

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

**TENTATIVE
CLEANUP AND ABATEMENT ORDER NO. R9-2024-0011
AN ORDER DIRECTING GUHN Y. KIM AND YUN SOON KIM, AS
ADMINISTRATORS OF THE KIM FAMILY TRUST OF 2017, M&E BROTHERS
LLC, FLOR DE LYS BARAWID, AND KIM BUHLER, AS ADMINISTRATOR OF
THE HORTMAN TRUST, TO CLEAN UP OR ABATE THE EFFECTS OF
AN UNAUTHORIZED RELEASE FROM 1654 AND 1718 E.
VALLEY PARKWAY, ESCONDIDO, CALIFORNIA**

The relevant facts and weight of the evidence indicate that the Parties listed below caused or permitted waste to be discharged into waters of the state and are therefore appropriately identified in this Order as the responsible parties in accordance with Health and Safety Code section 25296.10, California Code of Regulations (Cal. Code Regs.), title 23, section 2720, and as dischargers, in accordance with Water Code section 13304. The Parties are subject to the directives set forth in this Cleanup and Abatement Order (Order), as described below.

Parties:

Guhn Y. Kim and Yun Soon Kim, as Administrators of The Kim Family Trust of 2017 5490 Wolverine Terrace, Carlsbad, CA 92010	Contact: Guhn Y. Kim guhnykim@gmail.com
M&E Brothers LLC 15475 Willow Ranch Trail, Poway, CA 92064	Contact: Lys Barawid lysl61barawid@gmail.com
Flor De Lys Barawid 15475 Willow Ranch Trail Poway, CA 92064	Contact: Lys Barawid lysl61barawid@gmail.com
Kim Buhler, as Administrator of the Hortman Trust, and Norman Alton Hortman III as a beneficiary of the Hortman Trust 1209 Via Ramon Escondido, CA 92029	Contact: Kim Buhler and Norman Alton Hortman III kbuhler@eusd.org

Property Information:

Name:	Suzy's Cleaners Former Ha's/Economy Cleaners
Addresses:	1654 E. Valley Parkway, Escondido, CA 92027 (Suzy's Cleaners) 1718 E. Valley Parkway, Escondido, CA 92027 (Former Ha's/Economy Cleaners)
APN	231-320-2500

Property Descriptions:

The property located at 1654 E. Valley Parkway, Escondido, CA 92027 is currently occupied by Suzy's Cleaners. This Order refers to 1654 E. Valley Parkway, Escondido, CA 92027 as "1654 EVP Property."

The property located at 1718 E. Valley Parkway, Escondido, CA 92027 was formerly occupied by dry cleaning businesses, Ha's Cleaners and Economy Cleaners. It is currently occupied by an adult daycare facility. This Order refers to 1718 E. Valley Parkway, Escondido, CA 92027 as "1718 EVP Property."

This Order collectively refers to the 1654 EVP Property and 1718 EVP Property as the Properties. The Properties are located within a commercial strip mall surrounded by commercial land use to the east, west, and south, with residential land use to the north across Escondido Creek. Escondido Creek is a concrete-lined channel.

Unauthorized Releases:

Several environmental investigations have been conducted to evaluate the soil, soil vapor, indoor air, and groundwater conditions at the Site. The results of these investigations confirm the presence of wastes, including tetrachloroethene (PCE), a chemical historically used in dry cleaning operations.

This Order defines the term "Site" as the areas currently and/or potentially impacted due to the unauthorized release of waste from dry cleaning operations at the Properties. The Site is therefore determined by the lateral and vertical extents of the contamination by wastes in all media (i.e., soil vapor, sub-slab soil vapor, indoor air, groundwater, and soil).

Tentative
Cleanup and Abatement Order No. R9-2024-0011

DATE, 2024

Effective Date

I, David W. Gibson, Executive Officer, do hereby certify this Order is a full, true, and correct copy of the Order adopted by the California Regional Water Quality Control Board, San Diego Region, on DATE, 2024.

Order No. R9-2024-0011 is effective upon the date of signature.

Ordered by:

DAVID W. GIBSON

Date

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I. FINDINGS

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), finds the following:

A. Legal and Regulatory Authority

This Cleanup and Abatement Order (Order) conforms with and implements the following legal and regulatory provisions.

1. Water Code section 13304 subdivision (a), provides that:

“A person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”

2. Water Code section 13304, subdivision (c)(1), provides that:

“...[T]he person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action...”

3. Health and Safety Code section 25296.10 and California Code of Regulations (Cal. Code Regs.), title 23, section 2720, provide that:

“Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release...”. A responsible party is defined as, “(1) Any person who owns or operates an underground storage tank used for the storage of any hazardous substance; (2) In the case of any underground storage tank no longer in use, any person who owned or operated the

- underground storage tank immediately before the discontinuation of its use; (3) Any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred; and (4) Any person who had or has control over a underground storage tank at the time of or following an unauthorized release of a hazardous substance.”
4. Health and Safety Code section 25281, subdivision (u), defines a tank as a “stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support.”
 5. Health and Safety Code section 25281, subdivision (y)(1), defines an underground storage tank (UST) as “any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground.”
 6. Health and Safety Code section 25281, subdivision (h)(1)(B), defines hazardous substances as, among other substances, those defined in section 78075(a) of the Health and Safety Code.
 7. Health and Safety Code section 78075, subdivision (a), defines hazardous substances by referencing many authorities. Most relevant to this Order is “any toxic pollutant listed under section 1317 (a) of Title 33 of the United States Code.” (Health and Safety Code section 78075, subdivision (a)(4).)
 8. Pursuant to section 1317, subdivision (a), of Title 33 of the United States Code, U.S. Environmental Protection Agency (EPA) defines tetrachloroethene (PCE) and trichloroethene (TCE) as toxic pollutants. (title 40 Code of Federal Regulations, section 401.15 (59) and (63).)
 9. State Water Resources Control Board (State Water Board) Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*, sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, *The Statement of Policy With Respect to Maintaining High Quality of Waters in California* (Resolution No. 68-16), and the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) adopted by the San Diego Water Board, which establishes the cleanup levels to be achieved. Resolution No. 92-49 requires dischargers to clean up or abate the effects of discharges in a manner that promotes attainment of background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. A concentration limit greater than the background level (i.e., alternative cleanup level) may only be established in accordance with Cal. Code Regs, title 23, section 2550.4.

10. The threat of vapor intrusion into buildings at and near the Properties has caused or threatens to cause a nuisance as defined in Water Code section 13050, subdivision (m). This Order includes evidence of the potential for vapor intrusion. Soil vapor concentrations of PCE are summarized in **Findings D and G** below.
11. The San Diego Water Board may require the Parties in **Finding H** to submit a Public Participation Plan or engage in other activities to disseminate information and gather community input regarding the Site, as authorized or required by Water Code sections 13307.1, 13307.5, and 13307.6.
12. This Order requires investigation and cleanup in compliance with the Water Code, the Basin Plan, Resolution Nos. 92-49 and 68-16, and other applicable plans, policies, and regulations. All Parties in **Finding H** are responsible for complying with each requirement, unless otherwise specifically noted.

B. Scope of Cleanup and Abatement Order No. R9-2024-0011

This Order addresses the cleanup and abatement of all wastes discharged to soil and groundwater from dry cleaning operations at the Properties and the impacts thereof to soil vapor and indoor air (Figure 1). The following terms are defined on pages 1 and 2 of this Order: 1654 EVP Parkway, 1718 EVP Parkway, Properties, and Site. The Site is a commercial strip mall in Escondido, California.

Figure 1: Location of Properties (outlined in orange and red)



C. Background

In July 2020, the San Diego Water Board assumed regulatory oversight from the County of San Diego Department of Environmental Health (DEH) regarding environmental issues identified at the former Jo-Ann Fabrics and Crafts location.¹ Board staff reviewed the DEH case files and determined that (1) PCE has not been used either historically or currently at former Jo-Ann Fabrics and Crafts location, and (2) the following dry cleaner facilities within the strip mall caused or contributed to elevated PCE concentrations found in soil vapor beneath the former Jo-Ann Fabrics and Crafts location:

1. Suzy's Cleaners (**Figure 1**, outlined in orange) located approximately 50 feet west of the former Jo-Ann Fabrics and Crafts.²
2. Former Ha's Cleaners (from about 1986 to about 1991) and former Economy Cleaners (from about 1991 until about 1999) (**Figure 1**, outlined in red) located approximately 150 feet east of the former Jo-Ann Fabrics and Crafts.³

¹ The former Jo-Ann Fabrics and Crafts, with a street address of 1680 E. Valley Parkway, Escondido, CA 92027, is outlined in blue on Figure 1.

