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7 M & E BROTHERS LLC and
8 FLOR DE LYS BARAWID

9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11 In the Matter of Cleanup and Abatement Order
12 No. R9-2015-0014

SWRCB/OCC File: _____

**M & E BROTHERS, LLC'S AND FLOR
DE LYS BARAWID'S PETITION FOR
REVIEW OF THE SAN DIEGO
REGIONAL WATER QUALITY
CONTROL BOARD'S CLEANUP AND
ABATEMENT ORDER NO. R9-2025-
0014; PRELIMINARY POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION [Wat. Code § 13320]**

[Submitted Concurrently with Request for
Stay of Regional Board Order]

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19 In accordance with Water Code section 13320, M & E Brothers, LLC (“M&E”) and Mrs.
20 Flor de Lys Barawid (collectively, “Petitioners”) hereby submit this Petition for Review and
21 Statement of Points and Authorities (“Petition”) to the State Water Resources Control Board
22 (“State Board”). Petitioner respectfully requests that the State Board review the San Diego
23 Regional Water Quality Control Board’s (“Regional Board”) actions and inactions related to its
24 adoption of Cleanup and Abatement Order No. R9-2025-0014, *An Order Directing Guhn Y. Kim*
25 *and Yun Soon Kim, as Administrators of the Kim Family Trust of 2017, M&E Brothers, LLC, and*
26 *Flor De Lys Barawid to Clean Up or Abate the Effects of an Unauthorized Release from 1654 E.*
27 *Valley Parkway and 1718 E. Valley Parkway, Escondido, California (Final Order)* (“CAO”). A
28 copy of the CAO and letter of transmittal are attached hereto as Exhibit A.

1 This Petition satisfies the requirements of California Code of Regulations (“CCR”), title
2 23, section 2050, subd. (a). Petitioners reserve and request the right to file supplemental points
3 and authorities in support of the Petition for Review once the administrative record becomes
4 available. Petitioners also reserves the right to submit additional arguments and evidence
5 responsive to the Regional Board’s or other interested parties’ responses to the Petition for
6 Review, to be filed in accordance with 23 CCR Section 2050.5.

7 Petitioners further seek a Stay of the CAO that requires Petitioners to take action
8 immediately pursuant to the CAO’s investigative directives. The CAO’s directives are set forth in
9 Attachment 1, thereto, which presents a time schedule that requires Petitioners to take immediate
10 action and incur the costs of the Hortman Trust, an unnamed responsible party and discharger.
11 The State Board has the authority to grant a stay of a Regional Board order while it considers a
12 petition for review where, as presented here, Petitioners will be aggrieved for the reasons set forth
13 herein.

14 **I. NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS OF**
15 **PETITIONERS**

16 Petitioners’ names and contact information are as follows:

17 M & E Brothers, LLC
18 15475 Willow Ranch Trail
19 Poway, CA 92064
20 Phone: (858) 254-4620
21 Email: lysl61barawid@gmail.com

22 Mrs. Flor de Lys Barawid
23 15475 Willow Ranch Trail
24 Poway, CA 92064
25 Phone: (858) 254-4620
26 Email: lysl61barawid@gmail.com

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1 Petitioners request that all materials and documents generated in connection with this
2 Petition for Review and the administrative record be provided to Petitioners' counsel:

3 Ryan R. Waterman
4 Brownstein Hyatt Farber Schreck, LLP
5 225 Broadway, Suite 1670
6 San Diego, California 92101
7 Phone: (619) 702-7569
8 Email: rwaterman@bhfs.com

9 Kathryn A. Tipple
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11 225 Broadway, Suite 1670
12 San Diego, California 92101
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15 **II. PETITIONERS**

16 Mrs. Flor De Lys Barawid owned 1718 East Valley Parkway, Escondido, CA ("1718
17 EVP") with her deceased husband, Jaime Barawid, from 1999 to 2004. The Barawids purchased
18 1718 EVP in 1999 from the Norman Alton Hortman and Barbara Hortman Revocable Trust No.
19 1, dated July 2, 1985 ("Hortman Trust"). During its ownership (1987 – 1999), the Hortman Trust
20 leased the property to several dry cleaning businesses, although it had caused all dry cleaning
21 equipment and chemicals to be removed before it shown to the Barawids. The Barawids
22 purchased 1718 EVP so that Mrs. Barawid could open a day care facility for mentally and
23 physically disable adults. In 2004, the Barawids transferred 1718 EVP to M&E in response to Mr.
24 Barawid's declining health.

25 The CAO names Mrs. Barawid as a "discharger" under Water Code Section 13304
26 because it alleges, as a former owner, she "knew or should have known that activities on the
27 Property created a reasonable possibility of discharge into waters of the state . . . and Barawid had
28 the ability to control those discharges." (CAO, I.I.2, p. 25.) The CAO also names Mrs. Barawid as
a "responsible party" under Health & Safety Code ("H&SC") Section 25296.10(a) and 23 "CCR
Section 2720(4), because it alleges that "she had control over a UST at the time of or following an
unauthorized release of a hazardous substance." (CAO, I.I.2, p. 25.)

1 M&E is a closely held limited liability company and owner of 1718 EVP. Mrs. Barawid is
2 its managing member and majority shareholder. M&E continues to lease 1718 EVP to
3 Opportunities Unlimited, which operates a day care facility for mentally and physically disabled
4 adults.

5 The CAO names M&E as a “discharger” under Water Code Section 13304 because it is
6 the owner of 1718 EVP and “has the legal ability to control the discharge,” and as a “responsible
7 party” under H&SC Section 25296.10(a) and 23 CCR Section 2720(3) because it is the owner of
8 1718 EVP “where an unauthorized release of a hazardous substance from a UST occurred.”
9 (CAO, I.I.1, pp. 24-25.)

10 Mrs. Barawid and M&E have never allowed dry cleaning operations on 1718 EVP, or dry
11 cleaning chemicals to be used, stored, or discharged to 1718 EVP during their respective
12 ownership. All dry cleaning equipment and chemicals were removed by the Hortman Trust before
13 Mrs. Barawid took possession in 1999. Neither Mrs. Barawid nor M&E had any knowledge of an
14 underground storage tank (“UST”) at 1718 EVP until being made aware of it in 2021 when they
15 were sued in federal court. Yet both are named in the CAO as responsible parties and dischargers
16 of tetrachloroethene (“PCE”), a chemical historically used in dry cleaning operations, from a
17 decontaminated, closed UST at 1718 EVP and related passive migration from 1718 EVP.

18 **III. SPECIFIC ACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD**
19 **IS REQUESTED TO REVIEW**

20 M&E and Mrs. Barawid request that the State Board review the Regional Board’s
21 adoption of the CAO. The specific actions and inactions of the Regional Board, and requirements
22 of the Order, that M&E and Mrs. Barawid request the State Board to review are as follows:

23 **1. CAO, p. 9, n. 1:** The CAO erroneously concludes that the “Hortman Trust was
24 deemed irrevocable on March 5, 2020. The trust assets were subsequently distributed, and the
25 trust closed.” This is legal error, contrary to well-established principles of trust law. In fact, the
26 Hortman Trust can be held responsible as a former owner of 1718 EVP by naming the Hortman
27 Trustees, Mrs. Kim Buhler and Norman Hortman III, in their representative capacities as
28 “dischargers” and “other responsible parties” to the CAO. Further, the Hortman Trustees maintain

1 control of the Hortman Trust’s assets because they distributed them to themselves in late 2021
2 and early 2022.

3 **2. CAO, I.I.2:** The CAO names Mrs. Barawid as a “discharger” under Water Code
4 Section 13304 without providing requisite substantial evidence showing that she had active or
5 constructive knowledge during her ownership (1999 – 2004) that the dry cleaners that operated at
6 1718 EVP **prior** to her ownership created a reasonable possibility of discharge **during** her
7 ownership.

8 **3. CAO, I.I.2:** The CAO names Mrs. Barawid as an “other responsible party” under
9 H&SC Section 25296.10(a) and 23 CCR Section 2720(4) without substantial evidence that Mrs.
10 Barawid had “control” over the UST, which had been decontaminated, filled with concrete, and
11 abandoned in place underneath the floor of 1718 EVP in 1991, where it is undisputed that Mrs.
12 Barawid had no idea the UST existed.

13 **IV. THE DATE ON WHICH THE REGIONAL BOARD ACTED**

14 Executive Officer David Gibson issued the CAO on January 22, 2025.

15 **V. STATEMENT OF REASONS WHY THE ACTION WAS INAPPROPRIATE OR**
16 **IMPROPER**

17 M&E and Mrs. Barawid seek review of the following questions presented by the Regional
18 Board’s decision **not to name** the Hortman Trustees, Mrs. Kim Buhler and Mr. Norman Hortman
19 III, as “dischargers” and “responsible parties” to the CAO, and **to name** Mrs. Barawid as both a
20 “discharger” and a “responsible party,” as follows:

21 **Question Presented No. 1:** Whether the Hortman Trustees should be named as
22 “dischargers” and “responsible parties” in their representative capacities where the CAO commits
23 legal error by concluding that the Hortman Trust became irrevocable in 2020, where the CAO
24 identifies substantial evidence the Hortman Trust permitted and controlled discharges and a UST
25 at 1718 EVP, the Hortman Trustees received notice in 2021 of the Regional Board’s investigation
26 of contamination arising from the Trust’s ownership of 1718 EVP, and the trustees nevertheless
27 distributed all Trust assets to themselves by 2022?
28

1 **Question Presented No. 2:** Whether the CAO should be returned to the Regional Board
2 to fulfill its obligation to identify substantial evidence that Mrs. Barawid had active or
3 constructive knowledge that the dry cleaners who operated at 1718 EVP during the Hortman
4 Trust’s ownership created a reasonable possibility of discharge during her ownership (1999 –
5 2004) pursuant to *United Artists Theatre Circuit, Inc. v. Cal. Regional Water Quality Control Bd.,*
6 *San Francisco Region* (2019) 42 Cal.App.5th 851, or to remove Mrs. Barawid if no such
7 substantial evidence can be shown?

8 **Question Presented No. 3:** Whether Mrs. Barawid should be removed from the CAO as
9 an “other responsible party” under H&SC Section 25296.10(a) and 23 CCR Section 2720(4)
10 where it is undisputed that Mrs. Barawid had no knowledge of the UST beneath the floor of 1718
11 EVP during her ownership and, therefore, lacked sufficient “control” over the UST as a matter of
12 law?

13 A full and complete statement of the reasons why the Regional Board’s actions were
14 inappropriate or improper is provided in the accompanying Statement of Points and Authorities.

15 **VI. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED**

16 M&E and Mrs. Barawid file this Petition as currently named responsible parties and
17 dischargers on the CAO. Petitioners are aggrieved by the actions or inactions of the Regional
18 Board because they will bear the costs of, economic impacts thereon, and risks of liability arising
19 from the Regional Board’s actions and inactions that are the subjects of this Petition instead of the
20 primarily responsible party and discharger at 1718 EVP, the Hortman Trust.

21 **VII. SPECIFIC ACTION REQUESTED BY THE PETITIONERS OF THE STATE**
22 **BOARD**

23 The Petitioners respectfully request that the State Board review the record and this Petition,
24 and that the State Board issue an order or orders accomplishing the following:

- 25 1. Issue a stay of the Regional Board’s CAO pending full deliberations by the State Board
26 of this Petition and opportunity to issue a ruling;

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1 2. Determine the Regional Board’s issuance of the CAO, in part, was inappropriate,
2 improper, not supported by substantial evidence and an abuse of discretion for the reasons set forth
3 in the accompanying Statement of Points and Authorities;

4 3. Issue an order to modify and amend the CAO to name the Hortman Trust, through its
5 trustees, as a responsible party and discharger of PCE and other dry cleaning chemicals at 1718
6 EVP;

7 4. Issue an order to amend the CAO to remove Mrs. Barawid as a responsible party and
8 discharger required to comply with the requirements of the CAO; and,

9 5. Make any other necessary conforming changes consistent with the above or the
10 Statement of Points and Authorities.

11 **VIII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
12 **ISSUES RAISED IN THE PETITION**

13 As required by 23 CCR Section 2050(a)(7), Petitioners include a statement of points and
14 authorities in support of this Petition beginning on page 9.

15 **IX. STATEMENT THAT THIS PETITION HAS BEEN SENT TO THE REGIONAL**
16 **BOARD**

17 A true and correct copy of this Petition was sent electronically to the Regional Board at
18 david.gibson@waterboards.ca.gov. Further, a courtesy copy of this Petition was sent
19 electronically to the attorney for the Regional Board at alex.sauerwein@waterboards.ca.gov.

20 Petitioners file this Petition as named responsible parties and discharges in the CAO and,
21 therefore, subject to the CAO’s directives, terms, and conditions.

22 **X. STATEMENT AS TO WHETHER THE PETITIONERS RAISED THE ISSUE OR**
23 **OBJECTION IN THIS PETITION TO THE REGIONAL BOARD**

24 Petitioners each timely raised the substantive issues and objections in this Petition before
25 the Regional Board in written comments dated March 22, 2024, on the Regional Board’s
26 Tentative Cleanup and Abatement Order No. R9-2024-0011 (“Tentative CAO”). The Regional
27 Board has not conducted an evidentiary hearing on the allegations set forth in the Tentative CAO
28 or the CAO.

1 The Tentative CAO did not conclude that the Hortman Trust became irrevocable as the
2 CAO does, so with respect to that issue, Petitioners were first able to present the arguments and
3 evidence set forth herein on February 6, 2025. On February 14, 2025, through counsel, the
4 Regional Board declined to reconsider the CAO with respect to the Hortman Trustees.

5 This Petition is timely submitted pursuant to Water Code Section 13320 and 23 CCR
6 Section 2050 (b) whereby the final date for submittal of this Petition is the thirtieth day following
7 the action or inaction of the Regional Board: February 21, 2025.

8 **XI. REQUEST TO REGIONAL BOARD FOR PREPARATION OF THE**
9 **ADMINISTRATIVE RECORD**

10 By copy of this Petition to Executive Officer David W. Gibson, Petitioners hereby request
11 the preparation of the administrative record herein. Petitioners concurrently request a hearing
12 before the full Regional Board for the purpose of considering the issues presented herein, as
13 permitted by 23 CCR Section 2050.6.

14 **XII. REQUEST FOR EVIDENTIARY HEARING**

15 Petitioners request an evidentiary hearing at which all available evidence may be
16 presented.

17 Dated: February 21, 2025

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

19
20 By: 

Ryan R. Waterman
Kathryn A. Tipple
Attorneys for Petitioners
M & E BROTHERS, LLC and
FLOR DE LYS BARAWID

1 **STATEMENT OF POINTS AND AUTHORITIES**

2 Petitioners file this Statement of Points and Authorities in support of their Petition in
3 accordance with 23 CCR Section 2050 (a). Petitioners request the opportunity to file a supplemental
4 or reply memorandum after receipt of the administrative record and the Regional Board’s and/or
5 other interested parties’ response. Petitioners further incorporate by reference all evidence in the
6 administrative record supporting this Petition.

7 **I. INTRODUCTION**

8 On January 22, 2025, the San Diego Regional Water Quality Control Board (“Regional
9 Board”) adopted Cleanup and Abatement Order No. R9-2025-0014, *An Order Directing Guhn Y.*
10 *Kim and Yun Soon Kim, as Administrators of the Kim Family Trust of 2017, M&E Brothers LLC,*
11 *and Flor De Lys Barawid to Clean Up or Abate the Effects of an Unauthorized Release from 1654*
12 *E. Valley Parkway and 1718 E. Valley Parkway, Escondido, California (Final Order)* (“CAO”). In
13 brief, the CAO seeks to address PCE contamination beneath historic dry cleaning operations at two
14 properties on either ends of a commercial strip mall: 1654 E. Valley Parkway, Escondido,
15 California (“1654 EVP”) and 1718 E. Valley Parkway, Escondido, California (“1718 EVP”).

16 This Petition raises three significant matters of law and State Board policy that should be
17 reviewed, not only to correct errors but also to provide guidance to all nine regions.

18 **First**, should the Hortman Trustees be allowed to escape being named as “dischargers” and
19 “responsible parties” in the CAO in their representative capacity by distributing the Hortman
20 Trust’s assets to themselves as rapidly as possible, and then claiming the Trust is irrevocable,
21 closed, and bereft of assets? The CAO took the bait and, in the process, got well-established trust
22 law wrong. If left standing, the CAO’s failure to name the Hortman Trustees creates a dangerous
23 precedent by showing how trusts that formerly owned contaminated properties can escape a CAO.

24 **Second**, should the State Board make it clear that a CAO must identify substantial evidence
25 showing that a prior owner knew or should have known that a use of the property that pre-dated
26 their ownership presented a reasonable possibility of discharge? In *United Artists Theatre Circuit,*
27 *Inc. v. Cal. Regional Water Quality Control Bd., San Francisco Region* (2019) 42 Cal.App.5th 851
28 (“UATC”), the court ruled that the term “permitted” in Water Code Section 13304 requires a

1 showing that a prior owner knew or should have known that an activity presents a reasonable
2 possibility of discharge during the time of ownership. (*Id.*, 42 Cal.App.5th at 865, 887.) Here,
3 however, the CAO lacks even *one factual allegation* that Mrs. Barawid knew or should have known
4 that buying 1718 EVP would subject her to strict liability going forward—simply because one of
5 the Hortman Trust’s former tenants had been a dry cleaner. The State Board should take this
6 opportunity to remind all regions that *UATC* construes Water Code Section 13304 as requiring a
7 modest but essential factual showing to avoid reading “permitted” out of the statute.

8 ***Third and finally***, this case provides an opportunity to create State Board precedent on how
9 what is required to show that a former property owner had “control” over a UST pursuant to H&SC
10 Section 25296.10(a) and 23 CCR Section 2720(4) where, as here, the former owner lacked any
11 knowledge of the UST’s existence during her ownership. We have found no reported cases or State
12 Board Water Quality Orders that address this question of statutory first impression, nor does the
13 CAO cite any. Accordingly, the State Board should intervene to provide guidance to all regions as
14 to whether H&SC Section 25296.10(a) and 23 CCR Section 2720(4) create a strict liability regime
15 for *all prior owners*, or if some scienter is required before liability can attach.

16 **II. BACKGROUND**

17 **A. The Hortman Trust and Its Ownership of 1718 EVP and Control Over an**
18 **Illegal UST (1987 to 1999)**

19 Through their family trust, Norman and Barbara Hortman owned 1718 EVP from May
20 1987 until August 1999. (*See* “Hortman Grant Deed”, uploaded to Former Ha’s and Economy
21 Cleaners Geotracker Site (T10000017258) [“Former Ha’s Geotracker website”] on Dec. 6, 2022,
22 *available at* https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000017258;
23 “Barawid Grant Deed”, uploaded on Dec. 6, 2022, *available at* Former Ha’s Geotracker
24 website.)¹ During the Hortman Trust’s ownership and control of 1718 EVP, Norman and Barbara
25 Hortman leased the property to dry cleaning operations like Economy Cleaners and later, Ha’s
26 Dry Cleaner, both of which used tetrachloroethene (“PCE”). (*See* Phase I Environmental Site
27 Assessment (Feb. 4, 2022), p. 13, *available at* Former Ha’s Geotracker website.)

28 _____
¹ All Former Ha’s Geotracker references are available at the aforementioned website.

1 In 1991, the Hortmans received a Notice of Violation (“NOV”) from the San Diego
2 County Department of Environmental Health (“San Diego DEH”) for an illegal 55-gallon drum
3 beneath the floor of 1718 EVP used to store waste PCE. (Exhibit B, San Diego DEH Notice of
4 Violation (Jan. 2, 1991).) Norman Hortman responded to the NOV by collecting soil samples and
5 abandoning the unauthorized UST by decontaminating it, filling it with concrete, and abandoning
6 it in place under the supervision of the County. (Exhibit C, San Diego DEH UST Closure Report
7 (Mar. 22, 1991).) The Hortmans’ subsequent dry-cleaning tenant, Ha’s Dry Cleaners, also
8 received several NOV’s from San Diego County DEH for improper recordkeeping, training and
9 labeling of hazardous substances between 1996 and 1998. (Exhibit D, San Diego County
10 Compliance Inspection Reports (1996-1997).)

11 Mrs. Barbara Hortman, a trustee of the Hortman Trust, was a real estate professional. The
12 Hortmans, as trustees of the Hortman Trust, had personal knowledge of and control over their dry
13 cleaning tenants’ operations that used the PCE at 1718 EVP. They also knew about the 1991
14 NOV and UST Closure Order, as well as the closed-in-place UST. Despite this knowledge and
15 California real estate requirements for sellers to disclose site conditions to buyers, there is no
16 evidence the Hortmans disclosed any of the foregoing information, include the multiple NOV’s
17 and UST Closure Order, to the Barawids during the 1999 sale of 1718 EVP. All dry cleaning
18 operations had ceased by then and no evidence of dry cleaning machines or chemicals remained
19 at the property. (Exhibit E, Declaration of Flor De Lys Barawid in support of Request for Stay
20 [“Barawid Dec.”], ¶¶ 7-8 (Feb. 20, 2025).)

21 Norman Hortman, II, died in January 2020. In accordance with the terms of the Trust, his
22 daughter, Kim Buhler, became a trustee. Shortly thereafter, a Certification of Trust was executed
23 on March 5, 2020. (Exhibit F, Certification of Trust.) According to the Certification of Trust,
24 Mrs. Hortman was deemed mentally incapacitated by two doctors, and Mr. Norman Hortman, III,
25 her son, joined his sister Kim Buhler as a successor trustee for the Trust. (*Id.*, ¶ 3.) The
26 Certification of Trust also alleges that the “Trust is irrevocable.” (*Id.*, ¶ 4.) It is the Certification
27 of Trust that the CAO erroneously relies on to conclude that the Trust became irrevocable.
28

1 On February 26, 2021, as part of its investigation related to 1654 EVP, the Regional
2 Board mailed three letters to all known addresses for the Hortman Trust, including the primary
3 residence of Hortman Trustee Kim Buhler (1209 Via Ramon, Escondido, CA), and the primary
4 residence of Barbara Hortman (30541 Harvest Moon Circle, Escondido, CA), where Mrs. Buhler
5 was responsible for checking the mail due to her mother’s incapacity. (See “Request for
6 Meeting”, uploaded to Suzy Cleaners Geotracker Site (T10000014715) [“Suzy Cleaner
7 Geotracker website”] on Feb. 26, 2021, *available at*
8 https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000014715.) The Regional
9 Board tracked the delivery of these letters and its records show that the 30541 Harvest Moon and
10 1209 Via Ramon letters were delivered on March 1 and 2, 2021. (Exhibit G, T. Alo email with
11 tracking information.) At that time, both Kim Buhler and Norman Hortman III were co-Trustees
12 of the Hortman Trust, a role that they continue today.

13 After Mrs. Barbara Hortman died in April 2021, the Hortman Trustees moved quickly to
14 distribute the Trust’s assets to themselves, despite the Regional Board’s February 2021 Request
15 for Meeting letters.² Those letters put the Hortman Trustees on actual or constructive notice of a
16 claim by the Regional Board associated with the Hortman Trust’s former ownership of the 1718
17 EVP. The letters state: “the San Diego Water Board has determined that the following dry cleaner
18 facilities may have caused or contributed to the elevated tetrachloroethane (PCE) concentrations
19 found in soil vapor beneath Jo-Ann Fabrics and Crafts,” and then name two dry cleaning
20 operations that were lessees of the Hortman Trust during the period it owned 1718 EVP,
21 Economy Cleaners and Former Ha’s Cleaners. (Request for Meeting, uploaded to Suzy Cleaners
22 Geotracker Site on Feb. 26, 2021, at p. 1.)

23 The letters also left no doubt that the Regional Board intended to take action to investigate
24 the contamination: “The San Diego Water Board requests to meet with you to discuss the course
25 of action for this potential release, and to answer any questions you may have. Please contact us
26 by **5:00 p.m. on March 12, 2021**, so that we can schedule a meeting.” (Request for Meeting,
27

28 ² Mrs. Buhler and Mr. Hortman, III have testified that they were unaware of the Request for Meeting letters at this time.

1 uploaded to Suzy Cleaners Geotracker Site on Feb. 26, 2021, p. 1 [emphasis original].)

2 **B. Mrs. Barawid’s Ownership of 1718 EVP (1999 to 2004)**

3 On August 11, 1999, Mrs. Barawid and her husband, Jaime Barawid (now deceased),
4 purchased 1718 EVP as joint tenants from the Hortman Trust. (See “Hortman Grant Deed”,
5 uploaded on Dec. 6, 2022, *available at* Former Ha’s Geotracker website; “Barawid Grant Deed”,
6 uploaded on Dec. 6, 2022, *available at* Former Ha’s Geotracker website.) They purchased 1718
7 EVP to fulfill Mrs. Barawid’s lifelong dream of opening a facility to care for mentally and
8 physically impaired adults. (Exhibit E, Barawid Dec., ¶ 5.)

9 Mrs. Barawid had no background in dry cleaning and did not understand that it could lead to
10 environmental contamination. (Exhibit E, Barawid Dec., ¶¶ 8, 10.) She was not informed of the
11 illegal, decontaminated, and abandoned-in-place UST beneath the floor of the building at 1718
12 EVP, nor was she informed of the multiple NOV’s and UST Closure Report. (*Id.*, ¶¶ 7-8, 14.)

13 Had the UST been disclosed to her, however, it is likely that the Hortmans would have
14 included the UST Closure Report to alleviate concerns. Mrs. Barawid would have reasonably
15 understood from this report that the San Diego DEH had found no further action was required for
16 the closed UST. Indeed, the report states the UST was in “good” condition at the time of closure
17 and the hazardous waste manifest states Norman Hortman removed all hazardous substances and
18 took a soil sample detecting no chemicals of concern in the soil under the building.

19 During her ownership, the Barawids made interior modifications to accommodate the
20 Opportunities Unlimited business, including mobility upgrades. (Exhibit E, Barawid Dec., ¶ 6.)
21 Together, the Barawids carried on their service to vulnerable, underserved members of their
22 community until Mr. Barawid’s health began to rapidly decline in 2004. (*Id.*, ¶ 11.) Carrying out
23 Mr. Barawid’s estate planning priorities, Mrs. Barawid transferred 1718 EVP to the current
24 owner, M&E, on December 29, 2004. (*Id.*, ¶ 12.)

25 It is undisputed that at no time during the Barawids’ purchase and ownership of 1718 EVP
26 was there any dry cleaning equipment or chemicals stored, used or disposed onsite. (Exhibit E,
27 Barawid Dec., ¶ 10.) Nor is there any evidence that Mrs. Barawid exercised any control over the
28 illegal, decontaminated, and abandoned-in-place UST—in fact, how could she when she did not

1 even know it was there?

2 Indeed, the CAO includes no findings implicating Mrs. Barawid with an unauthorized
3 release of waste, and yet it includes over a page of findings against the Hortman Trust for its
4 control of and ownership during unauthorized releases of waste. (CAO, I.D.1.)

5 **C. Procedural History and Prior Comments**

6 A Tentative CAO was circulated for public comment on February 21, 2024. M&E and
7 Mrs. Barawid timely submitted comments thereto on March 22, 2024.

8 Mrs. Barawid focused her comments on explaining why she is not a “discharger” or “other
9 responsible party.” M&E focused on several shortcomings and unreasonable directives in the
10 Tentative CAO, and explained the basis for naming the Hortman Trust as a primarily responsible
11 party and discharger. The Petitioners’ consultant, de maximis, also submitted comments
12 highlighting several technical issues with the Tentative CAO’s findings and directives.

13 The Regional Board has offered cursory responses to some of these comments in its
14 responses to comments in the CAO, however, it does not respond to Mrs. Barawid’s legal and
15 factual arguments as to why she should be removed, and erroneously concludes that the Hortman
16 Trust cannot be named because it allegedly became irrevocable in 2020.

17 **III. LEGAL ARGUMENT**

18 **A. The Hortman Trust, Through its Trustees, Is a Responsible Party and**
19 **Discharger**

20 The CAO claims that Mrs. Buhler and Mr. Hortman, III, in their representative capacity as
21 trustees of the Hortman Trust, cannot be named as a responsible party and discharger to the CAO
22 because, “the Hortman Trust was deemed irrevocable on March 5, 2020, and the assets were
23 distributed. The Hortman Trust was a responsible party but has since been dissolved and is no
24 longer a legal entity to name as a responsible party.” (CAO, p. 9 n. 1, and Responses to
25 Comments, p. 13.)

