Case No. _____

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the matter of:

Cleanup and Abatement Order No. R9-2025-0014
(*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, CA [Final Order]*)

PETITION FOR REVIEW

Manuel Corrales, Jr., SBN 117647
Attorney at Law
11939 Rancho Bernardo Road, Suite 170
San Diego, CA 92128
Tel: (858) 521-0634/Fax: (858) 521-0633
Email: mannycorrales@yahoo.com

Attorney for Petitioners GUHN Y. KIM, YUN SOON KIM and THE KIM FAMILY TRUST of 2017

Pursuant to Cal. Water Code §13320, and CCR §2050-2068, GUHN Y. KIM, YUN SOON KIM and THE KIM FAMILY TRUST of 2017, ("the Kims") petition the State Water Resources Control Board ("State Board") to review and vacate or modify and amend the final Abatement Order No. R9-2025-0014, ("AO") issued by the San Diego Regional Water Quality Control Board ("SD Water Board") on January 22, 2025, to the Kims, the present owners of property located at 1654 EVP, Escondido, CA, and the present owners of property located at 1718 EVP, Escondido, but which, as the Kims contend, wrongly eliminated to previous owners of 1718 EVP, THE NORMAN ALTON HORTMAN AND BARBARA HORTMAN REVOCABLE TRUST NO. 1, dated July 2, 1985, ("the Hortman Trust") as a responsible party, on the sole and erroneous grounds that the Hortman Family Trust is purportedly "insolvent."

I.
PETITONERS' INFORMATION

The Petitioners, the Kims, are identified as follows:

GUHN Y. KIM, YUN SOON KIM and THE KIM FAMILY TRUST of 2017
5490 Wolverine Terrace
Carlsbad, CA 92010
Tel: (760) 212-2656
Email: guhnkim@gmail.com

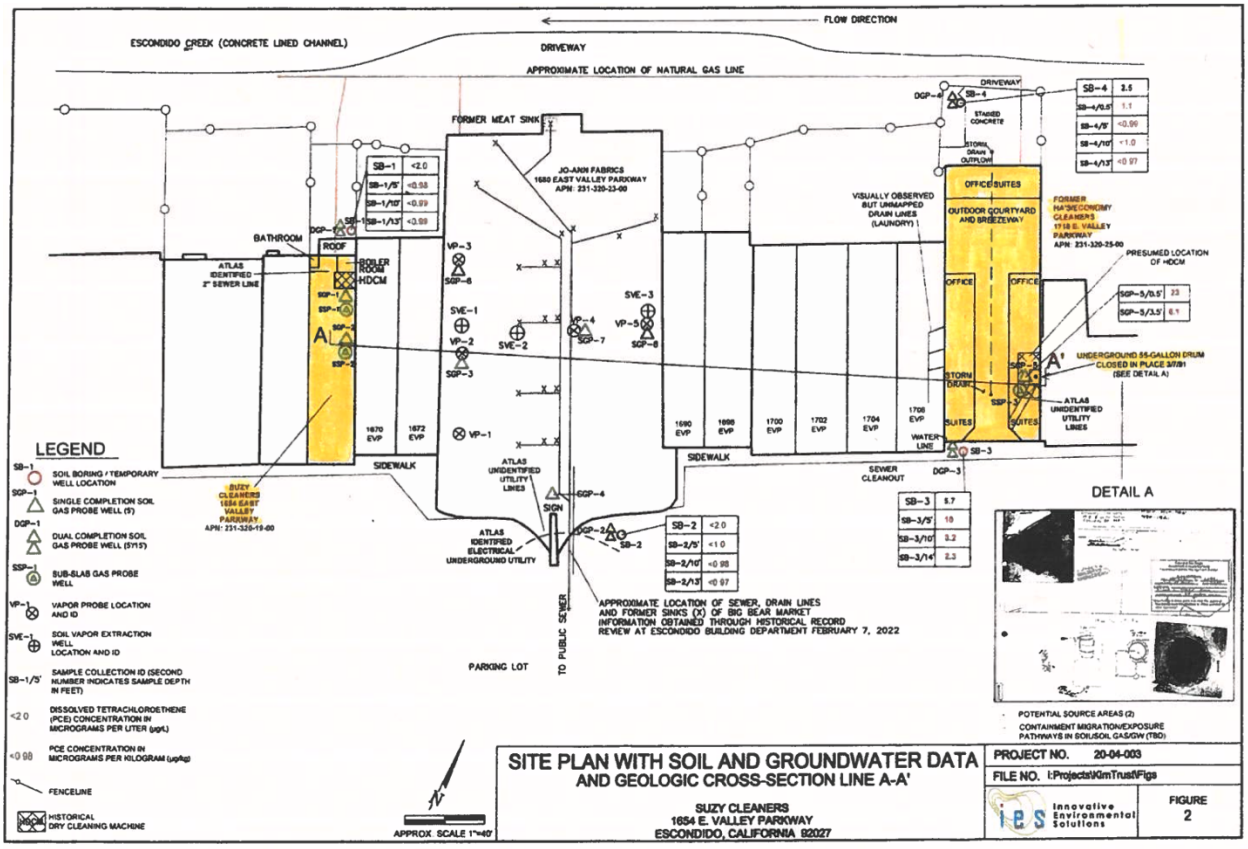
II.
INVOLVED PROPERTY

This matter involves the contamination of soil and an underground water table as a result of the release of Tetrachloroethene ("PCE"), a chemical used in dry cleaning operations, at a shopping plaza at East Valley Parkway in Escondido, California. The shopping plaza has several business, and measures 420 feet long and approximately 120 feet wide. There are two competing properties that are the subject of this final Abatement Order. On the east side is property at 1718 East Valley Parkway ("EVP") where a former dry cleaners operated (Ha's Cleaners and Economy Cleaners)

and on the west side is the Kims' property at 1654 EVP where there is presently a dry cleaners called Suzy Cleaners.

The Kims, after conducting an in depth inspection and testing of the entire plaza, under the SD Water Board's supervision, and at a cost of over $200,000, found that the source of the discharge of PCE occurred in 1991 during the time the Hortman Family owned the property, and that since then the PCE has migrated from 1718 EVP through the soil and the water table below westward across to the Kims' property at 1654 EVP. The Hortman Parties have performed no testing or sampling of the soil at the plaza, but instead have simply attacked the Kims' expert's findings and conclusions.

The following diagram depicts the area and the properties involved:



II.

THE ACTION OF THE SAN DIEGO WATER BOARD BEING CHALLENGED

The Kims challenge the subject final Abatement Order No. R9-2025-0014, ("AO") (attached as Ex. "1"), issued by the SD Water Board to the Kims on the following grounds:

1. The SD Water Board's decision set forth in the final AO to eliminate the Hortman Family Trust, and Kim Buhler and Norman Alton Hortman, II, as co-trustees of the Hortman Family Trust ("Hortman Parties") on the grounds that the assets of the Hortman Family Trust have been distributed and that the Trust is no longer a legal entity because it is insolvent, is arbitrary, capricious, and abuse of discretion and legally wrong. The Hortman Parties (Kim and Norman Hortman) have engaged in act of fraud and fraudulently transferred the assets of the Hortman Trust to themselves in an effort to hinder, delay or defraud the Kims and other property owners at the EVP plaza, immediately after their mother, Barbara Hortman died on April 20, 2021, and when the SD Water Board notified them that the Hortman Trust was potentially liable for cleanup costs associated with the PCE discharge that occurred in 1991 at 1718 EVP when their parents owned the property. Under California law, dissolved corporations can be sued for injuries caused by the corporation's pre-dissolution activities, but is discovered after dissolution, which rule extends to the Hortman Family Trust. Moreover, the Kims have a claim against the Hortman Family, including Kim Buhler and Norman Alton Hortman, III, for fraudulent conveyance of these Trust assets, and will be asking for the appointment of a receiver to collect these assets.

2. The AO is also arbitrary, capricious, an abuse of discretion, unlawful, and improper and inappropriate for the following technical reasons:

a. The AO fails to recognize the implications of soil, groundwater and soil vapor data from suspected source properties that the Kims duly presented to the SD Water Board.

b. The AO relies heavily on historical work done at an intermediary, non-source property (1680 EVP), JoAnn Fabrics. This historical work at 1680 EVP was not conducted under contemporaneous regulatory oversight and the conclusions drawn by the consultants involved were made prior to discovery of a substantial unauthorized release to the soil, soil vapor and groundwater at 1718 EVP, which the Kims' geological

consultant discovered when he conducted a site investigation and testing of the soil and water table under the SD Water Board's voluntary assistance program the Kims participated in.

c. The SD Water Board chose to include the work of these consultants and simply repeat their unscientifically based conclusions that because the Suzy Cleaner facility at 1654 EVP is located 50 feet to the west of JoAnn Fabrics at 1680 EVP, while 1718 EVP is located 150 feet to the east, Suzy Cleaner was the likely source of the contamination, not 1718 EVP. In contrast, the Kims presented clear evidence that 1718 EVP was the source of the PCE release through their expert's preliminary investigation work and a subsequent comprehensive passive soil and vapor survey of 1652 through 1720 EVP.

d. By March 25, 2022, the Kims consultant prepared various workplans which the SD Water Board approved. In addition, the Kims conducted a Geophysical Survey, and implemented a Preliminary Soil, Groundwater and Soil Gas Investigation at 1718, 1680 and 1654 EVP. None of the other property owners, including the Hortman Parties as former owners of 1718 EVP, conducted any similar test, or any tests at all. The investigations showed higher concentration levels of PCE at 1718 EVP than detected at 1654 EVP. Yet, the SD Water Board arbitrarily rejected this vertical soil vapor data, because it failed to prove that the 1654 EVP property was not a contaminated site.

e. The AO states that "the 1654 EVP property can only be ruled out as the source by conducting a comprehensive soil vapor survey." The Kims then on November 2, 2022, submitted to the SD Water Board a Technical memorandum detailing the results of a comprehensive passive gas survey which was conducted at the two sites as well as at adjacent and intermediary suites, showing clearly that 1718 EVP was the source of the PCE discharge and had migrated westward across the plaza. Despite this, the SD Water Board refused to issue a "No Further Action Determination" as to the Kims' property at 1654, but it instead released the Hortman Parties as responsible parties for erroneous legal reasons.

f. The AO misquotes the results of the Kims' Updated Conceptual Site Model ("CSM"), and ignores the chemical fingerprints and west-southwest PCE plume migration described in the CSM, to refuse to acknowledge clear scientific evidence that 1718 EVP is the source of the PCE discharge at the plaza.

g. The AO continues to propagate outdated and disproven findings, which has only emboldened the Hortman Parties to seek dismissal of the claims asserted against them in federal court, and, as stated herein, it improperly removed the Hortman Parties as responsible parties.

h. The AO improperly repeats historical (pre-assessment) conclusions of the 1680 EVP investigations that "the 1654 EVP property is the likely source of PCE detected in soil vapor," while at the same time omitting vital data and then only stating that the SD Water Board "disagrees' with the Kims' recommendations.

i. The AO fails to properly and fairly present the assessment data collected by the Kims under the SD Water Board's directives and approval.

j. The AO fails to properly present the results of the Kims' comprehensive passive soil vapor survey which identified high levels of PCE concentrations at the 1718 EVP site, and significantly less at 1654 EVP.

k. The AO fails to properly present the results of the Updated CSM and focuses only on additional site assessment recommended for 1654 EVP.

l. The AO fails to fairly present the accurate surrounding circumstances of the Kims' decision to terminate the Cost Recovery Program.

m. The AO contains confusing responses to the public comments to the Tentative Abatement Order. At various parts of the AO, it states that the SD Water Board disagrees with the public comment, but then later states that it has revised the AO in response to the public comment.

III.

THE PETITION IS TIMELY

Cal. Water Code §13320(a) requires that a person aggrieved by a Regional Board order may petition to the State Board within 30 days of such order. Here, the SD

Water Board final AO was issued on January 22, 2025, giving the Kims until February 21, 2025, to seek review. The petition was filed on February 4, 2025, making it timely.

IV.

THE SAN DIEGO WATER BOARD'S DECISION IN THE ABATEMENT ORDER TO REMOVE THE HORTMAN PARTIES AS RESPONSIBLE PARTIES WAS ARBITRARY, CAPRICIOUS, AND ABUSE OF DISCRETION, CONTRARY TO LAW, AND IMPROPER AND INAPPROPRIATE

The AO releases the Hortman Parties as responsible parties on the grounds that the Hortman Trust is purportedly insolvent. This conclusion is contrary to the law and ignores the actions by the beneficiaries and co-trustees of the Trust in fraudulently transferring the assets of the Trust to themselves after the SD Water Board notified them in February 2021 that the Hortman Trust would be liable for significant cleanup costs associated with the release of PCE at 1718 EVP, property previously owned by their parents.

A. LEGAL STANDARD

1. Standard of Review.

Pursuant to Cal. Water Code §13320(a), an aggrieved person may petition the State Board to review a Regional Board order, within 30 days of such order. The State Board may find that the actions of a Regional Board were inappropriate or improper and direct the Regional Board to take the appropriate action, refer the issue to another state agency with jurisdiction, or take the appropriate action itself. Cal. Water Code §13320(c).

The State Board is not subject to the standards which bind a court, and the scope of the State Board's review is "closer to that of independent review." In the Matter of the Petition of Exxon Company, Order Bo. WQ 85-7, at p. 10. In reviewing a Regional Board action, the State Board shall consider the record before the Regional Board, and any other relevant evidence which it wishes to consider. Cal. Water Code §13320(b); In the matter of the Petiton of Exxon Company, U.S.A, et al. of th Adoption of the Cleanup and Abatement Order No. 85-066, Order No. WQ 85-7, at p. 10. However, any findings made by an administrative agency in support of an action must be based

on substantial evidence in the record. Petition of Exxon, supra (citing Topanga Association for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506).