² Located at 1654 E. Valley Parkway, Escondido, CA 92027.

³ Located at 1718 E. Valley Parkway, Escondido, CA 92027.

D. Unauthorized Release of Waste

Several environmental inspections and investigations have been conducted to evaluate the soil, soil vapor, indoor air, and groundwater conditions at the Site. The results of these investigations confirm the presence of waste and are described below.

1. **Non-Permitted Underground Storage Tank.** On January 2, 1991, DEH conducted an inspection at Economy Cleaners and issued a Notice of Violation (NOV) to the property manager, Ken Creed, for the installation of a non-permitted UST.⁴ The DEH inspection report states, “This tank appears to have leaked and allowed an unauthorized release of hazardous waste to the ground. On this date this tank was filled with a liquid which may be contaminated with hazardous waste. It also appears that a sludge has collected at the bottom of the tank. There is a [sic] odor of solvent/cleaning product from this liquid and sludge.”

On February 15, 1991, Norman Hortman, property owner for Economy Cleaners, collected a soil sample beneath the UST, according to information included on the analytical laboratory chain-of-custody record. The sample was collected from about 3 feet off the center of the UST at a depth of about 5 feet below the bottom of the UST.⁵ The soil sample was analyzed for chlorinated solvents using EPA Method 8010. Chlorinated solvents were not detected at concentrations above the respective laboratory reporting limits.

On March 22, 1991, DEH conducted an inspection for the closure of the non-permitted UST. The UST was identified as a 55-gallon drum and was closed in place. Based on the closure of the UST and analytical results for the soil sample collected by Norman Hortman, DEH determined that no further action was required.

The 55-gallon drum was used to store hazardous substances and was buried directly under the 1718 EVP Property. When PCE is discharged into soil and groundwater, over time, it can degrade to more toxic breakdown products, such as TCE. The 55-gallon drum is a UST because it was placed underground to be stationary, was made of non-earthen materials, and contained hazardous substances. (See **Finding I.A.**) The Health and Safety Code defines hazardous substances as those listed by the EPA as toxic pollutants under the Clean Water Act. (See **Finding I.A.**) EPA listed PCE and TCE as toxic pollutants in 1979 (See **Finding I.A.**). As such, PCE and TCE are hazardous substances under the Health and Safety Code and the 55-gallon drum qualifies as a UST.

⁴ The NOV lists Economy Cleaners as the Business Name and Norman Hortman as the Owner Name.

⁵ This sample was not taken by a qualified professional, so it is unknown if this sample was representative.

2. **Environmental Investigations.** The analytical results from the following assessments confirm the presence of wastes at the Site:
- i. In March 2015, Ninyo & Moore conducted a Phase I Environmental Site Assessment⁶ at the former Jo-Ann Fabrics and Crafts that identified Suzy's Cleaners as a Recognized Environmental Condition. Ninyo and Moore subsequently conducted a soil vapor survey to evaluate whether historical and/or current dry cleaning operations in the vicinity of the former Jo-Ann Fabrics and Crafts may have resulted in volatile organic compound (VOC) impacts to vadose-zone soil beneath the former Jo-Ann Fabrics and Crafts. PCE was identified in shallow soil vapor ranging from 150 to 18,000 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$).
 - ii. In April 2015, Ninyo & Moore conducted an indoor air assessment⁷ at the former Jo-Ann Fabrics and Crafts. Indoor air concentrations of benzene, carbon tetrachloride, 1,2-dichloroethane, and PCE were detected at concentrations slightly above commercial screening levels for ambient air.
 - iii. In February 2017, Geosyntec Consultants installed two temporary soil vapor extraction pits⁸ at the former Jo-Ann Fabrics and Crafts to collect additional soil vapor data: SP-1 near the west wall closest to Suzy's Cleaners and SP-2 near the east wall closest to the former Ha's/Economy Cleaners. Laboratory analysis of soil vapor samples collected from SP-1 during a soil vapor extraction test detected PCE concentrations at 6,600 $\mu\text{g}/\text{m}^3$, at the beginning of the test (9:57) and 7,400 $\mu\text{g}/\text{m}^3$, at the end of the test (13:00). Soil vapor samples collected from SP-2 detected PCE concentrations at 1,000 $\mu\text{g}/\text{m}^3$, at the beginning of the test (14:00) and 1,100 $\mu\text{g}/\text{m}^3$, at the end of the test (17:00).
 - iv. In September 2018, Geosyntec Consultants conducted additional soil vapor and indoor air investigations⁹ at the former Jo-Ann Fabrics and Crafts to assess current subsurface soil vapor conditions and indoor air. PCE was detected in soil vapor at concentrations ranging from 100 to 7,300 $\mu\text{g}/\text{m}^3$. PCE was detected in indoor air at concentrations of 3.1 and 7.2 $\mu\text{g}/\text{m}^3$, which exceed the commercial risk-based screening level

6

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/8684766471/107903003%20L%20HHRA%20master.pdf

7

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/5493100821/107903003%20L%20IAQ%20master.pdf

⁸ https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/4061444938/Jo-Ann%20Fabrics%204.20.17.f.pdf

⁹ https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/2289487540/Jo-Ann%20Fabrics%2001.25.2019.F.pdf

of 2.0 µg/m³.

- v. In April/May 2019, Geosyntec Consultants conducted a 30-day soil vapor extraction test¹⁰ at two extraction wells, VP-1 and VP-2, to further evaluate (1) the persistence of subsurface VOC impacts in soil vapor beneath the former Jo-Ann Fabrics and Crafts, (2) whether subsurface VOCs present in soil vapor could be reduced to concentrations that no longer represent unacceptable risk to commercial occupants due to soil vapor intrusion, and (3) whether observed rebound of VOCs in sub-slab probes are likely to represent unacceptable risk to commercial occupants over time as VOCs begin to migrate back to the former Jo-Ann Fabrics and Crafts from off-site source areas. The soil vapor extraction test results indicated the following:
- The soil vapor extraction test significantly reduced subsurface VOC concentrations beneath the former Jo-Ann Fabrics and Crafts. PCE concentrations detected in the sub-slab probes during the intermediate sampling event ranged from below the laboratory detection limit to 360 µg/m³ and during the shutdown sampling event ranged from 4.1 to 19 µg/m³.
 - Minimal VOC concentration rebound was observed during the first rebound sampling event conducted two weeks following the pilot test. PCE concentrations in sub-slab soil vapor remained very low, with PCE only detected above the laboratory detection limit in one sub-slab probe (VP-1) at a concentration of 310 µg/m³. PCE concentrations during the baseline sampling event ranged from 2,200 to 24,000 µg/m³.
- vi. In July 2019, Geosyntec Consultants conducted a 2-month soil rebound sampling event.¹¹ VOC concentrations observed in the sub-slab probes during the 2-month rebound sampling event were two to three orders of magnitude greater than those observed during the 2-week rebound sampling event in each of the probes except VP-1. PCE concentrations during the 2-month rebound sampling event ranged from 440 to 2,100 µg/m³.
- vii. In November/December 2019, to address Suzy's Cleaners representatives' concerns regarding the pilot test results, Geosyntec Consultants (1) installed and sampled a third SVE well (SVE-3) along the

¹⁰

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/8374540030/SVEPilotTestRpt%2020190625.f.pdf

¹¹

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/4779126822/Addendum%20Memo%2020190731.f.pdf

east side of the former Jo-Ann Fabrics and Crafts closest to the former Ha's/Economy Cleaners, and (2) conducted additional sampling of the sub-slab probes at the former Jo-Ann Fabrics and Crafts to further evaluate the likely source(s) of PCE vapors beneath the former Jo-Ann Fabrics and Crafts, and the potential risk to the commercial occupants resulting from soil vapor intrusion.¹² The results of the investigation were the following:

- The PCE concentrations detected in the existing SVE-1 and SVE-2 wells (790 and 1,800 $\mu\text{g}/\text{m}^3$, respectively) were lower than the PCE concentration detected in the newly installed SVE-3 well (3,000 $\mu\text{g}/\text{m}^3$). These results were expected because no soil vapor extraction was conducted in SVE-3 and the location of SVE-3 is beyond the approximate 50-foot radius of influence identified for the soil vapor extraction pilot test.
- viii. Consistent with prior sub-slab and shallow soil vapor sampling events conducted between 2015 and 2019, the highest sub-slab PCE concentration was detected in a sample collected from VP-2 near the western boundary of the former Jo-Ann Fabrics and Crafts. PCE concentrations ranged from 8.8 (VP-1) to 3,400 $\mu\text{g}/\text{m}^3$ (VP-2) and exhibited a similar trend to the previous rebound sampling event conducted in July 2019. Further, concentrations were elevated overall compared to the July 2019 sampling event.
- ix. In February and March 2022, Innovative Environmental Solutions conducted a site investigation¹³ to evaluate soil, soil vapor, and groundwater conditions at the Site and found the following:
- PCE was detected in soil at concentrations ranging from 1.1 to 6.1 micrograms per kilogram ($\mu\text{g}/\text{kg}$).
 - PCE and TCE were detected in soil vapor at concentrations ranging from 440 to 110,000 $\mu\text{g}/\text{m}^3$ and 67 to 670 $\mu\text{g}/\text{m}^3$, respectively.
 - PCE was detected in groundwater at concentrations of 2.5 and 5.7 micrograms per liter ($\mu\text{g}/\text{L}$).

¹²

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/6548200309/VE3SamplingRpt%2020200110.f.pdf

¹³

https://documents.geotracker.waterboards.ca.gov/es/uploads/geo_report/6537341654/T10000014715.PDF

- x. In April 2022, Weis Environmental conducted an indoor air investigation¹⁴ to evaluate the indoor air quality at the 1718 EVP Property. Three indoor air samples were collected in the northeast, southeast, and southwest areas of the building. PCE was detected in indoor air samples at concentrations ranging from 0.995 to 1.81 µg/m³.

- xi. In September 2022, Innovative Environmental Solutions conducted a passive soil vapor survey¹⁵ to evaluate the source(s) and lateral extent of chlorinated solvents in soil vapor beneath the Site. Elevated soil vapor concentrations of cis-1,2-dichloroethene, PCE, and TCE are present beneath the Site, as shown below on **Figures 2 to 4**.

¹⁴

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/6264341056/1718%20E%20Valley%20Parkway%20Letter%20Report%20-%20Final.pdf

¹⁵

https://documents.geotracker.waterboards.ca.gov/esi/uploads/geo_report/1899325370/T10000014715.PDF