26 This conclusion is legally wrong and contradicts well-established trust law. By its terms,
27 the Hortman Trust remained subject to claims by creditors—like the Regional Board—
28 irrespective of its status as either a revocable trust or an irrevocable trust, and, in any event, it

1 remained revocable after Barbara Hortman was deemed unable to manage her own affairs in
2 2020.

3 1. The Hortman Trust

4 The settlors and original trustees of the Hortman Trust were Norman Alton Hortman, Jr.,
5 and Barbara Hortman. (Exhibit H, Hortman Trust.) The fact that the Hortman Trust was created
6 as a revocable trust is in its name—the “Norman and Barbara Hortman Revocable Trust No. 1.”
7 (*Id.*, p. 1.) As to revocation and amendment, the Trust states that, “[d]uring the joint lifetime of
8 the Trustors, this Trust may be revoked in whole or in part . . .”, and “[t]he Trustors may at any
9 time during their joint lifetimes amend any of the terms” of the Trust. (*Id.* at ¶¶ 6.03(A), (D).)

10 The Hortman Trust directed that upon the death of the first surviving spouse (i.e., settlor),
11 the Trust be split into three sub-trusts: (1) the Survivor’s Trust; (2) the Maximum Credit Trust;
12 and (3) the Marital Election Trust. (Exhibit H, Hortman Trust at ¶ 3.01.) The Hortman Trust also
13 clarified as to these sub-trusts that “the Surviving Spouse shall have the power to amend, revoke
14 or terminate the Survivor’s Trust, but the Maximum Credit Trust and the Marital Election Trust
15 may not be amended, revoked or terminated.” (*Id.* at ¶ 6.03(E).) All of the income of the Marital
16 Election Trust was to be paid to the surviving spouse and after the death of the surviving spouse,
17 to their estate. The Maximum Credit Trust was also to be paid out for the benefit of the surviving
18 spouse, and/or to the children or grandchildren of the deceased and surviving spouses. (*Id.* at ¶¶
19 3.10(B), (F).) Accordingly, all of the assets of the Trust continued to benefit the surviving settlor.

20 Shortly after Mr. Hortman’s death, Barbara Hortman allegedly became mentally
21 incapacitated on March 5, 2020. (Exhibit F, Certification of Trust.) It is this document that the
22 CAO refers to when it concludes that the Hortman Trust became irrevocable on March 5, 2020.
23 (CAO, p. 9 n. 1.) At that time, Mrs. Buhler became Mrs. Hortman’s power of attorney and her
24 son, Norman Alton Hortman, III, became a co-trustee of the Trust. (Exhibit F, Certification of
25 Trust.)

26 The Hortman Trust’s terms also clarified what would happen in the event a surviving
27 settlor was deemed incompetent. It states: “The powers of the Trustors to revoke or amend this
28 instrument are personal to them and shall not be exercisable on their behalf by any guardian,

1 conservator or other person, except that revocation or amendment may be authorized, after notice
2 to the Trustee, by the court that appointed the guardian or conservator.” (Exhibit H, Hortman
3 Trust at ¶ 6.03(F).)

4 2. The Hortman Trust Remained Revocable After March 2020

5 Under a revocable trust, the settlors transfer their property to the trust for lifetime
6 management and postmortem distribution, but retain the right to change their mind about a trust
7 transfer. Thus, while the settlors of a revocable inter vivos trust are living, the assets are
8 considered the property of the settlors for the settlors’ lifetimes. (*Estate of Giralдин* (2012) 55
9 Cal.4th 1058, 1065-66 [*Giralдин*].) There is a presumption that a trust is revocable “[u]nless a
10 trust is expressly made irrevocable by the trust instrument.” (Prob. Code, § 15400.) Minding this
11 presumption, “the existence or nonexistence of a right to revoke must be determined by
12 examining the trust instrument and determining from language used in the instrument” whether
13 the settlors intended for the trust to be revocable. (*Crook v. Contreras* (2002) 95 Cal.App.4th
14 1194, 1209.)

15 It is well-established that the incapacity of a settlor **alone** is not sufficient to render a
16 revocable trust irrevocable. In *Johnson v. Kotyck*, the beneficiary of a trust argued the trust
17 became irrevocable because “the settlor ha[d] been declared incompetent” and so once the settlor
18 became a conservatee, “she no longer ha[d] the power to revoke.” (*Id.*, 76 Cal.App.4th 83, 87.)
19 However, the court held it was “untrue that no one ha[d] the power to revoke the conservatee’s
20 inter vivos trust.” (*Ibid.*) Instead, “the legal rights of the conservatee—including the right to
21 revoke a trust—pass[ed] to the conservator” (*Ibid.*) The court concluded that “[t]he only
22 limitation on the court’s ability to authorize the revocation of a conservatee’s revocable trust is if
23 the trust instrument ‘(i) evidence[d] an intent to reserve the right of revocation exclusively to the
24 conservatee, (ii) provide[d] expressly that a conservator may not revoke the trust, or (iii)
25 otherwise evidence[d] an intent that would be inconsistent with authorizing or requiring the
26 conservator to exercise the right to revoke the trust.’” (*Id.* at pp. 87-88 [quoting Prob. Code,
27 § 2580(b)(11)].)

1 After March 5, 2020, the Hortman Trust remained **revocable** because its terms made it so.
2 The Trust states, “[d]uring the joint lifetime of the Trustors, this Trust may be revoked in whole
3 or in part . . .” and “[t]he Trustors may at any time during their joint lifetimes amend any of the
4 terms” of the Trust. (Exhibit H, Hortman Trust at ¶¶ 6.03(A), (D).) Thus, by its plain language,
5 the Hortman Trust gives every appearance of being a standard, revocable trust.

6 Contrary to the Hortman Trustees’ claims, Barbara Hortman’s incapacity did not render
7 the trust irrevocable. In fact, the express language of the Hortman Trust reserved the ability of a
8 conservator to exercise Barbara Hortman’s power to revoke or amend the Trust on her behalf
9 upon court authorization and notice to the trustees. (Exhibit H, Hortman Trust at ¶ 6.03(F) [“The
10 powers of the Trustors to revoke or amend this instrument are personal to them and shall not be
11 exercisable on their behalf by any guardian, conservator or other person, except that revocation or
12 amendment may be authorized, after notice to the Trustee, by the court that appointed the
13 guardian or conservator.”].) This language is very similar to the provision analyzed in *Johnson*
14 and its conclusions hold here. (*Johnson, supra*, 76 Cal.App.4th at p. 87.) Further, the Hortman
15 Trust provision regarding incapacity is wholly consistent with the Probate Code and case law,
16 which confirms that incapacity of a settlor does not necessarily or automatically render the trust
17 irrevocable. Instead, it is the language of the **Trust** itself that controls.

18 Accordingly, the Hortman Trust was, on its face, revocable up until the time of Barbara
19 Hortman’s passing and its assets recoverable by creditors.

20 3. The Hortman Trustees’ Reliance on *Laycock v. Hammer* Is Unavailing

21 In court filings, the Hortman Trustees have cited to *Laycock v. Hammer* (2006) 141
22 Cal.App.4th 25, for the principle that assets held in an irrevocable trust cannot be accessed by
23 creditors of the trust. It is unclear to what extent the Regional Board was presented with this
24 authority or based its decision to exclude the Hortman Trustees from the CAO in light of its
25 holding. Accordingly, in an excess of caution, Petitioners explain why the trust at issue in
26 *Laycock* was irrevocable from the start, unlike the revocable Hortman Trust, and its assets were
27 not for the benefit of the settlor, making it inapposite authority inapplicable here.
28

1 In *Laycock*, a man named Ellison purchased a life insurance policy on himself. Then he
2 assigned his entire interest in the policy (and any benefits that might be received) to an
3 irrevocable life insurance trust that gave him as settlor and trustor “no right, title or interest in, or
4 power, privilege or incident of ownership in regard to any” property in the trust. (*Laycock*, 141
5 Cal.App.4th at p. 27.) A third-party trustee, Laycock, was designated as the beneficiary of the
6 irrevocable trust. (*Ibid.*) Shortly before Ellison died, his creditor Hammer obtained a large
7 judgment against him. (*Id.* at p. 28.) When the life insurance trust paid the proceeds of the policy
8 to Laycock, Hammer filed a claim to recover his pre-existing judgment against the trust. (*Ibid.*)
9 Laycock then filed a petition for a determination that the insurance trust was irrevocable and,
10 therefore, exempt from Hammer’s claims. (*Ibid.*)

11 The court held that the trust in *Laycock* was irrevocable from the moment of its creation
12 where “[t]he Trustor hereby declares that this Trust is and shall be irrevocable and that, after the
13 execution of this Trust, Trustor shall have no right, title or interest in, or power, privilege or
14 incident of ownership in regard to any of property in this Trust and no right to alter, amend,
15 revoke or terminate this Trust or any of its provisions.” (*Laycock*, 141 Cal.App.4th at p. 27
16 [emphasis added].)

17 In contrast, the language of the Hortman Trust is quite distinct—naming itself as the
18 “Revocable Trust No. 1” and stating it “may be revoked” and the trustors may “amend any of the
19 terms.” (Exhibit H, Hortman Trust at ¶¶ 6.03(A), (D).) Moreover, unlike the irrevocable trust in
20 *Laycock* that never benefited the settlor at any point in time, the Hortman Trust continued to
21 benefit the settlors throughout their lifetimes. (See *Giraldin*, *supra*, 55 Cal.4th at p. 1065-66.)

22 In addition, *Laycock* limited its holding to Hammer’s claim against the irrevocable
23 insurance trust. It did not address whether Hammer’s other claim was successful against “a family
24 trust Ellison and his wife, who predeceased him, had established” (*Laycock*, *supra*, 114
25 Cal.App.4th at p. 28 [footnote 2 omitted].) In fact, with respect to this family trust, the court
26 mentioned in an aside that, “Hammer filed a claim in the probate estate in the amount of his
27 judgment and Laycock, as administrator of the estate, allowed the claim.” (*Id.* at p. 28 [emphasis
28 added].) The court explained that, “Hammer has made claims against the assets of the family

1 trust; Laycock has argued the family trust assets are also exempt from Hammer’s claims.” (*Id.* at
2 p. 28, n.2.)

3 What we can take from this aside is that *Laycock* simply does not address the question at
4 hand: whether the Regional Board, as a creditor, could name Mrs. Buhler and Mr. Hortman, III,
5 in their representative capacities as trustees of the Hortman Trust—a revocable trust.

6 Instead, what does directly address the issue—and which *Laycock* acknowledged—is that
7 assets in a trust that was revocable up until the time of the settlor’s death are available to
8 creditors. (Prob. Code, § 19001, subd. (a); *Laycock, supra*, 114 Cal.App.4th at pp. 29-30.)

9 Accordingly, to avoid a miscarriage of justice and the perpetuation of a dangerous
10 misunderstanding of well-established trust law, the State Board should direct the Regional Board
11 to amend the CAO to name Mrs. Buhler and Mr. Hortman, III, in their representative capacities as
12 trustees of the Hortman Trust, because the Hortman Trust remained a legal entity subject to the
13 continuing responsibilities arising out of the 1718 EVP Property.

14 **B. The CAO Lacks Substantial Evidence Sufficient to Name Mrs. Barawid as a**
15 **Discharger Under Water Code Section 13304**

16 The CAO alleges that Mrs. Barawid is a “discharger” pursuant to Water Code Section 13304
17 “because, as the former owner of the 1718 EVP Property, [she] knew or should have known that
18 activities on the Property created a reasonable possibility of discharge into waters of the state of
19 wastes that could create or threaten to create a condition of pollution or nuisance, and [she] had the
20 ability to control those discharges.” (CAO I.I.2.) Applicable case law requires the Regional Board
21 to demonstrate that a “discharger” had actual or constructive knowledge of a discharge. (*San Diego*
22 *Gas & Electric Co. v. San Diego Regional Water Quality Control Board* (2019) 36 Cal.App.5th
23 427, 431 [*“SDG&E”*].) The Regional Board must establish a causal or connecting link between the
24 person and an actual or threatened discharge of waste into state waters.” (*Id.*, 36 Cal.App.5th at p.
25 442.)

26 As to a prior owner like Mrs. Barawid, the Regional Board can only satisfy the “discharge
27 element”—causing or permitting a discharge or threatened discharge—if it can show that the prior
28 owner knew or should have known that an activity presented a reasonable possibility of discharge

1 during the time of ownership. (*United Artists Theatre Circuit, Inc. v. Cal. Reg. Water Quality*
2 *Control Bd.*, San Francisco Region (2019) 42 Cal.App.5th 851, 865, 887 [“UATC”].) A prior owner
3 “cannot be said to permit a discharge . . . absent knowledge or constructive knowledge that, in
4 general, the business [operated on the owner’s property] creates a reasonable possibility of
5 discharge.” (*UATC, supra*, 42 Cal.App.5th at pp. 880, 887 [emphasis added] [considering prior
6 owner’s responsibility for the activities of its dry cleaner tenant].) This is because “section 13304
7 [of the Water Code] requires some evidence of knowledge of the risk of a discharge on the part of
8 the prior owner named in a cleanup order” (*Id.* at p. 869.)

9 In other words, simply being a former property owner is not enough. And that is all the
10 CAO offers against Mrs. Barawid. The Regional Board’s insistence on naming Mrs. Barawid
11 contravenes *SDG&E* and *UATC*, and further ignores the Hortmans’ failure to disclose multiple
12 NOVs and the UST Closure Report during the 1999 sale of 1718 EVP. It is undisputed that Mrs.
13 Barawid did not learn about any of that until 2021 when she was sued in her individual capacity in
14 federal court by the 1645 EVP responsible parties and dischargers.

15 What the CAO must find is that Mrs. Barawid knew or should have known that the dry
16 cleaning activities allowed at 1718 EVP **during the Hortmans’ ownership** were so inherently
17 dangerous that they posed a reasonable possibility of discharge **during her ownership**. Mrs.
18 Barawid has testified that she had no idea that dry cleaning could lead to subsurface PCE
19 contamination in 1999. Nor has the Regional Board established that this was common knowledge
20 among laypersons like Mrs. Barawid at the time.

21 In fact, the “all appropriate inquiry” standard under CERCLA did not include a
22 consideration of soil vapor migration until a decade *after* Mrs. Barawid transferred 1718 EVP. For
23 example, the definition of “migrate/migration” for environmental consultants preparing a Phase I
24 Environmental Site Assessment under ASTM E1527-13 was not updated to include soil vapor
25 migration until 2013. (See, e.g., Holland & Knight, *New ASTM Standard for Phase I*
26 *Environmental Site Assessments Includes Substantive Changes* (Nov. 25, 2013), available at
27 [https://www.hklaw.com/en/insights/publications/2013/11/new-astmstandard-for-phase-i-](https://www.hklaw.com/en/insights/publications/2013/11/new-astmstandard-for-phase-i-environmental-site-a)
28 [environmental-site-a](https://www.hklaw.com/en/insights/publications/2013/11/new-astmstandard-for-phase-i-environmental-site-a).) And, again, the actual record would have indicated no risk of discharge from

1 the UST closed in 1991 based on the UST Closure Report prepared by the San Diego County DEH.

2 The CAO names Mrs. Barawid as a discharger without any factual support that she knew
3 or should have known during her ownership that the Hortman Trust’s prior activities “created a
4 reasonable possibility of discharge” during her ownership. (*UATC*, 42 Cal.App.5th at p. 888.)
5 Accordingly, the CAO should be returned to the Regional Board to determine whether such a
6 factual showing can be made.

7 **C. Mrs. Barawid Cannot Be Named as an Other Responsible Party**

8 The CAO identifies Mrs. Barawid as an “other responsible party” under H&SC Section
9 25296.10(a), and as that term is defined in 23 CCR Section 2720(4), because she “had **control** over
10 a UST at the time of or following an unauthorized release of a hazardous substance.” (CAO I.I.2
11 [emphasis added].)

12 Yet how could a former property owner exercise “control” over a UST within the plain
13 meaning of the statute and regulation if she was wholly unaware of the UST’s very existence?
14 Based on a plain meaning analysis, H&SC Section 25296.10 is not a strict liability statute and
15 requires a scienter component that has not been shown here.

16 1. Legislative History of H&SC § 25296.10 and 23 CCR § 2720

17 In 1989, the Legislature moved to address petroleum contamination from USTs with the
18 Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 (“Barry Keane Act”),
19 which added Chapter 6.75, Petroleum Underground Storage Tank Cleanup, to Division 20 of the
20 H&SC, and included H&SC Section 25299.37, which is substantially similar to the language of
21 H&SC Section 25296.10, the statute cited by the CAO.

22 In December 1991, just eight months after the Hortmans’ UST was decontaminated, filled
23 with concrete, and abandoned in place, 23 CCR Section 2720 was filed as an emergency regulation
24 in response to the Barry Keene Act, which required the State Board to propound regulations
25 implementing the law. (See H&SC § 25299.77.) The portion of 23 CCR 2720 that defines the term
26 “responsible party” has remained in effect, unchanged, since that time.

27 In 2002, the Legislature enacted Assembly Bill (“AB”) 2481, which created Chapter 6.7,
28 Underground Storage of Hazardous Substances, and took effect on January 1, 2003. AB 2481 not

1 only created Section 25296.10(a), as cited by the CAO, but it also repealed H&SC Section
2 25299.37. Section 25296.10(a) identifies the regulations propounded in response to the Barry
3 Keene Act to meet the requirements of Section 25299.37 “shall continue in effect . . . until revised
4 by the [State Board] to implement this section”

5 Section 25296.10(a) creates three categories of liable parties: owners, operators, and other
6 responsible parties. (*Id.*) Instead of defining the narrower class of “other responsible party,” as used
7 in Section 25296.10(a), however, 23 CCR Section 2720(1) – (4) define the broader term
8 “responsible party” as follows:

- 9 (1) Any person who owns or operates an underground storage tank used
10 for the storage of any hazardous substance;
- 11 (2) In the case of any underground storage tank no longer in use, any
12 person who owned or operated the underground storage tank
13 immediately before the discontinuation of its use;
- 14 (3) Any owner of property where an unauthorized release of a hazardous
15 substance from an underground storage tank has occurred; and
- 16 (4) Any person who had or has control over a underground storage tank at
17 the time of or following an unauthorized release of a hazardous
18 substance.

19 (23 CCR § 2720.)

20 Section 2720, subsection (4), appears to be the only “responsible party” category that the
21 CAO asserts against Mrs. Barawid, since it does not allege that she is a current owner or operator
22 of the UST, that she owned or operated the UST before its use was discontinued, or that she is a
23 current property owner. Instead, the CAO alleges she had “control” over the UST solely due to her
24 ownership of 1718 EVP between 1999 and 2004. (CAO, I.I.2.)

25 2. The Plain Meaning of “Control” Requires Knowledge of the Subject

26 The CAO alleges that Mrs. Barawid is a “responsible party” under H&SC Section 25296.10
27 and 23 CCR 2720(4) because she “had control over a UST at the time of or following an
28 unauthorized release of a hazardous substance.” (CAO, I.I.2.) The problem with this allegation is
that Mrs. Barawid had no knowledge of the UST until she was sued in 2021, and one cannot
“control” what one does not have any knowledge of.

1 As used in 23 CCR Section 2720(4) and Chapter 6.7 of the H&SC, both the plain meaning
2 of “control” and the way it is used in context indicate that some knowledge of the UST is required
3 before a former owner could be deemed to have had “control” over it.

4 First, the word “control” is used in 23 CCR Section 2720(4) as a transitive verb applied to
5 the direct object, the UST. This form of the word “control” means “to exercise restraining or
6 directing influence over: REGULATE, [as in to] *control one’s anger*.” (See Merriam-Webster
7 Dictionary (2024), control, available at
8 <https://www.merriamwebster.com/dictionary/control#:~:text=transitive%20verb,or%20directing%20influence%20over%20%3A%20regulate>.) Further, Black’s Law Dictionary defines “control”
9 as “[t]he direct or indirect power to govern the management and policies of a person or entity,
10 whether through ownership of voting securities, by contract, or otherwise; the power or authority
11 to manage, direct, or oversee.” Both definitions depend on knowledge of the direct object.
12 Without knowledge of the direct object, there can be no “restraining or directing of influence,” or
13 “power or authority to manage, direct, or oversee.”
14

15 Accordingly, a plain language interpretation of subsection (4)’s use of the transitive verb
16 “control” indicates some level of knowledge of the UST must exist before control over it can arise.
17 One could not restrain, direct, influence, manage, or oversee a UST without knowledge of its
18 existence in the first instance.

19 We also see this same meaning expressed in the way the word “control” is used in Chapter
20 6.7’s definition of an “operator.” H&SC Section 25281(j) defines an “operator” as “any person *in*
21 *control of*, or having daily responsibility for, the daily operation of an underground storage tank
22 system.” (*Id.* [emphasis added].) In this context, the word “control”—as pertaining to a person
23 deemed an “operator”—is equated with actually operating the UST on a daily basis or having
24 responsibility over the UST’s daily operations. This state of “control” could never arise if the
25 “operator” had no knowledge of the UST in the first place.

26 This interpretation of scienter is bolstered when considered in tandem with Water Code
27 Section 13304. In *UATC*, discussed in Section III.B, above, Section 13304’s “discharge element”—
28 cause or permitting a discharge or threatened discharge—was found to require substantial evidence

1 that the prior owner knew or should have known an activity presented a reasonable possibility of
2 discharge *during* the time of ownership. (*UATC*, 42 Cal.App.5th 851, 865, 887.) The *UATC* court
3 warned that the “Regional Board’s interpretation comes close to writing ‘permitted’ out of the
4 statute by imposing liability under a cleanup order absent any knowledge, actual or constructive,
5 that a lessee’s activity created a risk of discharge of wastes that could create or threaten to create a
6 condition of pollution or nuisance.” (*Id.* at p. 887.)

7 Moreover, when compared to “caused or permitted”—the operative phrase in Section
8 13304—the use of the word “control” in 23 CCR Section 2720(4) and H&SC Section 25281(j)
9 suggests a level of knowledge, action, and responsibility that falls much closer to “caused” than
10 “permitted,” where exerting “control” over something requires a more active role than merely
11 “permitting” something to occur.

12 Taken together, each of these statutes and the implementing regulation all demonstrate an
13 intent to address contamination threatening state waters from the same direction—holding actors
14 with requisite knowledge responsible. Yet the CAO’s use of H&SC Section 25296.10 and 23 CCR
15 Section 2720(4) would impose the same type of strict liability scheme that was rejected in *UATC*,
16 where the text does not indicate that the Legislature intended to create one.

17 Petitioners have found no case law interpreting the meaning of “control” under H&SC
18 Section 25296.10 and 23 CCR Section 2720(4), or that would support the novel way that the
19 Regional Board applies it here to name Mrs. Barawid as an “other responsible party” to the CAO.

20 It is undisputed that Mrs. Barawid had no idea the UST existed while she owned 1718 EVP
21 from 1999 to 2004 because the Hortmans never disclosed it and it was buried underneath the floor
22 of the building. The Regional Board has no basis to name Mrs. Barawid an “other responsible
23 party” under H&SC section 25296.10(a) because her lack of knowledge of the UST made it
24 impossible for her to have “control” over it. Accordingly, the CAO should be returned to the
25 Regional Board to remove Mrs. Barawid as an “other responsible party.”

26 ///

27 ///

28 ///

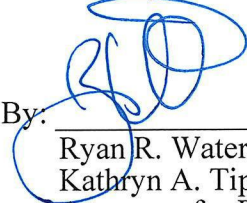
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IV. CONCLUSION

Petitioners respectfully submit that the CAO commits legally error by finding that the Hortman Trust became irrevocable, and consequently failing to name the Hortman Trustees in their representative capacities to hold the Trust accountable for environmental contamination that occurred during its ownership. Further, naming Mrs. Barawid to the CAO was inappropriate, improper, and unsupported by substantial evidence and law. Petitioners respectfully request the State Board issue a stay of the CAO, grant this Petition, and review the Regional Board’s actions and inactions in issuing the CAO.

Dated: February 21, 2025

BROWNSTEIN HYATT FARBER
SCHRECK, LLP



By: _____
Ryan R. Waterman
Kathryn A. Tipple
Attorneys for Petitioner
M & E Brothers, LLC and
Flor de Lys Barawid

PROOF OF SERVICE

I, Sheila Cavanaugh, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 225 Broadway, Suite 1670, San Diego, California 92101. On February 21, 2025, I served a copy of the within document(s):

**M & E BROTHERS, LLC'S AND FLOR DE LYS BARAWID'S
PETITION FOR REVIEW OF THE SAN DIEGO REGIONAL
WATER QUALITY CONTROL BOARD'S CLEANUP AND
ABATEMENT ORDER NO. R9-2025-0014; PRELIMINARY
POINTS AND AUTHORITIES IN SUPPORT OF PETITION
[Water Code, § 13320]**

by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Mr. David W. Gibson Executive Officer San Diego Regional Water Quality Control Board 2375 Northside Drive, Suite 100 San Diego, California 92108 Email: David.Gibson@waterboards.ca.gov	Mr. Alex Sauerwein Attorney San Diego Regional Water Quality Control Board 2375 Northside Drive, Suite 100 San Diego, California 92108 Email: Alex.Sauerwein@waterboards.ca.gov
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	KIM HORTMAN BUHLER, as the court appointed administrator and executor of the ESTATE OF BARBARA HORTMAN and KIM HORTMAN BUHLER and NORMAN ALTON HORTMAN III, trustees of the Norman Alton Hortman and Barbara Hortman Revocable Trust No. 1 Dated July 2, 1985
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 21, 2025, at San Diego, California.


Sheila Cavanaugh

EXHIBIT A



San Diego Regional Water Quality Control Board

January 22, 2025

In reply refer to/attn:
T10000014715:Talo
T10000017258:Talo
T10000022823:Talo

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Subject: Cleanup and Abatement Order No. R9-2025-0014

Recipients:

This letter serves to notify you that the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), has issued the following Cleanup and Abatement Order (enclosed):

- *Order No. R9-2025-0014, An Order Directing Guhn Y. Kim and Yun Soon Kim, as Administrators of the Kim Family Trust of 2017, M&E Brothers LLC, and Flor De Lys Barawid to Clean Up or Abate the Effects of an Unauthorized Release from 1654 E. Valley Parkway and 1718 E. Valley Parkway, Escondido, California (Final Order)*

On February 21, 2024, San Diego Water Board staff released Tentative Cleanup and Abatement Order No. R9-2024-0011 for public review and comment. Staff considered the written comments received on the Tentative Order to develop the Final Order. Staff's responses to the written comments are attached.

CELESTE CANTÚ, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

Any person aggrieved by the San Diego Water Board's actions to issue the Final Order may petition the State Water Resources Control Board (State Water Board) to review the actions in accordance with California Water Code section 13320. The State Water Board must receive the petition by 5:00 p.m. within 30 days after the date of the Order, except that if the thirtieth day following the date of the Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations and instructions applicable to filing petitions are available at the State Water Board's website or will be provided upon request

(http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml).

In the subject line of any response, include the reference codes **T10000014715:Talo**, **T10000017258:Talo**, and **T10000022823:Talo**. If you have any technical questions regarding this matter, please contact Tom Alo at Tom.Alo@waterboards.ca.gov. Legal inquiries should be directed to Alex Sauerwein at Alex.Sauerwein@waterboards.ca.gov.

Respectfully,

David W.  Digitally signed by David W. Gibson
Date: 2025.01.22 09:57:58 -08'00'

DAVID W. GIBSON
Executive Officer

DWG:kkd:rn:m:sam:tca

cc: Manuel Corrales, Gilleon Law Firm, mannycorrales@yahoo.com
Michael Davis, Innovative Environmental Solutions, mdavis@iesconsultants.com
Gregory Hout, Law Offices of Gregory J. Hout, ghout@houtlaw.com
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Michael Palmer, de maximis, mpalmer@demaximis.com
Kim Buhler, Administrator of the Hortman Trust, kbuhler@eusd.org

Enclosures:

- (1) Cleanup and Abatement Order No. R9-2025-0014, *An Order Directing Guhn Y. Kim and Yun Soon Kim, as Administrators of the Kim Family Trust of 2017, M&E Brothers LLC, and Flor De Lys Barawid, to Clean Up or Abate the Effects of an*

Unauthorized Release from 1654 E. Valley Parkway and 1718 E. Valley Parkway, Escondido, California

(2) Responses to Comments on Tentative Cleanup and Abatement Order No. R9-2024-0011

Tech Staff Info & Use	
Geotracker Global IDs	T10000014715 – 1654 E. Valley Parkway only T10000017258 – 1718 E. Valley Parkway only T10000022823 – Site as a whole
Cost Recovery IDs	TBD
Order No.	R9-2025-0014

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

**CLEANUP AND ABATEMENT ORDER NO. R9-2025-0014
AN ORDER DIRECTING GUHN Y. KIM AND YUN SOON KIM, AS
ADMINISTRATORS OF THE KIM FAMILY TRUST OF 2017, M&E BROTHERS LLC,
AND FLOR DE LYS BARAWID, TO CLEAN UP OR ABATE THE EFFECTS OF
AN UNAUTHORIZED RELEASE FROM 1654 E. VALLEY PARKWAY
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

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).

