratory, and contain the following statement, "All analyses were conducted at a laboratory certified for such analyses by the California Department of Health Services in accordance with current USEPA procedures."
- G. ANALYTICAL METHODS:** Specific methods of analysis must be identified in monitoring program reports. If the Responsible Parties propose to use methods or test procedures other than those included in the most current version of *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846* (U.S. Environmental Protection Agency) or 40 CFR 136, *Guidelines Establishing Test Procedures for the Analysis of Pollutants; Procedures for Detection and Quantification*, the exact methodology must be submitted for review and must be approved by the San Diego Water Board prior to use.
- H. ELECTRONIC REPORTING REQUIREMENTS -** The Electronic Reporting Regulations (Chapter 30, Division 3 of Title 23 & and Division 3 of Title 27, CCR) require electronic submission of any report or data required by a regulatory agency from a cleanup site after July 1, 2005. All information submitted to the San Diego Water Board in compliance with this Order is required to be submitted electronically via the Internet into the Geotracker database <http://geotracker.waterboards.ca.gov/> (The Geotracker Site ID is **SL209304205**). The electronic data shall be uploaded on or prior to the regulatory due dates set forth in the Order or addenda thereto. To comply with these requirements, the Responsible Parties shall upload to the Geotracker database the following minimum information.

- i. Laboratory Analytical Data - Analytical data (including geochemical data) for all soil, vapor, and water samples in Electronic Data File (EDF) format. Water, soil, and vapor data include analytical results of samples collected from: monitoring wells, boreholes, gas and vapor wells or other collection devices, surface water, groundwater, piezometers, stockpiles, and drinking water wells.
- ii. Locational Data - The latitude and longitude of any permanent monitoring well for which data is reported in EDF format, accurate to within 1 meter and referenced to a minimum of two reference points from the California Spatial Reference System (CSRS-H), if available.
- iii. Monitoring Well Elevation Data - Elevation measurements to the top of groundwater well casings for all groundwater monitoring wells. Drinking water wells included in the report, do not need to have the elevation reported unless they are identified as permanent sampling points.⁴
- iv. Depth-to-Water Data - Monitoring wells need to have the depth-to-water information reported whenever water data is collected, even if water samples are not actually collected during the sampling event. Drinking water wells do not need to have the depth-to-water reported unless the wells are surveyed as permanent sampling points and the measurements can be feasibly made in the well.
- v. Site Map – Site map or maps which display discharge locations⁵ streets bordering the Facility property, and sampling locations for all soil, water and vapor samples. The Site map is a stand-alone document that may be submitted in various electronic formats.⁶
- vi. Monitoring Well Screen Intervals - The depth to the top of the screened interval and the length of the screened interval for any permanent monitoring well.
- vii. Boring Logs - Boring logs (in searchable PDF format) prepared by an appropriately licensed professional.
- viii. Electronic Report Submittal Requirements - A complete copy (in searchable PDF format) of all assessment, cleanup, and

⁴ A permanent sampling point is defined as a point that is sampled for more than a 30-day period.

⁵ Former tank(s), product and vapor piping, dispenser or sump locations, and unauthorized discharge or spill areas.

⁶ Formats include .gif, .jpeg, .jpg, tiff, .tif, .pdf

monitoring reports including the signed transmittal letters, professional certifications, and all data presented in the reports.

The Geotracker website address is <http://geotracker.waterboards.ca.gov>. Deadlines for electronic submittals coincide with deadlines for paper copy submittals. The Geotracker Global ID for the Former Hebdon Electronics Facility is: **SL209304205**.

- I. **REPORTING OF CHANGED OWNER OR OPERATOR:** The Responsible Parties must notify the San Diego Water Board of any changes in Site occupancy or ownership associated with the properties described in this Order.
- J. **PENALTY OF PERJURY STATEMENT:** All reports must be signed by the Responsible Parties' principal executive officer or their duly authorized representative, and must include a statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge.
- K. **REGULATIONS:** All corrective actions must be in accordance with the provisions of the California Code of Regulations (CCR) Title 23, Chapter 16; the Cleanup and Abatement Policy in the *Water Quality Control Plan for the San Diego Basin* (9); and State Board Resolution No. 92-49.

