

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE RESOLUTION NO. R2-2012-0026

AUTHORIZING ATTORNEY GENERAL REFERRAL REGARDING
CLEANUP AND ABATEMENT ORDER NO. R2-2011-0034,
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R2-2010-0003, AND
RELATED WATER CODE SECTION 13267 INVESTIGATIVE ORDERS
TO HYUNG KEUN SUN AND YEO NAM SUN

IN REGARDS TO RECALCITRANT VOLATILE ORGANIC COMPOUNDS
RELEASED FROM THE PROPERTY AT 400 EAST SANTA CLARA STREET,
SAN JOSE, SANTA CLARA COUNTY

- A. WHEREAS, Hyung Sun and Yeo Nam Sun (hereinafter, collectively, the "Discharger"), owns the property at 400 East Santa Clara Street, San Jose (hereinafter, the "Site"), where the Art Cleaners dry cleaners business is operated.
- B. WHEREAS, the Discharger has failed to provide required technical reports and work plans to define the vertical and lateral extent of soil, soil gas, and groundwater pollution historically released from operations at the Site. Historic reports indicate soil and groundwater contamination by chlorinated hydrocarbons and petroleum hydrocarbons, respectively, and the possible presence of a buried underground storage tank at the Site.
- C. WHEREAS, at its January 13, 2010, hearing, the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter, the "Regional Water Board") found that the Discharger failed to comply with California Water Code section 13267 investigative orders issued February 21, 2008, and April 7, 2009. At the hearing, the Regional Water Board imposed an administrative civil liability of \$25,646 against the Discharger in Administrative Civil Liability Order No. R2-2010-0003.
- D. WHEREAS, the Discharger has failed to submit any of the work plans required by Cleanup and Abatement Order No. R2-2011-0034 issued August 30, 2011, pursuant to Water Code section 13304. The work plans required an inventory of chemicals presently used at the Site, to identify all pollution sources on the Site, and to define the vertical and lateral extent of soil, soil gas, and groundwater pollution.
- E. WHEREAS, without knowing the extent of the soil and groundwater pollution, the Regional Water Board is unable to determine the extent of adverse impacts to the waters of the State and the beneficial uses thereof. Coyote Creek is approximately 0.5 miles northeast of the Site. In this

basin, the San Francisco Bay Basin Water Quality Control Plan has designated the beneficial uses as municipal, industrial process/service water supply, and agricultural.

- F. WHEREAS, the contaminants sequestered in soils and groundwater may migrate to downgradient properties and unduly expose residents and school occupants at the Saint Patrick Elementary School, 0.1 miles northwest of the Site.
- G. WHEREAS, now that the Discharger has failed to comply with investigatory measures necessary to formulate cleanup and abatement actions, the Regional Water Board finds it is necessary and appropriate to move onto the next phase of responding to the Discharger by referring this matter to the Office of the California Attorney General to seek injunctive relief and/or judicially-imposed civil penalties, to file such other punitive causes of action, and to seek other remedies as may be permissible and appropriate.
- H. WHEREAS, the Discharger has caused or threatened to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and creates, or threatens to create, a condition of pollution or nuisance consistent with Water Code section 13304 and is, at a minimum, civilly liable under Water Code section 13350(a) and/or section 13385(a). Under section 13350(d), a court may impose such civil liability either on a daily basis not to exceed fifteen thousand dollars (\$15,000) for each day the violation occurs or on a per gallon basis not to exceed twenty dollars (\$20) for each gallon of waste discharged. Under section 13385(b), a court may impose such civil liability on a daily basis not to exceed twenty-five thousand dollars (\$25,000) for each day the violation occurs, and on a per gallon basis not to exceed twenty-five dollars for each gallon of waste discharged and not cleaned up.
- I. WHEREAS, Water code section 13350(g) requires the Regional Water Board to hold a hearing, with due notice of the hearing given to all affected persons, prior to requesting the Office of Attorney General to petition a court to impose, assess and recover civil liability. On June 13, 2012, the Regional Water Board held such a hearing in compliance with section 13350(g), and considered the testimony and evidence offered at the hearing and in the record.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Regional Water Board hereby authorizes the Executive Officer to request that the Office of the Attorney General seek judicially-imposed civil

penalties pursuant to Water Code section 13350(a) and/or section 13385(a), injunctive relief pursuant to Water Code section 13331, and to file such other punitive causes of action and to seek other relief as may be permissible and appropriate.

2. The Regional Water Board hereby authorizes the Executive Officer to seek injunctive relief and judicial civil liability in an amount that he deems appropriate and report it to the Regional Water Board Chair.

I, Bruce H. Wolfe, Executive Officer, hereby certify that the foregoing is a full, true, and correct copy of the Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, at its regular meeting on June 13, 2012.

BRUCE H. WOLFE
Executive Officer