2. Liability of a Trust Upon Dissolution—Winding Up and Payment of Debts Before Distribution

An owner of land sued for costs of cleanup of contaminated groundwater and soil beneath its property may seek contribution from any person who is or may be liable under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), and its counterpart, California's Carpenter-Presley-Tanner Hazardous Substance Account ("HSAA") under Cal. Health & Safety Code § 25300 et seq. Section 107(a) of CERCLA authorizes recovery of costs incurred in responding to hazardous waste problems, and §113(f) allows a party to seek contribution from any person who is or may be liable under §107(a). 42 U.S.C. §§9607(a), 9613(f). CERCLA imposes liability on the **past** or present owner of a facility at which hazardous wastes were released or disposed of. 42 U.S.C. §§ 9607 (a) (1), (2). An "owner" is "any person owning …such facility." 42 U.S.C. §9601 (20) (A) (ii).

Also, California no longer follows the common law rules with respect to either the death of a natural person or the dissolution of a corporation. Except as provided by statute, "no cause of action is lost by reason of the death of any person, but it may be maintained by or against the person's personal representative." Cal. Probate Code Section 573. Cal. Corp. Code 1905(b) provides that when the certificate of dissolution is filed, "the corporate existence shall cease, *except for the purpose of further winding up is needed.*" Also, Cal. Corp. Code Section 2010(a) explains that the purposes for which the corporate existence continues after dissolution: "A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets, but not for the purpose of continuing business except so far as necessary for the winding up thereof." Accordingly, the Supreme Court in Penasquitos, Inc. v. Superior Court (1991) 53 Cal.3d 1180, held that there is no legal barrier in suing a dissolved

corporation itself for injury or damage that is caused by the corporation's pre-dissolution activities occurring, or that has been discovered, after dissolution.

Under California law, a corporation cannot distribute its assets, nor may it dissolve, until its officers have paid or made provision for all known debts and obligations. Cal. Corp. Section 1905, 2004. These principles apply with equal force to partnerships and trusts, and partnership and trusts have similar winding up responsibilities. Cal. Corp. Section 16802(a) (When winding up is completed the partnership is terminated). A partnership and a Trust have similar duties and responsibilities in the winding up process, which includes paying all partnership debts and Trust debts before distribution. See Botsford v. Haskins & Sells (1978) 81 CA3d 780, 784-787 (adopting Rest. Second of Trust, Section 344, that when the time comes for termination of the trust, the trustee has the power and the duty to wind up the affairs of the trust, and that this winding up duty includes paying the debts and obligations of the trust before distribution to the beneficiaries).

3. Fraudulent Conveyance.

A debtor's transfer or obligation is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation "with actual intent to hinder, delay, or defraud any creditor." CC §3439.04(a)(1). In determining actual intent to defraud, hinder or delay under CC §3439.04 of the Uniform Voidable Transaction Act ("UVTA"), consideration is given to the following factors of "badges of fraud":

1. **Whether the transfer or obligation was made to an insider** (i.e., a relative or family member, etc.).

2. Whether the debtor retained possession or control of the property transferred after the transfer.

3. Whether the transfer or obligation was disclosed or **concealed**.

4. **Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit**.

5. Whether the transfer was of substantially all the debtor's assets.

6. Whether the debtor absconded.

7. **Whether the debtor removed or concealed assets**.

8. Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

9. **Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred**.

10. Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

11. Whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

The UVTA permits defrauded creditors to reach property in the hands of a transferee. A fraudulent conveyance is a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim …The purpose of the voidable transaction statute is "to prevent debtors from placing property which legitimately should be available for the satisfaction of demands of creditors beyond their reach." Lo v. Lee (2018) 24 CA5th 1065, 1071.

B. THE TRUSTEES, KIM BUHLER AND NORMAN ALTON HORTMAN, III, BREACHED THEIR FIDUCIARY DUTIES AND PAID THEMSELVES FROM THE TRUST BEFORE PAYING THE DEBTS AND OBLIGATIONS OF THE TRUST SO AS TO DEFRAUD THE KIMS

There is no legal basis for the SD Water Board's Decision under the AO to conclude that the Hortman Family are no longer a CERCLA responsible party for the discharge of PCE from 1718 EVP that migrated across the plaza and impacted and contaminated the Kims' property. What the Hortman co-trustees and beneficiaries, Kim Buher and her brother, Norman Alton Hortman, III, did was to simply defraud the Hortman Trust creditors, including the Kims, by fraudulently transferring the Trust assets to themselves without first paying the obligations and debts of the Trust. At the time they transferred these Trust assets to themselves, they knew that the trust had an obligation to compensate the Kims and others for the illegal PCE discharge that occurred at 1718 EVP. While it is true that the Trust's assets were depleted, thus

causing the Trust to be insolvent, the insolvency was created by an act of fraudulent transfers.

And even though the Trust is currently purportedly insolvent, California law does shield the Trust from liability. Under the facts in this case, Kim Buhler and her brother, Norman Alton Hortman, III, were required, as part of the winding up process after their mother died on April 20, 2021, to pay the Trust's debts and obligations before distributing the assets to themselves. As a result, the Kims and M&E Brothers LLC have sued the Hortman Parties for fraudulent conveyance in an effort to get the funds returned to the Trust. The Kims will be asking for the appointment of a receiver to collect these funds, and once the funds are returned, there should be enough to pay for the cleanup of the property at East Valley Parkway.

Accordingly, the AO is erroneous insofar as it eliminates the Hortman parties as additional responsible parties on the purported grounds that the Hortman Trust has dissolved. The AO should be modified and corrected to include the Hortman Parties as additional responsible parties.

C. KIM BUHLER AND HER BROTHER, NORMAN ALTON HORTMAN, III, COMMITTED ACTS OF FRAUD IN FRAUDULENTLY TRANSFERRING ASSETS TO THEMSELVES UPON BEING NOTIFIED THAT 1718 EVP WAS THE POTENTIAL SOURCE OF THE DISCHARGE OF PCE

The Hortman Family fraudulently transferred assets from the Hortman Trust in the following manner:

The Hortman Family, specifically Norman Alton Hortman and Babara Hortman ("The Hortman Parents") were very wealthy and owned numerous pieces of property in San Diego County, Los Angeles County, and elsewhere. They had over the years accumulated a vast array of stocks and bonds, and their net worth was extremely high and was enough to pay the cleanup costs of the entire plaza several times over, by the time that Barbara Hortman died in April of 2021. Her husband had died a few years earlier, leaving her all of his assets to her in the Hortman Family Trust. Defendants Kim Buhler and Norman Hortman, III, knew of the vast wealth that their parents had accumulated and that those assets were in the Hortman Family Trust. Defendant Kim

Buhler is an elementary school teacher and Norman Hortman, III, is a pilot. They knew that once their parents died, they would inherit those assets and become wealthy themselves.

The Hortman Family, specifically Norman Alton Hortman and Barbara Hortman, owned the property located at 1718 EVP in the shopping plaza where a former dry-cleaning facility operated under the name of Ha's Cleaners and Economy Cleaners.

In 1991, when the Hortman Parents owned 1718 EVP where the dry-cleaners facility operated, Norman Hortman, the father, detected a leak of a chemical in the ground at the dry cleaning facility. It turned out to be Tetrachloroethene ("PCE"), a chemical used in dry cleaning operations. The leak was coming from a buried drum below the property which was in violation of hazardous waste handling laws and regulations. This detected leak by Mr. Hortman was documented by the San Diego County department of Environmental Health ("DEH"). The drum was cleaned out and filled with cement, but the surrounding soil below the property was never removed or cleaned up. The leak had been ongoing for several years during the Hortman Family's ownership and leached into the water table below and migrated westward from 1718 EVP across the entire plaza, ultimately impacting the two properties owned by the Kims on the west side of the shopping plaza.

The Kims have sued the Hortman Family for trespass and nuisance in the federal Pacific Resources action, alleging that the sole source of the PCE contamination throughout the shopping plaza that ultimately impacted and contaminated their property came from 1718 EVP during the Hortman Family ownership, in additional to a 3rd party claim for indemnity and contribution under state and federal law. The Kims have so far incurred over $200,000.00 in costs related to the testing and sampling of the soil across the plaza under the cost recovery program of the SD Water Board. The SD Water Board also charged the Kims over $40,000.00 in oversight fees in connection with the Kims' testing and sampling of the soil. The SD Water Board issued an Abatement Order requiring the Kims and the present owner of 1718 EVP to clean up the contamination in the soil on their respective properties, which will cost the Kims over $1 million in complying with this Abatement Order, as well as the present owners of 1718 EVP. As a

result, the parties have filed cross claims for indemnity and contribution under state and federal hazardous waste statutes against the Hortman Parties. The Kims seek direct damages against the Hortman Parties in federal court for trespass and nuisance related to the loss of market value to their property and emotional distress.

In January 2021, Barbara Hortman, Kim Buhler's and Norman Hortman, III's, mom, was in failing health. A year prior, her doctor diagnosed her with severe dementia, stating she no longer had the mental capacity to handle her financial affairs. As a result, Defendant Kim Buhler stepped in to take care of her, pay the bills for the properties she owned, open her mail and respond to mail, and took her into her home off and on to supervise her care. Barbara was living in Valley Center at 30541 Harvest Moon Circle Valley Center, California, and Kim Buhler would bring her to her home at 1209 Via Ramon in Escondido, California, from time to time for visits. However, at the beginning of 2021, Barbara was placed on hospice care and she remained in Kim Buhler's home in a hospice bed from then on until she died in April 2021. During this time, Kim Buhler would open her mail and respond when necessary and thus continued to handle Barbara's affairs until she died. This would include going to the Harvest Moon address to get Barbara's mail. Defendant Kim Buhler would also open her own mail sent to her home at 1209 Via Ramon in Escondido.

On February 26, 2021, the Water Board sent three (3) letters by U.S. mail to the Hortman Family at the following addresses: (1) 1209 Via Ramon, Escondido, CA 92029; (2) 30541 Harvest Moon Circle, Valley Center, CA 92082; and (3) 1178 Orangewood Drive, Escondido, CA 92025. Each letter was identical, and each letter was addressed to the "Hortman Family." The letters are attached as Exhibits "1," "2" and "3." The letters stated that the Water Board had just taken over regulatory oversight from the County of San Diego (Department of Environmental Health ["DEH"]) regarding concentrations of PCE at a fabric store called JoAnn Fabrics, located in the middle of the East Valley Parkway shopping plaza, between Suzy Cleaners (1654 EVP) and the former Ha's Cleaners/Economy Cleaners location at 1718 EVP. The owner of the property where JoAnne Fabrics is located, Pacific Resources Associates, LLC, ("Pacific Resources") was in the process of selling it, when, after conducting its due diligence in

getting an environmental report for the potential sales transaction, it discovered traces of PCE vapors on the property. Because Suzy Cleaners was almost next door to the JoAnn Fabrics location, Pacific Resources pointed to the Kims as the source of the PCE, without taking into account the former Ha's Cleaners/Economy Cleaners at 1718 EVP that had been previously investigated in 1991 when the Hortman Family owned the 1718 EVP property, where there was a buried drum leaking PCE. Pacific Resources had threatened suit against the Kims, as owners of the property where Suzy Cleaners is located at 1654 EVP, and the Water Board became involved. Pacific Resources filed a Complaint against the Kims on February 6, 2020, in federal court. The Kims answered the Pacific Resources' Complaint on April 22, 2021, and at the same time filed a 3rd Party Cross-Claim against the present owners of the property at 1718 EVP and Barbara Hortman, as a former owner of 1718 EVP. However, Barbara Hortman died on April 20, 2021, and the Kims thereafter substituted in the Estate of Barbara Hortman and later the Hortman Family Trust.

The February 26, 2021, letters to the Hortman Family stated that the SD Water Board had determined at that time that the former Ha's Cleaners and Economy Cleaners located at 1718 EVP "may have caused or contributed to the elevated PCE concentrations found in soil vapor beneath JoAnn Fabrics." It noted that since PCE was never used at the JoAnn Fabrics location, the likely source of PCE detected at JoAnn Fabric was from the former Ha's Cleaners/Economy Cleaners site at 1718 EVP or the Suzy Cleaners site at 1654 EVP. In the letters, Mr. Tom Alo of the SD Water Board requested to meet the Hortman Family to discuss these issues. The letters provided Mr. Alo's telephone number and email for Tom Alo, and requested they contact him to meet and discuss the Hortman Family's potential liability for this detected release on March 12, 2021, at 5:00 p.m. The Hortman Family ignored these letters. Specifically, Defendants Kim Buhler and her brother Norman refused to respond. Nevertheless, the Hortman Family Trust, as administered by Kim Buhler and her brother, Norman Hortman, was **on notice** of potential liability for clean up costs and other damages suffered by the Kims and others for the PCE discharge at 1718 EVP. Under the law, "a

letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail." Cal. Evidence Code §641.

As stated, when these Water Board letters were sent to the Hortman Family, Defendant Kim Buhler was taking care of her mother, Barbara Hortman, on a daily basis. She was opening mail sent to her at her mother's Harvest Moon Circle address, but she was also opening her own mail at 1209 Via Ramon in Escondido. Since the letters were addressed to the "Hortman Family" at all three addresses, there is no reason to believe that Defendant Kim Buhler would not have opened the February 26, 2021, letter to the "Hortman Family" at her home address at 1209 Via Ramon in Escondido and read it. She would have understood the contents of the letter, since she was in fact a school teacher, and she would also have shared its contents with her brother Defendant Norman Alton Hortman, III, a pilot, and he, too, would have understood the contents of the letter. At the time, both Kim Buhler and her brother, Norman, were co-trustees and beneficiaries of the Hortman Trust. As named beneficiaries of that trust, they were in the position to inherit millions of dollars in assets and real property that their parents had accumulated over the years—assets they knew were in jeopardy, because their parents' former property at 1718 EVP was now liable to the Kims, Pacific Resources, and other owners of property at the East Valley Parkway plaza for significant cleanup costs, and potential damages to the Kims for trespass and nuisance, and for indemnity and contribution under federal and state laws for cleanup costs ordered by the Water Board. In fact, the Water Board has recently issued an Abatement Order requiring the Kims to incur over $500,000 in cleanup cost to remove and remediate the soil on their property at 1654 EVP that has been contaminated by PCE. Based upon the Kims investigation and testing of the soil, at a cost of over $200,000, the sole source of the PCE is from 1718 EVP where the former Ha's Cleaners/Economy Cleaners operated a dry cleaning facility and buried a drum that collected and eventually leaked PCE into the surrounding soil, which then migrated across the plaza westward through the soil and through the water table below and ultimately contaminated the Kims' property at 1654 EVP where Suzy Cleaners is located. Public records reflect that in 1991 Norman Alton Hortman, the father of Kim

Buhler and Norman Hortman, III, detected a PCE leak on the 1718 EVP property, showing that he had direct knowledge of the contamination being discharged on his property.