NOTIFICATIONS

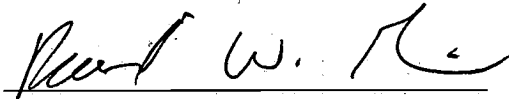
- A. **COST RECOVERY:** Pursuant to Water Code section 13304(c), the San Diego Water Board is entitled to, and will seek reimbursement for, all reasonable costs actually incurred by the San Diego Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by the Order.
- B. **ENFORCEMENT DISCRETION:** The San Diego Water Board reserves its right to take any enforcement action authorized by law for violations of the terms and conditions of this Order.
- C. **ENFORCEMENT NOTIFICATION:** Failure to comply with the requirements of this Order may subject the Responsible Parties to enforcement action, including but not limited to: imposition of administrative civil liability, pursuant to Water Code sections 13268 and 13350, in an amount not to exceed \$5000 for each day in which the Violation occurs under Water Code sections 13304 or 13350 or referral to the Attorney General for injunctive relief for civil or criminal liability.

- D. REQUESTING EVIDENTIARY HEARING BY THE SAN DIEGO WATER BOARD:** Any person affected by this action of the San Diego Water Board may request an evidentiary hearing before the San Diego Water Board. The San Diego Water Board's Executive Officer may elect to hold an informal hearing or "paper hearing" in lieu of scheduling a hearing before the San Diego Water Board. If you decide to request an evidentiary hearing, send your request to the San Diego Regional Board Executive Officer, Attn: Supervisor, Central San Diego Groundwater Unit, at the address provided on the Order transmittal letter. Please consider the following carefully:
- a. The San Diego Water Board must receive your request within 30 days of the date of this Order.
 - b. Your request must include all comments, technical analysis, documents, reports, and other evidence that you wish to submit for evidentiary hearing; however, please note that the administrative record will include all materials the San Diego Water Board has previously received regarding this Site. You are not required to submit documents that are already in the record.
 - c. The Executive Officer or San Diego Water Board may deny your request for a hearing after reviewing the evidence.
 - d. If you do not request an evidentiary hearing, the State Water Board may prevent you from submitting new evidence in support of a State Water Board petition.
 - e. Your request for an evidentiary hearing, if you submit one, does not stay the effective date of the Order, whether or not a hearing is scheduled.
 - f. A request for a hearing does not extend the 30-day period to file a petition with the State Water Board (see below): however, we suggest that you ask the State Water Board to hold the petition in abeyance while your request for a hearing is pending. (Refer to CCR Title 23 section 2050.5 (d)). Additional information regarding the State Water Board petition process is provided below.

E. REQUESTING ADMINISTRATIVE REVIEW BY THE STATE BOARD:

Any person affected by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with section 13320 of the Water Code and CCR Title 23 section 2050. The petition must be received by the State Water Board (Office of Chief Counsel, P.O. Box 100, California 95812-0100) within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

Ordered by:



David W. Gibson
Executive Officer

Date: October 26, 2010

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FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY
SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO:
IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER CODE
SECTIONS 13268 OR 13350 OR REFERRAL TO THE ATTORNEY GENERAL FOR
INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

ATTACHMENT 1 TO REVISED CAO NO. R9-2010-0007

**SUMMARY OF REGIONAL BOARD ENFORCEMENT HISTORY FOR THE
FORMER HEBDON ELECTRONICS FACILITY
2250 MEYERS AVENUE, 655 OPPER STREET, 665 OPPER STREET
ESCONDIDO, CALIFORNIA 92069**