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 January 22, 2025.

Order No. R9-2025-0014 is effective upon the date of signature.

Ordered by:

David W. Gibson  Digitally signed by David W. Gibson
Date: 2025.01.22 09:57:28 -08'00'

January 22, 2025

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 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 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 H** below.
11. The San Diego Water Board may require the Parties in **Finding I** 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 I** are responsible for complying with each requirement, unless otherwise specifically noted.

B. Scope of Cleanup and Abatement Order No. R9-2025-0014

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.

Figure 1: Location of Properties

Properties as defined in this Order are outlined in orange and red.

C. Background

The first known presence of waste was documented in 1991 by the San Diego County Department of Environmental Health (DEH) at the 1718 EVP Property. 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 from May 11, 1987, to August 17, 1999.¹ During this time, Norman Hortman was informed of the presence of waste at the Property and collected a soil sample from the Property (**Finding D.1**). DEH later closed the site in March 1991, but re-opened it in May 2020 based on information provided in Procopio's April 2020 letter to DEH (**Finding D.2.ii**).

In July 2020, the San Diego Water Board assumed regulatory oversight from DEH to investigate the source of environmental issues identified at the former Jo-Ann Fabrics and Crafts location.² Board staff reviewed the DEH case files and determined that (1) PCE has not been used either historically or currently at former

¹ Norman Alton Hortman and Barbara Hortman are deceased and the Hortman Trust was deemed irrevocable on March 5, 2020. The trust assets were subsequently distributed, and the trust closed. As such, this CAO recognizes the ownership history and contamination history as explained in Finding I.D. The San Diego Water Board reserves the right to amend this CAO to name additional parties if necessary.

² The former Jo-Ann Fabrics and Crafts, located at 1680 E. Valley Parkway, Escondido, CA 92027, is outlined in blue on **Figure 1**.

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.³
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.⁴

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.⁵ The DEH inspection report states, "[t]his 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 of 1718 EVP 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.⁶ 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 in good condition and was closed in place by decontaminating it and then filling it with 1/3 yard of cement. Based on the closure of the UST and analytical results for the soil

³ Located at 1654 E. Valley Parkway, Escondido, CA 92027.

⁴ Located at 1718 E. Valley Parkway, Escondido, CA 92027.

⁵ The NOV lists Economy Cleaners as the Business Name and Norman Hortman as the Owner Name.

⁶ This sample was not taken by a qualified professional, so it is unknown if this sample was representative.

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 (**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 (**Finding I.A.**). EPA listed PCE and TCE as toxic pollutants in 1979 (**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.

2. **Department of Environmental Health Official Notice.** DEH staff issued two letters to Guhn Kim, administrator of the Kim Family Trust of 2017 (Kim Family Trust), regarding the results of the environmental investigations conducted at the former Jo-Ann Fabrics and Crafts located between the Properties (**Figure 1**).
 - i. On February 7, 2020, DEH issued a letter to Guhn Kim, administrator of the Kim Family Trust, recommending that he enroll in DEH's Voluntary Assistance Program (VAP) and conduct an environmental investigation at the 1654 EVP Property to determine whether a release of PCE had occurred from the dry cleaning operations.⁷ DEH's recommendation was based on its review of the environmental reports described in **Findings D.3.i to D.3.vii** below. DEH's letter states:

Evidence of a release of chlorinated solvents from the Site [1654 EVP Property] are as follows:

- *PCE contamination in soil vapor was detected in the building at 1680 East Valley Parkway, located approximately 50 feet northeast from the Site. PCE detections in vapor at 1680 East Valley Parkway are higher on the westward side of the suite than the eastward side. PCE contamination in vapor was also detected in the suite at 1670 East Valley Parkway, located adjacent to the Site, between the Site and 1680 East Valley Parkway.*
- *There is no documentation of PCE being used at 1680 East Valley Parkway, currently or historically.*

7

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/8766614615/Suzy%20Cleaners%20Official%20Notice.pdf

- *Following a vapor extraction pilot test at 1680 East Valley Parkway, PCE-impacted soil vapors rebounded, but the rebound was delayed indicating that the 1680 East Valley Parkway suite is not the source of the impacts.*
 - *A dry cleaner has operated on the Site for decades and PCE waste was generated on the Site. DEH is aware that multiple efforts have been made for Geosyntec to access the Site and conduct environmental sampling but that, to date, all efforts to gain access have been denied. There is no available environmental data to indicate that a release has not occurred on the Site.*
- ii. On May 5, 2020, DEH issued a letter to Guhn Kim, administrator of the Kim Family Trust, providing responses to Procopio's April 22, 2020, comment letter regarding Suzy's Cleaners.⁸ Procopio's letter suggests that a source of the PCE may also be the former Ha's Cleaners located east of the former Jo-Ann Fabrics and Crafts. DEH's letter states:

Based on the items addressed in your Letter, DEH concurs that there is sufficient information to suggest that Ha's [1718 EVP Property] may also be contributing to the PCE discovered at JF [Jo-ann Fabrics]. At this time, DEH will also issue a notice to Ha's to investigate their site. However, because your Site is a potential contributor to the PCE release, you will still be required to conduct investigation at the Site as specified in the February 2, 2020, letter. This requires the submittal of a VAP application by May 7, 2020, as formerly agreed between you and DEH. Failure to proceed with an investigation of your site on a voluntary basis may result in the issuance of an order to proceed with corrective action.

3. **Environmental Investigations.** The analytical results from the following assessments confirm the presence of wastes at the Site. The Properties are the most likely sources of these wastes due to unauthorized releases from dry cleaning operations.
- i. In March 2015, Ninyo & Moore, a geotechnical and environmental sciences consulting firm, conducted a Phase I Environmental Site Assessment⁹ at the former Jo-Ann Fabrics and Crafts that identified the 1654 EVP Property as a Recognized Environmental Condition. Ninyo and Moore subsequently conducted a soil vapor survey to evaluate

8

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/3047681510/Suzy%20Cleaners%20Procopio%20Response%20%20050520.pdf

9

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

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 ($\mu\text{g}/\text{m}^3$).

Based on the results, Ninyo & Moore concluded that the 1654 EVP Property is the likely source of PCE detected in soil vapor and not Jo-Ann Fabrics.

- ii. In April 2015, Ninyo & Moore conducted an indoor air assessment¹⁰ 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, an engineering and consulting firm, installed two temporary soil vapor extraction pits¹¹ at the former Jo-Ann Fabrics and Crafts to collect additional soil vapor data: SP-1 near the west wall closest to the 1654 EVP Property and SP-2 near the east wall closest to the 1718 EVP Property. 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).

Based on these results, Geosyntec concluded that the 1654 EVP Property is the likely source of PCE detected in soil vapor.

- iv. In September 2018, Geosyntec Consultants conducted additional soil vapor and indoor air investigations¹² at the former Jo-Ann Fabrics and Crafts to assess current subsurface soil vapor conditions and indoor air quality. 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

¹⁰

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

¹¹ https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/4061444938/Jo-Ann%20Fabrics%204.20.17.f.pdf

¹² https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/2289487540/Jo-Ann%20Fabrics%2001.25.2019.F.pdf

level of 2.0 $\mu\text{g}/\text{m}^3$.¹³

- v. In April/May 2019, Geosyntec Consultants conducted a 30-day soil vapor extraction test¹⁴ at two extraction wells, EW-1 and EW-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 $\mu\text{g}/\text{m}^3$ and during the shutdown sampling event ranged from 4.1 to 19 $\mu\text{g}/\text{m}^3$.
 - 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 $\mu\text{g}/\text{m}^3$. PCE concentrations during the baseline sampling event ranged from 2,200 to 24,000 $\mu\text{g}/\text{m}^3$.
- vi. In July 2019, Geosyntec Consultants conducted a 2-month soil rebound sampling event.¹⁵ 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 most of the probes. PCE concentrations during the 2-month rebound sampling event ranged from 440 to 2,100 $\mu\text{g}/\text{m}^3$.

¹³ <https://dtsc.ca.gov/wp-content/uploads/sites/31/2022/02/HHRA-Note-3-June2020-Revised-May2022A.pdf>

¹⁴

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

¹⁵

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

Based on these results, Geosyntec concluded that the 1654 EVP Property is the likely source of PCE detected in soil vapor.

- 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 soil vapor extraction (SVE) well (SVE-3) along the 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.¹⁶ The results of the investigation were the following:
- The PCE concentrations detected in the two existing SVE wells (790 µg/m³ at EW-1 and 1,800 µg/m³ at EW-2) were lower than the PCE concentration detected in the newly installed SVE-3 well (3,000 µg/m³). These results were expected because no soil vapor extraction had been 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.
 - 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 µg/m³ (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.

Based on these results, Geosyntec concluded that the 1654 EVP Property is the likely source of the PCE detected in soil vapor and that the 1654 EVP Property can only be ruled out as the source by conducting a comprehensive soil vapor survey.

- viii. In February and March 2022, Innovative Environmental Solutions (IES) conducted a site investigation¹⁷ to evaluate soil, soil vapor, and groundwater conditions at the Site and found the following:

¹⁶

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

¹⁷

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

- 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 ($\mu\text{g}/\text{L}$).

Based on the results of the site investigation, IES recommended that the 1654 EVP Property should be given a No Further Action determination, and the 1718 EVP Property should be identified as the sole source of the PCE detected beneath the Site. San Diego Water Board staff disagreed with IES's recommendations because the recommendation failed to prove that the 1654 EVP Property was not contaminated with waste, so staff recommended that additional data be collected to supplement the information collected in the preliminary assessment.

- ix. In April 2022, Weis Environmental conducted an indoor air investigation¹⁸ during the spring season to evaluate the indoor air quality at the 1718 EVP Property. The 1718 EVP Property is composed of two office spaces. Two indoor air samples were collected in the front and rear areas of the east building space and one indoor air sample was collected in the central area of the west building space. PCE was detected in indoor air samples at concentrations ranging from 0.995 to 1.81 $\mu\text{g}/\text{m}^3$. TCE was not detected.

A formal work plan for the indoor air investigation had not been prepared and submitted to San Diego Water Board staff for review and approval prior to sampling. Although the indoor air investigation was conducted in general accordance with vapor intrusion guidance documents, there are data gaps that led to incomplete reporting regarding the indoor air investigation. Such data gaps include, but are not limited to, collecting indoor air samples at targeted locations within the building spaces (e.g., bathroom and known subsurface source areas) and collecting paired indoor air and sub-slab samples, as recommended in the February 2023 VI Supplemental Guidance. The San Diego Water Board reiterates that these reports have not demonstrated the absence of an unauthorized waste discharge. Further, the evidence shows that the site remains contaminated.

18

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

- x. In September 2022, Innovative Environmental Solutions conducted a passive soil vapor survey¹⁹ 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**.

Based on the results of the passive soil vapor survey, IES again recommended that the 1654 EVP Property be given a No Further Action determination, and the 1718 EVP Property be identified as the sole source of the PCE detected beneath the Site. San Diego Water Board staff disagreed with IES's recommendations and required that (1) the assumptions made by IES in the passive soil vapor survey report be validated by collecting site-specific soil, soil gas, and groundwater data, and (2) additional investigation and potential remediation be conducted prior to consideration of a No Further Action determination. San Diego Water Board reiterates that these reports have failed to prove that there was an unauthorized discharge of waste and that the Site is still contaminated.

- xi. In October 2022, Weis Environmental conducted an indoor air investigation²⁰ during the fall season to evaluate the indoor air quality at the 1718 EVP Property. Three indoor air samples were collected in the same areas as the indoor air samples collected in April 2022. PCE was detected in indoor air at concentrations ranging from 0.88 to 4.3 µg/m³. TCE was not detected.

Similar to the April 2022 indoor air investigation, a formal work plan had not been prepared and submitted to San Diego Water Board staff for review and approval prior to sampling. As such, there is additional work that needs to be conducted to confirm the results of the October 2022 indoor air investigation.

¹⁹

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

²⁰

https://documents.geotracker.waterboards.ca.gov/esi/uploads/geo_report/1940432906/T10000017258.PDF

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

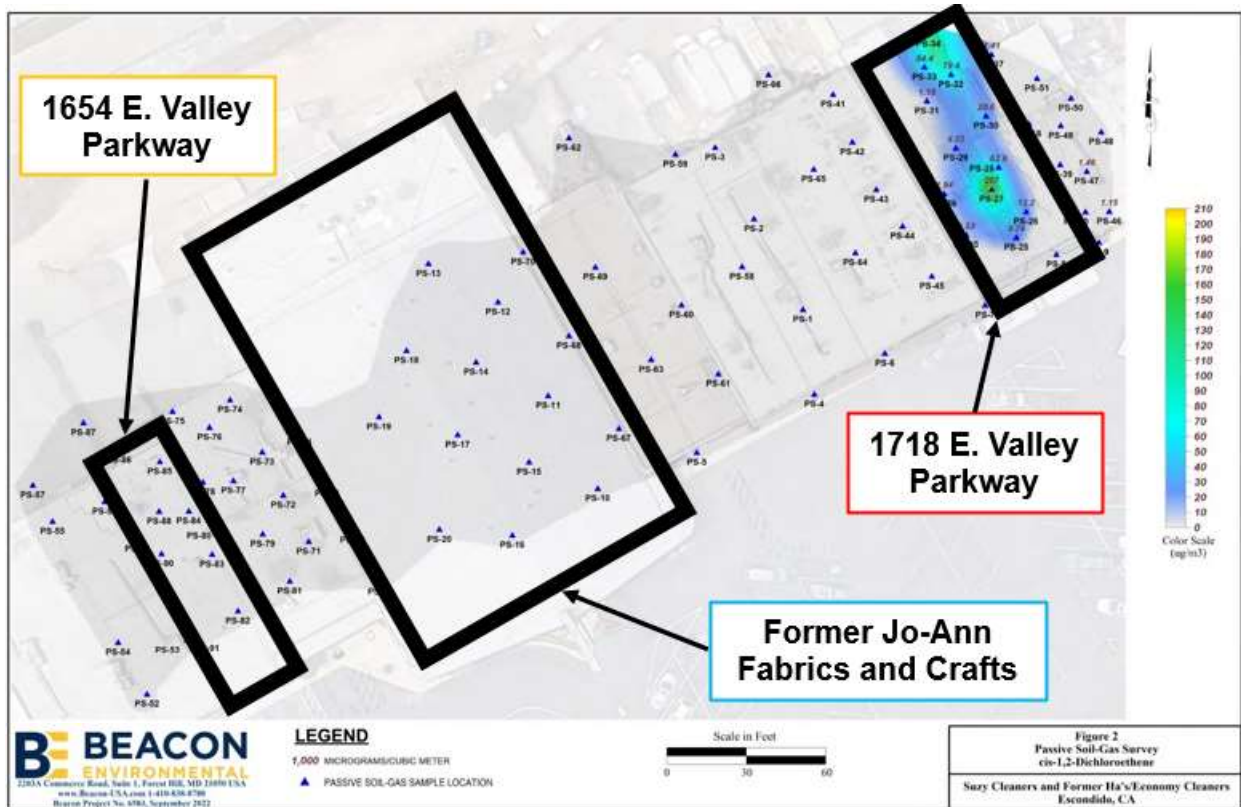


Figure 3: Passive Soil Vapor Analytical Results for Trichloroethene

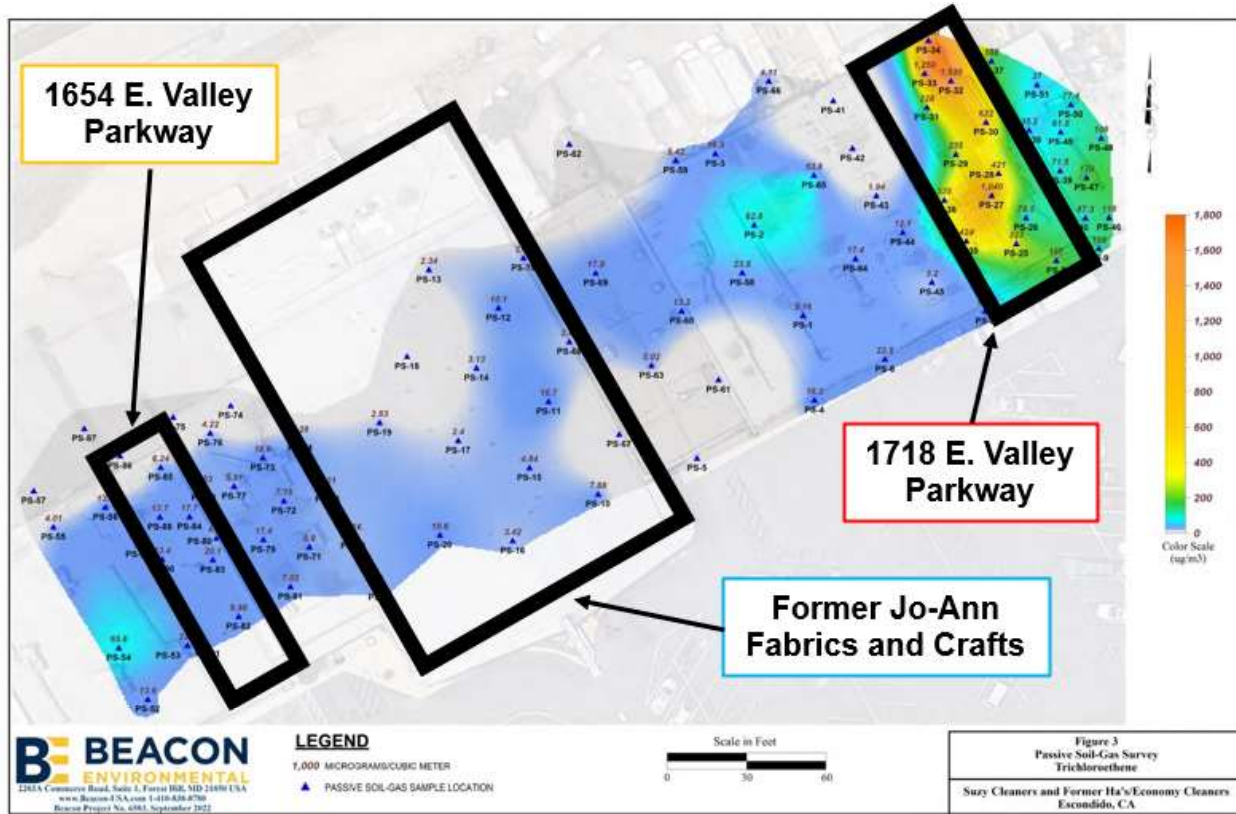
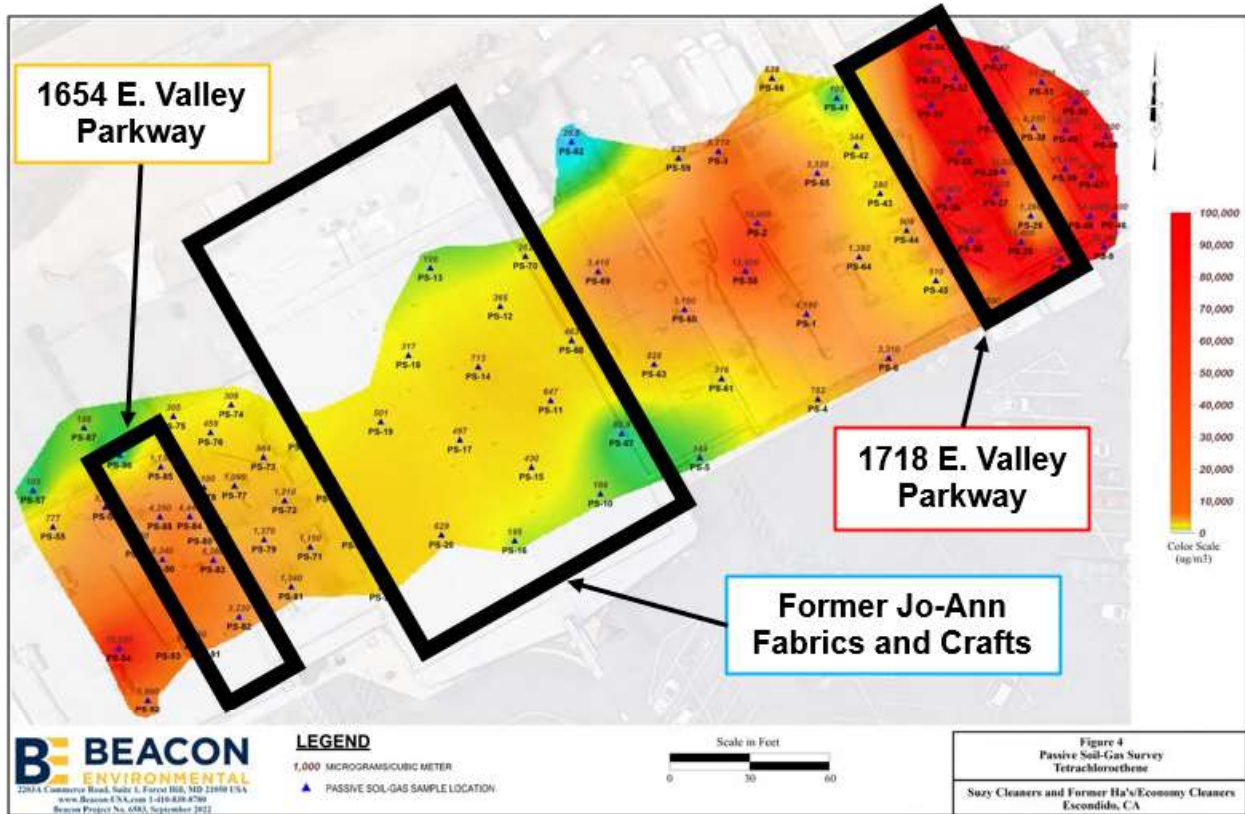


Figure 4: Passive Soil Vapor Analytical Results for Tetrachloroethene



E. Updated Conceptual Site Model Report

In January 2023, Innovative Environmental Solutions submitted a Conceptual Site Model (CSM) Report to the San Diego Water Board based on the results of the site investigation and passive soil vapor survey described in **Finding D.3**. San Diego Water Board staff provided written comments on the CSM Report in February and March 2023, and directed Guhn Kim to submit a final version of the CSM report based on staff's comments. In March 2023, IES submitted an Updated CSM Report.²¹ The Updated CSM Report identifies data gaps and recommends 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. Site Investigation Work Plan

In April 2023, IES submitted a Site Investigation Work Plan to the San Diego Water Board for staff review and approval. From September to December 2023, there were multiple rounds of responses to comments regarding the work plan

²¹

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

between IES and San Diego Water Board staff. As of the date of this Order, the Site Investigation Work Plan has not been finalized due to Guhn Kim's decision to terminate the agreement to participate in the Cost Recovery Program, as described in **Finding J**.

G. 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 Plan²² 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 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)²³ specified in Table 64444-A of Cal. Code Regs. title 22, section 64444.

H. 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)²⁴ 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). TCE, however, was not detected in the April 2022 and October 2022 indoor air investigations, but there are data gaps that led to incomplete reporting as described in **Findings D.3.ix and D.3.xi**.

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

²² https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/

²³ https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Chemicalcontaminants.html

²⁴ https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.shtml

Table 2: PCE in Soil Vapor Samples Exceeding Soil Vapor Intrusion ESLs

Location	Sample Date	Sample ID	Depth (feet bgs)	PCE Soil Vapor ^{(a)(b)} ($\mu\text{g}/\text{m}^3$)
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

Location	Sample Date	Sample ID	Depth (feet bgs)	TCE Soil Vapor ($\mu\text{g}/\text{m}^3$)	Predicted TCE in Indoor Air ^{25(a)(b)(c)} ($\mu\text{g}/\text{m}^3$)
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 = $24 \mu\text{g}/\text{m}^3$

(c) TCE was not detected in the April 2022 and October 2022 indoor air investigations; however, there are data gaps that need to be addressed as described in **Findings D.3.ix and D.3.xi**.

I. 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.²⁶ As the current owner of the 1718 EVP Property, M&E Brother LLC has the legal ability to

²⁵ Based on an attenuation factor of 0.03.

²⁶ *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.)

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, 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. The Kim Family Trust 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.²⁷ As the current owner of the 1654 EVP Property, The Kim Family Trust of 2017 has the legal ability to control the discharge.
4. 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.
5. 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.

²⁷ *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.).

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.²⁸

6. 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.
7. 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.

²⁸ 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	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

J. Cost Recovery Program

On July 20, 2021, Guhn Kim signed the agreement to voluntarily participate in the State Water Board's Cost Recovery Program, to conduct environmental investigations at the Site.²⁹ The environmental investigations conducted as of the date of this Order include the following:

- Limited site investigation to evaluate soil, soil vapor, and groundwater conditions at the Site (**Finding D.2.viii**).
- Passive soil vapor survey to evaluate the source(s) and lateral extent of chlorinated solvents in soil vapor beneath the Site (**Finding D.2.x**).

On December 1, 2023, Guhn Kim terminated the agreement.³⁰

San Diego Water Board staff requested that Lys Barawid and Kim Buhler voluntarily enroll in the State Water Board's Cost Recovery Program on

²⁹

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/3038480460/7.20.21%20SCP%20Introduction%20Letter_Suzys%20Dry%20Cleaners_Cost%20Recovery%20Signed.pdf

³⁰

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/2268476188/2023.12.01%20G.%20Kim%20LTR%20to%20SDRWQCB.pdf

November 11, 2022, and January 30, 2023, respectively, to investigate the potential source areas at the 1718 EVP Property. Both parties declined to enroll.

K. 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.

L. 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.

M. 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.

N. 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.

O. Delegation

Section 13223(a) of the Water Code provides that Regional Water Quality Control Boards may delegate certain powers and duties to its Executive Officer. Resolution R9-2005-0271 delegated all of the powers and duties of the San Diego Water Board, except those enumerated in 13223(a), to its Executive Officer. Adoption of Cleanup and Abatement Orders were delegated to the Executive Officer through Resolution R9-2005-0271. Thus, the Executive Officer can act on this Order.

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 data gaps identified at the Site. 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 pathways³¹ 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 vapor intrusion risk to building occupants?

³¹ 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.).

- 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 data gaps identified at the Site.
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.

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 the 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 at the Site and the site-specific study questions.
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 identified at the Site.
 - 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 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.³²
- 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 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

³² 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.

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 current and future 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 next 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 current and future 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. Interim Remedial Actions

The Parties may conduct interim remedial actions, as needed, to mitigate emergency situations and/or clean up or abate the effects of the discharge(s) to

minimize the short-term risk to human health and/or the environment. The Parties must notify the San Diego Water Board in writing when proposing interim remedial actions and provide rationale. The San Diego Water Board will review the notification and determine whether the proposed interim remedial actions are warranted.

K. 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."

L. Document Submittals

The Electronic Reporting Regulations require electronic submission of any report or data required by a regulatory agency from a cleanup site.³³ 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 the following GeoTracker Global ID numbers:

- **T10000014715 for the 1654 EVP Property only**
- **T10000017258 for the 1718 EVP Property only**
- **T10000022823 for the Site as a whole**

The Parties must upload the following minimum information to the GeoTracker database:

³³ Cal. Code Regs., title 23, division 3, chapter 30.

- 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.

M. 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.

N. 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.

O. 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.

P. 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.
7. **Request for Due Date Extension.** The Parties must notify the San Diego Water Board in writing to request an extension of a due date in the time schedule. The written request must, at a minimum, be submitted 14 days before the due date. The San Diego Water Board will review the request and determine whether the extension is reasonable.
8. **Separate Submittals.** The Parties can request to submit separate documents in fulfillment of certain directives, but in a manner that, when considered together, demonstrates compliance with the overall objectives of the Order. San Diego Water Board staff will review the request and determine whether the separate documents meet the overall objectives of the Order.