The February 26, 2021, Water Board letters also referenced the SD Water Board's "GeoTracker," which is a public website where the Hortman Family could view and download all documents and reports that had been filed with the SD Water Board concerning the investigation of PCE at the East Valley Parkway Plaza. In particular, there was, and presently is, a letter from the Kims' then attorney, Hazel Ocampo of the Procopio law firm, dated April 22, 2020, which details the background of the PCE release at 1718 EVP, and suggested that the 1718 EVP location where the former Ha's Cleaners/Economy Cleaners operated, and where the buried drum containing PCE at 1718 EVP, was the likely source of PCE detected at JoAnn Fabrics. (Ex. "4," letter from Ms. Ocampo to Ewan Moffat at the County DEH). The Ocampo letter is in the GeoTracker and was accessible by the Hortman Family when they received the February 26, 2021, letters from the SD Water Board. In a letter dated May 5, 2020, the County DEH informed the Kims that it received the Ocampo letter and "concurs that there is sufficient information to suggest that Ha's [Cleaners] may also be contributing to the PCE discovered at [JoAnn Fabrics]." (Ex. "5," Letter from Moffat at County DEH, dated May 5, 2020, page 3). Accordingly, on February 26, 2021, the Hortman Family, specifically Defendants Kim Buhler and Norman Alton Hortman, III, knew or should have known that the Hortman Trust was potentially liable to the Kims and others for PCE contamination that migrated from 1718 EVP, property owned by their parents, and that the Hortman Trust assets and property which they stood to inherit as co-beneficiaries—assets and property over which they had exclusive control and management—was in jeopardy.

Defendants Kim Buhler and Norman Alton Hortman, III, knew that the Kims had a right to compensation from the Hortman Trust assets over which they controlled because of the pending claims the Kims had, and presently have, against the Trust for damage and injury to their property, for emotional distress injuries, and for reimbursement for cleanup costs the Water Board was and is ordering the Kims to incur.

Instead of allowing these assets to remain in the Trust for payment of these debts, Defendants Kim Buhler and Norman Alton Hortman, III, fraudulently transferred the Trust assets and property to themselves, in order to hinder, delay and defraud the Kims as creditors with claims for damages and injuries caused by their parents in connection with the ownership of 1718 EVP. Immediately after their mother died on April 20, 2021, knowing that the Kims had a claim against the Trust for damages caused by the migration of PEC discharged at 1718 EVP, Defendants Kim Buhler and Norman Alton Hortman, III, transferred to themselves personally in equal shares all of the assets from Barbara Hortman's and the Hortman Trust's bank accounts, all real property owned by the trust, including income producing real property rentals, and valuable stocks and bonds and retirement accounts in millions of dollars, all with the intent to defraud, hinder and delay the Kims from getting compensation for the Hortman Trust's liability, and to hide from the Kims the full amount of the assets that were placed in the Trust. Indeed, the Hortman Trust that was produced only recently in January 2024 in the federal Pacific Resource lawsuit contained deleted or fraudulently redated pages that deleted the full list of assets and properties owned by the Trust, all in a further effort by Defendants Kim Buhler and Norman Alton Hortman, III, to hide and conceal the Trust's assets from the Kims and other creditors in the lawsuit, and prevent the Kims from being compensated for their losses, as herein described.

D. THE ABATEMENT ORDER IS ALSO "INAPPROPRIATE AND IMPROPER" TECHNICALLY, BECAUSE IT IGNORES UNCONTESTED DATA AND TECHINICAL CONCLUSIONS AFTER AN EXHAUSTIVE INVESTIGATION

The following are the specific inappropriate and improper technical actions taken by the SD Water Board in connection with the AO:

- On February 7, 2020, Mr. Kim was notified by the County of San Diego Department of Environmental Health (DEH) that the owners of 1680 EVP (formerly JoAnne Fabrics, or "JF") had hired consultants (Ninyo & Moore as well as Geosyntec Consultants) and that that PCE had been detected in soil gas and indoor air throughout their property. Between April 2015 and January 2020, Ninyo & Moore and Geosyntec conducted several soil vapor and sub-slab soil vapor investigations and reported concentrations being higher on the western edge of the 1680 EVP property. Because the Petitioner's dry-cleaner

(Suzy Cleaners, 1654 EVP) is located 50-feet to the west of their facility while 1718 EVP was located approximately 150 feet to the east, they had identified his property as the likely source. These conclusions were drawn by Ninyo & Moore as well as Geosyntec prior to any soil, soil vapor or groundwater sampling conducted at either 1654 nor 1718 EVP. In addition, the investigations and remedial activities at 1680 EVP were not conducted under contemporaneous regulatory oversight. The February 7, 2020, DEH letters dated and May 5, 2020, documenting DEH's review of technical reports provided to it after the fact, are attached as Exhibit "2." SD Water Board's inclusion of this work at 1680 EVP and repetition of the historical consultant conclusions (see AO D.3.i through D.3.vii) which have been discredited by more recent, thorough and SD Water Board approved investigations, is improper and inappropriate. The SD Water Board chose to repeat the historic conclusions drawn by Ninyo & Moore and Geosyntec that 1654 EVP was the "likely" source of PCE impacted soil vapor several times in the AO. At the time of the January 22, 2025, AO, the SD Water Board had already received the results of approved investigations under the Voluntary Cost Recovery Program in which the Kims had participated. The preliminary investigation identified clear evidence of an unauthorized release of PCE to soil, soil vapor and groundwater at 1718 EVP, and a subsequent comprehensive passive soil vapor survey of 1652 through 1720 EVP confirmed these results. AO, D.3.i through D.3.vii, improperly, inappropriately and repeatedly states the historic conclusions of 1654 EVP being the "likely" source which is derived from outdated and unsupervised studies. The SD Water Board's decision to highlight these discredited opinions creates an inherent bias within the AO against the Petitioner, and thus is improper and inappropriate.

- By March 25, 2022, the Petitioner had prepared Work Plans, which were approved by the SD Water Board, conducted a Geophysical Survey, and implemented a Preliminary Soil, Groundwater and Soil Gas Investigation at 1718, 1680 and 1654 EVP (see https://geotracker.waterboards.ca.gov/esi/uploads/geo_report/6537341654/T10000014715.PDF). In summary, this investigation identified the highest sub-slab soil gas concentrations of PCE at 1718 EVP (110,000 parts per billion, or ppb), which was 21.57 times higher than the highest sub-slab PCE concentration detected at 1654 EVP (5,100 ppb) and PCE was present in low levels in soil and groundwater at 1718 EVP while no soil or groundwater impact

was detected at 1680 or 1654 EVP. In addition, concentrations of PCE in soil vapor increased with depth at 1654 EVP (cleaner at the surface), indicating that the PCE vapors are originating from depth and not indicative of a surface release at 1654 EVP. The opposite was true at 1718 EVP. AO, D.3.viii, summarizes this phase of assessment work, conducted under the SD Water Board's oversight and approval, in three short bullet points that improperly and inappropriately fail to identify where the highest levels of soil gas were detected (1718 EVP), the vertical profile of PCE vapor distribution noted above, or that the PCE was only detected in soil and groundwater at 1718 EVP (Note: Section H Table 3 of the AO presents the groundwater result exceeding MCLs from 1718 EVP). In addition, the soil and groundwater sampling conducted at 1654 EVP occurred approximately 20-feet northwest of the historical dry-cleaning equipment, much more proximal to the suspected source than similar sampling at 1718 EVP, which occurred at two and three times that distance from the suspected UST at 1718 EVP. The results indicated a large contaminant footprint was present at 1718 EVP. The DEH and, in turn, the SD Water Board had asserted that groundwater flow was towards the northwest at these properties. Soil and groundwater samples collected from 1654 EVP location did not contain detectable PCE while six (6) of nine (9) soil samples collected from soil and two (2) of two (2) groundwater samples collected from 1718 EVP contained PCE. This along with the vertical soil vapor data described above, was the basis of our request for case closure. AO, D.3.viii ,improperly and inappropriately by omission summarizes the results of this investigation then states clearly that the "San Diego Water Board staff disagreed with [the Petitioner's consultant] IES's recommendations because the recommendation failed to prove that the 1654 EVP Property was not contaminated with waste." The SD Water Board's decision to inappropriately by omission summarize the results of this investigation while highlighting their disagreement creates an inherent bias against the Petitioner, and it thus improper and inappropriate.

- AO, D.3.vi,i states that "the 1654 EVP Property can only be ruled out as the source by conducting a comprehensive soil vapor survey." On November 2, 2022, the Petitioner's consultant submitted a Technical Memorandum to the SAN Diego Water Board (https://geotracker.waterboards.ca.gov/esi/uploads/geo_report/1899325370/T10000014715.PDF) detailing the results of a comprehensive passive soil gas survey which was conducted at the two sites as well as adjacent and

intermediary suites. The Executive Summary from the comprehensive passive soil vapor survey is quoted and provided below:

Executive Summary

For the purpose of this environmental investigation, Tetrachloroethene (PCE) has been identified as the primary chemical of concern as the source of site-wide contamination. In addition, during preliminary site assessment activities IES found similar subsurface conditions exist within the study area, and therefore assumes that natural subsurface conditions are consistent within the study area and that groundwater flows generally from the east-northeast to the west-southwest along with topography and flow of Escondido Creek. The purpose of the passive soil gas survey was to determine the source of PCE detected in soil gas samples collected from sub-slab and shallow subsurface soil in previous assessment events at suites 1654, 1680 and 1718 East Valley Parkway (EVP), Escondido, California (Figure 1). In this phase of assessment, ninety-one (91) PSGS were deployed in and around and subsequently collected from twelve suites located from 1652 through 1720 EVP.

Anaerobic biodegradation of PCE is possible through a process called reductive dechlorination with the degradation, or daughter products, being first trichloroethene (TCE), then cis/trans-1,2-dichloroethene (DCE). DCE is created during the latter stages of the PCE reductive dechlorination process. According to Fetter, DCE has a "very high" chemical mobility classification, therefore it does not linger in the environment. IES concludes that its presence indicates active dechlorination of PCE. Both PCE and TCE have "moderate" chemical mobility classifications, therefore they tend to accumulate, mobilize and linger in the environment. In addition, once PCE contacts oxygenated groundwater, the pre-existing anaerobic environment changes and reductive dechlorination may not proceed from TCE to DCE. If PCE accumulates on groundwater and forms dense, non-aqueous phase liquid (DNAPL), it will sink within the groundwater due to PCE's specific gravity.

The results of this investigation indicate the existence of two separate releases of PCE, both from 1718 EVP. The presence of two distinctive oval shaped DCE patterns in close proximity to one another at the 1718 EVP location (Figure 2), illustrate where reductive dechlorination of PCE to TCE then DCE is actively occurring. As discussed, DCE very high mobility classification indicates that it does not linger in the environment and therefore the presence of DCE

illustrates where PCE is actively dechlorinating in anaerobic soils. The highest levels of PCE and TCE were also detected at the 1718 EVP location, further corroborating source location. During this phase of assessment, DCE was detected only at the 1718 EVP property.

In addition to the existence two DCE plumes in close proximity at 1718 EVP shown on Figure 2, Figures 3 and 4 illustrate the current locations and migratory path of the down (groundwater) gradient PCE plumes, the southern release having migrated approximately 350 feet to the PS-54 location, and the northern release having migrated approximately 100 feet to the PS-2/PS-58 location. The relative dispositions of the two down-gradient plumes in juxtaposition with the source area DCE footprint indicate that two separate releases took place at different times, and migrated with groundwater along similar trajectories and at similar rates to the west-southwest. Assuming consistent groundwater flow throughout the study area, the southern release from 1718 EVP would then pre-date the northern release. The migrating dissolved or DNAPL plumes would continue to emit TCE and PCE gas as they migrate with groundwater, which in turn would impact soil gas in proximal locations.

AO, D.3.x, improperly and inappropriately by omission summarizes the results of this investigation then states clearly that the "San Diego Water Board staff disagreed with [the Petitioner's consultant] IES's recommendations of a No Further Action Determination." The SD Water Board's decision to inappropriately by omission summarize the results of this investigation while highlighting their disagreement creates an inherent bias against the Petitioner, and inappropriate and improper. The AO does, however, utilize the figures from this phase of assessment, which clearly show the west-southwestern migration of PCE and TCE, as well as the two source locations, identified from the DCE chemical fingerprints at 1718 EVP.

- The AO improperly, inappropriately and inadequately by omission summarizes the results of the Updated Conceptual Site Model (see https://geotracker.waterboards.ca.gov/esi/uploads/geo_report/1973010480/T10000014715.PDF) and concentrates only on additional site assessment at 1654 EVP, which arguably was recommended to appease the SD Water Board's requirements (Exhibit 3). The Updated Conceptual Site Model (CSM) provides a detailed description of evidence of two unauthorized releases that

have occurred at 1718 EVP, causing PCE in soil vapor to migrated west-southwest. It is clear from the work conducted that 1718 EVP is the most likely source of these two releases based on chemical fingerprints and the west-southwest PCE plume migration described in the CSM and discussed in comment 1a. The SD Water Board's decision to improperly and inappropriately by omission summarize the conclusions of the Updated Conceptual Site Model (CSM) while highlighting recommendations for additional confirmation assessments at 1654 EVP creates an inherent bias against the Petitioner, and is thus inappropriate and improper.