1. On June 12, 1997, this Regional Board issued CLEANUP AND ABATEMENT ORDER NO. 97-46 for FORMER HEBDON ELECTRONICS FACILITY, 655 OPPER STREET, ESCONDIDO, SANDIEGO COUNTY (hereinafter "CAO 97-46") based upon unauthorized discharges of wastes to groundwater from former circuit board manufacture, in violation of Water Code Section 13304 . Wastes attributable to operations at the Former Hebdon Facility included: 1,1,1-TCA; TCE and its chemical breakdown products; Methyl Ethyl Ketone (MEK); Acetone; Methylene Chloride; Gasoline (TPH); Lead; Chromium; Chloride; Sulfate; and Total Dissolved Solids.
2. On June 27, 1997, Addendum No. 1 to CAO 97-46 was issued, correcting the address of the referenced property in Directive No. 1.
3. On April 20, 1998, Notice of Violation 98-59 (hereinafter NOV 98-59) was issued for failure to submit a technical report as directed in CAO 97-46.
4. On May 13, 1998, CAO 97-46 and Addendum No. 1 to CAO 97-46 were rescinded and CLEANUP AND ABATEMENT ORDER NO. 98-58 for FORMER HEBDON ELECTRONICS FACILITY, 655 OPPER STREET, ESCONDIDO, SAN DIEGO COUNTY (hereinafter CAO 98-58) was issued. The new CAO named additional parties and set a new compliance schedule, in response to concerns raised in a public hearing.
5. On September 10, 1998, Notice of Violation (NOV) 98-103 was issued for failure to submit a technical report as directed in CAO 98-58.
6. On November 25, 1998, Addendum No. 1 to CAO 98-58 was issued, extending the original compliance dates and rescinding NOV 98-103.
7. On January 15, 1999, the Dischargers submitted a *Groundwater Monitoring Program Workplan* in compliance with Directive No.5 of CAO 98-58.
8. On February 1, 1999, the Dischargers submitted a *Site Investigation Workplan* in compliance with Directive No. 1 of CAO 98-58.

9. On February 11, 1999, Addendum No. 2 to CAO 98-58 was issued, revising analytic requirements for groundwater samples.
10. On April 20, 1999, Notice of Violation 99-29 was issued for failure to submit a technical report as directed in Directive 15 of Addendum No. 1 to CAO 98-58.
11. On April 27, 1999, the Dischargers submitted a quarterly groundwater monitoring report, First Site Monitoring Report, Spring 1999, Meyers-Opper Site, Escondido, CA in response to NOV 99-29.
12. On August 30, 1999, the Dischargers submitted a combined report, *Site Investigation and Second (Quarterly GW) Site Monitoring Report* in compliance with Directive 3 (Soil and Groundwater Investigation Report) and Directive 15 of CAO 98-58.
13. On October 15, 1999, the Dischargers submitted an Interim Removal Action Plan (IRAP) for Clarifier/Solution Separating Sumps in compliance with Directive 16 of CAO 98-58.
14. On June 9, 2000, the Dischargers submitted a Logistics Plan for Interim Removal Action Plan for the Meyers/Opper Site for excavation and removal of contaminated soils in compliance with Directive 16 of CAO 98-58.
15. On September 18, 2000, Addendum No. 3 to CAO 98-58 was issued, setting deadlines for completion of the IRAP and revising the submission deadline for a Feasibility Study as required by Directive No. 4.
16. On March 1, 2001, the Dischargers submitted the Interim Removal Action Report, Former Hebdon Electronics Facility, Escondido, California, in response to Addendum No. 3.
17. On April 27, 2001, the Dischargers submitted a Focused Feasibility Study in compliance with Directive 4 of CAO 98-58 and the new deadline set in Addendum No. 3.
18. On April 8, 2002, the Regional Board (Peter Peuron) reviewed and commented on the December 2001 Groundwater Monitoring Report, Former Hebdon Electronics Facility. Based upon high levels of 1,1,1-TCA contamination reported in MW-1B and MW-28, the Regional Board added the contaminant 1,4-dioxane to the sampling plan, and requested that the Discharger propose corrective measures to address the high VOC levels in groundwater. The CAO was not amended at that time.
19. On August 28, 2002, the Dischargers submitted their Final: June 2002 Groundwater Monitoring Report for the Meyers/Opper Site, Escondido California. The maximum value for 1,4-dioxane was found in MW-10 at 5,600 ug/L while the

maximum for 1,1,1-TCA occurred in MW-28 at 30,000 ug/L . Natural attenuation parameters were analyzed but MNA was determined to be infeasible as a remedial alternative. A pilot study for Enhanced Anaerobic Biodegradation (EAB) was recommended. (Appendix D-1).