Figure 2: Passive Soil Vapor Analytical Results for cis-1,2-Dichloroethene

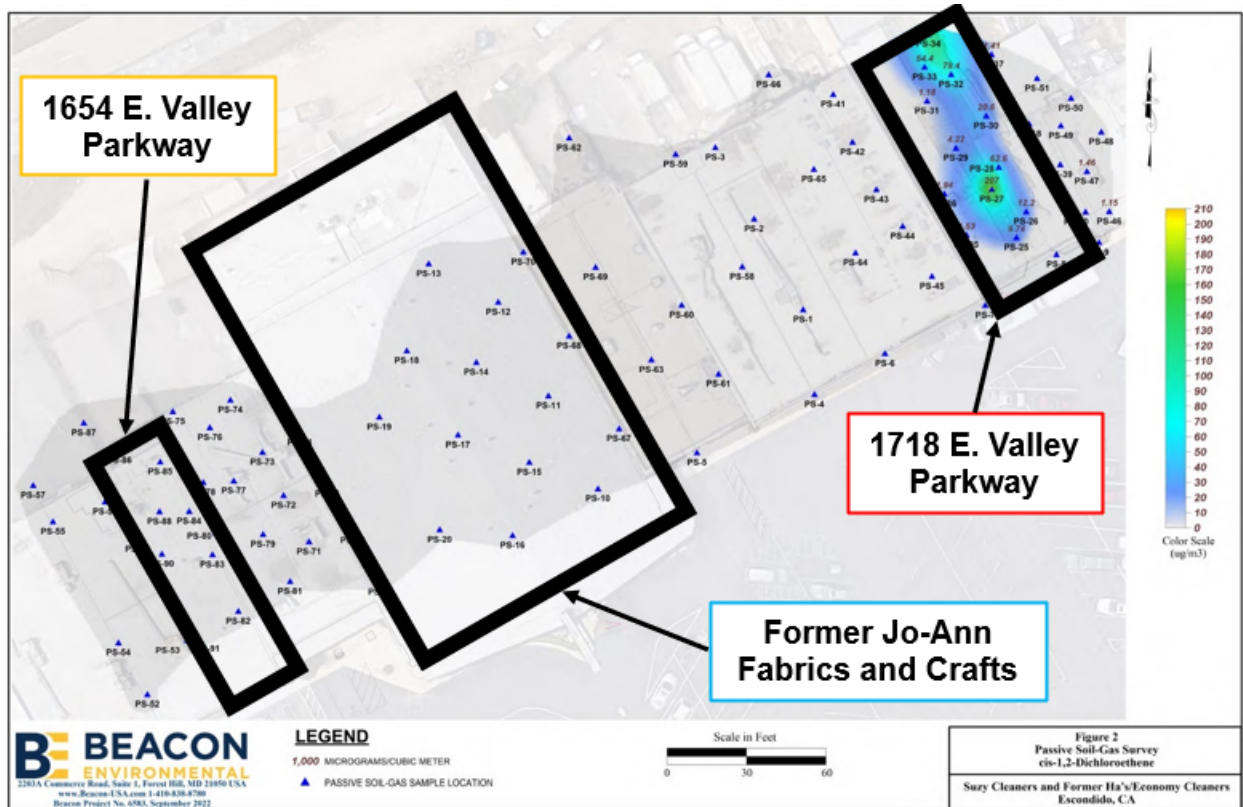


Figure 3: Passive Soil Vapor Analytical Results for Trichloroethene

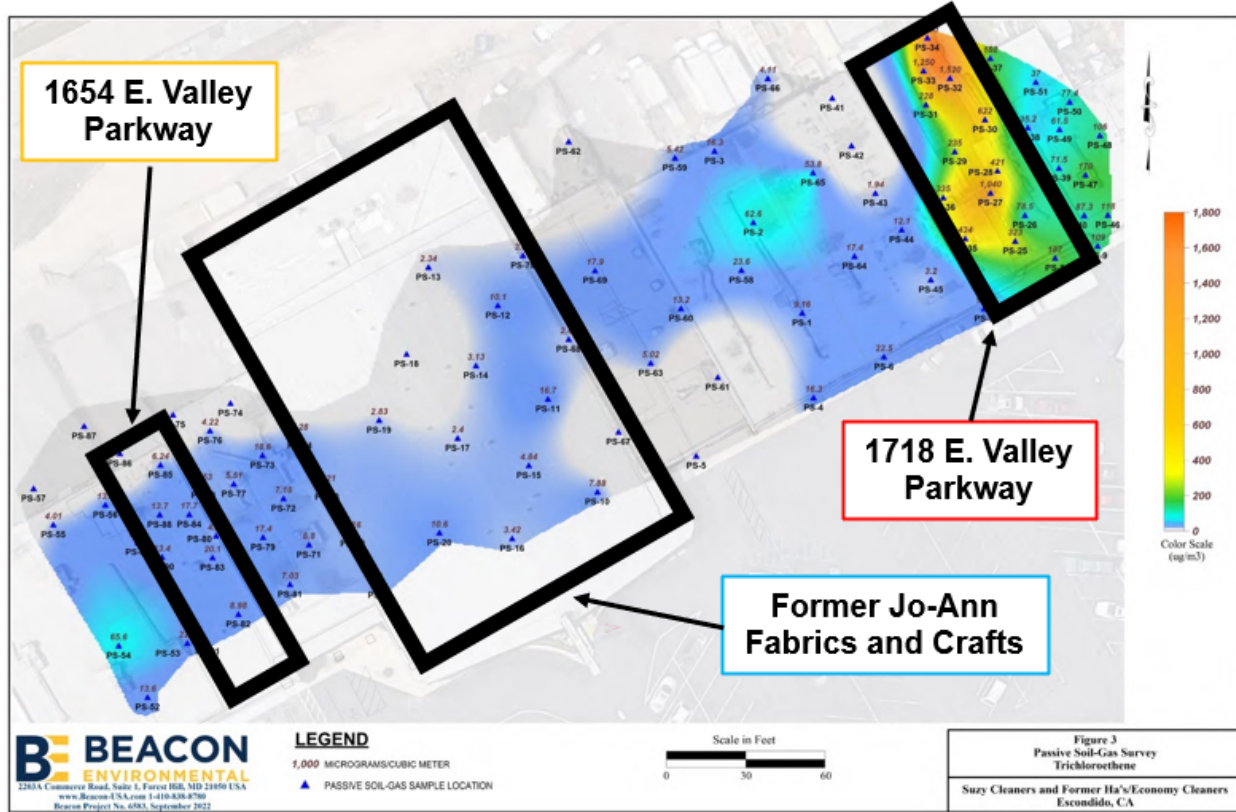
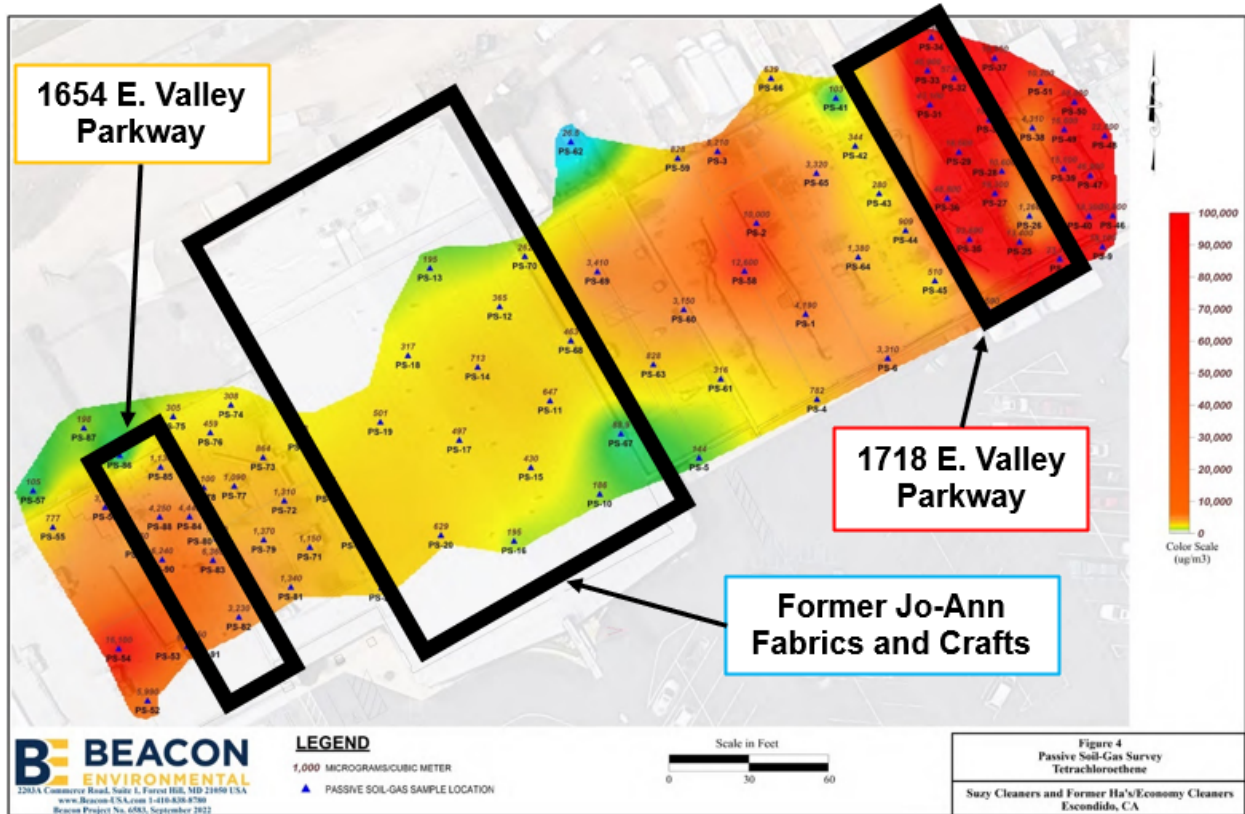


Figure 4: Passive Soil Vapor Analytical Results for Tetrachloroethene



E. Updated Conceptual Site Model Report

Innovative Environmental Solutions submitted an Updated Conceptual Site Model (CSM) Report¹⁶ to the San Diego Water Board in March 2023, based on the results of the site investigation and passive soil vapor survey described in Finding D.2 above. The Updated CSM Report identified data gaps and recommended the following:

Additional site assessment is necessary to investigate the source and potential for vapor intrusion and impacts to human health from the PCE-derived subsurface vapors reported within the study area. PCE and TCE concentrations detected to date at 1654 EVP do not indicate the need for any emergency response actions at this time. Based on the November 19, 2022 RWQCB letter, the following recommendations apply to the assessment of conditions at 1654 EVP. Unfortunately, due to historical interpretations presented by various environmental consultants, “up-gradient” areas as well as suspected near-Site source and suspected “down-gradient” assessment will likely be required to confirm this CSM.

To date, only three soil samples from a single boring location to the northwest of 1654 EVP have been analyzed. IES believes additional shallow soil assessment within the 1654 EVP suite is warranted to determine if source soil is present at this location. Similarly, soil sampling in the immediate vicinity of the PCE “Hot Spots” identified at 1700/1702 and 1652 EVP can determine if PCE source soil is present in those locations.

To date, only one groundwater grab sample from a single boring location to the northwest of 1654 EVP the Site has been analyzed. Additional groundwater assessment, through the installation of fixed groundwater monitoring wells which would allow the analysis of Site-specific groundwater quality, gradient and flow direction, are necessary to confirm the release scenario. To accomplish this, IES proposes to prepare a Work Plan for Additional Site Assessment focusing on areas of impact identified at 1652, 1654 and at other locations, to be proposed after the RWQCB has had an opportunity to review and respond to this CSM.

F. Beneficial Uses of Groundwater

The Site is located within the Escondido Hydrologic Subarea (4.62) in the Escondido Hydrologic Area (4.60) of the Carlsbad Hydrologic Unit (4.00). The Basin Plan¹⁷ designates beneficial uses for waters of the state and establishes water quality objectives to protect these uses. Present and potential future beneficial uses of groundwater within the Escondido Hydrologic Sub Area are

¹⁶

https://documents.geotracker.waterboards.ca.gov/esi/uploads/geo_report/1973010480/T10000014715.PDF

¹⁷ https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/

municipal and domestic supply (MUN), agricultural supply (AGR), and industrial service supply (IND). Water quality objectives to support the MUN use are more stringent than those for AGR and IND uses. The water quality objectives for MUN are the Maximum Contaminant Levels (MCLs)¹⁸ specified in Table 64444-A of Cal. Code Regs. title 22, section 64444.

G. Threat to Water Quality and Human Health

The environmental inspections and investigations described in **Finding D** indicate there is a threat to water quality and human health due to the presence of wastes at the Site. As shown in **Table 1** below, the PCE concentration in groundwater at the Site exceeds the MCL, which indicates the potential impairment of the MUN beneficial use. As shown in **Table 2** below, the PCE concentrations in soil vapor at the Site exceed the Environmental Screening Levels (ESL)¹⁹ for PCE, which indicate potential cancer and non-cancer risks to commercial/industrial building occupants from vapor intrusion. As shown in **Table 3** below, the predicted TCE indoor air concentrations based on the TCE soil vapor concentrations exceed the accelerated response action level for TCE under a commercial/industrial exposure scenario (8-hour workday).