- The Petitioners have also been the subject of lawsuits by the owner of 1680 EVP and owner and former owners of 1718 EVP. The SD Water Board's failure to recognize the technical findings of our consultant's investigations throughout this multi-year process and as memorialized in the final AO, has aggrieved the Petitioners by continuing to propagate outdated and disproven findings.
- For example, after the Preliminary Soil, Groundwater and Soil Gas Investigation at 1718, 1680 and 1654 EVP, the Kims' consultant: (1) identified PCE in both groundwater samples collected from peripheral locations at 1718 EVP, with one exceeding MCLs at (Table 1 of CAO No. R9-2025-0014); (2) identified PCE at concentrations of up to 110,000 micrograms per cubic meter (µg/m^3) in the soil vapor ***at 1718 EVP*** while discussing baseline soil vapor sampling at 1680 EVP with PCE up to 24,000 µg/m^3 as well as the results from soil vapor sampling at 1654 EVP where the maximum concentration detected was 11,000 µg/m^3; (3) identified PCE in six of nine soil samples collected from 1718 EVP and zero out of three soil samples collected within 20-lineal feet of historic dry-cleaning equipment at 1654 EVP; and (4) requested that the Petitioners receive no further action on his case and that the SD Water Board focus on the source property of 1718 EVP. Because sections D.3.viii and x of the final AO do not differentiate the locations of the sample results, while sections D.3.iii and vii of the AO do, it is improperly and inappropriately biased against the Petitioner. In addition, the Petitioner is aggrieved because AO, D.3.i, iii, vi, and vii repeat the historical (pre-assessment) conclusions of the 1680 EVP investigations that "the 1654 EVP Property is the likely source of PCE detected in soil vapor." In contrast, section D.3.viii and x of the AO omit vital data but clearly state "San Diego Water Board staff disagreed with IES's (the Petitioner's consultant) recommendations".

- The Petitioners are aggrieved by SD Water Board's failure to properly and fairly present the assessment data in the AO, section D.3.viii, which was collected by the Petitioner under the SD Water Board's directives and approval (Exhibit 4).
- The Petitioners is are aggrieved by SD Water Board's failure to properly present the results of their consultant's comprehensive passive soil vapor survey which identified: (1) high levels of PCE (up to 92,600 µg/m^3) and TCE (7,200 µg/m^3) as well as two DCE "hot spots" in the soil vapor at 1718 EVP; (2) No DCE at any other locations other than 1718 EV); (3) a continuous and connected PCE and TCE soil vapor plume beneath the Valley Plaza extending from at least 1720 EVP (east-northeast of 1718 EVP) to 1652 EVP (west-southwest of 1654 EVP); (4) two additional PCE "Hot Spots" at 1704 and 1652 EVP; and (5) requested that the Petitioner receive no further action on his case and that the Water Board focus on the source property of 1718 EVP. The Petitioners have been aggrieved by the SD Water Board's failure to properly and fairly present the comprehensive passive soil vapor assessment data in the AO, section D.3.x, which was conducted by the Petitioner under the SD Water Board's recommendations, directive and approval (Exhibit 5).
- The Petitioners are aggrieved by SD Water Board's failure to properly present the results of the Updated CSM, as the AO, Section E, focuses only on additional site assessment recommended for 1654 EVP. The Petitioners had protested the SD Water Board's conclusions and directives and were attempting to eliminate any possibility of future additional directives to assess how the plume emanated from 1718 EVP. The Petitioners submitted a Work Plan for this additional assessment, but it became a convoluted back and forth with the SD Water Board (Exhibit 3). After these interactions, it became clear that the SD Water Board was not going to be a partner in the accurate assessment of Site conditions, and because the Petitioners did not want to pay for improper and inappropriate regulatory oversight, they terminated the Site Cleanup Agreement. AO, Section F, has no discussion of these interactions but only states that the Kims terminated the Cost Recovery Program.
- The Petitioners are aggrieved by the SD Water Board's failure to fairly present the accurate factual circumstances surrounding the termination of the Cost Recovery Program. AO, Section J, fails to mention that the Petitioner was sent electronic mail correspondence which stated "given your (December 1,

2023) decision to terminate voluntary oversight by the Water Board, we will be preparing and issuing you a Cleanup and Abatement Order" (Exhibit 6), sent December 12, 2023, the same day the SD Water Board reportedly received the December 1, 2023 notification from the Petitioner). AO, Section J, does, however, state that responsible parties for 1718 EVP had been sent notices to enter the Cost Recovery Program "on November 11, 2022, and January 30, 2023 to investigate the potential source areas at the 1718 EVP Property. Both parties declined to enroll." Source areas at 1718 EVP had already been confirmed.

- The AO includes public comments and SD Water Board responses regarding Tentative Cleanup and Abatement Order No. R9-2024-0011. As with Exhibit 6, responses by the SD Water Board are confusing. Many responses from the SD Water Board state that "San Diego Water Board Staff disagree with the comment" but later, within the same response block state "San Diego Water Board staff have revised the TCAO in response to this comment." The Petitioners are further aggrieved by the continued obtuse responses contained within the AO Response to Comments on Tentative Cleanup and Abatement Order No. R9-2024-0011.

V.

THE STATE BOARD SHOULD VACATE THE FINAL ABATEMENT ORDER AND DIRECT THE SAN DIEGO WATER BOARD MODIFY, AMEND AND CORRECT IT

Based on the evidence presented, the Petitioners request the State Board conduct a technical review of the final AO and that the State Board make any appropriate comments and require that the SD Water Board to amend the final AO accordingly. The Petitioners also request that all the responsible parties for the unauthorized releases at 1718 EVP be required in a revised AO to fully assess the lateral and vertical extents of the soil, soil vapor and groundwater plumes identified at 1718 EVP before any additional assessment is required by the Petitioners. That would satisfy the SD Water Board's concern about data gaps while mitigating their improper and inappropriate directives which have required the Petitioners to assess site conditions from 1652 to 1720 EVP at great cost and effort by the Petitioners.

In addition, the AO should be vacated and modified, either on remand or by the State Board itself, to include the Hortman Family back as responsible parties who are former owners of 1718 EVP. This would include the Hortman Family Trust. As stated, there is no legal basis to remove the Hortman Family Trust simply because it is purportedly insolvent.

VI.

A STATEMENT THAT COPIES OF THIS PETITION HAVE BEEN SENT TO THE SAN DIEGO WATER BOARD AND TO THE DISCHARGER, IF DIFFERENT FROM THE PETITIONERS

A True and correct copy of this Petition and all supporting documentation were sent electronically to the following:

1. State Water Resources Control Board
   Office of Chief Counsel
   Adrianna M. Jerome
   P.O. Box 100
   Sacramento, CA 95812-0100
   Email: waterqualitypetitions@waterboards.ca.gov

2. San Diego Regional Water Quality Control Board
   David W. Gibson
   Executive Officer
   2375 Northside Drive, Suite 100
   San Diego, CA 92108-2700
   Email: David.Gibson@waterboards.ca.gov
   Tom.alo@waterboards.ca.gov
   Sarah.Mearon@waterboards.ca.gov
   Alex.Sauerwein@waterbioards.ca.gov
   Chiara.Clemente@waterboards.ca.gov

3. Ryan R. Waterman, Esq.
   BROWNSTEIN, HYATT, FARBER & SCHRECK, LLP
   225 Broadway, Suite 1670
   San Diego, CA 92101-5000
   Email: rwaterman@bhfs.com
   Attorney for M&E Brothers, LLC (present owners of 1718 EVP) and Flor De Lys Barawid

4. Matthew McMillan, Esq.
   TROPEA & MCMILLAN, LLP
   4747 Morena Blvd., Suite 250A

San Diego, CA 92117
Email: mmcmillan@tropeamcmillan.com
Attorneys for Kim Buhler and Norman Alton Hortman, III, as trustees for The Norman Alton Hortman and Barbara Hortman Revocable Trust No. 1, Dated July 2, 1985 (former owners of 11718 EVP)

VII.

A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE SAN DIEGO WATER BOARD BEFORE THE STATE BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONERS COULD NOT RAISE THOSWE OBJECTIONS BEFORE THE SAN DIEGO WATER BOARD

All the issues raised in this Petition were presented to the SD Water Board, except for the issue of removing the Hortman Trust as a responsible party, when the SD Water requested comments to the Tentative Abatement Order. When the SD Water Board issued the final AO, it unexpectedly removed the Hortman Trust as a responsible party based solely on the Trust being purportedly insolvent, which is contrary to California law.

VIII.

REQUEST FOR STAY

Petitioners request that the State Board stay the implementation of the SD Water Board's final Abatement Order pending resolution of this petition on the following grounds:

1. Attachment 1 to the AO sets forth a time schedule for compliance. This includes submitting a Site Investigation Work Plan to the SD Water Board by April 21, 2025, and other remedial actions and reports, without the participation of the Hortman Parties. The AO estimates the cost of this work to be between $300,000 and $500,000. (Page 28 of AO). Without the participation of the Hortman Parties, the party responsible for the discharge at 1718 EVP, and the party with the financial means to clean up the property, the Kims would be severely prejudiced financially.

2. In addition, there is presently a pending lawsuit in the federal court, where the Kims seek a judicial ruling that the Hortman Parties are the sole responsible parties for the discharge of PCE that has contaminated the entire plaza at East valley Parkway,

including the Kims' property at 1654 EVP. A favorable judicial ruling that 1718 EVP is the sole source of the PCE discharge which migrated westward across the plaza to contaminate the Kims' property would alter the directives under the AO and potentially release the Kims from responsibility to pay for the clean up of their property. Presently, the Kims have applied for SCAP funding, but they are number 100 or so on the list with no guarantee their application will be accepted within a year. Requiring the Kims to pay for the cleanup of their property now would severely impact their ability to defend themselves in the federal lawsuit and prosecute their claims against the Hortman Parties.

3. The Hortman Parties will attempt to use the AO releasing them as responsible parties to remove themselves from the federal lawsuit on collateral estoppel grounds, arguing that the order releasing them as responsible parties is binding against the Kims and that they should have no liability for the PCE discharge. This would cause undue time and expense litigating this issue if the AO is not stayed pending resolution of this petition.

4. There will be no substantial harm to the Hortman Parties or to the public if a stay is granted. The Hortman Parties do not presently own and occupy the properties at 1718 EVP. As stated in the reports submitted by the Kims' expert, there are low levels of PCE at 1654 EVP as compared to the levels detected at 1718 EVP.

5. The Kims will be filing suit against the Hortman Parties for fraudulent conveyance, which will include the appointment of a receiver to identify and collect all of the assets that Kim Buhler and Norman Hortman transferred to themselves from the Trust after their mother died on April 20, 2021. Implementation of the AO should be stayed, so that the AO does not aid the Hortman Parties from further fraudulent transfers of assets from the Trust or otherwise force the Kims to incur excessive cleanup costs before they have the chance to have the assets of the Trust returned so they can be used to clean up their property.

6. A stay is also necessary, so that, on review, the disputed legal and technical issues raised in this petition can be resolved, before forcing the Kims to incur

further cleanup costs and expenses. If a stay is not granted, the Kims will suffer substantial harm

IX.

CONCLUSION

For the foregoing reasons, the Kims request that the State Board grant this petition for review and order that the final AO issued by the SD Water Board be vacated, modified and corrected as herein requested. The Kims also request that the implementation of the AO be stayed pending resolution of this petition.

Dated:

Manuel Corrales, Jr., Esq., Attorney for
Petitioners GUHN Y. KIM, YUN SOON KIM
and THE KIM FAMILY TRUST of 2017

DECLARATION OF MANUEL CORRALES, JR.

I, Manuel Corrales, Jr., declare that if called as a witness in this matter I could competently testify as follows:

1. I am an attorney at law duly licensed to practice in the State of California, the State of Utah, and the State of New Mexico, and I am the attorney of record for Petitioners GUHN Y. KIM, YUN SOON KIM and THE KIM FAMILY TRUST of 2017 herein. I have personal knowledge of the facts set for the herein.

2. Attachment 1 to the AO sets forth a time schedule for compliance. This includes submitting a Site Investigation Work Plan to the SD Water Board by April 21, 2025, and other remedial actions and reports, without the participation of the Hortman Parties. The AO estimates the cost of this work to be between $300,000 and $500,000. (Page 28 of AO). Without the participation of the Hortman Parties, the party responsible for the discharge at 1718 EVP, and the party with the financial means to clean up the property, the Kims would be severely prejudiced financially.

3. In addition, there is presently a pending lawsuit in the federal court, where the Kims seek a judicial ruling that the Hortman Parties are the sole responsible parties

for the discharge of PCE that has contaminated the entire plaza at East valley Parkway, including the Kims' property at 1654 EVP. A favorable judicial ruling that 1718 EVP is the sole source of the PCE discharge which migrated westward across the plaza to contaminate the Kims' property would alter the directives under the AO and potentially release the Kims from responsibility to pay for the clean up of their property. Presently, the Kims have applied for SCAP funding, but they are number 100 or so on the list with no guarantee their application will be accepted within a year. Requiring the Kims to pay for the cleanup of their property now would severely impact their ability to defend themselves in the federal lawsuit and prosecute their claims against the Hortman Parties.

4. The Hortman Parties will attempt to use the AO releasing them as responsible parties to remove themselves from the federal lawsuit on collateral estoppel grounds, arguing that the order releasing them as responsible parties is binding against the Kims and that they should have no liability for the PCE discharge. This would cause undue time and expense litigating this issue if the AO is not stayed pending resolution of this petition.