Q. 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.³⁴

³⁴ 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	April 21, 2025: 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 5 – Requesting Administrative Review by the State Water Board	February 20, 2025: within 30 calendar days of the date of this Order

**RESPONSES TO COMMENTS ON
TENTATIVE CLEANUP AND ABATEMENT
ORDER NO. R9-2024-0011**

ABBREVIATIONS	
CAO	Cleanup and Abatement Order
CSM	Conceptual Site Model
DEH	San Diego County Department of Environmental Health
EVP	East Valley Parkway
IES	Innovative Environmental Solutions
PCE	tetrachloroethene
RP	Responsible Party
San Diego Water Board	California Regional Water Quality Control Board, San Diego Region
SI	Site Investigation
SCAP	Site Cleanup Subaccount Program
State Water Board	State Water Resources Control Board
TCAO	Tentative Cleanup and Abatement Order
TCE	trichloroethene
UST	underground storage tank
VI	vapor intrusion

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
<p>Comment 1: Michael A. Palmer and Roxie Trachtenberg, de maximis, inc., March 22, 2024</p>			
1a	Finding H	<p>There is a third potential source of subsurface chlorinated solvent contamination within the boundaries of the "Site" identified in the TCAO. Operators/owners of the suite located at 1704 EVP should be issued a letter pursuant to California Water Code section 13267 to complete technical and/or monitoring reports investigating contamination originating from the former paint store operations.</p>	<p>San Diego Water Board staff disagree with the comment. Data collected to date does not support that the former paint store at 1704 EVP is a source of the elevated PCE and TCE soil vapor concentrations.</p> <p>There are data gaps related to the soil vapor plumes based on the passive soil gas survey. For example, as indicated in IES's February 6, 2023, response to San Diego Water Board staff's February 1, 2023, comments on the CSM, site-specific data needs to be collected to support the following conclusions made by IES:</p> <p><u>Soil Vapor Plume at 1718 EVP</u> <i>[Our Work Plan will provide] additional support that a hydraulic barrier has truncated the northern portion of the PCE soil gas (and likely corresponding groundwater) plume beneath 1706 EVP. Please note that IES now believes that "truncated" is a better description of the hydraulic barrier's effects on shallow soil gas concentrations due to its orientation roughly perpendicular from the perceived contaminant flow direction. In addition, the term "bisected" previously utilized by IES in the CSM implies two symmetrical sections measure[d] along the long axis, which is not the case here.</i></p> <p><u>Soil Vapor Plume Across Valley Plaza</u> <i>[Our Work Plan will provide] additional evidence that pore water saturation and/or soil clay content is causing the temporal and spatial variability in shallow soil gas concentrations at the Valley Plaza. This can be conducted by</i></p>

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			<p><i>differentiating vertical soil and gas concentrations in various areas of the site and correlating the results with those of the passive survey. Groundwater will also be evaluated for its potential as a contaminant transport mechanism.</i></p> <p>These data gaps, among others, need to be addressed prior to considering whether the former paint store is a potential source.</p> <p>Lastly, San Diego Water Board staff have the discretion to name other responsible parties to the Order as additional data is collected and evidence is presented.</p> <p>San Diego Water Board staff have not revised the TCAO in response to this comment.</p>
1b	Finding I.H	<p>The TCAO should be divided into two separate orders, one for 1718 EVP and another for 1654 EVP, since each location represents a distinct and separate source area, and San Diego Water Board staff have made no affirmative determination that plumes from both properties are intermingled.</p>	<p>San Diego Water Board staff disagree with this comment. The TCAO is designed to allow the responsible parties to work collaboratively to collect site-specific data to address data gaps related to determining whether the soil vapor plumes (and groundwater plumes, if present), are separate or commingled through implementation of the Site Investigation Work Plan described in Directive C of the TCAO. Working collaboratively provides an opportunity for the parties to minimize costs by sharing resources. Staff, however, will allow the parties to address the directives in the TCAO separately, but in a manner that, when considered together, demonstrates compliance with the overall goals of the TCAO for the Site as a whole.</p> <p>San Diego Water Board staff have revised the TCAO in response to this comment. See Provision P.8.</p>
1c	Finding D	<p>The TCAO should be revised to clearly show that 1654 EVP is a source of PCE.</p>	<p>San Diego Water Board staff agree with the comment. Conclusions made by the County of San Diego Department of Environmental Health, San Diego Water Board staff, and consultants regarding a</p>

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			<p>potential release of PCE due to the dry cleaning operations at 1654 EVP have been added to the TCAO.</p> <p>San Diego Water Board staff have revised the TCAO in response to this comment. See Findings D.2 and D.3.</p>
1d	Finding G	<p>Table 3 in the TCAO must be updated to reflect actual indoor air concentrations for 1718 EVP based on the April and October 2022 sampling events and the TCAO should characterize risk accordingly, and the non-detect TCE values should be added as part of the "Findings" section of the TCAO.</p>	<p>San Diego Water Board staff agree with the comment. Note that only the April 2022 indoor air investigation is described in the TCAO. A description of the October 2022 indoor air investigation has been added to the TCAO. Regarding these investigations, formal work plans were not prepared and submitted to San Diego Water Board staff for review and approval prior to sampling. While these investigations were conducted in general accordance with vapor intrusion guidance documents, there are data gaps that need to be addressed to confirm the results of the indoor air investigations. Such data gaps include, but are not limited to, collecting indoor air samples at targeted locations within the building spaces (e.g., bathroom and known subsurface source areas) and collecting paired indoor air and sub-slab samples, as recommended in the February 2023 Final Draft VI Supplemental Guidance.</p> <p>San Diego Water Board staff have revised the TCAO in response to this comment. See Table 3, and Findings D.3.ix, D.3.xi, and H.</p> <p><u>Updated CSM Report</u></p> <p>San Diego Water Board staff agree with the comment. Staff provided written comments on the CSM report on February 1, February 13, and March 7, 2023, and directed Guhn Kim to submit a final version of the CSM based on our comments.</p>
1e	Finding E and Directive B	<p>The status of IES's CSM should be clarified in the TCAO. In addition, the status of IES's SI Work Plan is unclear and should be clarified.</p>	<p>San Diego Water Board staff have revised the TCAO in response to this comment. See Finding E.</p>

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			<p><u>Site Investigation Work Plan</u> San Diego Water Board staff agree with the comment. Staff added a finding in the TCAO describing the status of the draft Site Investigation Work Plan.</p>
1f	Finding J and Directive O.2	<p>Instead of a TCAO describing one "Site" with multiple RPs without a documented, intermingled plume, we strongly urge San Diego Water Board staff to issue investigative order letters under California Water Code Section 13267 to the RPs of 1654 EVP and 1704 EVP, while issuing a CAO to 1718 EVP.</p> <p>On the current record, we see no basis for holding 1718 EVP jointly and severally liable for investigation and remediation at 1654 or 1704 EVP, where separate and distinct releases and dischargers have been identified.</p>	<p>San Diego Water Board staff have revised the TCAO in response to this comment. See Finding F.</p> <p>See response to comment 1b regarding separate Orders.</p> <p>San Diego Water Board staff disagree with the comment that there is no basis for a joint order (holding the Parties liable for investigation and remediation). The San Diego Water Board reserves its right to take any enforcement action authorized by law for violations of the terms and conditions of the TCAO. The non-compliant party may be subject to enforcement actions pursuant to the directives of the TCAO until the party complies with the directives. Also, see response to comment 1b for previous discussion related to the contamination at the Site.</p> <p>San Diego Water Board staff have not revised the TCAO in response to this comment.</p>
1g	Finding D.1	<p>The TCAO is wholly lacking in the factual background regarding abandonment of the UST, as documented by DEH records, and should be updated.</p>	<p>San Diego Water Board staff disagree with the comment. However, staff have provided additional details regarding the UST abandonment procedure at 1718 EVP based on DEH's March 22, 1991, Underground Tank Removal/Closure Report.</p>
1h	Attachment 1	<p>The schedule provided in the Tentative CAO is too aggressive. A new directive requiring the parties to submit a schedule within a reasonable timeframe</p>	<p>San Diego Water Board staff have revised the TCAO in response to this comment. See Finding D.1.</p> <p>San Diego Water Board staff disagree with the comment. Staff will, however, include a provision in the TCAO that allows the responsible parties to request deadline extensions for San Diego Water Board</p>

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
		<p>should be added to the order and all subsequent deadlines should be linked to this schedule.</p>	<p>consideration.</p> <p>San Diego Water Board staff have revised the TCAO in response to this comment. See Provision P.7.</p>
1i	Finding L	<p>The estimated cost for compliance with the technical and monitoring directives of the Order seems low. M&E Brothers is in the process of applying for a SCAP grant and those costs are substantially higher than this amount estimated for just the 1718 EVP site alone. We would request that the San Diego Water Board provide the backup for these costs and confirm that these costs include agency oversight and all sampling and remedial activities, including step-out sampling.</p>	<p>San Diego Water Board staff disagree with the comment. The estimated total cost to comply with the directives in the TCAO only considers a breakdown of costs associated with the preparation of technical and monitoring reports pursuant to Water Code section 13267. The reports consist of:</p> <ul style="list-style-type: none"> • Directive B – Site Investigation Work Plan • Directive D – Site Investigation Report • Directive E – Feasibility Study • Directive F – Remedial Action Plan • Directive H – Remedial Action Plan Progress Reports • Directive I – Remedial Action Completion Report <p>The costs included in the Order differ from those required by the SCAP application, which include all costs associated with the site investigation and remediation phases (i.e., project management, report preparation, work plan implementation, subcontractor costs, and site closure).</p>
1j	Directives F, G, and I	<p>Given the limited financial resources of the parties, it is recommended that the TCAO be updated to defer the remedial action to a subsequent order. This step-wise approach will allow the RPs to address the immediate need for additional investigation.</p>	<p>San Diego Water Board staff have not revised the TCAO in response to this comment.</p> <p>San Diego Water Board staff disagree with this comment. The TCAO is written in a manner so that the site investigation, feasibility study, and remedial action directives are conducted in a phased approach. This approach allows sufficient time for the responsible parties to coordinate and develop the scope of work and cost for each directive (three months between each directive as shown in the time schedule).</p>

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			<p>San Diego Water Board staff will, however, consider requests to extend due dates as described in response to comment 1h.</p> <p>San Diego Water Board staff have not revised the TCAO in response to this comment.</p>
1k	Not Applicable	Recommend adding a new directive to the TCAO to assess the feasibility of an interim remedial action.	<p>San Diego Water Board staff agree with this comment. Staff have added a directive to the TCAO that allows interim remedial actions to be conducted at the Site.</p> <p>San Diego Water Board staff have revised the TCAO in response to this comment. See Directive J.</p>
<p>Comment 2: Manuel Corrales, Jr., March 18, 2024</p>			
2a	Not Applicable	<p>I want to bring to attention San Diego Water Board staff's letter dated December 19, 2022, which was sent to the Responsible Parties of 1718 EVP, which states "an unauthorized release of PCE has occurred at 1718 EVP related to dry cleaning operations at the former Ha's/Economy Cleaners, indicating that source exists at this location." We are wondering why no ORDER was issued to them at that time, or for that matter, when these conditions were initially reported to Staff in March of 2022.</p>	<p>Comment noted. As described in Finding J (new finding), San Diego Water Board staff issued letters requesting that Lys Barawid and Kim Buhler enroll in the State Water Board's voluntary Cost Recovery Program on November 11, 2022, and January 30, 2023, respectively, to investigate the potential source areas at 1718 EVP. Both parties declined to enroll. As such, staff began preparation of a Cleanup and Abatement Order consistent with the Water Boards' enforcement policy. Guhn Kim was added to the Order as a responsible party after terminating his agreement to participate in the voluntary Cost Recovery Program on December 1, 2023.</p> <p>San Diego Water Board staff have not revised the TCAO in response to this comment.</p>
2b	Not Applicable	<p>As indicated by the timing of the December 12, 2023, electronic mail notification to Mr. Kim that this ORDER would be issued only eleven days after Mr. Kim mailed his request for termination of his Cost</p>	<p>San Diego Water Board staff disagree with this comment. Staff requested that Guhn Kim enroll in the State Water Board's voluntary Cost Recovery Program on July 20, 2021. Guhn Kim signed the agreement, and the agreement was in effect until he terminated the</p>

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
		Recovery Program, it appears as if the issuance of the CAO by the San Diego Water Board was in direct retaliation for the termination of the Cost Cleanup Agreement.	<p>agreement on December 1, 2023. The agreement was terminated before completing the site investigation and cleanup work. As such, on December 12, 2023, San Diego Water Board staff informed Guhn Kim that staff would be preparing and issuing a Cleanup and Abatement Order naming him as a responsible party, consistent with the Water Boards' enforcement policy.</p> <p>Also, see response to comment 2a.</p> <p>San Diego Water Board staff have not revised the TCAO in response to this comment.</p> <p>See responses to comments 2a and 2b.</p>
2c	Not Applicable	It appears that the San Diego Water Board's timing for issuing the CAO was not based on the discovery of contaminants during the investigations, or a similar Cleanup and Abatement Order would have been issued to 1718 EVP in December 2022, when the San Diego Water Board finally acknowledged that there had been an unauthorized release at 1718 EVP. This gives the appearance that the CAO was issued in retaliation.	
2d	Page 1, paragraph 1 Findings A.1, A.9, B, and H	There is no evidence that Mr. Kim "caused or permitted waste to be discharged into the waters of the state," as stated in the TCAO.	San Diego Water Board staff disagree with the comment. There is evidence that Guhn Kim can be named in this CAO. Water Code section 13304 states: "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

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			<p>threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.”</p> <p>This CAO will require reporting on the impacts to water quality at 1654 EVP and 1718 EVP. However, the CAO has sufficient evidence showing that the site is contaminated with waste that impact water quality.</p> <p>San Diego Water Board staff have not revised the TCAO in response to this comment.</p> <p>San Diego Water Board staff disagree with the comment. The order of the parties listed in the TCAO does not indicate an “order of responsibility” or a level of impact. All parties named in the TCAO are equally responsible for the cleanup and abatement of all wastes discharged to soil and groundwater at the Site resulting from dry cleaning operations at 1654 EVP and 1718 EVP.</p> <p>San Diego Water Board staff have not revised the TCAO in response to this comment.</p> <p>See response to comment 2e.</p> <p>Comment noted. The suites west-southwest of 1718 EVP are not subject to this Order because there is no current/historical information or data that indicates a release of waste occurred at these suites. However, as described in revised Findings D.2 and D.3, there is evidence that a release of waste occurred at 1654 EVP due to dry cleaning operations. The San Diego Water Board has the discretion to name other responsible parties in the Order as additional data is</p>
2e	Page 1, Parties	The Kim Family Trust of 2017 is listed as the first entity in both the title of the TCAO and as the listed party. This is improper because it implies an order of responsibility, and we reject being perceived as the primary responsible party.	
2f	Page 2, Property Information	1654 EVP is again listed as the first property described. This is improper because it implies an order of responsibility, and we reject being perceived as the primary responsible party.	
2g	Page 2, Unauthorized Releases	Soil vapor concentrations detected at 1654 EVP are consistent with previous soil gas sample results detected at other addresses west-southwest of 1718 EVP, who are not, nor should be, a subject of this ORDER.	

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			<p>collected and evidence is presented.</p> <p>San Diego Water Board staff have not revised the TCAO in response to this comment.</p>
2h	Finding A.2	<p>The TCAO does not acknowledge The Kims' participation in this process and inherently and unfairly associates them with the other parties named in the ORDER, who have refused to participate in the Cost Recovery Program.</p>	<p>San Diego Water Board staff disagree with this comment. Staff have, however, added a finding to the TCAO describing Guhn Kim's participation in the State Water Board's voluntary Cost Recovery Program.</p>
2i	Findings A.3, A.4, and A.5	<p>As indicated in the reporting, The Kim Trust has never owned or operated an underground storage tank, while one was closed in place and remains present at 1718 EVP.</p>	<p>San Diego Water Board staff have revised the TCAO in response to this comment. See Finding J.</p> <p>Comment noted.</p> <p>San Diego Water Board staff have not revised the TCAO in response to this comment.</p>
2j	Figure 1	<p>Figure 1 of the TCAO improperly identifies the boundary of 1654 EVP to include 1652 EVP, the suite located adjacent to the west-southwest of 1654 EVP. This illustrates a lack of San Diego Water Board staff's understanding of site conditions.</p>	<p>San Diego Water Board staff disagree with the comment. The purpose of Figure 1 is to illustrate the approximate locations of 1654 EVP and 1718 EVP relative to the former Jo-Ann Fabrics and Crafts (1680 EVP). The boundaries are shown more accurately on Figures 2 to 4, which show the results of the passive soil vapor survey. These boundaries were drawn based on Figure 1 of IES's November 2, 2022, passive soil vapor technical memorandum.</p> <p>San Diego Water Board staff have, however, revised the TCAO in response to this comment to refine the property boundary of 1654 EVP. See Figure 1.</p>
2k	Finding D	<p>Now there is data available that indicates a release has not occurred at 1654 EVP, but the TCAO ignores these facts. This illustrates a lack of San Diego Water Board staff's understanding of site conditions or inherent bias against my client.</p>	<p>San Diego Water Board staff disagree with the comment. IES recommended that the San Diego Water Board provide a "no further action" determination for 1654 EVP based on the results from the (1) February and March 2022 site investigation to evaluate soil, soil vapor, and groundwater conditions at the Site, and (2) September</p>

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			<p>2022 passive soil vapor survey to evaluate the source(s) and lateral extent of chlorinated solvents in soil vapor beneath the Site. San Diego Water Board staff disagreed with this recommendation.</p> <p>San Diego Water Board staff have, however, revised the TCAO in response to this comment to provide clarity regarding this finding. See Findings D.3.viii and D.3.x.</p> <p>San Diego Water Board staff disagree with the comment.</p>
21	Finding D	<p>There is no indication in the TCAO that the administrative file regarding 1654 EVP was clean, illustrating the inherent bias that my client is being subjected to by San Diego Water Board staff.</p>	<p>On February 7, 2020, DEH issued an official notice to Guhn Kim recommending that he enroll in the Voluntary Assistance Program due to a potential release of PCE from the Suzy Cleaners facility. DEH's recommendation was based on review of the environmental reports described in Findings D.3.i to D.3.vii of the TCAO. On May 5, 2020, DEH issued another official notice to Guhn Kim providing responses to Procopio's April 22, 2020, comment letter regarding the Suzy Cleaners facility. Procopio's letter suggested that a source of the PCE may also be the former Ha's Cleaners located at 1718 EVP. DEH concurred with Procopio; however, DEH still maintained its February 7, 2020, position regarding the Suzy Cleaners facility.</p> <p>San Diego Water Board staff have, however, revised the TCAO in response to this comment to provide clarity regarding these findings. See Finding D.2.</p>
2m	Findings D.2.i through D.2.vii	<p>The TCAO goes to great lengths (over 2 and 1/2 pages of the TCAO) to describe environmental investigations and remediation that was conducted at 1680 EVP, a property that the San Diego Water Board admits is not considered a source property. The preliminary soil vapor concentrations detected beneath 1680 EVP, when considered with</p>	<p>San Diego Water Board staff disagree with the comment. Staff have, however, provided additional information in the TCAO regarding the conclusions made by consultants and regulatory agencies on the potential releases of PCE due to the dry cleaning operations at 1654 EVP and 1718 EVP.</p> <p>San Diego Water Board staff have revised the TCAO in response to</p>

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
		<p>the... Updated CSM, support the release scenario presented. San Diego Water Board staff's focus on these activities within the TCAO illustrates our concern over undue influence by rogue consultant reporting.</p>	<p>this comment. See Findings D.2 and D.3.</p>
2n	Finding D.2.ix	<p>The ORDER dedicates less than ½ page to our Preliminary Site Investigation and neglects to mention that all soil and groundwater detections occurred at 1718 EVP as well as the highest soil vapor concentrations. This illustrates San Diego Water Board staff's bias against my client.</p>	<p>See response to comment 2m.</p>
2o	Finding E	<p>Although data gaps in this investigation do exist, it seems only fair at this point that the responsible parties of 1718 EVP hold the burden of defining their soil, groundwater, and soil vapor plume boundaries before my client is required to do any additional work. We feel that a proper investigation of 1718 EVP will connect their identified releases with the greater impact detected throughout the Valley Plaza.</p>	<p>See response to comment 1b.</p>
2p	Table 2	<p>This table does not differentiate that the soil vapor samples collected at 1680 EVP represent post-remediation concentrations, which, if not considered, give a false impression of historical site conditions and contaminant plume locations, which undermines the release scenario presented in the CSM. This further illustrates San Diego Water Board's bias against my client.</p>	<p>San Diego Water Board staff disagree with the comment. The objectives of Table 2 are to present the current PCE soil vapor concentrations beneath 1654 EVP, 1680 EVP, and 1718 EVP after soil vapor extraction activities and provide a comparison to the soil vapor intrusion ESL for PCE. The data in Table 2 are not meant to support or refute the release scenario in the CSM.</p>
2q	Section II – Directives	<p>Considering that my client has incurred all site assessment costs to date (excluding the indoor air sampling conducted at 1718 EVP), this should be</p>	<p>San Diego Water Board staff have not revised the TCAO in response to this comment. See response to comment 2h.</p>

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
		stated in the ORDER and considered when the San Diego Water Board makes future investigative directives.	
Comment 3: Matthew D. McMillan, Tropea McMillan LLP, March 22, 2024			
3a	Finding H	Ms. Buhler and Mr. Hortman III are incorrectly named as responsible parties and must be removed from the TCAO because the TCAO offers no evidence establishing a causal link between Ms. Buhler and Mr. Hortman III and any waste discharge.	San Diego Water Board staff disagree with the comment. However, the TCAO originally included Ms. Buhler and Mr. Hortman III not in their individual capacities, but as trustees to the Hortman Trust. The TCAO did not contemplate naming Ms. Buhler or Mr. Hortman III as responsible parties beyond the connection they had to the Hortman Trust and the assets it held. However, the Hortman Trust was deemed irrevocable on March 5, 2020, and the assets were distributed. The Hortman Trust was a responsible party but has since been dissolved and is no longer a legal entity to name as a responsible party. As such, Ms. Buhler and Mr. Hortman III have been removed from the TCAO.
3b	Finding H	Ms. Buhler and Mr. Hortman III are incorrectly named as responsible parties and must be removed from the TCAO as beneficiaries of the Hortman Trust because no former owner liability exists for these parties as mere beneficiaries of a trust.	San Diego Water Board staff have revised the TCAO to remove Ms. Buhler and Mr. Hortman III as responsible parties. See Findings C and I. See response to comment 3a.
3c	Finding H	The Hortman Trust should not be listed as a responsible party because the TCAO is time-barred due to the failure to file timely creditor's claims.	See response to comment 3a.

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
3d	Finding H	The Hortman Trust should not be listed as a responsible party because the Hortman Trust is closed and has no assets.	See response to comment 3a.
3e	Finding H	The Hortman Trust should not be listed as a responsible party because the findings in the TCAO pertaining to the Hortman Trust misstate facts or are otherwise unsupported.	See response to comment 3a.
3f	Finding H	The Hortman Trust, Ms. Buhler, and Mr. Hortman III should be placed in a position of secondary responsibility to the current owner of 1718 EVP.	San Diego Water Board staff disagree with the comment. The Water Boards do not place parties in a secondary status where there is no cleanup occurring. Here, cleanup has not started so it would be premature to name any party as secondarily responsible. San Diego Water Board staff have not revised the TCAO in response to this comment.
3g	Finding H	The TCAO fails to name numerous other Responsible Parties that likely caused or contributed to the environmental conditions at the Site.	San Diego Water Board staff disagree with the comment. The TCAO names the correct responsible parties. The San Diego Water Board reserves the right to name additional parties later if it found that additional parties are responsible. At this time, the CAO is focused on the cleanup at 1718 EVP and 1654 EVP. San Diego Water Board staff have not revised the TCAO in response to this comment.

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
3h	Finding J	Site cleanup costs for 1654 and 1718 EVP should be handled separately and allocated to the appropriate responsible party(ies).	<p>San Diego Water Board staff disagree with the comment. In general, costs are not allocated to each responsible party when issuing an Order to multiple parties. It is the parties' responsibility to distribute implementation costs amongst themselves. However, the San Diego Water Board can allocate regulatory oversight costs to each responsible party through the Cost Recovery Program.</p> <p>San Diego Water Board staff have not revised the TCAO in response to this comment.</p>
<p>Comment 4: Ryan Waterman, Brownstein Hyatt Farber Schreck, March 22, 2024</p>			
4a	Finding H	M&E Brothers should be named as a secondarily liable Discharger.	See response to comment 3f.
4b	Finding H	The Tentative CAO should preserve the Hortman Trust's ability to respond to a forthcoming CAO by naming additional parties.	See response to comment 3g.
4c	Table 3	<p>The TCAO presents predicted indoor air concentrations in Table 3 instead of actual indoor air concentrations collected in April and October 2022.</p> <p>The forthcoming CAO's Directives need to be source-specific.</p>	See response to comment 1d.
4d	Section II – Directives	<p>The TCAO would require all named parties to be responsible for the Kims' refusal to further investigate 1654 EVP.</p> <p>The TCAO would require all parties to upload documents to the 1718 EVP Geotracker website and risks obscuring the regulatory and investigative</p>	<p><u>Refusal to Comply with TCAO Directives</u> See response to comment 1f.</p> <p><u>Geotracker Website</u> San Diego Water Board staff agree with the comment. Staff have created a Geotracker Global ID number for submittals related to the Site, which is defined in the TCAO as areas currently and/or potentially impacted due to the unauthorized release of waste from dry cleaning operations at the 1654 EVP Property and the 1718 EVP Property. Submittals specifically for the 1654 EVP Property and the</p>

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
		record compiled under the 1654 EVP Geotracker website.	1718 EVP Property should continue to be uploaded to Geotracker Global IDs T10000014715 and T10000017258, respectively. The three Geotracker Global ID numbers are linked.
4e	Figures 3 and 4	Current and former owners and operators should be required to investigate Site conditions at 1704 EVP due to the separate and distinct TCE and PCE releases shown on Figures 3 and 4. Additional updates to any forthcoming CAO must be made.	San Diego Water Board staff have revised the TCAO in response to this comment. See Directive L. 1. See response to comment 1a.
4f	Finding C and Attachment 1	Finding I.C should be revised to include full details regarding the UST closure at 1718 EVP and the operational and regulatory history for 1654 EVP. The time schedule in Attachment 1 should be revised to account for the different positions of the responsible parties and the SCAP funding decisions. Evidentiary hearing should be held before the full San Diego Regional Board.	See response to comment 1g regarding the full details for the UST closure at 1718 EVP. See response to comment 1c regarding the operational and regulatory history for 1654 EVP. See response to comment 1h regarding the time schedule in Attachment 1 of the TCAO.
4g	Not Applicable		Comment noted. San Diego Water Board staff have not revised the TCAO in response to this comment

**Comment 5:
George Landt, Trustee of the Landt Family Trust, March 12, 2024**

5	Not Applicable	There has not been a release of PCE and TCE from the properties owned by the Landt Family Trust (1690-1706 EVP). The most likely source of the PCE and TCE is at 1718 EVP.	Comment noted. San Diego Water Board staff have not revised the TCAO in response to this comment
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EXHIBIT B



COUNTY OF SAN DIEGO

EST. NUMBER H 10991

PAGE 1 OF 3

SPECIALIST P. Raptis

PHONE 746-3760

NOTICE OF VIOLATION

BUSINESS NAME Economy Cleaners

BUSINESS ADDRESS 1718 E. Valley Parkway City Escondido ZIP 92027

OWNERS NAME Norman Hootman

PHONE 480-1821

OWNERS ADDRESS 1718 E Valley Parkway CITY Escondido ZIP 92027

On the date below, an inspection of your business was conducted under the authority of section 25185 of the California Health and Safety Code. This inspection was conducted with the purpose of determining compliance with Chapters 6.5; 6.7; 6.95 of the California Health and Safety Code and/or applicable State or Local regulations. The following statements describe violations of law and are intended to provide guidance to correct the violations noted. You are currently in violation of law and may be subject to further legal action. Failure to correct these violations in a timely manner may be a factor in determining the course of further legal action.

It has been observed on January 2nd 1991 that, an non-permitted underground storage tank is located at 1718 E. Valley Parkway in the floor at Economy Cleaners. This tank appears to have leaked and allowed 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 odor of solvent/cleaning product from this liquid and sludge.