Table 1: PCE in Groundwater Exceeding MCL

Location	Sample Date	Sample ID	Depth (feet below ground surface [bgs])	PCE Groundwater (µg/L)	PCE MCL (µg/L)
1718 EVP Property	2/22/23	SB-3	15	5.7	5

¹⁸ https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Chemicalcontaminants.html

¹⁹ https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.shtml

Table 2: PCE in Soil Vapor Samples Exceeding Soil Vapor Intrusion ESLs [see table notes (a) and (b) below]

Location	Sample Date	Sample ID	Depth (feet bgs)	PCE Soil Vapor ($\mu\text{g}/\text{m}^3$)
1654 EVP Property	3/2/22	DGP-1	10	3,600
	3/2/22	SGP-1	5	6,800
	3/2/22	SSP-1	0.5	5,100
	3/2/22	SGP-2	5	11,000
	3/2/22	SSP-1	0.5	3,300
1680 EVP Property (Former Jo-Ann Fabrics and Crafts)	3/1/22	VP-2	0.5	2,600
	3/1/22	SGP-3	5	1,800
	3/1/22	SGP-7	5	1,700
	3/1/22	VP-4	0.5	1,700
	3/1/22	VP-5	0.5	1,200
	3/1/22	SGP-8	5	1,800
1718 EVP Property	2/2/22	SSP-3	0.5	110,000
	2/2/22	SGP-5	5	100,000
	3/3/22	DGP-3	5	47,000
	3/3/22	DGP-3	15	61,000
	3/2/22	DGP-4	5	3,900
	3/2/22	DGP-4	10	12,000

(a) PCE soil vapor intrusion ESL for cancer risk = $670 \mu\text{g}/\text{m}^3$

(b) PCE soil vapor intrusion ESL for noncancer risk = $5,800 \mu\text{g}/\text{m}^3$

Table 3: Predicted TCE Indoor Air Concentrations Exceeding TCE Indoor Air Accelerated Response Action Level [see table notes (a) and (b) below]

Location	Sample Date	Sample ID	Depth (feet bgs)	TCE Soil Vapor ($\mu\text{g}/\text{m}^3$)	Predicted TCE Indoor Air ²⁰ ($\mu\text{g}/\text{m}^3$)
1718 EVP Property	2/22/22	SSP-3	0.5	670	20
	2/22/22	SGP-5	5	390	12

(a) EPA Region 9 Interim TCE Accelerated Response Action Level = $8 \mu\text{g}/\text{m}^3$

(b) EPA Region 9 Interim TCE Urgent Response Action Level = $24 \mu\text{g}/\text{m}^3$

H. Parties Responsible for the Unauthorized Release

The relevant facts and weight of the evidence indicate that the Parties listed on the first page of this Order and described below in **Table 4** caused or permitted waste to be discharged into waters of the state and are therefore appropriately identified in this Order as the responsible parties, in accordance with Health and Safety Code section 25296.10 and Cal Code Regs, title 23, section 2720. The Parties are also appropriately identified as dischargers, in accordance with Water Code 13304. This Order will only use the term Parties to refer to responsible persons under Health and Safety Code section 25296.10, which is defined in Cal Code Regs, title 23, section 2720, and to dischargers as defined in Water Code 13304.

1. M&E Brothers LLC is a discharger because, as the current owner of the 1718 EVP Property, it has caused or permitted waste to be discharged or deposited where it has discharged to waters of the state and has created, and continues to threaten to create, a condition of pollution and/or nuisance.²¹ As the current owner of the 1718 EVP Property, M&E Brother LLC has the legal ability to control the discharge. Further, M&E Brothers LLC is a responsible party under Health and Safety Code section 25296.10 and Cal Code Regs, title 23,

²⁰ Based on an attenuation factor of 0.03.

²¹ *Tesoro Refining & Marketing Company LLC v. Los Angeles Regional Water Quality Control Board*, 42 Cal.App.5th 453, 457 (2019), held “the term ‘discharge’ must be read to include not only the initial occurrence [of a discharge], but also the passive migration of the contamination into the soil.” The Court affirmatively cited State Board precedent: “State Board held that a continuous and ongoing movement of contamination from a source through the soil and into the groundwater is a discharge to waters of the state and subject to regulation.” (*Ibid.*, citing State Water Board Order WQ 86-2 (*Zoecon Corp.*), WQ74-13 (*Atchison, Topeka, et al*), and WQ 89-8 (*Spitzer*) “[D]ischarge continues as long as pollutants are being emitted at the site.”). See also State Water Board Order WQ 89-1 (*Schmidl*.) Under California law, courts have historically held, and modern courts maintain, that possessors of land may be liable for a nuisance on that land even if the possessor did not create the nuisance. (See *Leslie Salt Co. v. San Francisco Bay Conservation and Dev. Comm’n* (1984) 153 Cal.App.3d 605, 619–620.).

- section 2720, because it is an owner of property where an unauthorized release of a hazardous substance from a UST has occurred.
2. Flor De Lys Barawid is a discharger because, as the former owner of the 1718 EVP Property, Flor De Lys Barawid knew or should have known that activities on the Property created a reasonable possibility of discharge into waters of the state of wastes that could create or threaten to create a condition of pollution or nuisance, and Barawid had the ability to control those discharges. Further, Flor De Lys Barawid is a responsible party under Health and Safety Code section 25296.10 and California Code of Regulations, title 23, section 2720 because Barawid had control over a UST at the time of or following an unauthorized release of a hazardous substance.
 3. Norman Alton Hortman and Barbara Hortman, Trustees of the Norman Alton Hortman and Barbara Hortman Revocable Trust No. 1, dated July 2, 1985 (Hortman Trust), previously owned the Property via the Hortman Trust. Norman Alton Hortman and Barbara Hortman are deceased; however, the Hortman Trust is now administered by Kim Buehler. Kim Buehler and Norman Alton Hortman III are beneficiaries of the Hortman Trust. The Hortman Trust is a discharger because, as a former owner, the Hortman Trust knew or should have known that activities on the Property created a reasonable possibility of discharge into waters of the state of wastes that could create or threaten to create a condition of pollution or nuisance and had ability to control those discharges. The Hortman Trust had knowledge that the Property was contaminated with PCE as indicated in this Order because its Trustees were issued NOVs and collected soil samples that contained the contamination. (See **Finding I.D.**) Further, the Hortman Trust is a responsible party under Health and Safety Code section 25296.10 and Cal Code Regs, title 23, section 2720 because it had control over a UST at the time of or following an unauthorized release of a hazardous substance.
 4. The Kim Family Trust of 2017 is a discharger because as the current owner of the 1654 EVP Property, it has caused or permitted waste to be discharged or deposited where it has discharged to waters of the state and has created, and continues to threaten to create, a condition of pollution and/or nuisance.²² As

²² *Tesoro Refining & Marketing Company LLC v. Los Angeles Regional Water Quality Control Board*, 42 Cal.App.5th 453, 457 (2019), held “the term ‘discharge’ must be read to include not only the initial occurrence [of a discharge], but also the passive migration of the contamination into the soil.” The Court affirmatively cited State Board precedent: “State Board held that a continuous and ongoing movement of contamination from a source through the soil and into the groundwater is a discharge to waters of the state and subject to regulation.” (*Ibid.*, citing State Water Board Order WQ 86-2 (*Zocon Corp.*), WQ74-13 (*Atchison, Topeka, et al*), and WQ 89-8 (*Spitzer*) “[D]ischarge continues as long as pollutants are being emitted at the site.”). See also State Water Board Order WQ 89-1 (*Schmidl*.) Under California law, courts have historically held, and modern courts maintain, that possessors of land may be liable for a nuisance on that land even if the possessor did not create the nuisance. (See *Leslie Salt Co. v. San Francisco Bay Conservation and Dev. Comm’n* (1984) 153 Cal.App.3d 605, 619–620.).

- the current owner of the 1654 EVP Property, The Kim Family Trust of 2017 has the legal ability to control the discharge.
5. Guhn Y. Kim and Yun Soon Kim are dischargers because, as the former owners of the 1654 EVP Property, Guhn Y. Kim and Yun Soon Kim knew or should have known that activities at the 1654 EVP Property created a reasonable possibility of discharge into waters of the state of wastes that could create or threaten to create a condition of pollution or nuisance, and had the ability to control those discharges.
 6. Decades of San Diego Water Board staff experience with industries that use, store, and transfer chemicals such as petroleum products and solvents (e.g., containing total petroleum hydrocarbons and volatile organic compounds, etc.) indicate that small amounts of spilled chemicals have the potential to discharge during routine operations, and seep through concrete and other intended containment, leading to the type of contamination found at the Site. The Board is currently overseeing numerous cleanup operations resulting from improper and inadequate handling of hazardous materials. Standard chemical handling practices often unknowingly allow adverse environmental impacts, like the ones observed at the Site, to occur. These factors, taken as a whole, lead to the conclusion that the Parties have discharged high concentrations of chemicals of concern, which must be cleaned up or abated to protect the environment and human health.²³
 7. The Parties caused or permitted PCE to be discharged or deposited where the wastes are or likely will pose a potential human health threat to occupants of the Site through direct contact exposure to contaminated soil, soil vapor, and/or groundwater, through vapor intrusion into indoor air, or through other exposure pathways.
 8. The San Diego Water Board will consider whether additional parties caused or permitted the discharge of waste at the Site and whether additional parties should be added to this Order. The Board may amend this Order or issue a separate order or orders in the future as more information becomes available. The Board is issuing this Order to avoid further Site remediation delays.