5. There will be no substantial harm to the Hortman Parties or to the public if a stay is granted. The Hortman Parties do not presently own and occupy the properties at 1718 EVP. As stated in the reports submitted by the Kims' expert, there are low levels of PCE at 1654 EVP as compared to the levels detected at 1718 EVP.

6. The Kims will be filing suit against the Hortman Parties for fraudulent conveyance, which will include the appointment of a receiver to identify and collect all of the assets that Kim Buhler and Norman Hortman transferred to themselves from the Trust after their mother died on April 20, 2021. Implementation of the AO should be stayed, so that the AO does not aid the Hortman Parties from further fraudulent transfers of assets from the Trust or otherwise force the Kims to incur excessive cleanup costs before they have the chance to have the assets of the Trust returned so they can be used to clean up their property.

7. A stay is also necessary, so that, on review, the disputed legal and technical issues raised in this petition can be resolved, before forcing the Kims to incur further cleanup costs and expenses.

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

Executed this _4th_ day of February 2025, at San Diego, California.

MANUEL CORRALES, JR.

EXHIBIT 1

CAO NO. R9-2025-0014

San Diego Regional Water Quality Control Board

January 22, 2025

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

Guhn Y. Kim and Yun Soon Kim
5490 Wolverine Terrace
Carlsbad, CA 92010
guhnykim@gmail.com

M&E Brothers LLC
15475 Willow Ranch Trail
Poway, CA 92064
lysl61barawid@gmail.com

Flor De Lys Barawid
15475 Willow Ranch Trail
Poway, CA 92064
lysl61barawid@gmail.com

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.

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. GIBSON
Executive Officer

DWG:kkd:rnm: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
William Koska, Law Offices of William K. Koska & Associates, wkoska@koskalaw.com
Suzanne Varco, Varco & Rosenbaum Environmental Law Group LLP, svarco@envirolawyer.com
Grant Olsson, Varco & Rosenbaum Environmental Law Group LLP, golsson@envirolawyer.com
Katharine Tremblay, Tremblay Beck Law, katharinetremblay@me.com
Ryan Waterman, Brownstein Hyatt Farber Schreck LLP, rwaterman@bhfs.com
David Allen, Barnes & Thornburg LLP, david.allen@btlaw.com
Joel Meyer, Barnes & Thornburg LLP, joel.meyer@btlaw.com
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:

January 22, 2025

_____ _____

DAVID W. GIBSON Date

TABLE OF CONTENTS

List of Tables

List of Figures

Figure 1: Location of Properties 9
Figure 2: Passive Soil Vapor Analytical Results for cis-1,2-Dichloroethene 18
Figure 3: Passive Soil Vapor Analytical Results for Trichloroethene 19
Figure 4: Passive Soil Vapor Analytical Results for Tetrachloroethene 20

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.

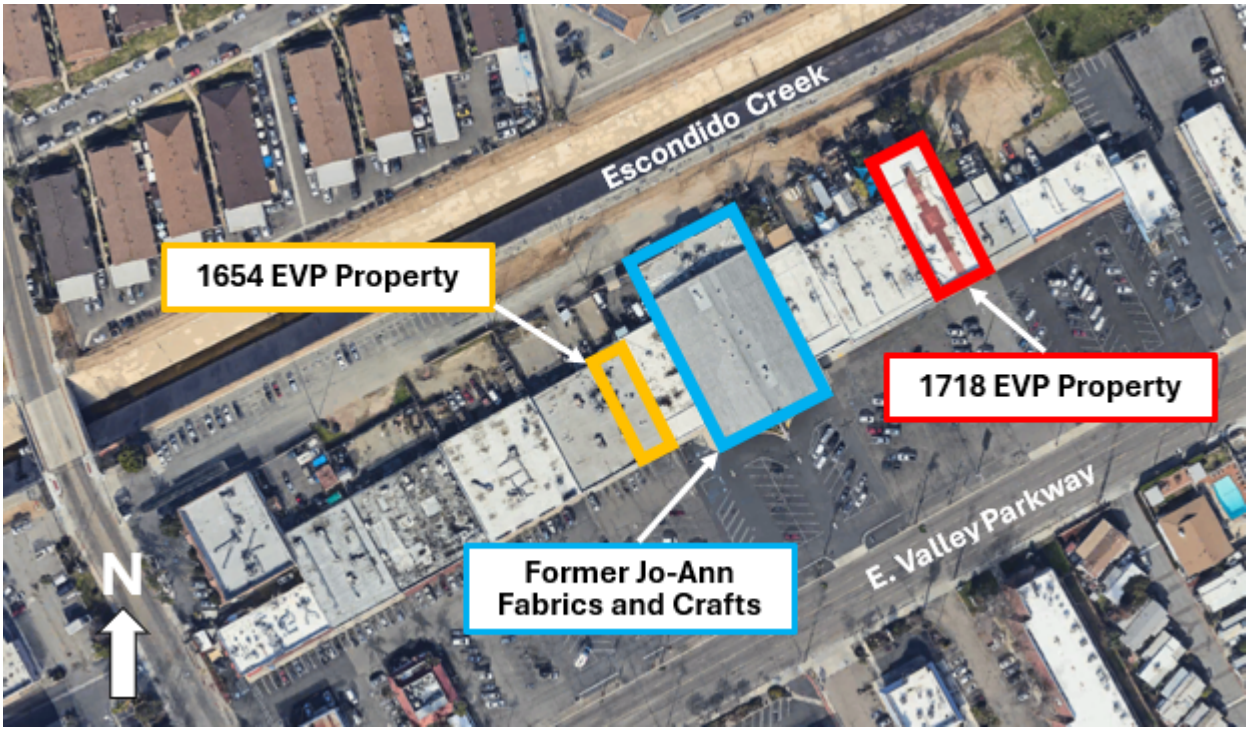
11. The San Diego Water Board may require the Parties in **Finding I** to submit a Public Participation Plan or engage in other activities to disseminate information and gather community input regarding the Site, as authorized or required by Water Code sections 13307.1, 13307.5, and 13307.6.

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 Assessment[9] 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 (µg/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 assessment[10] at the former Jo-Ann Fabrics and Crafts. Indoor air concentrations of benzene, carbon tetrachloride, 1,2-dichloroehane, 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 pits[11] 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 µg/m^3, at the beginning of the test (9:57) and 7,400 µg/m^3, at the end of the test (13:00). Soil vapor samples collected from SP-2 detected PCE concentrations at 1,000 µg/m^3, at the beginning of the test (14:00) and 1,100 µg/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 investigations[12] 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 µg/m^3. PCE was detected in indoor air at concentrations of 3.1 and 7.2 µg/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 µg/m^3.[13]

v. In April/May 2019, Geosyntec Consultants conducted a 30-day soil vapor extraction test[14] 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 µg/m^3 and during the shutdown sampling event ranged from 4.1 to 19 µg/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 µg/m^3. PCE concentrations during the baseline sampling event ranged from 2,200 to 24,000 µg/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 µg/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/m^3 at EW-1 and 1,800 µg/m^3 at EW-2) were lower than the PCE concentration detected in the newly installed SVE-3 well (3,000 µg/m^3). 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/m^3 (VP-2) and exhibited a similar trend to the previous rebound sampling event conducted in July 2019. Further, concentrations were elevated overall compared to the July 2019 sampling event.

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 investigation[17] 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 (µg/kg).

- PCE and TCE were detected in soil vapor at concentrations ranging from 440 to 110,000 µg/m^3 and 67 to 670 µg/m^3, respectively.

- PCE was detected in groundwater at concentrations of 2.5 and 5.7 micrograms per liter (µg/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 investigation[18] 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 µg/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 survey [19] 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 investigation[20] 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 $\mu g/m^3$. 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