According to: 1) The County Code of Regulations Section 661005, any person who constructs, installs, operates, maintains an underground storage tank must obtain appropriate permits. 2) California Health and Safety Code Chapter 6.95 Division 20 section 25295 Any unauthorized release which escapes from the primary containment must notify this Department within 24 hours of the release once detected or should have been detected. 3) California Health and Safety Code Chapter 6.5 Division 20 section 25189.5

ISSUED TO: Ken Creed

TITLE Property Manager

ISSUED BY: Pamela E. Raptis

DATE 1/12/91 TIME 10:45

IDENTIFICATION (CA DRIVERS LICENSE OR DATE OF BIRTH)

- CDL

If this box is checked, provide written documentation of compliance with this notice to this office within 10 days. Section 66328 (d) of the CA Code of Code of Regulations requires, that at a minimum, this documentation must state: 1. The corrective action to be taken 2. The expected date of completion

Exhibit 11



COUNTY OF SAN DIEGO

NOTICE OF VIOLATION

EST. NUMBER H 10991

PAGE 2 OF 3

SPECIALIST: P. Pappas

PHONE 746-3700

BUSINESS NAME Economy Cleaners

BUSINESS ADDRESS 1718 E. Valley Parkway City Escondido

OWNERS NAME Norman Hartman

OWNERS ADDRESS 1718 E. Valley Parkway CITY Escondido

ZIP 97027

PHONE 480-1821

ZIP 97027

On the date below, an inspection of your business was conducted under the authority of section 25183 of the California Health and Safety Code. This inspection was conducted with the purpose of determining compliance with Chapters 6.5; 6.7; 6.95 of the California Health and Safety Code and/or applicable State or Local regulations. The following statements describe violations of law and are intended to provide guidance to correct the violations noted. You are currently in violation of law and may be subject to further legal action. Failure to correct these violations in a timely manner may be a factor in determining the course of further legal action.

Continued:

it is unlawful to allow because disposal of hazardous waste to the ground or any unauthorized point. 4) California Health and Safety Code Chapter 6.95, Division 20 Section 25283 an owner or operator of the underground storage tank shall monitor the facility and keep records, these records must be sufficient in detail to ensure operator has undertaken all monitoring activities as required.

Immediately discontinue the use of this underground storage tank. Immediately contact a registered hazardous waste hauler to remove the contaminated liquid from the tank and dispose of it properly. Immediately remove the contaminated sludge from this tank by a registered waste hauler and dispose of it properly. Submit hazardous waste determination laboratory tests to this office within 10 days. You must use a certified laboratory for this tests. Immediately place hazardous waste labels on the gallon pail and gallon bottle of hazardous waste already removed from tank.

ISSUED TO: Ken Creed

TITLE Property Manager

ISSUED BY: Pamela E. Pappas

DATE 11/2/81 TIME 10:45

IDENTIFICATION (CA DRIVERS LICENSE OR DATE OF BIRTH)

If this box is checked, provide written documentation of compliance with this notice to this office within 10 days. Section 66328 (d) of the CA Code of Regulations requires, that at a minimum, this documentation must state: 1. The corrective action to be taken 2. The expected date of completion

Exhibit 11



COUNTY OF SAN DIEGO

NOTICE OF VIOLATION

EST. NUMBER H 10991
PAGE 3 OF 3
SPECIALIST: P. Raptis
PHONE 746-3700
PHONE 480-1821
ZIP 92027

BUSINESS NAME Economy Cleaners
BUSINESS ADDRESS 1718 E Valley Parkway City Escondido
OWNERS NAME Noeman Horstman
OWNERS ADDRESS 1718 E Valley Parkway CITY Escondido ZIP 92027

On the date below, an inspection of your business was conducted under the authority of section 25185 of the California Health and Safety Code. This inspection was conducted with the purpose of determining compliance with Chapters 6.5; 6.7; 6.95 of the California Health and Safety Code and/or applicable State or Local regulations. The following statements describe violations of law and are intended to provide guidance to correct the violations noted. You are currently in violation of law and may be subject to further legal action. Failure to correct these violations in a timely manner may be a factor in determining the course of further legal action.

Continued:

This site will be referred to Site Assessment and Mitigation for review as to determine the extent of discharge and soil contamination. Site Assessment and Mitigation will charge a fee, based on an hourly schedule, for this review and determination.

Do not remove or attempt to remove this underground storage tank without the appropriate permits as required by Hazardous Materials Management Division of the San Diego Health Department at 338-2222.

Submit in writing, within 10 days, your plan of action and cleaning for this site. Submit to Attn: Pamela E. Raptis Address below.

If you require assistance please contact me at 940-2854

ISSUED TO: Ken Creed TITLE Property Manager
ISSUED BY: Pamela E. Raptis DATE 1/12/91 TIME 10:45
IDENTIFICATION (CA DRIVERS LICENSE OR DATE OF BIRTH)

If this box is checked, provide written documentation of compliance with this notice to this office within 10 days. Section 66328 (d) of the CA Code of Regulations requires, that at a minimum, this documentation must state:
1. The corrective action to be taken
2. The expected date of completion

Exhibit 11

EXHIBIT C

HAZARDOUS MATERIALS MANAGEMENT DIVISION
UNDERGROUND TANK REMOVAL/CLOSURE REPORT

ESTABLISHMENT # H10991 PLAN CHECK # AT2191

SITE NAME Economy Cleaners PHONE 739-0809

SITE ADDRESS 1718 E Valley Pkwy #5

CITY/ ZIP CODE _____

CONTRACTOR run

PHONE _____

NUMBER OF TANKS 1

REMOVAL

CLOSURE IN PLACE

REMARKS:

TANK EDP NUMBER
U/L TAG NUMBER
CAPACITY (GALS)
MATERIAL STORED
DECONTAMINATION?
MANIFEST AVAILABLE?
% LEL (CGI READING)
DRY ICE/OTHER (AMT)
TANK CONDITION
BACKFILL SOIL TYPE
BACKFILL CONDITION
NATIVE SOIL TYPE
NATIVE CONDITION
EXCAVATION ODORS?
STOCKPILE ODORS?
PONDED PRODUCT?
PIPELINE LEAK?
REINSPECTION REQUIRED?

1				
	55 gallon drums			55 gallon fill of 1/3 of port cement -
	Use			
	lys # 89577212			
	Good			
	NA			
	NA			
	NA			
	NA			
	NA			
	NA			
	NA			
	NO			

NOTICE: You are hereby notified that on 3/22/91, a Hazardous Materials Specialist conducted an inspection for the closure of one hazardous substance underground storage tanks. A summary of the conditions follows:

- A determination of this site's status is pending receipt of Laboratory Analyses Results for samples taken this date. Results must be submitted within 30 days. To avoid delays, have the Laboratory send a copy of the results directly to _____ of the (HMMD) see address below: _____ (print)
- Contamination of the excavation area has been noted by observations made during the tank removal this date. **BEGIN SITE ASSESSMENT PHASE**-(See reverse for details).

The Laboratory results have been reviewed by Mary Peter/Mike Vernetti (of the HMMD) on 3/17/91 and indicate the following:
 NO FURTHER ACTION IS REQUIRED.
 BEGIN SITE ASSESSMENT PHASE (See attached information).
 Phone Contact _____ Date Form was Mailed 1/1

Received By Sent by mail

Printed Name _____

Phone Number _____

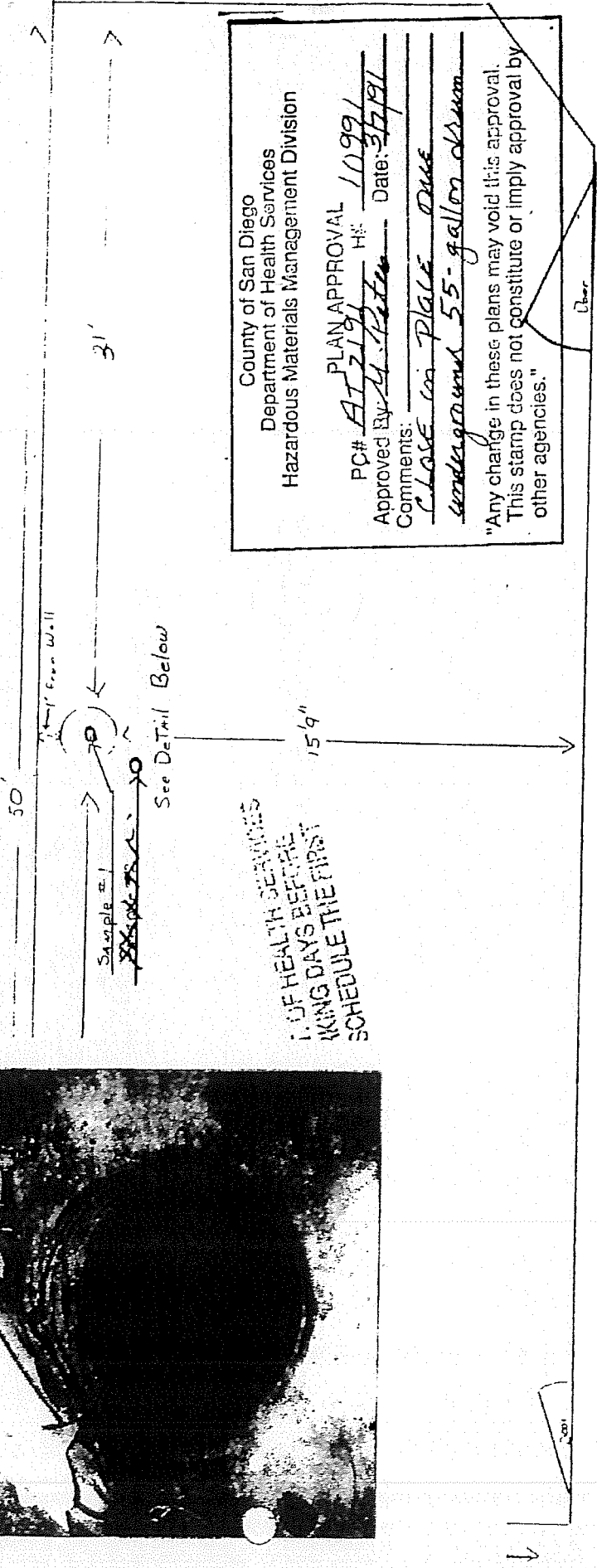
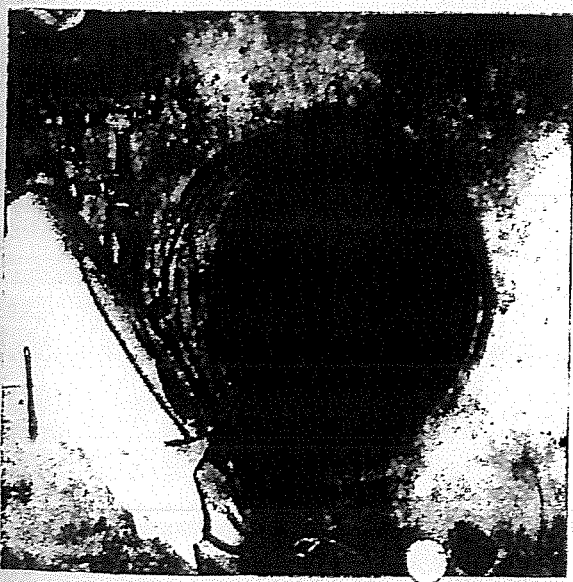
Mary Peter
Hazardous Materials Specialist
County of San Diego
Department of Health Services
HMMD - P. O. Box 85261
San Diego, CA 92138-5261
(619) 338-2222

(HMMD COPY)

Exhibit 13

Economy Cleaners
 1718 E. Valley Parkway
 Escondido, CA 92027

Norm HORTMAN
 480-1621



County of San Diego
 Department of Health Services
 Hazardous Materials Management Division

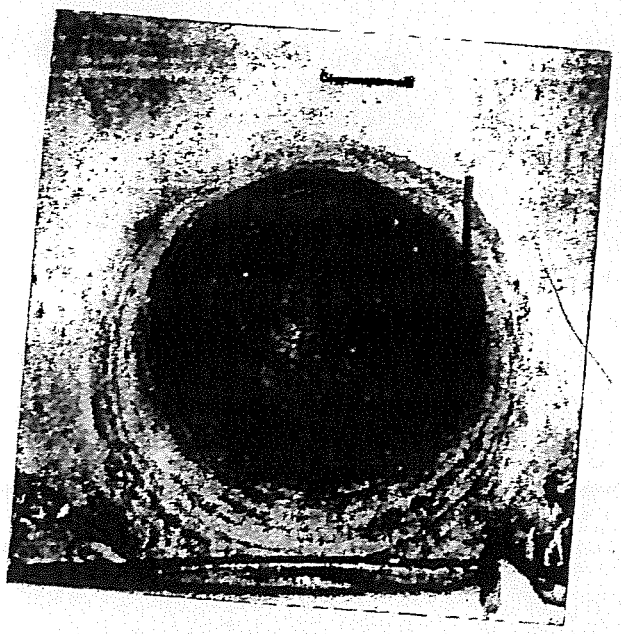
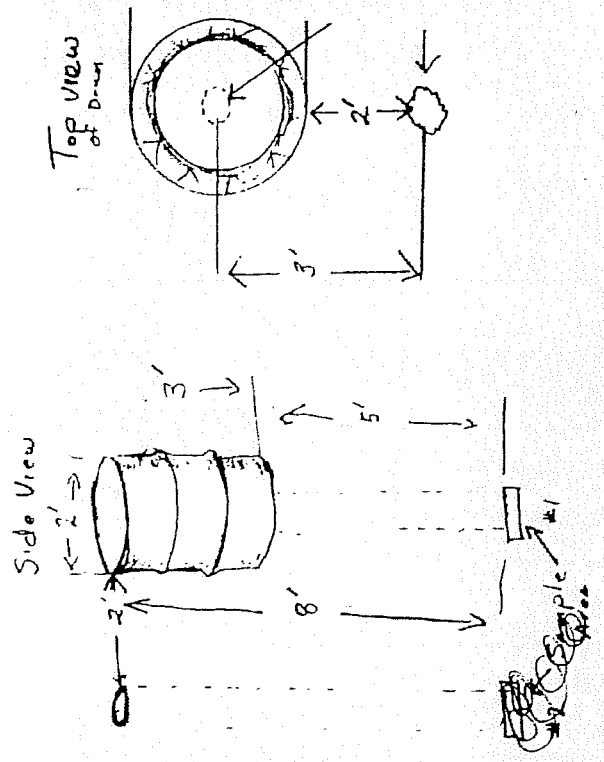
PLAN APPROVAL
 PC# AT2194 HS# 1099
 Approved By: M. Patten Date: 3/27/91

Comments:
Close on plate One
underground 55-gallon drum

"Any change in these plans may void this approval. This stamp does not constitute or imply approval by other agencies."

1. OF HEALTH SERVICES
 WORKING DAYS BEFORE
 SCHEDULE THE FIRST

55 gal Drum in the floor





Pacific Treatment Analytical Services

AMTECH Laboratories

4340 Viewridge Avenue, Suite A • San Diego, CA 92123 (619) 560-7717 FAX: (619) 560-7763

RECEIVED

FEB 26 11 10 AM '91

ENVIRONMENTAL
HEALTH SERVICES

American Star Management Co.
1718 East Valley Parkway Ste. C
Escondido, CA 92027
Attn: Ken Creed

LABORATORY NO: 0294-91
DATE OF REPORT: February 25, 1991
DATE RECEIVED: February 15, 1991 @ 1325
IDENTIFICATION: One soil sample

Enclosed with this letter is the report on the following analyses on the sample from the project identified above:

Chlorinated Solvents by EPA 8010

The sample was received by Pacific Treatment Analytical Services intact, with chain-of-custody documentation and appropriate preservation. The test results and pertinent quality assurance/quality control data are listed on the attached tables.

Kenneth J. Walits
Laboratory Director

BK 2500

American Star Management Co.
 Client Sample ID: Sample #1
 Lab Sample ID: 0294-91
 Project: None
 Sample Matrix: Soil
 Attn: Ken Creed

Date Sampled: 02/15/91
 Date Received: 02/15/91
 Date Analyzed: 02/19/91
 Date of Report: 02/25/91
 Method: EPA 8010
 Units: (ug)/kg

PARAMETER	RESULTS
Chloromethane	4.0 U
Bromomethane	59.0 U
Dichlorofluoromethane	90.5 U
Vinyl Chloride	9.0 U
Chloroethane	26.0 U
Methylene Chloride	12.5 U
Trichlorofluoromethane	10.0 U
✓ 1,1-Dichloroethene	6.5 U
1,1-Dichloroethane	3.5 U
trans-1,2-Dichloroethene	5.0 U
Chloroform	2.5 U
✓ 1,2-Dichloroethane	1.5 U
1,1,1-Trichloroethane	1.5 U
Carbon Tetrachloride	6.0 U
Bromodichloromethane	5.0 U
1,2-Dichloropropane	2.0 U
trans-1,3-Dichloropropene	17.0 U
Trichloroethene	6.0 U
✓ Chlorodibromomethane	4.5 U
1,1,2-Trichloroethane	1.0 U
cis-1,3-Dichloropropene	10.0 U
2-Chloroethyl vinyl ether	6.5 U
Bromoform	10.0 U
✓ 1,1,2,2-Tetrachloroethane	1.5 U
Tetrachloroethene	1.5 U
Chlorobenzene	12.5 U
1,3-Dichlorobenzene	16.0 U
1,2-Dichlorobenzene	7.5 U
1,4-Dichlorobenzene	12.0 U

U Indicates the compound was analyzed for but not detected at a concentration above the detection limit.

B Indicates analyte was also found in the method blank.



Exhibit 14

American Star Management Co.
Client Sample ID: Sample #1
Lab Sample ID: 0294-91
Project: None
Sample Matrix: Soil
Attn: Ken Creed

Date Sampled: 02/15/91
Date Received: 02/15/91
Date Analyzed: 02/19/91
Date of Report: 02/25/91

Quality Assurance/Quality Control data for EPA 8010

Parameter	MS % R	MSD % R	RPD
1,1-Dichloroethene	121	110	10
Chloroform	101	134	28
1,1,1-Trichloroethane	115	102	12
Trichloroethene	95	82	15
Chlorobenzene	89	91	2

MS % R = Matrix Spike Percent Recovery
MSD % R = Matrix Spike Duplicate Percent Recovery
RPD = Relative Percent Difference



CHAIN - OF - CUSTODY RECORD

Client: American Star Management Date: Feb 15, 1991 P.O.#: _____
 Project Name: Ecovary Cleaners Lab #: 0294-91
 Turn around Time Normal (5-7 days) Rush (24 hrs.) Emergency (same day) Other _____
 Results Attn. To: _____ Due By: _____
 Sampled by: Norma Hartman Fax Phone Hard Copy FAX# _____

Lab Sample I.D.	Client Sample I.D.	Date & Time	Composite	Grab	Sample Matrix	Location/Station	Number of Containers (Type & Volume)	Analysis												
								487	8010	8020	Not necessary									
	51				Soil			X	X	X										

COMMENTS: _____

RELINQUISHED BY	DATE & TIME	RECEIVED BY
1. <u>Norma Hartman</u>	<u>Feb 15, 1991 - 1:25 PM</u>	<u>Patricia M. Decker</u>
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

EXHIBIT D



COUNTY OF SAN DIEGO

COMPLIANCE INSPECTION REPORT

EST. NUMBER H 10991DATE 9 12 4 97PAGE 3 OF 3BUSINESS ADDRESS: 1718 E. Valley Pky #J92077

VIOLATION REPORT: The items checked below refer to specific section numbers of Titles 19/22/23 of the California Code of Regulations (CCR), Chapters 6.5, 6.7, 6.95 of the Health and Safety Code (HSC), and/or the San Diego County Code (SDCC).

I HAZARDOUS WASTE REQUIREMENTS:

RECORD KEEPING

- Health Permit not obtained SDCC 68.905
- No EPA Identification Number 66262.12
- Waste Manifests/Receipts not on-site for 3 years 66262.40
- Manifest not properly completed 66262.23
- Manifest copy not sent to DTSC 66262.23
- TSDF signed-manifest not on-site 66262.40
- Biennial report not sent to DTSC 66262.41
- LDR Documentation not available 66268.7
- Exception Rpt. not filed with DTSC 66262.42
- Operating TSDF without authorization 25201

- V0108 W
- V0105 W
- V0118 W
- V0120 W
- V0115 W
- V0121 W
- V0122 W
- V0123 W
- V0116 W
- V0124 W

STORAGE AND HANDLING

- Waste stored longer than 90, 180, or 270 days 66262.34
- Failure to clean up hazwaste off of floor surface 66262.10b
- Waste container missing/improperly labeled 66262.34
- Haz Materials not properly labeled 25124
- Waste container not kept closed 66265.173
- Waste container in poor condition 66265.171
- Waste container(s) not properly managed 66265.173
- Damaged container not repackaged 66265.171
- Container incompatible with waste 66265.172
- Incompatibles in the same container 66265.177
- Incompatibles not stored separately 66265.177
- Ignitable Waste less than 50 feet 66265.176
- Ignitable Waste not grounded 66265.31
- Storage area not inspected weekly 66265.174

- V0221 W
- V0313 W
- V0222 W
- V0223 W
- V0202 W
- V0205 W
- V0210 W
- V0226 W
- V0207 W
- V0224 W
- V0213 W
- V0214 W
- V0215 W
- V0216 W

DISPOSAL AND TRANSPORTATION

- Unauth. disposal of waste to 25189.5
- Waste determination not made 66262.11
- Unlawful transport of haz. waste 25163
- Waste transported without manifest 66262.20
- Extremely Haz Waste Permit not obtained 25205.7

- V0313 W
- V0319 W
- V0315 W
- V0316 W
- V0317 W

TRAINING, CONTINGENCY PLAN & EMERGENCY PROCEDURES

- Training records unavailable 66265.16
- Training program not adequate 66265.16
- Facility not designed to minimize release 66265.31
- Spill control equip not available 66265.32
- Aisle space is obstructed 66265.35
- Contingency plan not prepared and/or on file 66265.51, 66265.53

- V0405 W
- V0406 W
- V0501 W
- V0508 W
- V0509 W
- V0609 W

MISCELLANEOUS

- Waste oil contaminated 25250.7
- Used oil filters improperly managed 66266.130
- Damaged batteries improperly managed 66266.81
- Facility has failed to notify local CUPA and DTSC of onsite treatment of hazardous waste (tiered permitting)
- Onsite treatment of waste without authorization 25201

- V0225 W
- V0701 W
- V0702 W
- V0125 W
- V0125 W

II UNDERGROUND STORAGE TANK (UST) REQUIREMENTS:

GENERAL UST REQUIREMENTS

- Health Permit not obtained 68.1005, 25284
- Repair/modify/close permit not obtained 68.1005
- UST Permit Application not submitted 25286(a)
- Operating permit conditions violated 2712
- Failed to notify HMMMD of changes 25284
- No owner/operator agreement 25284
- No records of financial coverage 25292.2
- No maint/monit/calib records available 2712(b), 2641(j)
- Monitoring Equip. not tested annually 2630, 2641

- V3002 T
- V3007 T
- V3010 T
- V3011 T
- V3012 T
- V3005 T
- V3013 T
- V3001 T
- V3003 T

MONITORING REQUIREMENTS (SINGLE WALL)

- Leak Detection Method does not meet performance standards 2643
- Integrity test not conducted 25292
- Copy of tank test not submitted to HMMMD within 30 days 2643
- Manual tank gauging (<2000 gal) 2645 not done properly
- Reconciliation not done properly 2646
- Reconciliation not approved for facility 2646
- Dispenser meter(s) not calib annually 2646
- Improper liquid measurements 2646
- Stick in poor condition 2646
- Improper monthly reconciliation 2646
- Failed to report excessive variation 2646
- Pressurized Product Piping Leak Device not tested annually 25292
- No written monitoring procedure 2641
- No written emergency response plan 2641
- SIR reporting incorrectly done 2646.1

- V3014 T
- V3015 T
- V3016 T
- V3017 T
- V3018 T
- V3019 T
- V3020 T
- V3021 T
- V3022 T
- V3023 T
- V3024 T
- V3025 T
- V3027 T
- V3027 T
- V3004 T

MONITORING REQUIREMENTS (DOUBLE WALL)

- Monitoring system not functional 2632
- No written monitoring procedure 2632
- Written emergency response plan not available 2632
- Spill/Overfill equip. not maintained or installed 2635

- V3026 T
- V3027 T
- V3028 T
- V3029 T

RELEASE REPORTING

- Failure to report an unauthorized release 25295
- Release record log not available 2651, 2650
- No leak report/investigation/action 2652

- V3009 T
- V3030 T
- V3031 T

CLOSURE

- Temporary closure req. not completed 2671
- Unused tank not properly closed 25298
- Permanent closure req. not completed 2672
- Failed to apply for temporary closure 25298

- V3006 T
- V3032 T
- V3033 T
- V3008 T

III HAZARDOUS MATERIALS BUSINESS PLAN REQUIREMENTS:

RECORD KEEPING

- Health Permit not obtained SDCC 68.1105
- Business Plan not established/implemented 25503.5
- Business Plan not submitted to HMMMD 25505
- Business Plan not amended 25505
- Personnel Training Records not available 19 CCR 2732

- V2001 W
- V2002 W
- V2007 W
- V2003 W
- V2302 W

RELEASE REPORTING

- Failure to report a release/threatened release 25507

- V2008 W

BUSINESS PLAN ELEMENTS

- Emergency Response Plan inadequate 25504
- Emergency Contacts not provided/current 25509
- Personnel Training Program inadequate 25504
- Inventory is incomplete 25504
- Site Map is not sufficient 25509
- Acutely Haz. Mat. not registered 25533

- V2201 W
- V2203 W
- V2301 W
- V2005 W
- V2202 W
- V2009 W

ALL VIOLATIONS MUST BE CORRECTED. PLEASE CALL (619) 338-2222 OR YOUR INSPECTOR IF YOU HAVE ANY QUESTIONS.

*Thay*9-24-97

ESTABLISHMENT REPRESENTATIVE

DATE SIGNED

TITLE

Department of Environmental Health, Hazardous Materials Management Division, P. O. Box 85261, San Diego, CA 92186-5261

DISTRIBUTION: WHITE-RETURN TO HMMMD
YELLOW-BUSINESS RETAINS



COUNTY OF SAN DIEGO

EST. NUMBER H 10 991

COMPLIANCE INSPECTION REPORT

DATE 12/15/92

PAGE 2 OF 2

BUSINESS ADDRESS: 1718 EVALLEY

VIOLATION REPORT: The items checked below refer to specific section numbers of Titles 19/22/23 of the California Code of Regulations (CCR), Chapters 6.5, 6.7, 6.95 of the Health and Safety Code (HSC), and/or the San Diego County Code (SDCC).

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J. King

ESTABLISHMENT REPRESENTATIVE

DATE SIGNED

TITLE

Department of Environmental Health, Hazardous Materials Management Division, P. O. Box 85261, San Diego, CA 92186-5261

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- V3016 T _____
- V3017 T _____
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- V3019 T _____
- V3020 T _____
- V3021 T _____
- V3022 T _____
- V3023 T _____
- V3024 T _____
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- Site Map is not sufficient 25509
- Acutely Haz. Mat. not registered 25533

- V2201 W _____
- V2203 W _____
- V2301 W _____
- V2005 W _____
- V2202 W _____
- V2009 W _____

EXHIBIT E

1 BROWNSTEIN HYATT FARBER SCHRECK, LLP
RYAN R. WATERMAN, Bar No. 229485
2 rwaterman@bhfs.com
KATHRYN TIPPLE, Bar No. 327929
3 ktipple@bhfs.com
225 Broadway, Suite 1670
4 San Diego, California 92101
Telephone: 619.702.7659
5 Facsimile: 619.239.4333

6 Attorneys for Petitioners
M & E BROTHERS LLC and
7 FLOR DE LYS BARAWID

8 BEFORE THE
9 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

10
11 In the Matter of Cleanup and Abatement Order
No. R9-2015-0014

SWRCB/OCC File: _____

**DECLARATION OF FLOR DE LYS
BARAWID IN SUPPORT OF REQUEST
FOR STAY OF THE SAN DIEGO
REGIONAL WATER QUALITY
CONTROL BOARD'S ORDER NO. R9-
2025-0014
[Wat. Code § 13321]**

[Submitted Concurrently with Petition for
Review of Regional Board Order and
Request for Stay]

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32721401

1 acquisition. I was unaware of any storage of chemicals at 1718 EVP and no one informed us of
2 any underground storage tank hidden beneath the finished floors of the building at 1718 EVP. I had
3 no reason to believe 1718 EVP was or could have been contaminated at the time I assumed
4 ownership of 1718 EVP for the purposes of leasing it to an adult day care business.