20. On June 30, 2003, the Dischargers submitted a Groundwater Remedial Action Plan for the Former Hebdon Electronics Facility to address groundwater impacts from VOCs including TCE, 1,1,1-TCA and 1,4-dioxane. The Regional Board concurred with this limited pump and treat system for four wells in the source zone in a staff letter dated July 9, 2003.
21. On January 18, 2006, the Dischargers submitted a Technical Memorandum to Evaluate Alternative Groundwater Remediation Technologies as the pump and treat system was found to have extracted only 0.22 lbs of total VOCs after operating for 18 months. A pilot study was proposed to test the effectiveness of chemical oxidation for mass destruction, using persulfate injected into downgradient well MW-9 and off-site well MW-25.
22. On April 27, 2006, Notice of Violation No. R9-2006-0060 was issued for failure to file reports electronically in accordance to section 13195, Chapter 3 of the Porter-Cologne Water Quality Control act. The Dischargers outlined steps taken to correct this omission in a response letter to the Regional Board dated June 19, 2006.
23. On February 2, 2007, the Dischargers submitted *Final: 3rd Q 2006 Groundwater Monitoring and Remedial Progress Report, Meyers-Opper Site, Escondido, CA*. This report presented results from the pilot test conducted August 16 and 18, 2006 and requested deletion of the first quarter 2007 GW monitoring program based on relative plume stability.
24. In 2007, the Dischargers submitted three quarterly groundwater (GW) monitoring reports. They further requested reducing the GW monitoring program from quarterly to semi-annually.
25. On November 8, 2007, the Dischargers submitted a letter entitled: *Proposal and Workplan for In-Situ Treatment—Phase 2 Program, Former Hebdon/Meyers Opper Site in Escondido, California*.
26. On March 10, 2008, the Dischargers submitted: *Workplan for In-Situ Groundwater Sampling to delineate the downgradient plume extent of 1,4-dioxane and VOCs the upper zone*. This included plans for new well installation off-site. The Regional Board concurred with this Workplan in a reply letter dated March 26, 2008.
27. On July 2, 2008, the Regional Board sent a letter to the property owner at 2250 Micro Place requesting access to the Mesa Power Systems property for the

purpose of off-site plume investigation. The owner gave his consent in a reply letter dated July 31, 2008.

28. Data from the Hebdon on-site GW monitoring program was not collected in 2008 pending implementation of the March 2008 downgradient workplan.
29. On March 3, 2009, the Dischargers submitted a report entitled *Downgradient Plume Characterization Activities, Former Hebdon/Meyers Oppor site in Escondido*. The report described 1,4-dioxane detections in two shallow zone off-site wells above the CDPH health-based notification level of 3.0 ug/L. (No MCL exists for 1,4-dioxane.)
30. On May 22, 2009, the Dischargers submitted a report entitled *Proposed In-Situ Chemical Oxidation (ISCO) Phase 2 Treatment Program, Former Hebdon/Meyers Oppor Site in Escondido, California*. They proposed revising the Phase 2 injection program by reducing the coverage to 6 wells from an earlier plan (2007) for 17 wells.
31. On July 16, 2009, the Regional Board sent a comment letter to the Dischargers requesting additional technical information and clarification of their March 3, 2009 downgradient characterization results. A response within 30 days was required.
32. On August 10, 2009, the Dischargers submitted a response entitled: *Subject: Regional Board July 16, 2009 Letter Regarding the Report of "Downgradient Plume Characterization Activities—Former Hebdon/Meyers Oppor Site in Escondido*.
33. On October 13, 2009, the Regional Board responded to the May 22, 2009 Phase 2 proposal in a letter entitled: *Comments on Proposed In-Situ Chemical Oxidation (ISCO) Phase 2 Treatment Program*. This letter directed the Dischargers to implement the Phase 2 plan as an interim remedial action (IRA), and also required a Feasibility Study to be submitted after 60 days past completion of the verification monitoring for the IRA.