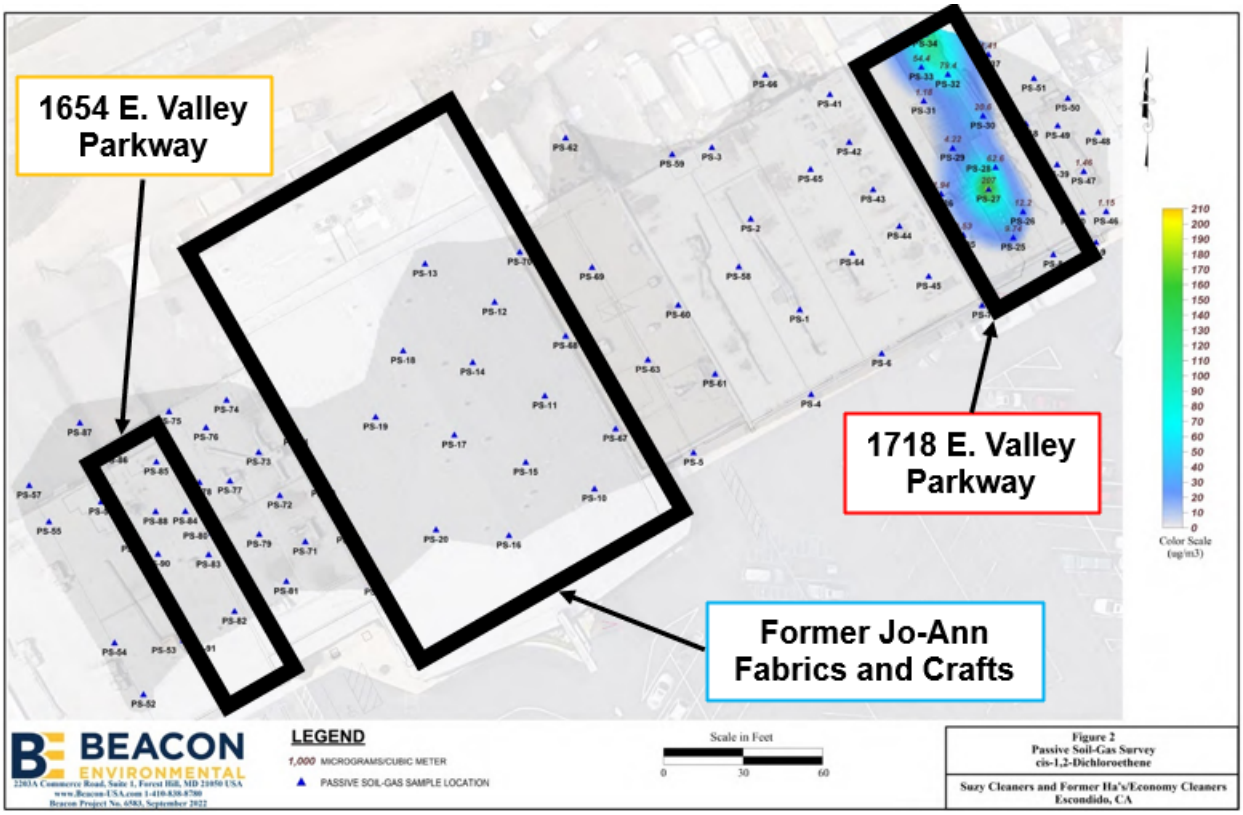


Figure 3: Passive Soil Vapor Analytical Results for Trichloroethene

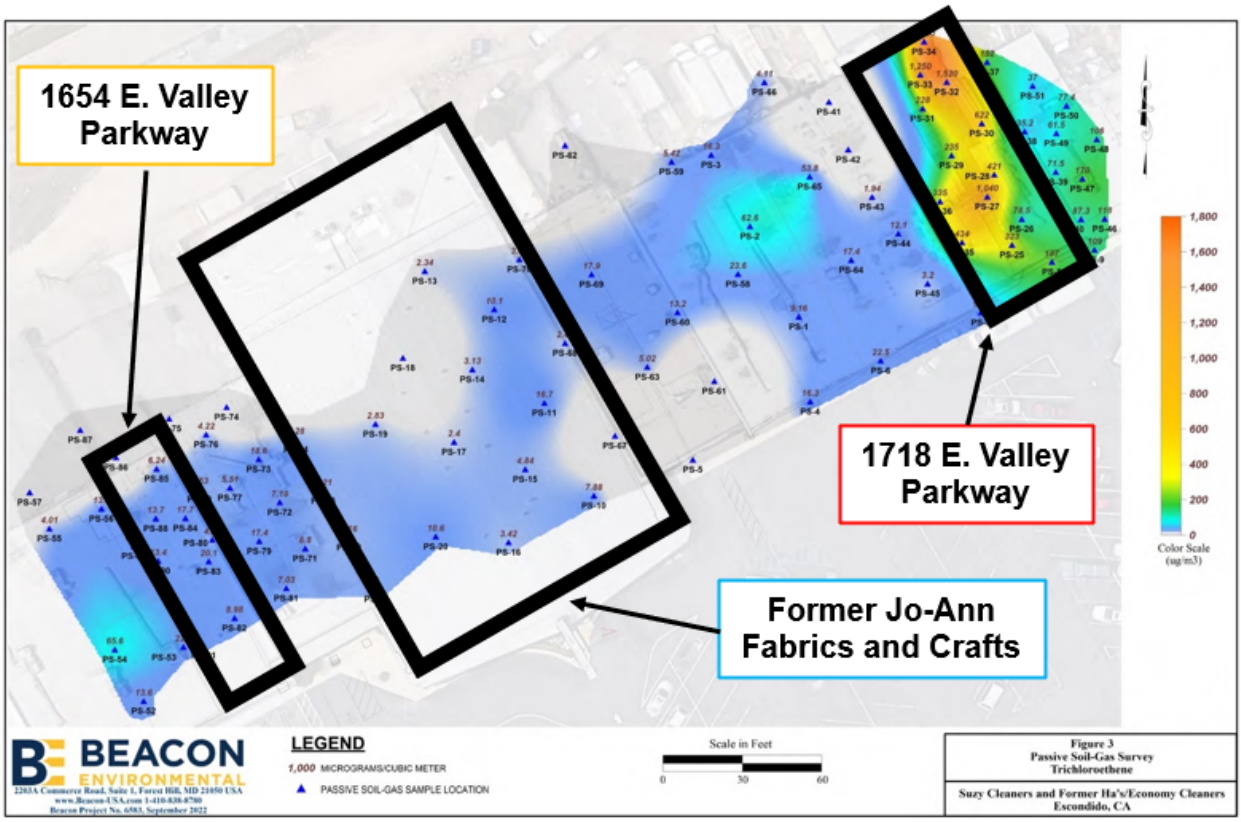
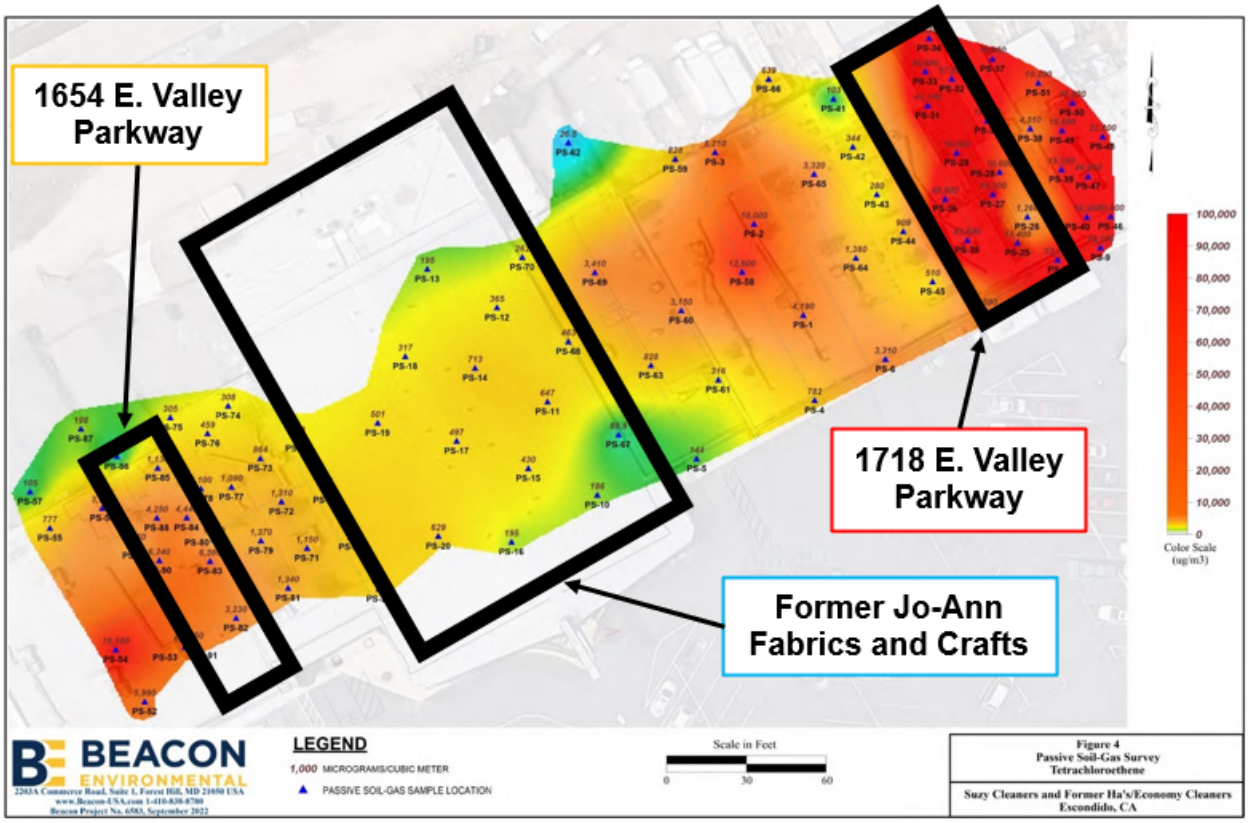


Figure 4: Passive Soil Vapor Analytical Results for Tetrachloroethene



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 Plan[22] designates beneficial uses for waters of the state and establishes water quality objectives to protects 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)] (µg/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 µg/m^3
(b) PCE soil vapor intrusion ESL for noncancer risk = 5,800 µg/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 (µg/m^3)	Predicted TCE in Indoor Air[25](a)(b)(c) (µg/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 µg/m^3
(b) EPA Region 9 Interim TCE Urgent Response Action Level = 24 µg/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 (*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.).

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 pathways[31] 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
Comment 1: ***Michael A. Palmer and Roxie Trachtenberg, de maximis, inc., March 22, 2024***			
1a	Finding H	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.	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. 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: Soil Vapor Plume at 1718 EVP *[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.* Soil Vapor Plume Across Valley Plaza *[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*

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			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. These data gaps, among others, need to be addressed prior to considering whether the former paint store is a potential source. 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. San Diego Water Board staff have not revised the TCAO in response to this comment.
1b	Finding I.H	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.	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. San Diego Water Board staff have revised the TCAO in response to this comment. See Provision P.8.
1c	Finding D	The TCAO should be revised to clearly show that 1654 EVP is a source of PCE.	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

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			potential release of PCE due to the dry cleaning operations at 1654 EVP have been added to the TCAO. San Diego Water Board staff have revised the TCAO in response to this comment. See Findings D.2 and D.3.
1d	Finding G	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.	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. 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.
1e	Finding E and Directive B	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.	<u>Updated CSM Report</u> 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. San Diego Water Board staff have revised the TCAO in response to this comment. See Finding E.

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			Site Investigation Work Plan 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. San Diego Water Board staff have revised the TCAO in response to this comment. See Finding F.
1f	Finding J and Directive O.2	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. 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.	See response to comment 1b regarding separate Orders. 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. San Diego Water Board staff have not revised the TCAO in response to this comment.
1g	Finding D.1	The TCAO is wholly lacking in the factual background regarding abandonment of the UST, as documented by DEH records, and should be updated.	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. San Diego Water Board staff have revised the TCAO in response to this comment. See Finding D.1.
1h	Attachment 1	The schedule provided in the Tentative CAO is too aggressive. A new directive requiring the parties to submit a schedule within a reasonable timeframe	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

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
		should be added to the order and all subsequent deadlines should be linked to this schedule.	consideration. San Diego Water Board staff have revised the TCAO in response to this comment. See Provision P.7.
1i	Finding L	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.	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: • 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 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). San Diego Water Board staff have not revised the TCAO in response to this comment.
1j	Directives F, G, and I	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.	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).

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			San Diego Water Board staff will, however, consider requests to extend due dates as described in response to comment 1h. San Diego Water Board staff have not revised the TCAO in response to this comment.
1k	Not Applicable	Recommend adding a new directive to the TCAO to assess the feasibility of an interim remedial action.	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. San Diego Water Board staff have revised the TCAO in response to this comment. See Directive J.
Comment 2: ***Manuel Corrales, Jr., March 18, 2024***			
2a	Not Applicable	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.	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. San Diego Water Board staff have not revised the TCAO in response to this comment.
2b	Not Applicable	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	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

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.	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. Also, see response to comment 2a. San Diego Water Board staff have not revised the TCAO in response to this comment.
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.	See responses to comments 2a and 2b.
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
			threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts." 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. San Diego Water Board staff have not revised the TCAO in response to this comment.
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.	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. San Diego Water Board staff have not revised the TCAO in response to this comment.
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.	See response to comment 2e.
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 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

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			collected and evidence is presented. San Diego Water Board staff have not revised the TCAO in response to this comment.
2h	Finding A.2	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.	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. San Diego Water Board staff have revised the TCAO in response to this comment. See Finding J.
2i	Findings A.3, A.4, and A.5	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.	Comment noted. San Diego Water Board staff have not revised the TCAO in response to this comment.
2j	Figure 1	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.	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. 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.
2k	Finding D	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.	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

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
			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. 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.
2l	Finding D	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.	San Diego Water Board staff disagree with the comment. 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. 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.
2m	Findings D.2.i through D.2.vii	The TCAO goes to great lengths (over 2 and ½ 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	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. San Diego Water Board staff have revised the TCAO in response to

Comment No.	TCAO Section	Comment Summary	San Diego Water Board Staff Response
		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.	this comment. See Findings D.2 and D.3.
2n	Finding D.2.ix	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.	See response to comment 2m.
2o	Finding E	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.	See response to comment 1b.
2p	Table 2	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.	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. San Diego Water Board staff have not revised the TCAO in response to this comment.
2q	Section II – Directives	Considering that my client has incurred all site assessment costs to date (excluding the indoor air sampling conducted at 1718 EVP), this should be	See response to comment 2h.

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. 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.
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.	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).	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. San Diego Water Board staff have not revised the TCAO in response to this comment.
Comment 4: ***Ryan Waterman, Brownstein Hyatt Farber Schreck, March 22, 2024***			
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	The TCAO presents predicted indoor air concentrations in Table 3 instead of actual indoor air concentrations collected in April and October 2022.	See response to comment 1d.
4d	Section II – Directives	The forthcoming CAO's Directives need to be source-specific. The TCAO would require all named parties to be responsible for the Kims' refusal to further investigate 1654 EVP. The TCAO would require all parties to upload documents to the 1718 EVP Geotracker website and risks obscuring the regulatory and investigative	<u>Refusal to Comply with TCAO Directives</u> See response to comment 1f. <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

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. San Diego Water Board staff have revised the TCAO in response to this comment. See Directive L.1.
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.	See response to comment 1a.
4f	Finding C and Attachment 1	Additional updates to any forthcoming CAO must be made. 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.	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	Evidentiary hearing should be held before the full San Diego Regional Board.	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

EXHIBIT 2

Sand Diego County DEH Letters dated

February 7, 202 and May 5, 2020

County of San Diego

DEPARTMENT OF ENVIRONMENTAL HEALTH
LAND AND WATER QUALITY DIVISION
P.O. BOX 129261, SAN DIEGO, CA 92112-9261
Phone: (858) 505-6700 or (800) 253-9933 Fax: (858) 514-6583
www.sdcdeh.org

AMY HARBERT
ASSISTANT DIRECTOR

OFFICIAL NOTICE

February 7, 2020

Mr. Guhn Kim
Kim Family 2017 Trust
Santa Maria Midtown Properties LLC
5490 Wolverine Terrace
Carlsbad, CA 92010

Dear Mr. Kim:

HAZARDOUS MATERIALS DIVISION PERMIT #DEH2009-HUPFP-211155
SUZY CLEANERS
1654 EAST VALLEY PARKWAY, ESCONDIDO

Staff of the Department of Environmental Health (DEH), Site Assessment and Mitigation (SAM) received environmental assessment reports, prepared by Geosyntec, for the Jo-Ann Fabrics and Crafts property at 1680 East Valley Parkway. The reports indicate that there may be a release of tetrachloroethane (PCE) from the Suzy Cleaners facility (the "Site").

DEH staff reviewed the following reports:

- April 3, 2015 *Soil Vapor Survey and Screening-Level Human Health Risk Assessment*, prepared by Ninyo & Moore
- April 13, 2015 *Indoor Air Quality Assessment*, prepared by Ninyo & Moore
- April 20, 2017 *Additional Soil Vapor Investigation Report*, prepared by Geosyntec
- January 25, 2019 *Additional Soil Vapor Investigation Report*, prepared by Geosyntec
- June 25, 2019 *SVE Pilot Test Report*, prepared by Geosyntec
- July 31, 2019 *Addendum to 25 June 2019 SVE Pilot Test Memorandum*, prepared by Geosyntec
- January 10, 2020 *Supplemental Investigation Report*, prepared by Geosyntec

Evidence of a release of chlorinated solvents from the Site are as follows:

1. 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 soil 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.

2. There is no documentation of PCE being used at 1680 East Valley Parkway, currently or historically.

3. 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.

4. 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.

DEH recommends that you enter the Voluntary Assistance Program (VAP). The VAP provides timely regulatory oversight and review of environmental investigations. Information about the VAP can be found at: https://www.sandiegocounty.gov/content/sdc/deh/lwqd/sam_voluntary_assistance_program.html
For additional information regarding the VAP, contact VAP coordinator James Clay at 858-505-6969 or at james.clay@sdcounty.ca.gov.

If the VAP does not receive an application from you within 30 days from the date of this letter, DEH will open an environmental case and issue an Enforcement Order for Corrective Action under Chapter 6.5 of the California Health and Safety Code.

DEH was delegated by the Department of Toxic Substances Control (DTSC) to implement and enforce Environmental Assessment and Corrective Action authority pursuant to Health and Safety Code sections 25187, 25187.1, 25200.14, and 25404.1, and California Code of Regulations, Title 22 Chapter 50, article 1 sections 68400.11 et seq. Health and Safety Code sections 25187 and 25200.14 authorize DEH to issue a Corrective Action Order when DEH determines that there is or may be a release of hazardous waste or constituents into the environment from a hazardous waste facility.

Please contact James Clay at (858) 505-6969, if you require additional assistance.

Sincerely,

James Clay

JAMES CLAY, Environmental Health Specialist III
Site Assessment and Mitigation Program

EWAN MOFFAT, PG 7207 CHg 972
Hydrogeologist

cc: Mr. Anderson Donan, Donan Environmental Services (by email)

County of San Diego

DEPARTMENT OF ENVIRONMENTAL HEALTH
LAND AND WATER QUALITY DIVISION
P.O. BOX 129261, SAN DIEGO, CA 92112-9261
Phone: (858) 505-6700 or (800) 253-9933 Fax: (858) 514-6583
www.sdcdeh.org

AMY HARBERT
ASSISTANT DIRECTOR

OFFICIAL NOTICE

May 5, 2020

Mr. Guhn Kim
Kim Family 2017 Trust
Santa Maria Midtown Properties LLC
5490 Wolverine Terrace
Carlsbad, CA 92010

Dear Mr. Kim:

HAZARDOUS MATERIALS DIVISION PERMIT #DEH2009-HUPFP-211155
SUZY CLEANERS
1654 EAST VALLEY PARKWAY, ESCONDIDO

Staff of the Department of Environmental Health (DEH), Site Assessment and Mitigation Program (SAM) received a Letter, dated April 22, 2020 prepared by Procopio, for the Suzy Cleaners facility (the Site), located at 1654 East Valley Parkway. The letter is in response to a February 7, 2020 letter from DEH requesting that you enter the Voluntary Assistance Program (VAP) to provide environmental data (i.e. soil borings, soil vapor samples, groundwater samples, etc.) of the subsurface beneath the Site to determine whether a release of tetrachloroethylene (PCE) has occurred. This request was made based on elevated PCE concentrations obtained from soil and soil vapor data at 1680 East Valley Parkway, identified as JOANN Fabrics and Crafts (JF), located approximately 50 feet east of the Site.