5 9. Shortly after acquiring 1718 EVP, we licensed Opportunities Unlimited with the
6 State of California to allow for licensed adult day service operations onsite.

7 10. My husband and I never allowed dry cleaning chemicals onsite at 1718 EVP during
8 our ownership. I did not even know what dry cleaning chemicals were until I was served with a
9 third-party complaint in 2021.

10 11. In 2004, my husband's health was declining so our sons, Michael and Edward,
11 stepped in to help at him at 1718 EVP and provide care for our clients.

12 12. By December 2004, due to my husband's deteriorating health and his wishes to keep
13 our business going with the help of our sons, we transferred 1718 EVP to M&E and I became its
14 managing member with Michael and Edward serving as additional members.

15 13. M&E is the current owner of 1718 EVP. M&E continues to lease 1718 EVP to
16 Opportunities Unlimited for the purposes of continuing the adult day care services. Like my late
17 husband and I, M&E has never allowed dry cleaning or dry cleaning chemicals at 1718 EVP.

18 14. I first learned about the closed UST at 1718 EVP in 2021 when M&E and I were
19 sued in federal court. I learned the Hortman Trust leased the property to several dry cleaner
20 operators that used tetrachloroethene ("PCE") and benefited from these operations. I learned then
21 that the Hortmans received a Notice of Violation and subsequent UST Closure Order in 1991,
22 during their ownership period, from the San Diego County Department of Environmental Health. I
23 learned the UST was decontaminated and filled with concrete when closed, and Norman Alton
24 Hortman with the Hortman Trust was involved with soil sampling and UST closure.

25 15. M&E joined the federal litigation in 2023 as current owner of 1718 EVP and has
26 been cooperating with the Regional Board to investigate 1718 EVP and ensure the health and safety
27 of the Opportunities Unlimited clients.

28 16. In cooperation with the Regional Board, M&E conducted indoor air sampling at

32721401

1 1718 EVP. I understand the results show there is no PCE vapor issue inside the building.

2 17. M&E and I have since been named in the Order as responsible parties and
3 dischargers of PCE, a chemical historically used in dry cleaning operations, from a decontaminated,
4 closed UST at 1718 EVP despite never knowing about the UST until a few years ago.

5 18. On or about February 21, 2024, the Regional Board sent me and M&E a tentative
6 Cleanup and Abatement Order (“Tentative Order”) naming M&E, me, as well as the Hortman Trust
7 as responsible parties and dischargers at 1718 EVP.

8 19. I submitted comments to the Tentative Order on or around March 22, 2024, pointing
9 out there was no factual or legal basis in the Tentative Order to name me simply because I was a
10 prior owner. I requested a hearing.

11 20. M&E also submitted comments, in part supporting the factual findings and legal
12 conclusions against the Hortman Trust.

13 21. On or about January 22, 2025, the Regional Board adopted the Order and responded
14 to the Tentative Order comments without a hearing. The Order removes the Hortman Trust. The
15 Order still names me simply as prior owner, along with M&E as current owner. The Order imposes
16 actions onto M&E and me, requiring us to bear the full costs of investigation and cleanup at 1718
17 EVP instead of the primarily responsible party and discharger – the Hortman Trust. None of the
18 Regional Board’s responses to the Tentative Order comments respond to my personal comments.

19 22. M&E and I are petitioning the State Water Resources Control Board (“State Water
20 Board”) to review the Order, in part to address the issues I included in my comments to the
21 Tentative Order that the Regional Board failed to respond to or address in the final Order.

22 23. Our petition includes substantial questions of fact and law disputing the Regional
23 Board’s decisions to name me as a prior owner without any findings against me, and to remove the
24 Hortman Trust despite ample findings against the Hortman Trust. Both issues result in unfair and
25 unreasonable outcomes for M&E and me.

26 24. The Regional Board’s directives in the Order require M&E and me to submit a Site
27 Investigation Work Plan (“SI Work Plan”) within 90 days after the date of the Order. I understand
28 from consultants we would need to approve the work soon to get a SI Work Plan done in time.

32721401

1 Without the issuance of the stay pending the State Water Board’s consideration of our petition, we
2 will be required to spend an estimated \$40,000 on the SI Work Plan and then several hundreds of
3 thousands of dollars to implement the plan while the Hortman Trust can retained its assets.

4 25. I will be harmed if I remain financially responsible for the Order without the
5 Regional Board responding to my Tentative Order comments and without a chance for the State
6 Water Board to consider my petition and request to be removed from the Order. Without a stay of
7 the Order in the meantime, I will be denied due process and financially harmed.

8 26. M&E is also not financially capable to litigate this matter and perform investigation
9 and remediation of 1718 EVP as current owner instead of the Hortman Trust. M&E, with
10 encouragement of the Regional Board, applied for Site Cleanup Subaccount Program funding to
11 investigate and remediate 1718 EVP but has not been awarded any funding to date. Without a stay
12 of the Order, M&E will have to continue to deplete its assets instead of the Hortman Trust.

13 27. I do not believe the Hortman Trust or any other interested person will be harmed if
14 a stay of the Order is granted. Again, I understand the indoor air results at 1718 EVP indicate no
15 vapor intrusion risks to the public. A stay will allow the State Water Board to consider the petition
16 without requiring the wrong parties to incur substantial costs.

17 28. It is my belief that to the extent there is contamination at 1718 EVP, it occurred prior
18 to both my ownership of 1718 EVP and M&E’s ownership of 1718 EVP. The investigation and
19 remediation costs for any contamination at 1718 EVP should be borne by the Hortman Trust as
20 former owner that allowed and profited from dry cleaning operations at 1718 EVP. The Hortman
21 Trust failed to disclose their buried UST during the sale of 1718 EVP to my deceased husband and
22 me, and the remaining Hortman Trust assets should be used first to address the contamination the
23 Hortman Trust permitted and caused. Requiring M&E and me to pay for the Order while we petition
24 the State Water Board is unfair and unreasonable.

25 ///

26 ///

27 ///

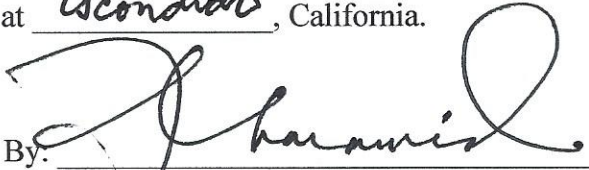
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BROWNSTEIN HVATT FARBER SCHRECK, LLP
Attorneys at Law
225 Broadway, Suite 1670
San Diego, CA 92101-5000

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I declare under penalty of perjury under the laws of the United States of American that the foregoing is true and correct.

Executed this 20th day of February 2025, at Escondido, California.

By: 

Flor de Lys Barawid

PROOF OF SERVICE

I, Sheila Cavanaugh, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 225 Broadway, Suite 1670, San Diego, California 92101. On February 21, 2025, I served a copy of the within document(s):

**DECLARATION OF FLOR DE LYS BARAWID IN SUPPORT OF
REQUEST FOR STAY OF THE SAN DIEGO REGIONAL WATER
QUALITY CONTROL BOARD'S ORDER NO. R9-2025-0014
[Wat. Code § 13321]**

by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Mr. David W. Gibson Executive Officer San Diego Regional Water Quality Control Board 2375 Northside Drive, Suite 100 San Diego, California 92108 Email: David.Gibson@waterboards.ca.gov	Mr. Alex Sauerwein Attorney San Diego Regional Water Quality Control Board 2375 Northside Drive, Suite 100 San Diego, California 92108 Email: Alex.Sauerwein@waterboards.ca.gov
Ms. Adriana M. Jerome Office of Chief Counsel State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0100 Email: Adriana.Jerome@waterboards.ca.gov waterqualitypetitions@waterboards.ca.gov	Philip Wyels Assistant Chief Counsel State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0100 Email: Philip.wyels@waterboards.ca.gov
Manuel Corrales, Jr. ATTORNEY AT LAW 17140 Bernardo Center Dr. Suite 358 San Diego, CA 92128 Phone: 858.521.0634 Fax: 858.521.0633 Email: mannycorrales@yahoo.com Attorneys for Defendants GUHN Y. KIM, YUN SOON KIM, and THE KIM FAMILY TRUST OF 2017	Santino M. Tropea Matthew McMillian Brandon Vegter TROPEA MCMILLIAN LLP 4747 Morena Blvd., Suite 250A San Diego, CA 92117 Phone: 858.703.8103 Fax: 858.533.8813 Email: stropea@tropeamcmillan.com mmcmillian@tropeamcmillan.com bvegter@tropeamcmillan.com Attorneys for Third-Party Defendants, Cross- Claimants and Third-Party Plaintiffs KIM HORTMAN BUHLER, as the court

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	appointed administrator and executor of the ESTATE OF BARBARA HORTMAN and KIM HORTMAN BUHLER and NORMAN ALTON HORTMAN III, trustees of the Norman Alton Hortman and Barbara Hortman Revocable Trust No. 1 Dated July 2, 1985
--	--

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 21, 2025, at San Diego, California.



Sheila Cavanaugh

EXHIBIT F

**CERTIFICATION
OF THE
NORMAN AND BARBARA HORTMAN REVOCABLE TRUST NO. 1**

The undersigned declare as follows:

1. NORMAN ALTON HORTMAN and BARBARA HORTMAN, as Trustors and Trustees, entered into a Declaration of Trust dated July 2, 1985, known as the NORMAN AND BARBARA HORTMAN REVOCABLE TRUST NO. 1 (the "Trust").
2. Attached hereto is a true and correct copy of the portions of the trust instrument which provide:
 - a. That NORMAN ALTON HORTMAN and BARBARA HORTMAN are the original Trustees;
 - b. That upon the death of one of them, the survivor would serve as Co-Trustee with KIM BUHLER, and if either of them failed to qualify, ceased to act or be unable to serve for any reason, then NORMAN ALTON HORTMAN III would act as Successor Co-Trustee;
 - c. The name of the Successor Trustee;
 - d. The powers of the Trustee; and
 - e. The signature pages.
3. NORMAN ALTON HORTMAN died on January 30, 2020, and BARBARA HORTMAN was certified in writing by two (2) licensed physicians to be mentally incapacitated. KIM BUHLER (fka HORTMAN) and NORMAN ALTON HORTMAN III have consented to serve as Successor Co-Trustees.
4. The Trust is irrevocable.
 - a. The tax identification number of the Trust is BARBARA HORTMAN's Social Security number pursuant to U.S. Treasury Regulation Section 1.671-4 and 1.6012-3(a)(9).
 - b. Title to assets of the Trust should be taken as: "KIM BUHLER and NORMAN ALTON HORTMAN III, Successor Co-Trustees of the NORMAN AND BARBARA HORTMAN REVOCABLE TRUST NO. 1 dated July 2, 1985."
5. The Trust has not been revoked, modified or amended in any manner which would cause the representations contained in this Certification to be incorrect.
6. This Certification is being signed by the currently acting Co-Trustees of the Trust and in accordance with California Probate Code Section 18100.5.

Dated: March 5, 2020



KIM BUHLER, Co-Trustee



NORMAN ALTON HORTMAN III, Co-Trustee

HORTMAN008957

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

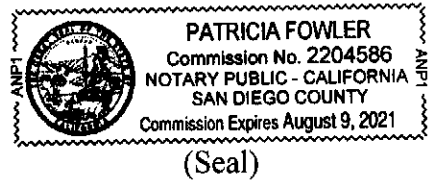
STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On March 5, 2020, before me, Patricia Fowler, a Notary Public, personally appeared KIM BUHLER and NORMAN ALTON HORTMAN III, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

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

WITNESS my hand and official seal.


Patricia Fowler
Notary Public in and for said County and State



(Seal)



Graybill
Medical Group



625 E Grand Ave
Escondido CA 92025-4402
(866)228-2234

February 21, 2020

Re:

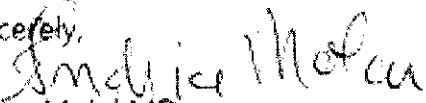
Barbara Hortman
30541 Harvest Moon Circle
Valley Center, CA 92082

To Whom It May Concern,

Barbara Hortman was seen in the office today. She had a mini mental test and scored 7/30. This falls in the realm of advanced dementia. It is my medical opinion that Barbara Hortman does not have the capacity to make medical and financial decisions for herself. Her son Norman Hortman and daughter Kim Buhler are her power of attorney.

For more information, please feel free to contact me at the above number.

Sincerely,



Indira Molai MD

Letter prepared by Indira Molai

Barbara Hortman DOB: 04/20/1940

HORTMAN008959



February 14, 2020

Re:

Barbara Hortman
30541 Harvest Moon Circle
Valley Center, CA 92082

To Whom It May Concern,

I'm following this Barbara Hortman. I have been her physician for a number of years. In my opinion she is not competent to make financial or medical decisions for herself as she suffers from progressive dementia. This has gradually worsened over the last few years. In my opinion she does not have the capacity to make decisions for herself regarding finances or healthcare.

Her daughter Kim and her son Norman have the DURABLE POWER OF ATTORNEY for her financially and does well as for her healthcare needs. If there are any questions regarding financial decisions or healthcare decisions please contact them.

Sincerely,

Alan Chang MD

Letter prepared by Alan Chang MD

NORMAN AND BARBARA HORTMAN

REVOCABLE TRUST NO. 1

NORMAN ALTON HORTMAN and BARBARA HORTMAN, called the "Trustee," declares that NORMAN ALTON HORTMAN and BARBARA HORTMAN, called the "Trustors" and sometimes referred to as "Husband" and "Wife," have transferred and delivered to the Trustee without consideration, the property described in Schedules A and B attached to this instrument and incorporated by reference herein at this point.

ARTICLE I

TRUST ESTATE

1.01. Property subject to this instrument, listed in Schedules A and B, including any additions from time to time as provided herein, is referred to as the "Trust Estate" and shall be held, administered, and distributed in accordance with this instrument.

1.02. The property listed on Schedule A was the community or quasi-community property of the Trustors and shall remain community or quasi-community property after its transfer as provided by provisions of California law. Schedule B sets forth any and all separate property of the Trustors transferred herein, if any, which shall remain the separate property of the respective Trustor who originally transferred said property and after its transfer shall be administered in such a manner as to retain its separate property character. Each Trustor may also contribute his or her separate or community property to this trust in the future. The designation by Trustor of the property as being of separate or community character shall be binding upon the Trustee. The term "community estate" shall refer to the Trustors' community property, and the term "separate estate" shall refer to the Trustors' separate property, if any. No transfer, conveyance, transmutation and/or gift to the other Trustor is intended by any contribution of separate property to this Trust.

1.03. It is the Trustors' intention that the Trustee shall have no more extensive power over any community property transferred to the Trust Estate than either of the Trustors would have had under the applicable provision of California law had this Trust not been created, and this instrument shall be so interpreted as to achieve this intention. This limitation shall terminate upon the death of either Trustor.

ARTICLE V

POWERS OF THE TRUSTEE

In order to carry out the provisions of the trusts created by this instrument, the Trustee shall have these powers in addition to those now or hereafter conferred by law:

5.01. To invest and reinvest funds in every kind of property (real, personal or mixed) and every kind of investment, specifically including, but not limited to, corporate obligations of every kind; municipal bonds and other obligations which are exempt from federal or state income tax; stocks, preferred or common; shares of investment trusts; investment companies; limited or general partnership interests; mutual funds, money market funds; checking and savings accounts, time certificates or any other accounts at a banking or other regulated financial institution and mortgage participations; and life insurance policies on the life of any beneficiary except the beneficiary of a marital deduction trust, that men of prudence, discretion and intelligence acquire for their own account, including any common trust fund administered by the Trustee.

5.02. To continue to hold any property, including, to the extent applicable, any shares of the Trustee's own stock; and to operate, at the risk of the Trust Estate, any business that the Trustee receives or acquires under the Trust as long as the Trustee deems advisable.

5.03. To have all the rights, powers and privileges of an owner with respect to any of the securities held in trust, including, but not limited to, the powers to vote, give proxies and pay assessments; to buy, sell and trade in securities on margin, including the buying and writing of options and short sales; to maintain and operate a security margin account with brokers; to invest in commodities or commodity futures or currencies, to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations, and, incident to such participation, to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise or sell stock subscription or conversion rights.

5.04. To manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve and repair trust property; and, further, without limitation on the above, to enter into agreements to establish private annuity(s), upon the written consent of the Surviving Spouse, utilizing assets contained in the Survivor's Trust for the purpose of removing said assets from the estate of said Surviving Spouse.

5.05. To lease trust property for terms within or beyond the term of the Trust for any purpose, including exploration for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements or to invest in oil, gas or other mineral resource business ventures, including partnerships, joint ventures or other entities or enterprises.

5.06. To lend money to any person, including, but not limited to, the probate estate of either Trustor and/or any beneficiaries hereunder, provided that any such loan shall be adequately secured and shall bear a reasonable rate of interest; and to invest in trust deeds, mortgages or other debt instruments and sell the same at discount.

5.07. To purchase real or personal property at its fair market value from any person as determined by the Trustee, in the Trustee's sole discretion, including, but not limited to, the probate estate of either Trustor and/or from the beneficiaries hereunder. This power to purchase shall also include the right to exchange an annuity to any beneficiary hereunder in return for any interest such beneficiary may have under this Trust.

5.08. To loan or advance the Trustee's own funds to the Trust for any trust purpose, with interest at current rates; to receive security for such loans in the form of a mortgage, pledge, deed of trust, or other encumbrance of any assets of the trust; to purchase assets of the trust at their fair market value as determined by an independent appraisal of those assets; and to sell property to the Trust at a price not in excess of its fair market value as determined by an independent appraisal.

5.09. To take any action and to make any election, in the Trustee's discretion, to minimize the tax liabilities of this Trust and its beneficiaries. In the sole and absolute discretion of the Trustee, the Trustee shall allocate the benefits among the various beneficiaries, and the Trustee shall make adjustments in the rights of any beneficiaries, or between the income and principal accounts, to compensate for the consequences of any tax election or any investment or administrative decision that the Trustee believes has had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.

5.10. To borrow money; and to encumber trust property by mortgage, deed of trust, pledge, security agreement or otherwise, for the debts of the trust or a co-owner of trust property.

5.11. To commence or defend, at the expense of the Trust, such litigation with respect to the Trust or any property of the Trust Estate as the Trustee may deem advisable; and to

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compromise or otherwise adjust any claims or litigation against or in favor of the Trust, in the sole and absolute discretion of the Trustee.

5.12. To carry insurance of such kinds and in such amounts as the Trustee deems advisable, at the expense of the Trust, to protect the Trust Estate and the Trustee personally against any hazard.

5.13. To withhold from distribution, in the Trustee's discretion, at the time for distribution of any property in this Trust, without the payment of interest, all or any part of the property, as long as the Trustee shall determine, in the Trustee's discretion, that such property may be subject to conflicting claims, to tax deficiencies or to liabilities, contingent or otherwise, properly incurred in the administration of the estate.

5.14. To purchase bonds and to pay such premiums in connection with the purchase as the Trustee, in the Trustee's discretion, deems advisable, provided, however, that each premium shall be repaid periodically to principal out of the interest on the bond in such reasonable manner as the Trustee shall determine and, to the extent necessary, out of the proceeds on the sale or other disposition of the bond.

5.15. To purchase bonds at such discount as the Trustee, in the Trustee's discretion, deems advisable, provided, however, that each discount shall be accumulated periodically as interest in such reasonable manner as the Trustee shall determine and, to the extent necessary, paid out of the proceeds on the sale or other disposition of the bond or out of principal.

5.16. To partition, allot and distribute the Trust Estate, upon any division or partial or final distribution of the Trust Estate, in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the Trustee; and to sell such property as the Trustee may deem necessary to make division or distribution. In making any division or partial or final distribution of the Trust Estate, the Trustee shall be under no obligation to make a pro rata division or to distribute the same assets to beneficiaries similarly situated; but rather, the Trustee may, in the Trustee's discretion, make a non-pro rata division between trusts or shares and non-pro rata distribution to such beneficiaries, as long as the respective assets allocated to separate trusts or shares or distributed to such beneficiaries have equivalent or proportionate fair market value, provided, however, that to the extent feasible, any stock in a professional corporation or interest in

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a professional partnership or practice shall be allocated to the trust of such professional, if any, with the other trust's remaining assets of comparable value. The income tax bases of assets allocated or distributed non-pro rata need not be equivalent and may vary to a greater or lesser amount, as determined by the Trustee, in his discretion; and no adjustment need be made to compensate for any difference in bases.

5.17. To employ any custodian, attorney, accountant, corporate fiduciary or any other agent or agents to assist the Trustee in the administration of this Trust; and to rely upon the advice given by these agents, if prudent to do so. Reasonable compensation for all services performed by these agents shall be paid from the Trust Estate out of either income or principal as the Trustee, in his sole discretion, shall determine and shall not decrease the compensation to which the Trustee is entitled.

5.18. There need be no physical segregation or division of the various trusts except as segregation or division may be required by the termination of any of the trusts, but the Trustee shall keep separate accounts for the different undivided interests.

5.19. To determine all matters with respect to what is principal and income of the Trust Estate, except as the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the California Revised Uniform Principal and Income Act as from time to time existing. Any such matter not provided for either in this instrument or in the California Revised Uniform Principal and Income Act shall be determined by the Trustee, in the Trustee's sole discretion.

A. Notwithstanding any other provision of this instrument or of the California Revised Uniform Principal and Income Act to the contrary, the Trustee shall not be required to establish such reserves for depreciation as may be required by good accounting practice.

B. Among successive beneficiaries of this Trust, all taxes and other current expenses shall be pro-rated over the period to which they relate on a daily basis.

5.20. To determine that income accrued or unpaid on trust property when received into the Trust shall be treated as any other income.

5.21. To determine that, if at any time a trust created hereunder shall, in the sole judgment of the Trustee, be of the aggregate principal value of Ten Thousand Dollars (\$10,000.00) or

less, such trust may be terminated and assets thereof, in the Trustee's possession, distributed to the beneficiary or beneficiaries, at that time, of the current income thereof, and if there is more than one beneficiary, in the proportions in which they are beneficiaries.

5.22. To consider, when making distributions of income or corpus hereunder, the tax consequences to the Trust and to the beneficiaries to whom distributions may be made (including the power to allocate different classes of income to different beneficiaries).

The Trustee may make distributions, whether or not otherwise authorized by this instrument, if the retention of the amount distributed would be considered an accumulation under Sections 665 to 668 of the Internal Revenue Code of 1954, as amended. Such distribution shall be made to any of the persons to whom the Trustee may make income distributions.

5.23. To sign all checks and endorse checks to the Trust or made payable to the Trust, if Co-Trustees are named in this instrument, one of the Co-Trustees shall have the power to sign all checks, endorse checks payable to the Trust or to a Trustee for deposit to a joint checking or savings account of the then Trustors, and to sign withdrawal slips and any other documents relating to bank accounts maintained by the Trust.

5.24. To release or restrict the scope of any power that the Trustee may hold in connection with the Trust created under this instrument, whether said power is expressly granted hereunder or implied by law; and to appoint a Special Trustee to administer assets when prudence requires such Special Trustee to be appointed, provided, however, that the Trustee shall retain the power to remove said Special Trustee at anytime. The Trustee shall exercise this power by written instrument specifying the powers to be released or restricted and the nature of any such restriction.

5.25. To allocate and distribute in kind, to any beneficiary, assets with different income tax bases as determined by the Trustee, in the Trustee's sole discretion; and no adjustment need be made to compensate for any difference in tax bases.

5.26. A. To hold, as part of each trust established in this instrument, all insurance policies on the lives of any other third party, where prudent to do so, provided, however, that any life insurance contributed as the separate property or designated as the separate property of any Trustor, shall retain its separate property character; and the other Trustor, or the Insured, shall not exercise any incidents of ownership

whatsoever over any such policy. The Trustee, in the capacity of a Special Trustee with respect to said asset, shall hold all powers conferred on the owner of any policy. If for any reason the Trustee named herein shall be deemed under the applicable provisions of the Internal Revenue Code as a related or subordinate party to the Insured of said policy or policies, then the Trustee shall appoint a Special Trustee to serve as Trustee exercising and holding the incidents of ownership over said policy or policies.

B. The Trustee shall charge all premiums on said policy or policies from sources other than assets owned by the Insured or subject to the exercise of a general power of appointment by the Insured, if applicable. The Trustee is specifically authorized to pay said premiums from income or invade principal of the particular portion of the trust from which the premiums will be paid. Upon receipt of proof of death of the Insured, the Trustee shall use reasonable efforts to collect all sums payable under the terms of the policy or policies. All sums received shall become part of the principal of the Trust Estate, and any portion thereof specifically allocated as being the separate property or separate estate of the party contributing said policy or policies shall be so allocated.

C. The Trustee shall have full power to compromise, arbitrate or otherwise adjust any claim, dispute or controversy arising under any policy or policies, and authority to initiate, defend, settle and compromise any legal proceeding necessary, in the Trustee's opinion, to collect the proceeds of any policy or policies hereunder. The Trustee's receipt to any insurer shall be considered full discharge, and the insurer shall not be under any duty to inquire concerning the Trustee's application of policy proceeds.

5.27 If Co-Trustees are named herein, either Co-Trustee shall be entitled to act on behalf of the Trust without obtaining the written consent of the other Co-Trustee or Co-Trustees.

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TJG
BY

ARTICLE VIII

PROVISIONS RELATING TO TRUSTEE

8.01. Upon the death of the Deceased Spouse, the Surviving Spouse and KIM HORTMAN shall serve as the Co-Trustees of the Survivor's Trust and the Marital Election Trust. The Surviving Spouse and KIM HORTMAN shall serve as the Co-Trustees of the Maximum Credit Trust. If any of the above named Trustees shall fail to qualify, cease to act or be unable to serve for any reason, then NORMAN ALTON HORTMAN, III shall immediately commence service as Successor Co-Trustee hereunder. Under no circumstances shall the Surviving Spouse serve as sole Trustee of the Maximum Credit Trust. The Trustors, acting jointly while they both are living and not incapacitated, or the nonincapacitated spouse may appoint a Successor Trustee, including a corporation qualified to conduct a trust business in the United States or an appropriate individual. The right of the Surviving Spouse to appoint Successor Trustees is restricted in Paragraph 8.04. In the event that any Trustee becomes physically or mentally incapacitated, as certified in writing by two (2) licensed physicians, whether or not a court of competent jurisdiction has declared him or her incompetent or mentally ill, or in need of a conservator, he or she shall cease to act as Trustee and the Successor Trustee shall immediately commence service in his or her stead. If no Successor Trustee is able to serve, one shall be appointed pursuant to the terms of this Paragraph and Paragraph 8.04 or if none is appointed under said Paragraphs, then according to Paragraph 8.02.

8.02. In the event that no Successor Trustee is appointed pursuant to Paragraphs 8.01 or 8.04 within sixty (60) days following the resignation, death or incapacity of the Trustee, then a state or federally regulated financial institution shall be appointed by court order to so act.

8.03. No bond shall be required of any person named in this instrument as Trustee, or of any person appointed as the Trustee in the manner specified here, for the faithful performance of his duties as Trustee.

8.04. The Trustors, acting jointly while they both are living and not incapacitated, or the non-incapacitated spouse, and after the death of the Surviving Spouse, the beneficiaries hereunder or their legal guardians, by unanimous written consent, may, at any time and without any cause whatsoever, remove any Successor Trustee or Trustees and appoint a Successor Trustee, including a corporation qualified to conduct a trust business in the United States or an appropriate individual, to the trust created herewithin. In no event shall a Successor Trustee appointed be a related or subordinated party as defined in §672(c) or §2613(e)(2)(b) of the Internal Revenue Code.

Notwithstanding anything to the contrary herein, the Surviving Spouse shall be entitled to remove a Trustee and appoint a Successor Trustee only in the event that the Trustee so removed has died, voluntarily resigned, engaged in conduct in violation of the duties imposed upon him hereunder or is otherwise in breach of his fiduciary responsibilities owed towards any party with a direct interest in this instrument.

8.05. Any Successor Trustee shall succeed as Trustee with like effect as though originally named in this instrument as such. All authority and powers conferred upon the original Trustee hereunder shall pass to any Successor Trustee.

Any Successor Trustee shall not be responsible for acts or omissions of any preceding Trustee, in connection with or relating to any acts or transactions regarding the Trust Estate, and shall not be responsible for any assets not registered in the trust name.