²³ State Board Order WQ 86-16 (*Stinnes-Western*) supports the use of evidence of chemical use, standard chemical handling practices, and detections of those chemicals in the environment as reasonable bases supporting a cleanup and abatement order. “As noted earlier, given the very low action levels for these chemicals, today we are concerned with any discharge.” (*Ibid.* at n. 4.)

Table 4: Current and Previous Owners of 1654 and 1718 E. Valley Parkway

Property	Name	Ownership Date	Records
1654 EVP	Guhn Y. Kim and Yun Soon Kim	1991 – 2016	Tax Assessor Records
1654 EVP	Kim Family Trust of 2017	2017 – present	Tax Assessor Records
1718 EVP	M&E Brothers LLC	December 29, 2004 – present	Individual Deed
1718 EVP	Jaime M. Barawid and Flor De Lys Barawid, Husband and Wife as Joint Tenants	August 17, 1999 – December 29, 2004	Grant Deed
1718 EVP	Norman Alton Hortman and Barbara Hortman, Trustees of the Norman Alton Hortman and Barbara Hortman Revocable Trust No. 1, dated July 2, 1985 (Hortman Trust). Kim Buehler is the current administrator of the Hortman Trust.	May 11, 1987 – August 17, 1999	Grant Deed

I. Cleanup Levels Pursuant to Resolution No. 92-49

Resolution No. 92-49 sets forth the policies and procedures the State Water Board and Regional Water Quality Control Boards must use during an investigation or cleanup of a discharge of waste and requires that cleanup levels be consistent with Resolution No. 68-16. Resolution No. 92-49 applies to the cleanup and abatement of the effects of waste discharged at the Site. Resolution No. 92-49 requires dischargers to clean up or abate the effects of discharges in a manner that promotes the attainment of background water quality, or the best water quality that is reasonable if background water quality cannot be restored, considering all 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 greater than background must (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of waters of the state; 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.

J. Basis for Technical and Monitoring Reports

Water Code section 13267 authorizes the San Diego Water Board to require any person who has discharged, discharges, or is suspected of having discharged or is discharging waste within its region to prepare technical and monitoring reports.

The burden, including the costs, of these reports must bear a reasonable relationship to the needs and the benefits to be obtained from the reports.

The San Diego Water Board estimates that compliance with the technical and monitoring directives of this Order will cost **between \$300,000 and \$500,000**. The technical and monitoring reports required by this Order are necessary to (a) assess the impact of the discharge to soil, soil vapor, and groundwater beneath and adjacent to the Property, (b) assess the potential risk of the discharge to human health and beneficial uses, (c) assure compliance with the cleanup and abatement directives contained in this Order, and (d) assess the appropriateness of cleanup and abatement measures to remediate the impacts of the discharge consistent with Basin Plan requirements and Resolution No. 92-49, and protect the waters of the state from the conditions of discharge described above. Based on the nature and consequences of the discharge and its effects at the Site, the burden of the technical and monitoring reports bears a reasonable relationship to the need for the reports and to the benefits to be obtained from the reports.

K. California Environmental Quality Act Compliance

The issuance of this Order is an enforcement action taken by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Cal Code Regs title 14, section 15321, subdivision (a)(2). This Order directs the Parties to prepare and submit technical and monitoring reports, and to undertake corrective actions through implementation of remedial action plans as required by this Order. The San Diego Water Board will evaluate compliance with CEQA when it considers approval of the Parties' proposed remedial action plan.

L. Cost Recovery

Pursuant to Water Code section 13304, subdivision (c), and consistent with other statutory and regulatory requirements, including, but not limited to, Water Code section 13365, the San Diego Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste, to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this or a subsequent Order. Upon receipt of invoices, and per instruction therein, the Parties must reimburse the Board for all reasonable costs incurred by the Board.

IT IS HEREBY ORDERED, pursuant to the Legal and Regulatory Authorities outlined in **Finding I.A**, all Parties must comply with the following directives:

II. DIRECTIVES

The Parties must undertake all investigative and corrective actions necessary to clean up or abate the impacts from the unauthorized release to the Site. The Parties must ensure the Site is cleaned up or abated in a manner that attains background concentrations or alternate cleanup levels approved by the San Diego Water Board.

A. Cleanup or Abatement of Discharged Wastes

The Parties must take all corrective actions necessary to clean up or abate the effects of the wastes discharged to soil and groundwater at the Site and the impacts thereof to soil vapor and indoor air.

1. Wastes discharged to soil at the Site must be cleaned up or abated to levels that promote attainment of background water quality or alternative cleanup levels that are protective of water quality and human health.
2. Wastes discharged to groundwater at the Site must be cleaned up or abated to levels that will achieve background water quality or alternative cleanup levels that are protective of water quality and human health.
3. Impacts to soil vapor from wastes discharged to soil and groundwater at the Site must be cleaned up or abated to levels that protect human health.
4. Impacts to indoor air from wastes discharged to soil and groundwater at the Site must be cleaned up or abated to levels that protect human health.

B. Site Investigation Work Plan

The Parties must prepare a Site Investigation Work Plan (SI Work Plan) that addresses site-specific study questions and the data gaps identified in the Updated CSM Report described in **Finding E** above. The SI Work Plan must, at a minimum, include the following elements:

1. Study questions to answer through implementation of the SI Work Plan. The study questions must include, at a minimum, the following:
 - a. Soil
 - i. Is there a PCE source(s) in soil beneath the Site?
 - ii. What are the lateral and vertical extents of the soil impacted by PCE and its breakdown products?
 - iii. What are the potential threats to water quality and human health due to the wastes discharged to soil?
 - b. Soil Vapor
 - i. What are the lateral and vertical extents of the soil vapor plumes beneath the Site impacted by PCE and its breakdown products?
 - ii. Are the soil vapor plumes of PCE and its breakdown products related to the discharge of wastes in soil and/or groundwater?

- iii. Are there preferential pathways²⁴ for vapors to be transported from the subsurface source(s) at the Site to the overlying building(s)
 - iv. Do the soil vapor plumes for PCE and its breakdown products beneath the Site pose a potential vapor intrusion risk to building occupants?
 - c. Indoor Air
 - i. What are the indoor air and sub-slab soil vapor concentrations at the Site?
 - ii. How does outdoor air quality affect indoor air quality at the Site?
 - iii. Do the indoor air and sub-slab soil vapor data indicate a potential vapor intrusion risk to building occupants?
 - d. Groundwater
 - i. What is the depth to groundwater and the groundwater flow direction, flow velocity, and hydraulic gradient beneath the Site?
 - ii. Is there a PCE source(s) in groundwater beneath the Site?
 - iii. What are the lateral and vertical extents of groundwater impacted by PCE and its breakdown products?
 - iv. What are the potential threats to water quality and human health due to the wastes discharged to groundwater?
2. A data gap investigation to address the data gaps identified in the Updated CSM Report.
3. A Sampling and Analysis Plan (SAP) describing the proposed sampling methodologies, analytical methods, analytes, and sampling locations. The SAP must be adequate to answer the study questions.
4. A Quality Assurance Project Plan (QAPP) describing the project objectives and organization, functional activities, and quality assurance/quality control (QA/QC) protocols for the sampling to be conducted in accordance with the SAP.
5. An implementation schedule describing the schedule of activities for implementation of the SI Work Plan.

²⁴ For example, utility corridors (sewer, electrical, fiber optic, cable, water, etc.), floor drains, cracks or seams in the foundation and walls, and geologic discontinuities (fault zones, sand channels, etc.).

The Parties must submit the SI Work Plan to the San Diego Water Board for review and concurrence by the date listed in **Attachment 1** of this Order.