The Letter suggests that the source of the PCE may also be coming from another site, Ha's Cleaners (Ha's), located approximately 150 feet east of JF. Based on our review of the information provided, DEH has the following comments:

<u>The Relevant Dry-Cleaning Machinery is Nearly Equidistant to the Site</u>

The Letter states that, although the property lines between JF and the Site are approximately 50 feet apart, the distance from the PCE hot spot at JF (SV-1) to the location of the Site's dry cleaning machine (DCM) in the northwest corner of the Site, is approximately 140 feet. This would be a similar distance compared to the 150 feet between JF and Ha's. Therefore, the Site and Ha's are almost equidistant from JF.

DEH Response: Using SV-1 as the 'hot spot', the distance from SV-1 to the property line of Ha's is approximately 220 feet, which would still be greater than the suggested distance (140 feet) to the Site. In addition, SV-3, and SV-4, between SV-1 and Ha's, have significantly lower PCE concentrations. Moreover, the statement assumes that a potential release from the Site would have come from the DCM. Although the DCM is a common PCE source, PCE releases can also occur from other areas, such as the storage room, floor drains, bathroom, or spill releases. Without soil and soil vapor samples from the Site, the PCE source location(s) cannot fully be determined. Although the respective 50 feet and 150 feet measurements for the Site and Ha's may not be entirely accurate, the Site is closer to JF and is considered a potential source.

Unlawful Release and Irregular Closure of the Former Ha's Dry Cleaner Provide a Likely Source of PCEs to the Site

The Letter discusses the discovery and removal of a 55-gallon tank from Ha's, including a soil sample taken beneath the tank. Based on the sample results, SAM case #H10991-001 was closed on March 22, 1991. The Letter also suggests that since the case has limited information and that an associated odor complaint during the investigation was not fully addressed, a release of PCE may have occurred at Ha's.

DEH Response: Soil sampling beneath a tank is the conventional means to determine whether or not there has been a release from the particular tank being removed. If the sample result(s) is/are non-detect, it is considered sufficient information to confirm no subsurface release related to that tank and subsequent closure of a case (#H10991-001). Although an odor complaint was received on March 4, 1991, a follow-up visit by the inspector on March 5, 1991 indicated there were no odors, and the complaint was therefore considered to be unjustified. From our records, there is no indication that the alleged odors came from the subsurface or from a former tank as you have indicated.

Groundwater Flow and Utility Lines Show a Likely Transport Pathway from East to West

The Letter states that since there is a northwest groundwater flow in the area, it is more likely that the PCE impacts would have come from Ha's since that is upgradient to JF with regards to groundwater flow direction. In addition, a former floor drain on the northeast corner of JF is closer to Ha's.

DEH Response: Based on groundwater flow directions from nearby SAM cases, DEH concurs that the general groundwater flow is to the northwest. However, due to a lack of groundwater data from JF, the Site or Ha's, it cannot be determined whether groundwater has been impacted by PCE. It is plausible the PCE intrusion into JF could solely be the result of a soil vapor plume emanating from PCE-impacted soil rather than transported via groundwater. In this scenario, groundwater flow direction would have no bearing on the flow direction of the soil vapor plume.

The former floor drain on the northeast corner of JF is approximately equidistant from Ha's and the Site (the DCM on the northwest corner). Although it is possible that vapors may have

travelled from Ha's through utility lines, at this time there is no means to establish that they would not have done the same from the Site.

PCE Rebound Levels Increase Eastward Toward the Former Ha's Dry Cleaner

The letter references the January 10, 2020 Supplemental Investigation Report (SIR) that shows the highest soil vapor extraction (SVE) rebound sample result (3,000 ug/m^3) at SVE-3, closer to Ha's, and the lowest SVE rebound sample result (790 ug/m^3), SVE-1, closer to the Site.

DEH Response: As stated in the SIR, SVE-3 was outside the radius of influence of the SVE system, and thus was never remediated. Therefore, the 3,000 ug/m^3 of PCE noted in SV-3 is a baseline sample and, by comparing the value of 3,000 ug/m^3 to the equivalent baselines of SV-1 (6,900 ug/m^3) and SV-2 (14,000 ug/m^3), it is actually lower. It is uncertain what SVE-3 would be if it had been previously remediated. Additionally, both the rebound samples and the baseline samples are highest in SVE-2 (the center). Based on this, it is possible that the PCE could be coming from either the Site, Ha's, or both.

SUMMARY FINDINGS:

Based on the items addressed in your Letter, DEH concurs that there is sufficient information to suggest that Ha's may also be contributing to the PCE discovered at JF. 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.

Please contact Ewan Moffat at (858) 505-6856, if you require additional assistance.

Sincerely,

EWAN MOFFAT, PG 7207 CHg 972
Hydrogeologist

cc: Ms. Hazel Ocampo, Precopio

EXHIBIT 3

Sand Diego Water Board's

Response to Comments Matrix

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
1	Section 4.2 - Area Hydrology and Hydrogeology	IES proposes to install four permanent groundwater monitoring wells to define the groundwater gradient and flow direction. Figure 9, however, only shows three groundwater monitoring wells (MW-1, MW-2, and MW-3). Correct this discrepancy on a revised figure.	IES offers that three groundwater wells distributed in an equilateral triangle as shown on Figure 9 of the Work Plan is sufficient to determine site-specific depth to groundwater, flow direction and gradient. Groundwater quality and gradient should be established before the lateral extent of soil, groundwater and/or soil gas impact are determined in order to guide the investigation. IES will update section 4.2 to reflect three groundwater monitoring wells.	No additional comments.	No additional comments.	No additional comments.	No additional comments.
2	Section 4.3 – Suzy Cleaners Case Origin	The Work Plan states that wastes from historical dry cleaning operations were stored in aboveground steel drums for subsequent disposal. Show the location(s) of these drums on Figure 9.	IES will provide a Revised Work Plan with the addition of the former drum storage area at the Site on Figures 2, 3 and 9.	No additional comments.	No additional comments.	No additional comments.	No additional comments.
3a	Section 5 – Additional Assessment Scope of Work	This section indicates that the Work Plan is intended to address the data gaps in the vicinity of 1654 E. Valley Parkway as identified in the March 22, 2023, *Updated Conceptual Site Model* (CSM) prepared by IES. The Work Plan should also be in designed in a manner that addresses the study questions specified in the San Diego Water Board's February 1, 2023, letter. In our letter, we also indicated that additional study questions can be posed in the Work Plan for the purpose of supporting IES's conclusions in the CSM with site-specific data. The study questions and a few of IES's CSM conclusions are	Groundwater quality and gradient should be established before the lateral extent of soil, groundwater and/or soil gas impact are determined in order to guide the investigation. For these reasons, which are further explained below, no modifications to the Work Plan regarding lateral assessment of PCE should be required at this time.	Board staff agrees that a phased investigation approach can be conducted at 1654 E. Valley Parkway as recommended by IES in comment 3c below. It is our understanding that the overall goal for this phase is to determine whether there is a source(s) in soil, soil gas, and/or groundwater beneath and directly adjacent to 1654 E. Valley Parkway due to the dry cleaning operations conducted at Suzy's Cleaners. Subsequent phases of investigation may be required based on the results of this phase, which may include, for example, determining the	To clarify, our overall goal of this phase of assessment is to determine if known soil gas impact detected at 1652 and 1654 E. Valley Parkway is derived from on or off-site source(s). This would be accomplished by collecting soil, soil gas and groundwater samples at previously identified PCE soil gas "hot spots" at or near 1654 E. Valley Parkway, and other locations, to determine if the detected soil gas is being derived from proximal source soil, which could be associated with the historical dry-cleaner at 1654 E. Valley Parkway. The proposed 3-,	IES's response does not clearly indicate whether it agrees or disagrees with our recommendation in comment 3a on 10/27/23. Board staff recommended the following in comment 3a on 10/27/23: *As such, revise the Work Plan to:* 1. *Include the data gaps identified in Section 6.1 of the CSM report.* 2. *Include the applicable study questions identified in comments 3b to 3i below.* 3. *Include additional study questions to*	The generation of the CSM by this RP was in response to RWQCB directives to assess all properties located between and beyond 1654 through 1718 E. Valley Parkway, even though the Preliminary Site Investigation (see RWQCB letter dated April 14, 2022) confirmed the presence of PCE at 1718 E. Valley Parkway. The April 21, 2023 Work Plan was designed to provide data to determine if source is present at or near 1654 E. Valley Parkway. Therefore, the

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
		provided below, which are currently unsupported with data. Revise the Work Plan to (1) include the study questions, (2) include additional study questions to support IES's conclusions in the CSM report, and (3) describe how the proposed scope of work will address each data gap identified in the CSM report, each study question, and each additional study question supporting IES's CSM conclusions.		lateral and vertical extents of the impacted soil, soil gas, and/or groundwater. However, the Work Plan does not include sufficient rationale for the work proposed for the current phase. We recommend revising the Work Plan by organizing it in a manner that will allow Board staff and the public to better understand how the proposed scope of work will achieve the overall goal of this phase with respect to soil, vapor intrusion, and groundwater. As such, revise the Work Plan to: 1. Include the data gaps identified in Section 6.1 of the CSM report. 2. Include the applicable study questions identified in comments 3b to 3i below. 3. Include additional study questions to support IES's conclusions in the CSM report that are applicable for this investigation phase. 4. Describe how the proposed scope of work will address each data gap and each applicable study question in Nos. 1, 2, and 3 above.	8- and 13-feet soil (lab) sample depths at each continuously cored DPT location will allow a determination if and where soil impact is present at each assessed location and establish the vertical distribution of all phases of PCE impact. Groundwater grab samples are also proposed at each DPT location to determine if groundwater is acting as the source of soil gas impact in those areas. To complete the vertical assessment of soil gas distribution in these areas, each DPT is to be completed as nested soil gas wells with soil vapor sampling points set at 5 and 13 feet deep, again to determine the vertical distribution of known soil gas impact at those locations. Sampling all three media phases at each DPT location, in addition to data previously collected as well as groundwater flow direction determined by the three new wells should allow the determination of whether 1652 and/or 1654 E. Valley Parkway are likely source properties of PCE detected in soil gas at those locations, or if the contaminants more likely migrated to their present locations in groundwater or as soil gas.	*support IES's conclusions in the CSM report that are applicable for this investigation phase.* 4. *Describe how the proposed scope of work will address each data gap and each applicable study question in Nos. 1, 2, and 3 above.* IES has indicated that the applicable study questions in No. 2 will be included in the revised Work Plan (see IES comments 3b to 3i on 11/6/23). However, it is not clear whether IES will include the following in the revised Work Plan: • Data gaps in No. 1. • Additional study questions in No. 3 (see comment 3j). • In No. 4, descriptions on how the proposed scope of work will specifically address Nos. 1, 2, and 3. When responding to our comments, indicate whether IES will include recommendation Nos. 1, 3, and 4 in the revised Work Plan. If IES will not include these recommendations, provide rationale.	data gaps referred to by the RWQCB are in reference to the entire plume, which IES has demonstrated is continuous and connected with two distinctly identified source areas (DCE) located at 1718 E. Valley Parkway. The continued broad directives being imposed on this RP by the RWQCB lack justification. and have caused confusion and negative complications for this RP. IES disagrees with the expansion of the proposed scope of work as requested by the RWQCB. It appears that the RWQCB also agree that your previous directives were improper, as indicated by RWQCB 11/14/2023 comment 4a in which the RWQCB states that **"comments 4a, 4b, and 4d in our 10/27/23 comments have been revised in redline/strikeout."** It the opinion of IES that RWQCB Request 3a is beyond the current necessary scope of work to identify the source of PCE "hot spots" at or near 1654 E. Valley Parkway. IES has targeted areas of highest concentrations of PCE at 1654 E. Valley

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
							Parkway, near the HDCE and sewer line. The Historical Waste Storage Area was adequately assessed during the Preliminary Investigation, as will be illustrated on the updated maps. IES agrees that refinements to the proposed drilling locations can be made, but we disagree that an expansion of the scope of work is necessary at this time.
3b		**STUDY QUESTIONS** <u>Soil</u> • Is there a tetrachloroethene (PCE) source(s) in soil beneath and adjacent to 1654 East Valley Parkway?	The Work Plan proposes to advance seven soil borings (4 indoor direct push continuous core borings and 3 outdoor well borings drilled with HSA) and will include an additional two sub-slab soil gas sampling points to begin to determine the lateral and vertical extent of PCE and its breakdown products in soil beneath and adjacent to 1654 EVP.	Include this study question in the revised Work Plan and describe how the proposed scope of work will address it. This question will (1) help guide the development of the sampling approach for soil, and (2) help frame the Work Plan in a manner that will allow Board staff and the public to better understand how the proposed scope of work for soil will attempt to achieve the overall goal of this phase.	Sampling described in the RWP is in areas of known soil gas impact and the Historical Dry Cleaner Equipment (HDCE) is designed to determine if there is an on-site PCE source, as discussed in 3a. As requested, this study question will be added to the IES RWP.	No additional comments.	No additional comments.
3c		• What are the lateral and vertical extents of the soil impacted by PCE and its breakdown products?	Groundwater quality and gradient should be established before the lateral extent of soil, groundwater and/or soil gas impact are determined in order to guide the investigation. For these reasons, a step-wise approach is recommended and no modifications to the Work Plan regarding lateral assessment of PCE should be required at this time.	Board staff agrees with a step-wise approach as described in comment 3a above. As such, this study question should be deferred to the next phase(s) of investigation based on the results of the current phase, if warranted.	No additional comments.	No additional comments.	No additional comments.