8.06. The Trustee shall render an accounting from time to time regarding the transactions of a trust created in this instrument by delivering a written accounting to each beneficiary entitled to current income distributions of the trust or to current distributions out of income or principal of the trust in the Trustee's discretion. In the event a current beneficiary is a minor, the account shall be delivered to the minor's parent or guardian of his person. Unless one or more of the beneficiaries (or a minor's parent or guardian of a minor's person) shall deliver a written objection to the Trustee within ninety (90) days of a receipt of the Trustee's account, the account shall be deemed settled and shall be final and conclusive in respect to transactions disclosed in the account as to all beneficiaries of the trust, including unborn and unascertained beneficiaries. After settlement of the account by reason of the expiration of the ninety (90) day period referred to above or by agreement of the parties, the Trustee shall no longer be liable to any beneficiary of the trust, including unborn and unascertained beneficiaries, in respect to transactions disclosed in the account, except for the Trustee's intentional wrongdoing or fraud.

8.07. All actions of any joint Trustees shall be unanimous. In case of any deadlock, the Trustees may petition a court of competent jurisdiction for instructions regarding the matter producing the deadlock. Any corporate Trustee shall, if required by appropriate regulations of any state or federal agency, retain possession of instruments of title or other trust documents evidencing ownership of trust assets.

8.08. The Trustee serving hereunder shall be entitled to withdraw from the Trust Estate, on an annual or more frequent basis, Trustee's fees equal to the then prevailing fees for Trustees serving for similar trusts with similar assets, performing similar duties and responsibilities, to be determined by

taking the average Trustee's fees of three (3) regulated financial institutions in the community or, in the case of a Successor Trustee who is a regulated financial institution, its customary published fees in the community, from time to time. The Trustee shall also be entitled to any extraordinary fees related to matters of an unusual nature. The amount of said extraordinary fee shall be the customary amount charged for said services by persons in the regular business of providing such services in the community at the time of the rendition of said services.

8.09. If any legal action is required to enforce or interpret any provision of this instrument, whether at law or equity or for declaratory relief, the prevailing party in such action may, in the discretion of the court, be awarded his reasonable attorneys' fees and costs incurred in the prosecution or defense of said action. Said amount may be charged against the Trust Estate in the manner ordered by the court.

8.10. If both Trustors die simultaneously or under circumstances which make it difficult to determine which Trustor dies first, Wife shall be deemed to have survived Husband for purposes of this Trust. The provisions of this Trust shall be construed upon that presumption irrespective of any provision of law establishing a contrary presumption or requiring survivorship for a fixed period of time as a condition of taking property by inheritance.

8.11. Whenever, in the judgment of the Trustee, it shall be necessary or proper in the administration of this trust, the Trustee may disclose the existence, nature, terms and conditions hereof and a memorandum hereof may be recorded by the Trustee.

Executed at San Diego, California, this 2 day of July, 1985.

Norman Alton Hortman
NORMAN ALTON HORTMAN, Co-Trustee

Barbara Hortman
BARBARA HORTMAN, Co-Trustee

We certify that we have read the foregoing NORMAN AND BARBARA HORTMAN REVOCABLE TRUST NO. 1 and that it correctly states the terms and conditions under which the Trust Estate is to be held, managed and disposed of by the Trustees. We approve the Trust in all particulars and request that the Trustee execute it.

Norman Alton Hortman

NORMAN ALTON HORTMAN

Trustor

Barbara Hortman

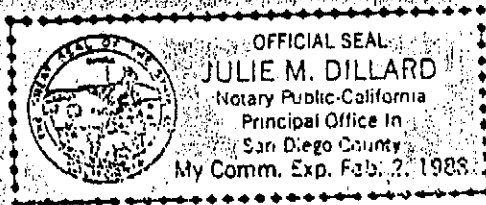
BARBARA HORTMAN

Trustor

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN DIEGO)

On this 2nd day of July, in the year 1985
before me, the undersigned, a Notary Public in and for said
State, personally appeared NORMAN ALTON HORTMAN and BARBARA
HORTMAN, personally known to me (or proved to me on the basis of
satisfactory evidence) to be the persons whose names are
subscribed to the within NORMAN AND BARBARA HORTMAN REVOCABLE
TRUST NO. 1., and acknowledged that they executed the same.

WITNESS my hand and official seal.

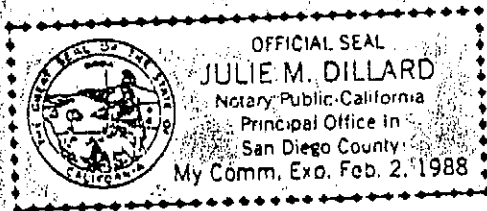


Julie M. Dillard
Notary Public in and for
said County and State

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN DIEGO)

On this 2 day of July, in the year 1985,
before me, the undersigned, a Notary Public in and for said
State, personally appeared NORMAN ALTON HORTMAN and BARBARA
HORTMAN, personally known to me (or proved to me on the basis of
satisfactory evidence) to be the Co-Trustees of the Trust created
by the above instrument, and to be the persons whose names are
subscribed to the within instrument, and acknowledged that they
executed the same.

WITNESS my hand and official seal.



Julie M. Dillard
Notary Public in and for
said County and State

EXHIBIT G

Waterman, Ryan R.

From: Alo, Tom@Waterboards <Tom.Alo@waterboards.ca.gov>
Sent: Friday, January 31, 2025 7:52 AM
To: Waterman, Ryan R.
Cc: Mearon, Sarah@Waterboards; Sauerwein, Alex@Waterboards
Subject: Hortman Family Letters (February 2021)
Attachments: GLS_Hortman Family.pdf

Hi Ryan,

Attached is the information you requested regarding the February 2021 letters issued to the Hortman Family.

Please let me know if you have any questions or need anything else.

Respectfully,



Tom C. Alo

Water Resource Control Engineer
CA Regional Water Quality Control Board
2375 Northside Dr, Ste 100, San Diego, CA 92108
(619) 521-3375 / Tom.Alo@waterboards.ca.gov



Ship From: SWRCB-REG 9-SAN DIEGO - Sheila Christine McQuaid-Moran
2375 NORTHSIDE DRIVE SUITES 100,200.300/370390
SAN DIEGO, CA 92108

Tracking #: 552405386 ✓
Reference:

COD Value: \$0.00
Dec Value: \$0.00

Ship Date: 02/26/2021

Status: Delivered

Ship To: Hortman Family - Hortman Family
1209 Via Ramon
Escondido, CA 92029

Del Date: 03/01/2021
Del Time: 8:36 am
Signed By: H.Hartman

Service Type: CPS
Pkg Weight: 1
Total Charge: 3.65

Ship From: SWRCB-REG 9-SAN DIEGO - Sheila Christine McQuaid-Moran
2375 NORTHSIDE DRIVE SUITES 100,200.300/370390
SAN DIEGO, CA 92108

Tracking #: 552405429 ✓
Reference:

COD Value: \$0.00
Dec Value: \$0.00

Ship Date: 02/26/2021

Status: Returned

Ship To: Hortman Family - Hortman Family
1178 Orangewood Drive
Escondido, CA 92025

Del Date: 03/05/2021
Del Time: 9:55 am
Signed By: RTS - REFUSED

Service Type: CPS
Pkg Weight: 0
Total Charge: 3.65

Ship From: SWRCB-REG 9-SAN DIEGO - Sheila Christine McQuaid-Moran
2375 NORTHSIDE DRIVE SUITES 100,200.300/370390
SAN DIEGO, CA 92108

Tracking #: 552405455 ✓
Reference:

COD Value: \$0.00
Dec Value: \$0.00

Ship Date: 02/26/2021

Status: Delivered

Ship To: Hortman Family - Hortman Family
30541 Harvest Moon Circle
Valley Center, CA 92082

Del Date: 03/02/2021
Del Time: 1:41 pm
Signed By: FRONT DOOR

Service Type: CPS
Pkg Weight: 0
Total Charge: 3.65

EXHIBIT H

NORMAN AND BARBARA HORTMAN

REVOCABLE TRUST NO. 1

NORMAN ALTON HORTMAN and BARBARA HORTMAN, called the "Trustee," declares that NORMAN ALTON HORTMAN and BARBARA HORTMAN, called the "Trustors" and sometimes referred to as "Husband" and "Wife," have transferred and delivered to the Trustee without consideration, the property described in Schedules A and B attached to this instrument and incorporated by reference herein at this point.

ARTICLE I

TRUST ESTATE

1.01. Property subject to this instrument, listed in Schedules A and B, including any additions from time to time as provided herein, is referred to as the "Trust Estate" and shall be held, administered, and distributed in accordance with this instrument.

1.02. The property listed on Schedule A was the community or quasi-community property of the Trustors and shall remain community or quasi-community property after its transfer as provided by provisions of California law. Schedule B sets forth any and all separate property of the Trustors transferred herein, if any, which shall remain the separate property of the respective Trustor who originally transferred said property and after its transfer shall be administered in such a manner as to retain its separate property character. Each Trustor may also contribute his or her separate or community property to this trust in the future. The designation by Trustor of the property as being of separate or community character shall be binding upon the Trustee. The term "community estate" shall refer to the Trustors' community property, and the term "separate estate" shall refer to the Trustors' separate property, if any. No transfer, conveyance, transmutation and/or gift to the other Trustor is intended by any contribution of separate property to this Trust.

1.03. It is the Trustors' intention that the Trustee shall have no more extensive power over any community property transferred to the Trust Estate than either of the Trustors would have had under the applicable provision of California law had this Trust not been created, and this instrument shall be so interpreted as to achieve this intention. This limitation shall terminate upon the death of either Trustor.

1.04. Notwithstanding anything to the contrary herein, the Trustee shall have the power to convey, encumber or otherwise dispose of community, real and personal property held hereunder without the consent of either Husband or Wife, whether or not the Husband or Wife shall then be capable of giving such consent.

ARTICLE II

DISTRIBUTION OF INCOME AND PRINCIPAL

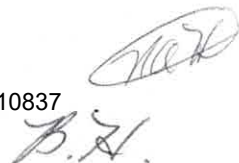
2.01. A. During the joint lifetimes of the Trustors, the Trustee shall pay to the Trustors, as their interests may appear, or shall apply for the Trustors' benefit, pursuant to their written direction, all of the net income of the Trust Estate in monthly or less frequent installments consistent with an efficient administration of the Trust Estate.

B. If the Trustee considers the net income insufficient, the Trustee shall pay to the Trustors for their accounts or apply for the Trustors' benefit as much of the principal of the Trust Estate, invading, unless otherwise requested by the Trustors, first the separate estate of the Trustor requiring such invasion and, if said separate estate is insufficient, then the community estate of the Trustor's portion constituting the share of the Trustor requiring such invasion, as is necessary, in the Trustee's discretion for the Trustors' proper support, health, education, maintenance and welfare in accordance with their accustomed manner of living at the date of this instrument. At the written request of the Trustors, the Trustee shall pay to each, as separate or community property, as much of the principal of the Trust Estate that belongs to each as each shall so request.

2.02. The Trustee shall exercise in a liberal manner the power to invade principal contained in this paragraph, and the rights of the remaindermen in the Trust shall be considered of secondary importance.

2.03. The Trustor receiving payments shall have the same duty to use community income and principal received under this instrument for the benefit of the Trustors as he or she has with respect to any other community property.

2.04. If at any time, as certified in writing by two licensed physicians, either Trustor has become physically or mentally incapacitated, whether or not a court of competent jurisdiction has declared him or her incompetent or mentally ill, or in need of a Conservator, the Trustee shall pay to the other Trustor or apply for the benefit of either Trustor to their respective Conservators, the amounts of net income and principal of the Trust Estate in the order as described in Paragraph 2.01(A) herein necessary, in the Trustee's discretion, for the proper support, health, education, maintenance and welfare of both Trustors in accordance with their accustomed manner of living at the date of this instrument until (1) the incapacitated Trustor, either in the Trustee's

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discretion or as certified by two licensed physicians, is again able to manage his or her own affairs, or (2) the earlier death of either Trustor. The nonincapacitated Trustor may also withdraw, from time to time, accumulated trust income and principal of either the separate estate of the incapacitated Trustor or the community property. Income and principal from such separate estate, so paid or withdrawn, shall be held and administered as separate property of the incapacitated Trustor by the nonincapacitated Trustor. Any income in excess of the amounts applied for the benefit of the Trustors shall be accumulated and added to principal of the separate estate of each respective Trustor or as part of the community estate, as the case may be. In the event that a Trustor, also acting as Co-Trustee, should be so incapacitated, the remaining Co-Trustee shall thereafter act as sole Trustee until the incapacitated Trustor recovers, as defined above, or dies.

2.05. During the joint lifetimes of the Trustors, the Trustors acting individually as to their separate property or jointly as to their community property may at any time direct the Trustee in writing to pay single sums or periodic payments out of the Trust Estate to any other person.

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ARTICLE III

DISTRIBUTION UPON FIRST TRUSTOR'S DEATH

3.01. The first Trustor to die shall be called the "Deceased Spouse," and the then living Trustor shall be called the "Surviving Spouse." Upon the death of the Deceased Spouse, the Surviving Spouse shall immediately resign as Co-Trustee, and the person or persons specified in Paragraph 8.01 hereof shall commence service as Successor Trustee(s). Upon the death of the Deceased Spouse, the Trustee shall divide the Trust Estate, including any additions made to the Trust by reason of Trustor's death, including, but not limited to, the decedent's Will and life insurance policies on the decedent's life, into three separate trusts, designated the "Survivor's Trust," the "Marital Election Trust" and the "Maximum Credit Trust."

3.02. Whenever the Trustee is directed to make a distribution of trust assets or a division of trust assets into separate trusts or shares upon the death of the Trustor, the Trustee may, in the Trustee's discretion, defer such distribution or division until two (2) years after the Trustor's death if such period of time is required in order to efficiently administer the Trust Estate.

3.03. When the Trustee defers distribution or division of the trust assets, the deferred division or distribution shall be made as if it had taken place at the time prescribed in this instrument, in the absence of this paragraph, and all rights given to the beneficiaries of such trust assets under other provisions of this instrument shall be deemed to have accrued and vested as of such prescribed time.

3.04. The Survivor's Trust shall be comprised of the Surviving Spouse's interest in the Trustors' community estate and the Surviving Spouse's separate estate, if any, included in or added to the Trust Estate in any manner, including any undistributed or accrued income with respect to said estates.

3.05. The Maximum Credit Trust shall include a pecuniary amount that, when determined by taking into account all available deductions and credits of the Deceased Spouse's estate, equals the lesser of the following two (2) amounts:

A. The total amount of the Deceased Spouse's gross estate; or

B. The minimum amount which, if it comprised the whole of the gross estate of the Deceased Spouse, will be fully offset by the Unified Credit Against Estate Tax available to the estate of the Deceased Spouse so that no federal estate tax will be payable and no unused Unified Credit will remain.

3.06. The Marital Election Trust shall consist of the balance of the Trust Estate not included in Paragraphs 3.04 and 3.05 hereof.

3.07. A. The Trustee shall satisfy the amounts so determined under Paragraph 3.05 in cash or in kind, or partly in each, with assets of the Deceased Spouse. Assets allocated in kind shall be deemed to satisfy this amount on the basis of their fair market values at the date or dates of allocation to the Maximum Credit Trust or as of a date otherwise selected by the Trustee within two (2) years of the date of death.

B. The Surviving Spouse shall have the right to elect to have the principal residence of the Trustors at the time of the death of the Deceased Spouse allocated to the Survivor's Trust and may exchange other assets of equivalent value to achieve this allocation.

3.08. Notwithstanding anything to the contrary herein, the Surviving Spouse shall have the right to make a qualified disclaimer, as defined in Section 2518 of the Internal Revenue Code, as to the whole or any part of any trust herein created or a disclaimer under any other provisions of federal, state or local law and the portion so disclaimed shall be added to the Maximum Credit Trust.

3.09. A. Upon the death of the Deceased Spouse, the Trustee shall pay out of the Trust Estate debts of the Deceased Spouse, the estate and inheritance taxes, including interest and penalties attributable to the Trust Estate, arising because of the Deceased Spouse's death, the last illness and funeral expenses of the Deceased Spouse, attorneys' fees and other costs incurred in administering the Deceased Spouse's probate estate. Any payment for estate or inheritance taxes shall be charged to the Marital Election Trust without apportionment or charge against any beneficiary of the Trust Estate or any transferee of property passing outside of the Trust Estate. Payments for last illness, funeral and other administration costs shall be charged to the Marital Election Trust, provided, however, that administration costs allocable to the Surviving Spouse's share of the community property administered in the Deceased Spouse's estate shall be charged to the Survivor's Trust.

B. Unless otherwise provided herein, payment of any of the decedent's debts shall be charged against each trust in accordance with California law in effect at the date of the decedent's death.

3.10. A. Upon the death of the Deceased Spouse, the Trustee shall pay to or apply for the benefit of the Surviving Spouse all of the net income of the Survivor's Trust in monthly or less frequent installments as may be necessary for the effi-


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cient administration of the Trust Estate. The term "net income" in this Paragraph 3.10 shall be construed, where applicable, to mean all items or amounts within the meaning of the term "income" in the estate tax marital deduction provision of the Internal Revenue Code in effect at the time of the death of the Deceased Spouse. If the Trustee considers the income insufficient, the Trustee shall also pay to or apply for the benefit of the Surviving Spouse such sums out of the principal of the Survivor's Trust as the Trustee, in the Trustee's discretion, shall consider necessary for the Surviving Spouse's proper support, health, education, maintenance and welfare in accordance with the Surviving Spouse's accustomed standard of living at the date of the death of the Deceased Spouse.

B. The Trustee shall pay to the Surviving Spouse all of the income of the Marital Election Trust, annually in all events or at more frequent intervals. Any income accrued and unpaid at the date of death of the Surviving Spouse shall be paid to the estate of the Surviving Spouse. The Surviving Spouse shall have the power to require the Trustee to make all trust property productive within a reasonable amount of time. The Trustee may distribute all or any part of the principal of the Marital Election Trust to the Surviving Spouse, in such proportions as the Trustee, in his absolute discretion, shall consider necessary for the proper support, health, education, maintenance and welfare of the Surviving Spouse, in order to maintain the Surviving Spouse at the same standard of living as the Surviving Spouse enjoyed at the time of death of the Deceased Spouse. The principal of the Marital Election Trust may only be utilized for the benefit of the Surviving Spouse should the principal of the Survivor's Trust be exhausted or depleted. In no event shall distributions of the principal of the Marital Election Trust benefit, in any material manner, any subsequent spouse or person of the opposite sex with whom the Surviving Spouse may be cohabiting.

C. The Executor or other responsible party, pursuant to the provisions of Internal Revenue Code Section 2203, shall have the power to make an election or partial election pursuant to the provisions of Internal Revenue Code Section 2056(b)(7) as provided for in the Economic Recovery Tax Act of 1981 with respect to the Marital Election Trust. In determining whether to make the election provided for hereunder, the Executor or other responsible party shall give primary consideration to the interests of the Surviving Spouse. The interests of the remaindermen and any tax considerations shall be secondary to the welfare of the Surviving Spouse.

D. It is the Trustors' intention to comply with the provisions of Internal Revenue Code Section 2056(b)(7) and Paragraph 3.10 B and all other related paragraphs shall be interpreted and construed to comply with the terms thereof.

E. In the event the election provided for in Paragraph 3.10 C is not made, or a partial election is made, the following provisions shall be effective with respect to the

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Marital Election Trust, or the portion for which the election is not made if a partial election is made, notwithstanding the provisions of Paragraph 3.10 B:

1. The Trustee shall pay to the Surviving Spouse all of the net income of the Marital Election Trust in convenient intervals, but at least annually in all events. Any income accrued and unpaid at the date of death of the Surviving Spouse shall be paid to the estate of the Surviving Spouse.

2. The Trustee may, provided the Survivor's Trust is exhausted and depleted to such an extent that the distributions provided thereunder for the benefit of the Surviving Spouse can no longer be made in full, invade the principal of the Marital Election Trust for the benefit of the Surviving Spouse in such amounts or proportions as the Trustee, in his absolute discretion, shall consider necessary for the proper support, health, education, maintenance and welfare of the Surviving Spouse, in order to maintain the Surviving Spouse at the same standard of living as the Surviving Spouse enjoyed at the time of death of the Deceased Spouse.

F. During the lifetime of the Surviving Spouse the Trustee shall either accumulate the net income or distribute all or any part of the current or accumulated net income of the Maximum Credit Trust to or for the benefit of the Surviving Spouse, the children born of the marriage of the Deceased Spouse and the Surviving Spouse or issue of any child of the Deceased Spouse and the Surviving Spouse, or any of them in such amounts or proportions as the Trustee, in his absolute discretion shall consider necessary for the proper support, health, education, maintenance, and welfare of the foregoing group, taking into consideration any outside income of any member or members of said group.

1. In the exercise of the foregoing discretion, the welfare of the Surviving Spouse shall be given primary consideration, unless the Surviving Spouse remarries or cohabits with a person of the opposite sex. If the Surviving Spouse remarries or cohabits with a person of the opposite sex, then the welfare of the children of the Deceased Spouse and the Surviving Spouse, and the issue of a deceased child of the Deceased Spouse and the Surviving Spouse shall be given the primary consideration. In no event shall the distributions to the Surviving Spouse benefit in any material way the Surviving Spouse's husband or the person with whom the Surviving Spouse is cohabiting. The Trustee may take into account the income or resources available to the Surviving Spouse or the children from any source whatsoever.

2. Should the principal of the Survivor's Trust and the Marital Election Trust be exhausted or depleted to

such an extent that the distributions provided thereunder for the benefit of the Surviving Spouse can no longer be made in full, the Trustee may invade the accumulated income and/or principal of the Maximum Credit Trust in the same manner, for the same purposes and subject to the same limitations as provided in Paragraph 3.10 F.

3. Notwithstanding anything to the contrary herein, the portion of the Maximum Credit Trust attributable to a qualified disclaimer made by the Surviving Spouse shall not be subject to the Surviving Spouse having any special or general power of appointment over said portion of said Trust, and shall not be subject to any power in the Surviving Spouse to direct the beneficial enjoyment of the disclaimed property.



ARTICLE IV

DISTRIBUTION UPON THE DEATH OF SURVIVING SPOUSE

4.01. Upon the death of the Surviving Spouse, the principal of the Survivor's Trust then remaining shall be distributed to such beneficiary or beneficiaries (which may be or include his estate or any other person), in such amounts or proportions, on such terms and conditions and subject to such trusts or limitations as the Surviving Spouse may appoint by Last Will and Testament, making specific reference therein to this power of appointment. In no event shall this provision be construed to provide the Surviving Spouse with a general power of appointment over the Marital Election Trust if an election under Internal Revenue Code Section 2056(b)(7) has not been effectively made.

4.02. Upon the death of the Surviving Spouse, the Trustee may, in the Trustee's discretion, pay out of the principal of the Survivor's Trust or, if it has been exhausted, the Marital Election Trust the Surviving Spouse's debts, last illness and funeral expenses, attorney's fees and other costs incurred in administering the Surviving Spouse's probate estate, and estate and inheritance taxes (including interest and penalties) arising on the death of the Surviving Spouse, which are attributable to the Survivor's Trust.

4.03. Upon the death of the Surviving Spouse, the Trustee shall add any portion of the Survivor's Trust not previously distributed pursuant to the power of appointment contained herein, and the Marital Election Trust, to the Maximum Credit Trust. The balance, if any, of the Survivor's Trust, the Marital Election Trust and the Maximum Credit Trust, after being retained in trust, in the discretion of the Trustee, for no longer than the second anniversary of the Surviving Spouse's death, shall be distributed or retained in trust (both principal and any accrued and undistributed income) as follows:

A. The Trustee shall divide the Trust Estate as it may be augmented from any source into as many equal shares as there are children of the Trustors then living and children of the Trustors then deceased leaving issue then living.

B. Each share allocated to a living child shall be retained in trust or distributed as follows:

1. The Trustee shall pay to or apply for the benefit of such child, at quarterly or at more frequent intervals, as

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much of the net income and principal of the child's Trust as the Trustee, in his discretion, deems necessary for the child's proper support, health, education, maintenance and welfare, after taking into consideration, to the extent the Trustee deems advisable, any other income or resources of the child known to the Trustee and reasonably available. Any income not distributed shall be accumulated and added to the principal.

2. When a child attains twenty-five (25) years of age the Trustee shall distribute to that child one hundred percent (100%) of the principal of the child's trust as then constituted.

3. If a child has attained twenty-five (25) years of age at the time of the division of the Trust Estate into shares, then the Trustee shall distribute to him or to her the entire balance of that child's share.

4. If a child born of the marriage of the Deceased Spouse and the Surviving Spouse dies before becoming entitled to receive distribution of his entire trust, the undistributed balance of that child's trust shall be distributed, or retained in trust, as follows:

a. If no child of a deceased child is living who is under eighteen (18) years of age, the balance shall thereupon be distributed, free of trust, to said deceased child's issue then living, by right of representation.

b. If a child of a deceased child is then living who is under eighteen (18) years of age, the balance shall be retained in trust in accordance with the provisions of Paragraph 4.03(C) (1 through 4) below.

c. If a deceased child has no living issue, the undistributed balance of the deceased child's trust shall be equally divided and distributed among the remaining children of the Trustors then living; provided, however, that if a part of that balance would otherwise be distributed to any person for whose benefit a trust is then being administered under this instrument, that part shall instead be added to that trust and shall thereafter be administered according to its terms, except that any addition to a partially distributed trust shall augment proportionately the distributed and the undistributed portions of that trust.

C. Each share allocated to a child of a deceased child or to a group composed of the living children of a deceased child shall be retained in trust or distributed as follows:

1. If children of a deceased child are then living who are under eighteen (18) years of age, the share shall again be divided into equal shares and retained by the Trustee

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as a separate trust for the benefit of the deceased child's living issue, including those eighteen (18) years of age or older.

2. The Trustee shall pay to or apply for the benefit of the child of a deceased child, at quarterly or at more frequent intervals, as much of the net income and principal, in that respective order, of the child's trust as the Trustee, in the Trustee's discretion, deems necessary for the child's proper support, health, education, maintenance and welfare, after taking into consideration, to the extent the Trustee deems advisable, any income or other resources of the child, outside the child's Trust, known to the Trustee and reasonably available. Any income not distributed shall be accumulated and added to principal.

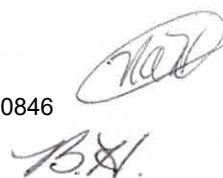
3. When the child attains eighteen (18) years of age, the Trustee shall distribute to the child the principal and any accumulated income of said child's separate share of the Trust Estate. If the child is eighteen (18) years of age at the time the Trust Estate is divided into separate shares, the Trustee shall distribute to the child, upon making the division, all of his share.

4. If a child of a deceased child dies prior to attaining eighteen (18) years of age, the child's share shall vest, and the Trustee shall pay to the estate of that child or to the person(s) that the child shall appoint by a writing on file with the Trustee or by Will specifically referring to this power of appointment created hereunder, the principal and any accumulated income of said child's share.

D. In the event a guardian is appointed over the person of any minor child and/or children of the Trustors, the Trustee shall reimburse said guardian for any and all direct expenses attributable to an additional child or children residing therewith, including but not limited to such expenses as house expansion and improvement costs.

E. Whenever provision is made in this Paragraph 4.03 for payment from a trust for the "education" of a beneficiary, the term "education" shall be construed to include college and post-graduate study, as long as pursued to advantage by the beneficiary at an institution of the beneficiary's choice; and, in determining payments to be made for such college or post-graduate education, the Trustee shall take into consideration the beneficiary's related living expenses to the extent that they are reasonable.

F. The Trustee shall in addition to distribution for proper support, health, education, maintenance and welfare, have the power to distribute, in a lump sum, to the children, or issue of a child, whether or not such child of the Trustors is deceased, as much of the current or accumulated income of the Trust as the

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Trustee, in the Trustee's discretion, deems reasonable and prudent for said child and/or children to start a business or otherwise provide for self-sufficiency.

4.04. It is the Trustors' intention, notwithstanding any other provision herein, with respect to each trust herein, if and when a "taxable termination" occurs which would cause any beneficiary of the trust to be treated as a "deemed transferor" of all or a part of the Trust Estate for generation skipping tax purposes within the meaning of Chapter 13 of the Internal Revenue Code, to have the assets of that Trust, or the portion thereof subject to the generation skipping tax, immediately vest in the issue of the Trustors described pursuant to the provisions of §2613(b)(6) of the Internal Revenue Code of 1954, as amended to the extent of the exemption provided and, to the extent that said exemption is not applicable, then to the issue of any younger generation beneficiary causing taxable termination as that term is defined in §2613(c) of the Internal Revenue Code of 1954, as amended.