EXHIBIT "B"

**IN SUPPORT OF
SHORT-FORM PETITION OF AMERICAN SALVAGE, INC.
OF
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD CLEANUP AND
ABATEMENT ORDER R9-2010-0007, AND REQUEST FOR ABEYANCE
& REQUEST FOR STAY**

Emails from CDM confirming persulfate injection activities at the Property

RE: 665 Meyers Property upcoming injection activities

From: "Tekce, Seher" <TekceSS@cdm.c...> [View Contact](#)
To: "Tekce, Seher" <TekceSS@cdm.com>, bvdlaw@sbcglobal.net

Fri, August 20, 2010 1:58:14 PM

Bill,

I got your voice mail. I appreciate if you can send me the signed form when you receive it from Mr. Kimmel.

Thanks for your help

Regards

S. Sibel Tekce

Project Manager

CDM

111 Academy Suite 150
Irvine, CA 92617

Direct Dial: 949 - 930 9821

Main Office: 949 - 752 5452

Cell Phone: 714 - 335 1416

 Please consider the environment before printing this email

From: Tekce, Seher

Sent: Wednesday, August 18, 2010 4:19 PM

To: bvdlaw@sbcglobal.net

Subject: 665 Meyers Property upcoming injection activities

Hi Bill

We are planning to submit required forms and fees to the San Diego County.

One of the required forms is attached and needs to be signed by the property owner.

Do you have authority to sign it ? if not, could you please help us obtain Mr. Kimmel's signature?

Please let me know. If you can sign it, my field geologist can stop by and pick it up from you tomorrow afternoon.

We will be conducting some initial testing at the site tomorrow and we already contacted the tenant.

Thank you

<< File: [sam_poc_interactive.doc](#) >>

S. Sibel Tekce

Project Manager

CDM

111 Academy Suite 150
Irvine, CA 92617

Direct Dial: 949 - 930 9821

Main Office: 949 - 752 5452

Cell Phone: 714 - 335 1416

 Please consider the environment before printing this email

Meyers property injection activities

From: "Tekce, Seher" <TekceSS@cdm.c View Contact
To: William Van Dusen <bvdlaw@sbcglobal.net>

Wed, November 17, 2010 1:02:38 PM

Hi Bill,

I just want to let you know that we are planning to conduct persulfate injection Activities during the week of December 6th. We anticipate this work to take 3-4 days.

We will contact the tenant as well

If you have any questions, please let me know

Regards

S. Sibel Tekce

Project Manager

CDM

111 Academy Suite 150

Irvine, CA 92617

Direct Dial: 949 - 930 9821

Main Office: 949 - 752 5452

Cell Phone: 714 - 335 1416

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"Tekce, Seher" <T Go Delete Reply Forward Spam Move Print Actions

670 View your 2010 Credit Score

Meyers property injection activities

From: "Tekce, Seher" <TekceSS@cdm.c View Contact
To: William Van Dusen <bvdlaw@sbcglobal.net>

- Inbox (154)
- Drafts
- Sent
- Spam (2) Empty
- Trash Empty
- Contacts Add
- Folders And

Hi Bill,
I just want to let you know that we are planning to conduct persulfate injection
Activities during the week of December 6th. We anticipate this work to take 3-4 days.
We will contact the tenant as well
If you have any questions, please let me know

Regards
S. Sibel Tekce
Project Manager
CDM
111 Academy Suite 150
Irvine, CA 92617
Direct Dial: 949 - 930 9821
Main Office: 949 - 752 5452
Cell Phone: 714 - 335 1416

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- Flickr
- My Photos
- Notepad

TODAY: 11/22

665 Meyers

Fri, July 30, 2010 5:05:48 PM

From: "Tekce, Seher" <TekceSS@cdm.c...> [View Contact](#)
To: bvdlaw@sbcglobal.net

Mr. Van Dusen

I am planning to send out my site geologist to Meyers Site on Monday afternoon to check on the treatment system and site conditions. We should be receiving our permit from the Regional Board next week and will be ready to initiate proposed work plan.