C. Implementation of the Site Investigation Work Plan

The Parties must implement the SI Work Plan after receiving written concurrence from the San Diego Water Board or its authorized delegate, and in compliance with the implementation schedule in the SI Work Plan, unless otherwise directed in writing by the Board or its authorized delegate. If unforeseen circumstances arise that cause delays, the Parties must provide the Board or its authorized delegate with a written request to modify the implementation schedule. Any proposed changes to the implementation schedule must be approved by the Board or its authorized delegate.

The Parties must notify the Board upon completion of all tasks in the SI Work Plan. This written notification must be submitted to the Board by the date listed in **Attachment 1** of this Order.

D. Site Investigation Report

The Parties must prepare a Site Investigation Report (SI Report) describing the results, conclusions, and recommendations from implementing the SI Work Plan. The SI Report must, at a minimum, include the following elements:

1. A brief description of the Site and Site history, including a summary of previous environmental assessments.
2. An updated CSM based on the data collected during implementation of the SI Work Plan to answer the study questions and fill the data gaps identified in the Updated CSM Report.
3. A summary of the field activities conducted at the Site pursuant to the SI Work Plan, including SI Work Plan modifications made in field.
4. A summary of the analytical results of the soil, soil vapor, indoor air, and groundwater samples collected at the Site, including supporting information such as boring logs, data tables, maps, and laboratory analytical reports.
5. A Human Health Risk Assessment (HHRA) for potential risks to current and future receptors that could be exposed to chemicals in soil, soil vapor, indoor air, and groundwater.
6. Conclusions for the San Diego Water Board to consider in the context of the data gaps identified in the Updated CSM Report and the study questions in the SI Work Plan.
7. Recommendations to be considered by the San Diego Water Board based on the conclusions. The Parties may provide recommendations collectively or independently for the Board to consider. The recommendations must, at a minimum, include the following:

- a. Areas at the Site that must be cleaned up.
- b. Changes to the study questions.
- c. Additional investigations or data needed to fill data gaps in the Updated CSM Report.
- d. Additional investigations or data needed to better answer the study questions.

The SI Report must be submitted to the San Diego Water Board for review and consideration by the date listed in **Attachment 1** of this Order.

E. Feasibility Study

Pursuant to Resolution No. 92-49, the Parties must prepare a Feasibility Study that (1) proposes cleanup levels for wastes discharged to soil and groundwater at the Site, (2) proposes cleanup levels for impacts to soil vapor and indoor air from wastes discharged to soil and groundwater at the Site, and (3) evaluates and recommends remedial and/or mitigation approaches and technologies capable of achieving the cleanup levels. The Feasibility Study must, at a minimum, include the following elements:

1. Soil Cleanup Levels and Remediation Technologies

- a. An evaluation of the technological and economic feasibility of cleaning up or abating wastes discharged to soil at the Site to cleanup levels that promote attainment of background water quality.²⁵
- b. If applicable, development of a range of alternative cleanup levels between cleanup levels that (1) promote attainment of background water quality conditions and (2) promote attainment of MCLs in groundwater. The development of alternative cleanup levels is only acceptable when it is technologically and/or economically infeasible to clean up to levels that promote attainment of background water quality. The alternative cleanup levels must (1) be consistent with maximum benefit to the people of the state, (2) not unreasonably affect present and anticipated beneficial uses of such water, and (3) not result in water quality less than prescribed in the Basin Plan.
- c. An evaluation of a variety of remediation technologies capable of effectively cleaning up or abating the sources of wastes in soil to achieve the cleanup levels that promote attainment of background water quality or the alternative cleanup levels. Potential single or combined remediation

²⁵ To be consistent with Resolution No. 92-49, the discharge of wastes to soil must be cleaned up or abated in a manner that results in concentrations of the leachate of the soil left in place that will attain background water quality, or the best water quality if background cannot be restored.

technologies must be evaluated based on effectiveness, implementability, overall protection of human health and the environment, and cost.

2. Groundwater Cleanup Levels and Remediation Technologies

- a. An evaluation of the technological and economic feasibility of cleaning up wastes discharged to groundwater at the Site to cleanup levels that will achieve background water quality.
- b. If applicable, development of a range of alternative cleanup levels between cleanup levels that will (1) achieve background water quality and (2) achieve MCLs in groundwater. The development of alternative cleanup levels is only acceptable when it is technologically and/or economically infeasible to clean up to levels that will achieve background water quality. The alternative cleanup levels must (1) be consistent with maximum benefit to the people of the state, (2) not unreasonably affect present and anticipated beneficial uses of such water, and (3) not result in water quality less than prescribed in the Basin Plan.
- c. An evaluation of a variety of remediation technologies capable of effectively cleaning up or abating the sources of wastes in groundwater to achieve the cleanup levels that will achieve background water quality or the alternative cleanup levels. Potential single or combined remediation technologies must be evaluated based on effectiveness, implementability, overall protection of human health and the environment, and cost.

3. Soil Vapor Cleanup Levels and Remediation Technologies

- a. Development of cleanup levels for wastes in soil vapor that promote indoor air levels protective of building occupants.
- b. An evaluation of a variety of remediation technologies capable of effectively cleaning up or abating the sources of wastes in soil vapor to achieve the cleanup levels that promote indoor air levels protective of the building occupants. Potential single or combined remediation technologies must be evaluated based on effectiveness, implementability, overall protection of human health, and cost.

The Parties must submit the Feasibility Study to the San Diego Water Board for review and consideration by the date listed in **Attachment 1** of this Order.

F. Remedial Action Plan

The Parties must prepare a Remedial Action Plan (RAP) that describes the activities needed to implement the remediation/mitigation technologies recommended in the Feasibility Study. The RAP must, at a minimum, include the following elements:

1. A brief description of the Site and Site history, including a summary of the SI Report and Feasibility Study.
2. A detailed description of how the remediation technologies will be implemented, and identification of areas of concern on a scaled map where remediation activities will be conducted. Engineering design drawings and construction requirements must be included.
3. A detailed description of the overall approach that will be used to monitor the progress and effectiveness of the remediation technologies to achieve the cleanup levels in soil, soil vapor, groundwater, and indoor air.
4. An implementation schedule providing the sequence of the remediation actions and monitoring activities.

The Parties must submit the RAP to the San Diego Water Board for review and consideration by the date listed in **Attachment 1** of this Order.

G. Implementation of the Remedial Action Plan

The Parties must implement the RAP after receiving written concurrence from the San Diego Water Board or its authorized delegate, and in compliance with the implementation schedule in the RAP, unless otherwise directed in writing by the Board or its authorized delegate. If unforeseen circumstances arise that cause delays, the Parties may provide the Board or its authorized delegate with a written request to modify the implementation schedule. Any proposed changes to the implementation schedule must be approved by the Board or its authorized delegate.

The Parties must notify the Board or its authorized delegate at (1) the start of the RAP implementation and (2) the completion of the tasks in the RAP. The written notification must be submitted to the Board by the date listed in **Attachment 1** of this Order.

H. Remedial Action Plan Progress Reports

The Parties must prepare quarterly progress reports that, at a minimum, include the following elements:

1. A detailed description of the remediation actions and monitoring activities conducted and any deviations from the approaches described in the RAP.
2. Supporting information such as analytical laboratory reports and waste manifests.
3. Updates on the implementation schedule.
4. Conclusions and recommendations.
5. Activities planned for the subsequent quarter.

The Parties must submit the quarterly progress reports to the San Diego Water Board by the dates listed in Attachment 1 of this Order. The Parties must submit the first progress report to the San Deigo Water Board after the first full quarter of implementing the RAP.

I. Remedial Action Plan Completion Report

The Parties must prepare a RAP Completion Report that, at a minimum, verifies the following through implementation of the SI Work Plan and RAP:

1. The soil, soil vapor, groundwater, and indoor air cleanup levels have been achieved at the Site.
2. Indoor air levels do not pose a health risk to building occupants at the Site.

The Parties must submit the RAP Completion Report to the San Diego Water Board for review and concurrence by the date listed in **Attachment 1** of this Order.

J. Penalty of Perjury Statement

All reports must be signed by the Parties' corporate officers or duly authorized representatives, and must include the following statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

K. Document Submittals

The Electronic Reporting Regulations require electronic submission of any report or data required by a regulatory agency from a cleanup site.²⁶ The electronic document submittals must be uploaded on or prior to the regulatory compliance due dates set forth in this Order or addenda thereto. To comply with these requirements, the Parties must upload the required documents to the GeoTracker database as follows:

1. **GeoTracker.** All information submitted to the San Diego Water Board in compliance with this Order is required to be submitted electronically to the GeoTracker database (<http://geotracker.waterboards.ca.gov/esi>) under

²⁶ Cal. Code Regs., title 23, division 3, chapter 30.