4.05. If at any time before full distribution of the Trust Estate, both Trustors and all persons set forth in Paragraph 4.03 (A through F) are deceased and if no other disposition of the property is directed by this instrument, the portion of the Trust Estate then remaining, which is (or, in the absence of a common disaster claiming the lives of all of them, would have been) traceable to the Survivor's Trust and the Maximum Credit Trust, shall thereupon be distributed among the heirs of the Surviving Spouse and the Deceased Spouse, respectively, in the manner hereinafter specified. In determining the amounts to be allocated to the Survivor's Trust or the Maximum Credit Trust, as the case may be, the Marital Election Trust, if any, shall be allocated to the Maximum Credit Trust.

A. Distribution of any portion of the Trust Estate required, in accordance with this Paragraph 4.05, to be distributed to the heirs of the Surviving Spouse shall be made to those persons who would be the heirs of the Surviving Spouse, their identities and respective shares being determined as though the death of the Surviving Spouse had then occurred and according to the laws of the State of California then in effect, relating to the succession of separate property not acquired from a predeceased spouse.

B. Distribution of any portion of the Trust Estate required, in accordance with this Paragraph 4.05, to be distributed to the heirs of the Deceased Spouse shall be made to those persons who would be the heirs of the Deceased Spouse, their identities and respective shares being determined as though the death of the Deceased Spouse had then occurred and according to the laws of the State of California then in effect, relating to the succession of separate property not acquired from a predeceased spouse.

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ARTICLE V

POWERS OF THE TRUSTEE

In order to carry out the provisions of the trusts created by this instrument, the Trustee shall have these powers in addition to those now or hereafter conferred by law:

5.01. To invest and reinvest funds in every kind of property (real, personal or mixed) and every kind of investment, specifically including, but not limited to, corporate obligations of every kind; municipal bonds and other obligations which are exempt from federal or state income tax; stocks, preferred or common; shares of investment trusts; investment companies; limited or general partnership interests; mutual funds, money market funds, checking and savings accounts, time certificates or any other accounts at a banking or other regulated financial institution and mortgage participations; and life insurance policies on the life of any beneficiary except the beneficiary of a marital deduction trust, that men of prudence, discretion and intelligence acquire for their own account, including any common trust fund administered by the Trustee.

5.02. To continue to hold any property, including, to the extent applicable, any shares of the Trustee's own stock; and to operate, at the risk of the Trust Estate, any business that the Trustee receives or acquires under the Trust as long as the Trustee deems advisable.

5.03. To have all the rights, powers and privileges of an owner with respect to any of the securities held in trust, including, but not limited to, the powers to vote, give proxies and pay assessments; to buy, sell and trade in securities on margin, including the buying and writing of options and short sales; to maintain and operate a security margin account with brokers; to invest in commodities or commodity futures or currencies, to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations, and, incident to such participation, to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise or sell stock subscription or conversion rights.

5.04. To manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve and repair trust property; and, further, without limitation on the above, to enter into agreements to establish private annuity(s), upon the written consent of the Surviving Spouse, utilizing assets contained in the Survivor's Trust for the purpose of removing said assets from the estate of said Surviving Spouse.

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5.05. To lease trust property for terms within or beyond the term of the Trust for any purpose, including exploration for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements or to invest in oil, gas or other mineral resource business ventures, including partnerships, joint ventures or other entities or enterprises.

5.06. To lend money to any person, including, but not limited to, the probate estate of either Trustor and/or any beneficiaries hereunder, provided that any such loan shall be adequately secured and shall bear a reasonable rate of interest; and to invest in trust deeds, mortgages or other debt instruments and sell the same at discount.

5.07. To purchase real or personal property at its fair market value from any person as determined by the Trustee, in the Trustee's sole discretion, including, but not limited to, the probate estate of either Trustor and/or from the beneficiaries hereunder. This power to purchase shall also include the right to exchange an annuity to any beneficiary hereunder in return for any interest such beneficiary may have under this Trust.

5.08. To loan or advance the Trustee's own funds to the Trust for any trust purpose, with interest at current rates; to receive security for such loans in the form of a mortgage, pledge, deed of trust, or other encumbrance of any assets of the trust; to purchase assets of the trust at their fair market value as determined by an independent appraisal of those assets; and to sell property to the Trust at a price not in excess of its fair market value as determined by an independent appraisal.

5.09. To take any action and to make any election, in the Trustee's discretion, to minimize the tax liabilities of this Trust and its beneficiaries. In the sole and absolute discretion of the Trustee, the Trustee shall allocate the benefits among the various beneficiaries, and the Trustee shall make adjustments in the rights of any beneficiaries, or between the income and principal accounts, to compensate for the consequences of any tax election or any investment or administrative decision that the Trustee believes has had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.

5.10. To borrow money; and to encumber trust property by mortgage, deed of trust, pledge, security agreement or otherwise, for the debts of the trust or a co-owner of trust property.

5.11. To commence or defend, at the expense of the Trust, such litigation with respect to the Trust or any property of the Trust Estate as the Trustee may deem advisable; and to

compromise or otherwise adjust any claims or litigation against or in favor of the Trust, in the sole and absolute discretion of the Trustee.


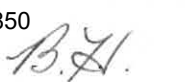
5.12. To carry insurance of such kinds and in such amounts as the Trustee deems advisable, at the expense of the Trust, to protect the Trust Estate and the Trustee personally against any hazard.

5.13. To withhold from distribution, in the Trustee's discretion, at the time for distribution of any property in this Trust, without the payment of interest, all or any part of the property, as long as the Trustee shall determine, in the Trustee's discretion, that such property may be subject to conflicting claims, to tax deficiencies or to liabilities, contingent or otherwise, properly incurred in the administration of the estate.

5.14. To purchase bonds and to pay such premiums in connection with the purchase as the Trustee, in the Trustee's discretion, deems advisable, provided, however, that each premium shall be repaid periodically to principal out of the interest on the bond in such reasonable manner as the Trustee shall determine and, to the extent necessary, out of the proceeds on the sale or other disposition of the bond.

5.15. To purchase bonds at such discount as the Trustee, in the Trustee's discretion, deems advisable, provided, however, that each discount shall be accumulated periodically as interest in such reasonable manner as the Trustee shall determine and, to the extent necessary, paid out of the proceeds on the sale or other disposition of the bond or out of principal.

5.16. To partition, allot and distribute the Trust Estate, upon any division or partial or final distribution of the Trust Estate, in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the Trustee; and to sell such property as the Trustee may deem necessary to make division or distribution. In making any division or partial or final distribution of the Trust Estate, the Trustee shall be under no obligation to make a pro rata division or to distribute the same assets to beneficiaries similarly situated; but rather, the Trustee may, in the Trustee's discretion, make a non-pro rata division between trusts or shares and non-pro rata distribution to such beneficiaries, as long as the respective assets allocated to separate trusts or shares or distributed to such beneficiaries have equivalent or proportionate fair market value, provided, however, that to the extent feasible, any stock in a professional corporation or interest in

a professional partnership or practice shall be allocated to the trust of such professional, if any, with the other trust's remaining assets of comparable value. The income tax bases of assets allocated or distributed non-pro rata need not be equivalent and may vary to a greater or lesser amount, as determined by the Trustee, in his discretion; and no adjustment need be made to compensate for any difference in bases.

5.17. To employ any custodian, attorney, accountant, corporate fiduciary or any other agent or agents to assist the Trustee in the administration of this Trust; and to rely upon the advice given by these agents, if prudent to do so. Reasonable compensation for all services performed by these agents shall be paid from the Trust Estate out of either income or principal as the Trustee, in his sole discretion, shall determine and shall not decrease the compensation to which the Trustee is entitled.

5.18. There need be no physical segregation or division of the various trusts except as segregation or division may be required by the termination of any of the trusts, but the Trustee shall keep separate accounts for the different undivided interests.

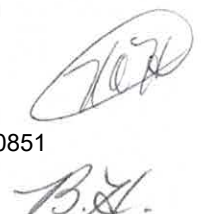
5.19. To determine all matters with respect to what is principal and income of the Trust Estate, except as the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the California Revised Uniform Principal and Income Act as from time to time existing. Any such matter not provided for either in this instrument or in the California Revised Uniform Principal and Income Act shall be determined by the Trustee, in the Trustee's sole discretion.

A. Notwithstanding any other provision of this instrument or of the California Revised Uniform Principal and Income Act to the contrary, the Trustee shall not be required to establish such reserves for depreciation as may be required by good accounting practice.

B. Among successive beneficiaries of this Trust, all taxes and other current expenses shall be pro-rated over the period to which they relate on a daily basis.

5.20. To determine that income accrued or unpaid on trust property when received into the Trust shall be treated as any other income.

5.21. To determine that, if at any time a trust created hereunder shall, in the sole judgment of the Trustee, be of the aggregate principal value of Ten Thousand Dollars (\$10,000.00) or

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less, such trust may be terminated and assets thereof, in the Trustee's possession, distributed to the beneficiary or beneficiaries, at that time, of the current income thereof, and if there is more than one beneficiary, in the proportions in which they are beneficiaries.

5.22. To consider, when making distributions of income or corpus hereunder, the tax consequences to the Trust and to the beneficiaries to whom distributions may be made (including the power to allocate different classes of income to different beneficiaries).

The Trustee may make distributions, whether or not otherwise authorized by this instrument, if the retention of the amount distributed would be considered an accumulation under Sections 665 to 668 of the Internal Revenue Code of 1954, as amended. Such distribution shall be made to any of the persons to whom the Trustee may make income distributions.

5.23. To sign all checks and endorse checks to the Trust or made payable to the Trust, if Co-Trustees are named in this instrument, one of the Co-Trustees shall have the power to sign all checks, endorse checks payable to the Trust or to a Trustee for deposit to a joint checking or savings account of the then Trustors, and to sign withdrawal slips and any other documents relating to bank accounts maintained by the Trust.

5.24. To release or restrict the scope of any power that the Trustee may hold in connection with the Trust created under this instrument, whether said power is expressly granted hereunder or implied by law; and to appoint a Special Trustee to administer assets when prudence requires such Special Trustee to be appointed, provided, however, that the Trustee shall retain the power to remove said Special Trustee at anytime. The Trustee shall exercise this power by written instrument specifying the powers to be released or restricted and the nature of any such restriction.

5.25. To allocate and distribute in kind, to any beneficiary, assets with different income tax bases as determined by the Trustee, in the Trustee's sole discretion; and no adjustment need be made to compensate for any difference in tax bases.

5.26. A. To hold, as part of each trust established in this instrument, all insurance policies on the lives of any other third party, where prudent to do so, provided, however, that any life insurance contributed as the separate property or designated as the separate property of any Trustor, shall retain its separate property character; and the other Trustor, or the Insured, shall not exercise any incidents of ownership

whatsoever over any such policy. The Trustee, in the capacity of a Special Trustee with respect to said asset, shall hold all powers conferred on the owner of any policy. If for any reason the Trustee named herein shall be deemed under the applicable provisions of the Internal Revenue Code as a related or subordinate party to the Insured of said policy or policies, then the Trustee shall appoint a Special Trustee to serve as Trustee exercising and holding the incidents of ownership over said policy or policies.

B. The Trustee shall charge all premiums on said policy or policies from sources other than assets owned by the Insured or subject to the exercise of a general power of appointment by the Insured, if applicable. The Trustee is specifically authorized to pay said premiums from income or invade principal of the particular portion of the trust from which the premiums will be paid. Upon receipt of proof of death of the Insured, the Trustee shall use reasonable efforts to collect all sums payable under the terms of the policy or policies. All sums received shall become part of the principal of the Trust Estate, and any portion thereof specifically allocated as being the separate property or separate estate of the party contributing said policy or policies shall be so allocated.

C. The Trustee shall have full power to compromise, arbitrate or otherwise adjust any claim, dispute or controversy arising under any policy or policies, and authority to initiate, defend, settle and compromise any legal proceeding necessary, in the Trustee's opinion, to collect the proceeds of any policy or policies hereunder. The Trustee's receipt to any insurer shall be considered full discharge, and the insurer shall not be under any duty to inquire concerning the Trustee's application of policy proceeds.

5.27 If Co-Trustees are named herein, either Co-Trustee shall be entitled to act on behalf of the Trust without obtaining the written consent of the other Co-Trustee or Co-Trustees.

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ARTICLE VI

POWERS TO DIRECT, AMEND AND REVOKE

6.01. A. There is hereby reserved to the Trustors during the joint lifetimes of the Trustors the right, individually as to the respective Trustor's separate estates and jointly as to the community estate, to direct the Trustee, in writing, from time to time, to retain, sell, exchange or lease any property of the Trust Estate, to invest trust funds, or to purchase for the Trust any property which he may designate and which is acceptable to the Trustee. Upon receipt of such directions, the Trustee shall comply therewith, and the Trustee shall not be required to and shall not sell, lease or exchange trust property or invest trust funds except upon the Trustor's written directions. The identical powers provided for in this paragraph are hereby reserved to the Surviving Spouse effective upon the death of the Deceased Spouse, but only with respect to the Survivor's Trust and the Marital Election Trust.

B. The Trustee shall incur no liability to the Trustors or to any beneficiary of this trust in following any direction of the Trustors or the Surviving Spouse, or for failure to act with respect to the matters set forth in this Paragraph 6.01 in the absence of such directions. The Trustors may, from time to time, by written instrument, surrender to the Trustee any of the powers reserved to the Trustors hereunder and may, upon similar notice, resume their exercise except where the instrument surrendering such powers provides that such surrender is irrevocable.

C. Upon the death or legally declared disability of the Trustors or the Surviving Spouse, and/or during such time as the Trustors or the Surviving Spouse may have surrendered the rights reserved to the Trustors or the Surviving Spouse, pursuant to the provisions of Paragraph 6.01 B, and/or during such time as the Trustors or Surviving Spouse are, in the opinion and sole discretion of the Trustee, because of physical incapacity or for any other reason unable to exercise such rights, the Trustee shall have and exercise full powers and duties of management.

6.02. The Trustors, individually as to the separate estate or jointly as to the community estate, or the Surviving Spouse, from time to time, by written notice to the Trustee, may require that the Trustee, in addition to the services provided under the preceding Paragraph 6.01, shall give to the property or certain of the property subject to this Trust such supervision and periodical review as is customarily given by a competent Trustee to like property under its fiduciary control; and, upon receipt of such written notice, the Trustee shall, as frequently as the Trustee deems necessary, make recommendations with respect



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to the retention, sale, exchange or leasing of such property at any time held hereunder, and advise or recommend the investment of trust funds and the purchase of property for the Trust.

6.03. A. During the joint lifetimes of the Trustors, this Trust may be revoked in whole or in part with respect to community property by an instrument in writing signed by either Trustor and delivered by certified mail, return receipt requested, to the Trustee and the other Trustor, and with respect to separate property by an instrument in writing signed by the Trustor who contributed that property to the Trust, delivered by certified mail, return receipt requested, to the Trustee.

B. Upon revocation, the Trustee shall promptly, within a reasonable period of time, deliver to the Trustors all or the designated portion of the community property trust assets. All property delivered to the Trustors shall be held and administered as community property. Upon revocation, with respect to the separate estate, the Trustee shall properly deliver to the contributing Trustor all the designated portion of that property. The Trustee shall also account for his acts since the preceding accounting.

C. If this instrument is revoked with respect to all or a major portion of the assets subject to the instrument, the Trustee shall be entitled to retain sufficient assets to reasonably secure payment of liabilities lawfully incurred by the Trustee in the administration of the Trust, including Trustee's fees that have been earned, unless the Trustors shall indemnify the Trustee against loss or expense.

D. The Trustors may at any time during their joint lifetimes amend any of the terms of this instrument by an instrument in writing signed by both Trustors and delivered by certified mail, return receipt requested, to the Trustee. Either Trustor may amend this Trust without the signature of the other Trustor if the Amendment affects only that Trustor's separate property and does not affect the community property of the Trustors or the separate property of the other Trustor. No amendment shall substantially increase the duties or liabilities of the Trustee or change the Trustee's compensation without the Trustee's consent, nor shall the Trustee be obligated to act under such an amendment unless the Trustee accepts it. If a Trustee is removed, the Trustors shall pay to the Trustee any sums due and shall indemnify the Trustee against liability incurred by the Trustee in the administration of the Trust.

E. Upon the death of the Deceased Spouse, the Surviving Spouse shall have the power to amend, revoke or terminate the Survivor's Trust, but the Maximum Credit Trust and the Marital Election Trust may not be amended, revoked or terminated. Revocation and amendment shall be made in the manner provided in

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Paragraph 6.03 (B through D), respectively. Upon revocation or termination of the Survivor's Trust, all of its assets shall be delivered to the Surviving Spouse. Upon the death of the Surviving Spouse, neither trust may be amended, revoked or terminated.

F. The powers of the Trustors to revoke or amend this instrument are personal to them and shall not be exercisable on their behalf by any guardian, conservator or other person, except that revocation or amendment may be authorized, after notice to the Trustee, by the court that appointed the guardian or conservator.

ARTICLE VII

GENERAL PROVISIONS

7.01. Unless the Trustee shall have received actual written notice of the occurrence of an event affecting the beneficial interests of any trust created under this instrument, the Trustee shall not be liable to any beneficiary of this Trust for distribution made as though the event had not occurred.

7.02. Other property acceptable to the Trustee may be added to these trusts by any person, by the Will or Codicil of either Trustor, by the proceeds of any life insurance or otherwise.

7.03. Unless sooner terminated in accordance with other provisions of this instrument, all trusts created under this instrument shall terminate twenty-one (21) years after the death of the last survivor of the Trustors or of the Trustors' issue living on the date of the death of the first Trustor to die. The principal and undistributed income of a terminated trust shall be distributed to the then income beneficiaries of that trust in the same proportion that the beneficiaries are entitled to receive income when the trust terminates. If, at the time of such termination, the rights to income are not fixed by the terms of the trust, distribution under this clause shall be made, by right of representation, to the persons who are entitled or authorized, in the Trustee's discretion, to receive trust payments.

7.04. No interest in the principal or income of any trust created under this instrument shall be anticipated, assigned, encumbered or subjected to creditor's claim or legal process before actual receipt by the beneficiary.

7.05. The validity of this Trust and the construction of its beneficial provisions shall be governed by the laws of the State of California in force from time to time. This Paragraph shall apply regardless of any change of residence of the Trustee or any beneficiary, or the appointment or substitution of a Trustee residing or doing business in another state.

7.06. As used in this instrument, the term "issue" shall refer to lineal descendants of all degrees and the terms "child" or "children" shall refer to lineal descendants of the first degree of kindred. The terms "child," "children" and "issue" shall include adopted children or issue who are minors on the date of adoption. Unless otherwise provided herein, the issue of the same degree of kindred shall inherit, by right of representation based on the class of issue of the closest degree of kindred to the Trustors. Where the term "children" or "child" of the Trustors is used, it shall refer to only those children born to or adopted (if such adoption occurs while the child is a minor) by the Trustors jointly.

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7.07. As used in this instrument, the masculine, feminine or neuter gender, and the singular or plural number, shall each include the other whenever the context so indicates.

7.08. If any provision of this trust instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect. The table of contents set forth herein, if any, is for convenience of reference only and is not intended to be made a substantive part of this instrument.

7.09. In the event any beneficiary under this Trust shall, singly or in conjunction with any other person or persons, contest in any court the validity of this Trust or of a deceased Trustor's last Will, or shall seek to obtain an adjudication in any proceeding in any court that this trust or any of its provisions or that such Will or any of its provisions is void, or seek otherwise to void, nullify or set aside this Trust or any of its provisions, then the right of that person to take any interest given to him by this Trust shall be determined as it would have been determined had the person predeceased the execution of this Declaration of Trust without surviving issue.

7.10. Notwithstanding anything to the contrary herein, upon the death of either Trustor, the Surviving Spouse may exercise no power over the Maximum Credit Trust in such a way which, if so exercised, would constitute a general power or special power of appointment over the Maximum Credit Trust.

7.11. Notwithstanding anything to the contrary herein, upon the death of either Trustor, the Surviving Spouse may exercise no power over the Marital Election Trust if an election under Internal Revenue Code Section 2056(b)(7) has not been made which would constitute a general or special power of appointment over the said Marital Election Trust.

7.12. Notwithstanding anything contained herein to the contrary, if any of the insurance policies added to this Trust Estate name a Trustee as the insured, or are owned by the Trust or by the non-insured Trustor, then as to those policies, the non-insured Trustor, while living, and then the Successor Trustee, shall act as sole Trustee with respect to all of the incidents of ownership of said policies.

ARTICLE VIII

PROVISIONS RELATING TO TRUSTEE

8.01. Upon the death of the Deceased Spouse, the Surviving Spouse and KIM HORTMAN shall serve as the Co-Trustees of the Survivor's Trust and the Marital Election Trust. The Surviving Spouse and KIM HORTMAN shall serve as the Co-Trustees of the Maximum Credit Trust. If any of the above named Trustees shall fail to qualify, cease to act or be unable to serve for any reason, then NORMAN ALTON HORTMAN, III shall immediately commence service as Successor Co-Trustee hereunder. Under no circumstances shall the Surviving Spouse serve as sole Trustee of the Maximum Credit Trust. The Trustors, acting jointly while they both are living and not incapacitated, or the nonincapacitated spouse may appoint a Successor Trustee, including a corporation qualified to conduct a trust business in the United States or an appropriate individual. The right of the Surviving Spouse to appoint Successor Trustees is restricted in Paragraph 8.04. In the event that any Trustee becomes physically or mentally incapacitated, as certified in writing by two (2) licensed physicians, whether or not a court of competent jurisdiction has declared him or her incompetent or mentally ill, or in need of a conservator, he or she shall cease to act as Trustee and the Successor Trustee shall immediately commence service in his or her stead. If no Successor Trustee is able to serve, one shall be appointed pursuant to the terms of this Paragraph and Paragraph 8.04 or if none is appointed under said Paragraphs, then according to Paragraph 8.02.

8.02. In the event that no Successor Trustee is appointed pursuant to Paragraphs 8.01 or 8.04 within sixty (60) days following the resignation, death or incapacity of the Trustee, then a state or federally regulated financial institution shall be appointed by court order to so act.

8.03. No bond shall be required of any person named in this instrument as Trustee, or of any person appointed as the Trustee in the manner specified here, for the faithful performance of his duties as Trustee.

8.04. The Trustors, acting jointly while they both are living and not incapacitated, or the non-incapacitated spouse, and after the death of the Surviving Spouse, the beneficiaries hereunder or their legal guardians, by unanimous written consent, may, at any time and without any cause whatsoever, remove any Successor Trustee or Trustees and appoint a Successor Trustee, including a corporation qualified to conduct a trust business in the United States or an appropriate individual, to the trust created herewithin. In no event shall a Successor Trustee appointed be a related or subordinated party as defined in §672(c) or §2613(e)(2)(b) of the Internal Revenue Code.

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Notwithstanding anything to the contrary herein, the Surviving Spouse shall be entitled to remove a Trustee and appoint a Successor Trustee only in the event that the Trustee so removed has died, voluntarily resigned, engaged in conduct in violation of the duties imposed upon him hereunder or is otherwise in breach of his fiduciary responsibilities owed towards any party with a direct interest in this instrument.

8.05. Any Successor Trustee shall succeed as Trustee with like effect as though originally named in this instrument as such. All authority and powers conferred upon the original Trustee hereunder shall pass to any Successor Trustee.

Any Successor Trustee shall not be responsible for acts or omissions of any preceding Trustee, in connection with or relating to any acts or transactions regarding the Trust Estate, and shall not be responsible for any assets not registered in the trust name.

8.06. The Trustee shall render an accounting from time to time regarding the transactions of a trust created in this instrument by delivering a written accounting to each beneficiary entitled to current income distributions of the trust or to current distributions out of income or principal of the trust in the Trustee's discretion. In the event a current beneficiary is a minor, the account shall be delivered to the minor's parent or guardian of his person. Unless one or more of the beneficiaries (or a minor's parent or guardian of a minor's person) shall deliver a written objection to the Trustee within ninety (90) days of a receipt of the Trustee's account, the account shall be deemed settled and shall be final and conclusive in respect to transactions disclosed in the account as to all beneficiaries of the trust, including unborn and unascertained beneficiaries. After settlement of the account by reason of the expiration of the ninety (90) day period referred to above or by agreement of the parties, the Trustee shall no longer be liable to any beneficiary of the trust, including unborn and unascertained beneficiaries, in respect to transactions disclosed in the account, except for the Trustee's intentional wrongdoing or fraud.

8.07. All actions of any joint Trustees shall be unanimous. In case of any deadlock, the Trustees may petition a court of competent jurisdiction for instructions regarding the matter producing the deadlock. Any corporate Trustee shall, if required by appropriate regulations of any state or federal agency, retain possession of instruments of title or other trust documents evidencing ownership of trust assets.

8.08. The Trustee serving hereunder shall be entitled to withdraw from the Trust Estate, on an annual or more frequent basis, Trustee's fees equal to the then prevailing fees for Trustees serving for similar trusts with similar assets, performing similar duties and responsibilities, to be determined by

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taking the average Trustee's fees of three (3) regulated financial institutions in the community or, in the case of a Successor Trustee who is a regulated financial institution, its customary published fees in the community, from time to time. The Trustee shall also be entitled to any extraordinary fees related to matters of an unusual nature. The amount of said extraordinary fee shall be the customary amount charged for said services by persons in the regular business of providing such services in the community at the time of the rendition of said services.

8.09. If any legal action is required to enforce or interpret any provision of this instrument, whether at law or equity or for declaratory relief, the prevailing party in such action may, in the discretion of the court, be awarded his reasonable attorneys' fees and costs incurred in the prosecution or defense of said action. Said amount may be charged against the Trust Estate in the manner ordered by the court.


8.10. If both Trustors die simultaneously or under circumstances which make it difficult to determine which Trustor dies first, Wife shall be deemed to have survived Husband for purposes of this Trust. The provisions of this Trust shall be construed upon that presumption irrespective of any provision of law establishing a contrary presumption or requiring survivorship for a fixed period of time as a condition of taking property by inheritance.

8.11. Whenever, in the judgment of the Trustee, it shall be necessary or proper in the administration of this trust, the Trustee may disclose the existence, nature, terms and conditions hereof and a memorandum hereof may be recorded by the Trustee.

Executed at San Diego, California, this 2 day of

July, 1985.


NORMAN ALTON HORTMAN, Co-Trustee


BARBARA HORTMAN, Co-Trustee

We certify that we have read the foregoing NORMAN AND BARBARA HORTMAN REVOCABLE TRUST NO. 1 and that it correctly states the terms and conditions under which the Trust Estate is to be held, managed and disposed of by the Trustees. We approve the Trust in all particulars and request that the Trustee execute it.

Norman Alton Hortman
NORMAN ALTON HORTMAN
Trustor

Barbara Hortman
BARBARA HORTMAN
Trustor

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STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN DIEGO)

On this 2nd day of July, in the year 19845 before me, the undersigned, a Notary Public in and for said State, personally appeared NORMAN ALTON HORTMAN and BARBARA HORTMAN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within NORMAN AND BARBARA HORTMAN REVOCABLE TRUST NO. 1., and acknowledged that they executed the same.

WITNESS my hand and official seal.



Julie M. Dillard
Notary Public in and for
said County and State

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN DIEGO)

On this 2 day of July, in the year 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared NORMAN ALTON HORTMAN and BARBARA HORTMAN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Co-Trustees of the Trust created by the above instrument, and to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

WITNESS my hand and official seal.



Julie M. Dillard
Notary Public in and for
said County and State

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7/10/85

CERTIFICATION

The undersigned attorney for NORMAN ALTON HORTMAN and BARBARA HORTMAN declares as follows:

1. That Exhibit "A", attached hereto and incorporated herein by reference as though fully set forth, are true and correct copies of the introductory page, the powers clauses, and signature pages of the Declaration of Trust of NORMAN ALTON HORTMAN and BARBARA HORTMAN dated July 2, 1985.

2. That the Trust thereby established is for the benefit of NORMAL ALTON HORTMAN and BARBARA HORTMAN, and is completely revocable. The pages that are omitted from the certificate are of a personal nature dealing with the distribution of the Trustors' estate and in no way affect the powers of the Trustees.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Diego, California, this 30th day of

July, 1985.

KAUFMAN, LORBER, GRADY & FARLEY

By Wendy Waller Daynes
WENDY WALLER DAYNES

SCHEDULE A

All real and personal property standing in the name of either party hereto no matter how title may be taken.

B.A. Max
HORTMAN010865

SCHEDULE B

7/10/76