I appreciate if you can inform the tenant and provide us their contact info.

Please let me know if you have any questions

Thanks

S. Sibel Tekce

Project Manager

CDM

111 Academy Suite 150
Irvine, CA 92617
Direct Dial: 949 - 930 9821
Main Office: 949 - 752 5452
Cell Phone: 714 - 335 1416

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Offline Sign Out

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13 emails were found matching your search

William Van Dusen <wvdusen@geosyntec.com> <wvdusen@geosyntec.com>

BHitchens@Geosyntec.co RE: 665 Meyers Property upcomin... Tue 8/31, 10:17 AM **Inbox**
 ... received this message in error, please reply by email and delete this email. ----- Forwarded Message ----- From: "Tekce, Seher" <TekceSS@cdm.com> To: William Van Dusen <bvdlaw@sbcglobal.net> Sent: Mon, August 23, 2010 12:44:49 PM Subject: RE: 665

William Van Dusen Fw: 665 Meyers Property upcomin... Tue 8/31, 10:05 AM **Sent**
 ... communication may be privileged. If you have received this message in error, please reply by email and delete this email. From: "Tekce, Seher" <TekceSS@cdm.com> To: "Tekce, Seher" <TekceSS@cdm.com>, bvdlaw@sbcglobal.net Sent: Fri, August 20, 2010 1:58:14 PM Subject: RE: 665 Meyers

Tekce, Seher RE: 665 Meyers Property upcomin... Mon 8/23, 12:44 PM **Inbox**
 ... communication may be privileged. If you have received this message in error, please reply by email and delete this email. From: "Tekce, Seher" <TekceSS@cdm.com> To: "Tekce, Seher" <TekceSS@cdm.com>, bvdlaw@sbcglobal.net Sent: Fri, August 20, 2010 1:58:14 PM Subject: RE: 665 Meyers

William Van Dusen Re: 665 Meyers Property upcomin... Mon 8/23, 11:29 AM **Sent**
 ... communication may be privileged. If you have received this message in error, please reply by email and delete this email. From: "Tekce, Seher" <TekceSS@cdm.com> To: "Tekce, Seher" <TekceSS@cdm.com>, bvdlaw@sbcglobal.net Sent: Fri, August 20, 2010 1:58:14 PM Subject: RE: 665 Meyers

William Van Dusen Fw: 665 Meyers Property upcomin... Sat 8/21, 6:13 AM **Sent**
 ... privileged. If you have received this message in error, please reply by email and delete this email. ----- Forwarded Message ----- From: "Tekce, Seher" <TekceSS@cdm.com> To: bvdlaw@sbcglobal.net Sent: Wed August 18 2010

RE: 665 Meyers Property upcoming injection activities

From: "Tekce, Seher" <TekceSS@cdm.com> View Contact
To: William Van Dusen <bvdlaw@sbcglobal.net>

Thank you

From: William Van Dusen [mailto:bvdlaw@sbcglobal.net]
Sent: Monday, August 23, 2010 11:29 AM
To: Tekce, Seher
Subject: Re: 665 Meyers Property upcoming injection activities

Per your request, see attached signed by ASI's president, Mr. Kimmel.

Regards,

TODAY: 11/19

- View your 2010 Credit Score
- Inbox (154)**
- Drafts
- Sent
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EXHIBIT "C"
DECLARATION OF WILLIAM B. VAN DUSEN
IN SUPPORT OF
SHORT-FORM PETITION OF AMERICAN SALVAGE, INC.
OF
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD CLEANUP AND
ABATEMENT ORDER R9-2010-0007, AND REQUEST FOR ABEYANCE
& REQUEST FOR STAY

I, WILLIAM B. VAN DUSEN, DECLARE AS FOLLOWS:

1. I am attorney licensed to practice before all of the courts of the State of California and I have personal knowledge of the facts stated in this Declaration, except as to those matters stated upon information and belief, and as to those matters, I am informed and believe them to be true.
2. Petitioner, American Salvage, Inc., is requesting a stay with respect to the subject Cleanup and Abatement Order. I am informed and believe that if a stay is not granted, Petitioner will suffer substantial harm because it will be required to expend enormous amounts of money on consultants and processes in order to comply with the ambitious timelines set forth in the CAO in order to avoid the imposition of penalties.
3. Petitioner has not had any involvement in the remediation of the site to date, has not caused or contributed to the problems at the Property, and will have to spend huge sums to begin to address the requirements of the CAO. On the other hand, I am informed and believe that there will be no substantial harm to the other interested parties and/or to the public interest if the stay is granted. First, the Trust and/or the actual PRPs have advised me through CDM that they will be continuing their remediation activities, specifically, that persulfate injection activities are to commence on December 6, 2010. Following such injection activities, I am informed and believe that the results therefrom will need to be analyzed before proceeding further. Moreover, I am informed that the discharges at issue occurred long ago and approximately 12 years of remediation work has been conducted at the Property. In addition, I am informed that there are substantial questions of law and fact in that the CAO is contrary to the State Board policy and supporting California law of distinguishing between *primary* and *secondarily responsible* parties, and the findings ignore the fact of the Trust's and/or the actual PRPs' continuing remediation activities. Further, the Petition raises the legal and factual question of whether the Regional Board has failed in its legal duty to proceed in good faith with meaningful enforcement against the originally named (and actual) PRPs.

I declare under penalty of perjury that the foregoing statements are true and that this Declaration was executed this 23rd day of November, 2010, at La Mesa, California.



William B. Van Dusen

Service List – Named Dischargers

Raymond & Valerie Grimsinger
31663 Palos Verdes Drive
Escondido, CA 92026

Joseph & Hope Hebdon
15459 Roundtree Road
Valley Center, CA 92082

John Niccoli
1425 Hamilton Lane
Escondido, CA 92029

John Billings
3261 Ocean Front Walk
San Diego, CA 92109

Kevin Bove
134 Whisper Way
Boeme, TX 78006-2953

Victoria Hebdon
445 Estrelita Drive
Vista, CA 92084-7833

Consolidated Electrical Distributors, Inc.
C/O David T. Bradford, Esq.
31356 Via Colinas, Suite #106
Westlake Village, CA 91362

Northbrook Properties, Inc.
C/O CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Kenneth G. McCord
176 South Shadow Pines Road
Orange, CA 92869-6566

James Robert Dennis
12526 High Bluff Drive, Suite 300
San Diego, CA 92130-2067

SMYLIE & VAN DUSEN

Attorneys at Law

2878 Camino del Rio South, Suite 200
San Diego, CA 92108
619.233.9199

November 23, 2010

Via email to: DGibson@waterboards.ca.gov

David W. Gibson
Executive Officer , San Diego Regional Water Quality Control Board
9174 Sky Park Court Suite 100
San Diego, CA 92123-4353

Re: *Revised CAO R9-2010-0007*
Request for Review by the San Diego Regional Water Quality Control Board

Dear Mr. Gibson:

On behalf of our client, American Salvage, Inc., we hereby request that the San Diego Regional Water Quality Control Board review *de novo* the Revised Cleanup and Abatement Order No. R9-2010-007 dated October 26, 2010. The basis upon which review is sought is set forth in the Petition of American Salvage, Inc., a copy of which is being emailed to you and filed today with the State Water Board.

We have asked the State Board to hold our client's petition in abeyance in the event the Regional Board grants the requested review

We thank you in advance for your consideration and look forward to your reply.

Very truly yours,



SMYLIE & VAN DUSEN
William B. Van Dusen

c: See attached service list (via mail)
Cris Carrigan, Senior Staff Counsel, RWQCB (via email)
Kelly E. Richardson, L & W, Counsel for CED & NPI (via email)
Jeannette L. Bashaw, Legal Analyst, State Water Resources Control Board

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