GeoTracker Global ID **T10000017258**. The Parties must upload the following minimum information to the GeoTracker database:

- a. **Reports.** A complete copy of all work plans and assessment, monitoring, and cleanup reports, including signed transmittal letters, professional certifications, and all data presented in the reports in Portable Document Format (PDF), and converted to text-searchable format. Reports larger than 400 megabytes need to be divided into separate files at logical places in the report to keep the file sizes under 400 megabytes.
 - b. **Site Maps.** A site map, as a stand-alone PDF document, including notes, legends, north arrow, and other data as appropriate to ensure that the site map is clear and understandable. When appropriate, the Parties should provide required information on multiple site maps.
 - c. **Laboratory Analytical Data.** Analytical data, including geochemical data, for all soil, soil vapor, indoor air, and groundwater samples in Electronic Deliverable Format.
2. **Other Submittals.** The San Diego Water Board may also request information or documents in hard copy and/or electronic copies, including email.
- a. **Hard Copies and Electronic Copies.** If requested by the Board, the Parties must also provide the following to the Board: a hard copy of the complete document, a hard copy of the cover/transmittal letter, and a hard copy of oversized drawings or maps. The Board may also request the Parties to provide these documents electronically on universal serial bus (USB) drives.
 - b. **Email.** If requested by the Board, the Parties must also submit a text-searchable PDF copy of all documents including signed transmittal letters, professional certifications, and all data presented in the documents to sandiego@waterboards.ca.gov.

L. Compliance Determination for Document Submittals

Upon receipt of the documents, the San Diego Water Board will use the email date and time, upload date and time, and/or receipt date and time to determine compliance with the regulatory due dates specified in this Order.

M. Violation Reports

If the Parties violate any of the requirements of this Order, then the Parties must notify the San Diego Water Board office by email as soon as practicable once the Parties have knowledge of the violation. The Board may, depending on violation severity, require the Parties to submit a separate technical report on the violation within five working days of the email notification.

N. Other Reports

The Parties must notify the San Diego Water Board or its authorized delegate in writing prior to any activities at the Parties' facilities that have the potential to cause further migration of pollutants.

O. Provisions

1. **Waste Management.** The Parties must properly manage, store, treat, and dispose of contaminated soil and groundwater in accordance with applicable federal, state, and local laws and regulations. The storage, handling, treatment, or disposal of soil and groundwater associated with the assessment required by this Order must not create conditions of nuisance as defined in Water Code section 13050, subdivision (m).
2. **Contractor/Consultant Qualifications.** The Parties must provide documentation certifying that documents (e.g., plans, reports, etc.) required under this Order are prepared under the direction of appropriately qualified professionals. California Business and Professions Code sections 6735, 7835, and 7835.1 require licensed professionals to direct or perform engineering and geologic evaluations and judgments. The Parties must provide upon request to the San Diego Water Board a statement of qualifications and license numbers of the responsible lead professionals. The lead professional preparing the engineering and geologic plans, specifications, reports, and conclusions must sign and affix their professional geologist or civil engineer registration stamp to all documents submitted to the Board.
3. **Laboratory Qualifications.** The Parties must ensure that all soil and groundwater samples be analyzed by Environmental Laboratory Accreditation Program (ELAP)-certified laboratories using analytical methods approved by EPA for the type of analysis to be performed. ELAP only accredits analytical test methods approved for regulatory purposes. If an analytical test method is not on the Field of Testing Sheet, ELAP does not offer the method for accreditation. The Parties must ensure that all soil vapor and air samples are analyzed by an appropriately certified laboratory.
4. **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:
 - a. Complete sample analytical reports.
 - b. Complete laboratory QA/QC reports.
 - c. A discussion of the sample and QA/QC data.
 - d. A transmittal letter that indicates the director of the laboratory supervised all the analytical work, and contains the following statement:

“All analyses were conducted at an Environmental Laboratory Accreditation Program-certified laboratory using methods approved by the U.S. Environmental Protection Agency.”

5. **Analytical Methods.** Specific methods of analysis must be identified in the technical and monitoring reports. For example, if the Parties propose to use methods or test procedures other than those included in the most current version of EPA’s “Test Methods for Evaluating Solid Waste: Physical/Chemical Methods, SW-486” or title 40 Code of Federal Regulations part 136, “Guidelines Establishing Test Procedures for the Analysis of Pollutants,” or other than those approved by ASTM International, the exact methodology must be submitted for review and must be approved by the San Diego Water Board prior to use.
6. **Reporting of Changed Owner or Operator.** The Parties must notify the San Diego Water Board, in writing, of any changes in site occupancy or ownership associated with the Property described in this Order within 14 calendar days of the change.

P. Notifications

1. **Cost Recovery.** Upon receipt of invoices, and in accordance with instruction therein, the Parties must reimburse the State Water Board for all reasonable costs incurred by the San Diego Water Board to investigate discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order and consistent with the annual estimation of work. This section is authorized by Water Code section 13304.
2. **All Applicable Permits.** The Parties must obtain all permits and access agreements needed to implement the requirements of this Order. This Order does not relieve the Parties of the responsibility to obtain permits or other entitlements to perform necessary assessment activities. This includes, but is not limited to, actions that are subject to local, state, and/or federal discretionary review and permitting.
3. **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.
4. **Enforcement Notification.** Failure to comply with requirements of this Order may subject the Parties to enforcement action, including but not limited to administrative enforcement orders requiring the Parties to cease and desist from violations, imposition of administrative civil liability, referral to the State Attorney General for injunctive relief, and referral to the District Attorney for criminal prosecution. The Parties are jointly and severally liable for the entire

amount of the administrative civil liability. The San Diego Water Board reserves the right to seek administrative civil liability from any or all Parties.

5. **Requesting Administrative Review by the State Water 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 Water Code section 13320 and Cal. Code Regs. title 23, section 2050. The State Water Board (Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812) must receive the petition by the date listed in Attachment 1 of this Order. Copies of the laws and regulations applicable to filing petitions will be provided upon request.²⁷

²⁷ Nothing in this Order prevents the Parties from later petitioning the State Water Board to review other future San Diego Water Board orders regarding the Site, including but not limited to subsequent investigative orders and/or cleanup and abatement orders. Upon such petition, the San Diego Water Board will not assert that the Parties have previously waived or forfeited their right to petition the San Diego Water Board's action or failure to act under Water Code section 13320. Further, upon such petition, the San Diego Water Board will not assert that the Parties are precluded from petitioning for review of future orders by any failure to petition for review of this Order.

ATTACHMENT 1: TIME SCHEDULE

DIRECTIVE	DUE DATE
Directive B – Submit Site Investigation Work Plan	DATE, 2024: no later than 90 days after the date of this Order
Directive C – Implement Site Investigation Work Plan	In compliance with the implementation schedule in the Site Investigation Work Plan
Directive C – Submit written notification regarding completion of Site Investigation Work Plan tasks	No later than 5 days after last task has been completed in the implementation schedule
Directive D – Submit Site Investigation Report	No later than 90 days after notifying the Board in writing that the activities in the Site Investigation Work Plan are complete
Directive E – Submit Feasibility Study	No later than 90 days after Board has concurred with the Site Investigation Report
Directive F – Submit Remedial Action Plan	No later than 90 days after Board has concurred with the Feasibility Study
Directive G – Implement Remedial Action Plan	In compliance with the implementation schedule in the Remedial Action Plan
Directive G – Submit written notification regarding completion of the Remedial Action Plan tasks	No later than 5 days after the last task in the implementation schedule is complete
Directive H – Submit Quarterly Remedial Action Plan Progress Reports	No later than 30 calendar days following the close of each quarter. The first progress report must be submitted after the first full quarter of implementing the Remedial Action Plan
Directive I – Submit Remedial Action Completion Report	No later than 90 days after notifying the Board in writing that the activities in the Remedial Action Plan are complete in accordance with the implementation schedule
Notification No. 5 – Requesting Administrative Review by the State Water Board	DATE, 2024: within 30 calendar days of the date of this Order