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
3d		<u>Soil Gas</u> • What are the lateral and vertical extents of the soil gas plume beneath and adjacent to 1654 E. Valley Parkway impacted by PCE and its breakdown products?	IES has already established that the PCE and TCE soil gas plumes are continuous and connected from at least 1720 EVP to at least 1652 EVP. In addition to the soil gas assessments already conducted by this RP, the Work Plan proposes to advance 4 direct push, continuous core borings, at indoor locations at each with temporary dual completion soil gas wells to help assess the lateral and vertical extent of PCE and its breakdown products in soil gas beneath to 1654 EVP. IES will modify the Work Plan to include two (2) sub-slab soil gas sampling points to be collocated with proposed indoor air samples IA-1 and IA-2, but a directive by the RWQCB to assess the lateral extent of this continuous and connected soil gas plume that extends from at least 1720 EVP to at least 1652 EVP is not warranted at his time.	Board staff agrees with a step-wise approach as described in comment 3a above. As such, this study question should be deferred to the next phase(s) of investigation based on the results of the current phase, if warranted.	No additional comments.	No additional comments.	No additional comments.
3e		• Are there preferential pathways[1] for vapors to be transported from the subsurface source(s) at 1654 E. Valley Parkway to the overlying suites?	Contaminant distributions will be compared to the location of known subsurface utilities.	Include this study question in the revised Work Plan and describe how the proposed scope of work will address it. This question will (1) help guide the development of the sampling approach for vapor intrusion, and (2) help frame the Work Plan in a manner that will allow Board staff and the public to better understand	Based on the results of the PSGS, it has been established that the PCE "hot spot" closest to 1654 E. Valley Parkway is located at 1652 E. Valley Parkway. The September 28, 2023 comment by the RWQCB appears to indicate that the RWQCB has concluded that there are *"subsurface source(s) at 1654 E. Valley*	<u>Comment 1</u> In the revised Work Plan, Board staff recommends leaving the study question stated as-is and describing how the study question has already been addressed with current data. If current data is insufficient to address the study question, we recommend expanding the	<u>Comment 1</u> IES agrees with this revision and has the data required for a full evaluation of utilities associated with 1654 E. Valley Parkway. <u>Comment 2</u> The IES Work Plan dated April 21, 2023 proposed three (3) direct push

[1] Examples of preferential pathways are bedrock fractures, sand lenses, dry wells, rodent tunnels, vapor pathways inside conduits (e.g., sewers, storm drains, utilities, fiber optic cable housing), and engineered backfill material along conduits.

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
				how the proposed scope of work for vapor intrusion will attempt to achieve the overall goal of this phase.	*Parkway."* The results of investigations conducted thus far suggest there is not a source of PCE at 1654 E. Valley Parkway. As has been repeatedly reported, the PCE "Hot Spot' is located at 1652 E. Valley Parkway. In addition, IES has already reported that only a sewer line exists in the northern portion of the 1652 E. Valley Parkway suite and that the entire western half of the Valley Plaza is built upon engineered fill. IES can pose a version of this study question in the RWP and provide that the evaluation has already been conducted for 1654 E. Valley Parkway.	scope of work to address the study question. When responding to our comments, indicate whether IES agrees or disagrees with our recommendations. If IES disagrees, provide rationale. <u>Comment 2</u> With regard to IES's comments that there is not a source of PCE at 1654 E. Valley Parkway and that the PCE soil gas hot spot is located at 1652 E. Valley Parkway, see comment 4a below.	technology (DPT) drilling locations for the purposes of identifying source at 1654 E. Valley Parkway and one (1) at the "hot spot" identified at 1652 E. Valley Parkway (PS-54). The three locations at 1654 E. Valley Parkway are being proposed near the highest active PCE concentration detected to date (SGP-2-5), highest passive PCE concentration detected to date (PS-83) and near the sewer line and HDCE. IES agrees that the DPT locations can be refined on the figures, but does not recommend an expansion of the proposed scope of work at this time and reiterates that three DPT borings within this small suite is adequate for the purposes of this limited study.
3f		• Does the soil gas plume beneath and adjacent to 1654 E. Valley Parkway pose a potential vapor intrusion risk to building occupants?	The Work Plan also proposes to collect indoor air samples at 1654 and 1652 in order to evaluate potential inhalation hazards.	Include this study question in the revised Work Plan and describe how the proposed scope of work will address it. This question will (1) help guide the development of the sampling approach for vapor intrusion, and (2) help frame the Work Plan in a manner that will allow Board staff and the public to better understand how the proposed scope of work for vapor intrusion will attempt to achieve the overall goal of this phase.	Due to the small size of the suites and known areas of PCE impact, limited targeted sampling should allow a preliminary evaluation of inhalation risk. In addition, IES can only see evidence that one indoor air sampling event has taken place at 1718 E. Valley Parkway, an operating Senior Day Care Facility where three indoor air samples were collected from buildings described as 19,633 square feet in size. This study question will be added to the IES RWP, but	See comment 8 below.	IES agrees that one additional co-located sub-slab soil point/indoor air sample should be collected in the bathroom due to the potential for subsurface vapors to preferentially migrate to engineered trenches. IA-2 in the work plan has already been placed in the primary work area and near the location of Soil Vapor Probe . Based on sub-slab detections to date, IES believes this is adequate for this

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
					approval of the limited scope is requested at this time.		preliminary vapor intrusion evaluation.
3g		<u>Groundwater</u> • What are the direction of groundwater flow beneath the Site, the groundwater flow velocity, and the depth to groundwater?	The Work Plan proposes to install 3 groundwater monitoring wells in an equilateral triangle distribution adjacent to 1654 EVP (including to the northwest of the Site) that will allow the determination of the depth to water, groundwater flow direction and gradient. These wells are proposed adjacent to 1654 EVP.	Include this study question in the revised Work Plan and describe how the proposed scope of work will address it. This question will (1) help guide the development of the sampling approach for groundwater flow and depth, and (2) help frame the Work Plan in a manner that will allow Board staff and the public to better understand how the proposed scope of work for groundwater flow and depth will attempt to achieve the overall goal of this phase.	This study question will be added to the IES RWP.	No additional comments.	No additional comments.
3h		• Is there a PCE source(s) in groundwater beneath and/or adjacent to 1654 E. Valley Parkway?	The Work Plan proposes to advance 4 indoor direct push borings, each to groundwater to allow collection of a groundwater grab samples beneath 1654 EVP to help determine the lateral and vertical extent of PCE and its breakdown products in groundwater beneath 1654 EVP.	Include this study question in the revised Work Plan and describe how the proposed scope of work will address it. This question will (1) help guide the development of the sampling approach for groundwater, and (2) help frame the Work Plan in a manner that will allow Board staff and the public to better understand how the proposed scope of work for groundwater will attempt to achieve the overall goal of this phase.	As described in comment 3a, IES has proposed to collect groundwater grab samples at four locations within 1652-1654 E. Valley Plaza, targeting "hot spots" and other specific locations. That part of the investigation is designed to determine the suspected areas of highest impact. The perimeter groundwater monitoring wells will allow an establishment of groundwater gradient and flow direction as well as an assessment of groundwater quality at those perimeter locations, which can be evaluated in conjunction with groundwater [sic] the other [groundwater] quality data [to] guide future investigations. This study question will be added to the IES RWP.	Board staff reiterates that the three perimeter groundwater wells cannot be used to assess potential impacts to groundwater from wastes potentially discharged from 1654 E. Valley Parkway <u>unless</u> it can be demonstrated from the results of the proposed scope of work that the three perimeter wells are located in appropriate locations (i.e., downgradient and cross-gradient of the source). See our recommendation in comment 7 on 10/27/23. Our position remains unchanged. We recommend that IES proceed with our recommendation in comment 7 on 10/27/23. When responding to our comments, indicate whether IES agrees or disagrees with	The primary purpose of the three groundwater monitoring wells proposed in the Work Plan are to accurately determine groundwater gradient and flow direction through triangulation to help guide future investigations. This data, combined with groundwater quality data from the DPT borings will be utilized to evaluate groundwater quality, gradient and flow direction. This will allow IES to correlate the data and better determine the source of PCE at 1654 E. Valley Parkway. Once groundwater gradient is determined, additional investigations can be guided by this additional information.

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
						our recommendation. If IES disagrees, provide rationale.	The preliminary investigation indicated that PCE-impacted soil, groundwater and soil gas was detected AT ALL LOCATIONS AT 1718 E. Valley Parkway (both well to the north and south of the "hot spots" identified later), indicating the likelihood of a large PCE-impacted groundwater plume. IES correlated the PCE concentrations detected in groundwater with PCE in soil gas to determine that that much higher groundwater impact would be expected near SGP-5 due to the extremely elevated PCE levels in soil gas near the buried UST at 1718 E. Valley Parkway. IES had not yet discovered the DCE plumes at 1718 E. Valley Parkway. IES has considered these factors when proposing these wells in the Work Plan (e.g., if the triangulated wells identify groundwater to be flowing to the west-southwest, proposed well MW-3 would be in an up-gradient direction from the site, but down hydraulic gradient from historical boring SB-3, which contained a dissolved PCE concentration above the MCL). IES disagrees with an expansion of the

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
							proposed scope of work at this time
3i		• What are the lateral and vertical extents of the groundwater impacted by PCE and its breakdown products?	Completely assessing the PCE and breakdown product plumes at this time prior to determining site- specific groundwater flow and gradient is not recommended due to the chance of investigating in the wrong locations. Groundwater quality and gradient should be established before the lateral extent of soil, groundwater and/or soil gas impact are determined in order to guide the investigation. For these reasons, no modifications to the Work Plan regarding lateral assessment of PCE should be required at this time.	Board staff agrees with a step-wise approach as described in comment 3a above. As such, this study question should be deferred to the next phase(s) of investigation based on the results of the current phase, if warranted.	No additional comments.	No additional comments.	No additional comments.
3j		**IES's CSM CONCLUSIONS** • Groundwater is acting as a secondary source and transport mechanism of PCE from 1718 E. Valley Parkway towards 1654 E. Valley Parkway (west-southwest direction). • Cis-1,2-dichloroethene "bullseye" to the south is the source of the downgradient "hotspot" at 1652 E. Valley Parkway. • Vapor plume beneath Valley Plaza is migrating due to pore water saturation and soil clay content, which can cause significant temporal variability in soil gas concentrations.	We generally agree with the RWQCB's dissemination of our conclusions from the CSM, although we wanted to provide some further clarification. Specifically, the southern PCE "hotspot" identified by passive sample P-54, was collected from 1652 EVP and not 1654 EVP. As has been repeatedly documented, the former historical dry-cleaning equipment at the Site was located in the northeast corner of the 1654 EVP Suite. The PCE "hot spot" identified in the southwestern portion of the 1652 EVP suite does not correlate with a release of PCE from the former dry-cleaning	Include additional study questions in the revised Work Plan to support IES's conclusions in the CSM report that are applicable to this investigation phase and describe how the proposed scope of work will address the questions. These study questions will (1) help guide the development of a sampling approach that will provide data to support these conclusions, and (2) help frame the Work Plan in a manner that will allow Board staff and the public to better understand how the proposed scope of work regarding IES's CSM conclusions will attempt	On May 12, 2022 the RWQCB required this RP to prepare and implement a work plan "that at a minimum, describes the sampling methodology that will be used to delineate the lateral distribution of the PCE vapor plumes at Suzy Cleaners and the former Ha's/Economy Cleaners (e.g., passive soil gas sampling)." The preliminary assessment, along with this secondary passive soil gas survey (PSGS) established 1718 E. Valley Parkway as a source property with confirmed soil, groundwater and soil gas contamination. The Work Plan addresses PCE impact detected in soil	<u>Comment 1</u> IES's response does not clearly indicate whether it agrees or disagrees with our recommendation in comment 3j on 10/27/23. Board staff recommended the following in comment 3j on 10/27/23: *Include additional study questions in the revised Work Plan to support IES's conclusions in the CSM report that are <u>applicable to this investigation phase</u> and describe how the proposed scope of work will address the questions.* When responding to our comments, indicate whether IES will include additional	<u>Comment 1</u> Please see IES comments 3a, 3e, 3f and 3h, which address the remaining study question comments. Excluding the additional co-located indoor air/sub-slab gas samples, IES generally disagrees with an expansion of the proposed scope of work at this time <u>Comment 2</u> No additional comments.

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
		• Hydraulic barrier at 1706 E. Valley Parkway is bisecting the suspected source areas at 1718 E. Valley Parkway due to a high-volume water leak.	equipment at 1654 EVP, where you would expect to see higher concentrations in samples collected from the suspected source area. Also, the statement by the RWQCB that "Vapor plume beneath Valley Plaza is migrating due to pore water saturation and soil clay content, which can cause significant temporal variability in soil gas concentrations" is not entirely accurate. IES concluded that increased soil pore saturation caused by the confirmed water leak at 1706 EVP was inhibiting vapor migration to the shallow subsurface in those areas thereby creating a temporary vapor barrier along the trace of the water pipe, as supported with EPA studies and historical site-specific active soil gas sampling.	to achieve the overall goal of this phase. On a separate note, IES indicated in its 10/20/23 responses that the following statement was made by the San Diego Water Board: "Vapor plume beneath Valley Plaza is migrating due to pore water saturation and soil clay content, which can cause significant temporal variability in soil gas concentrations." To clarify, IES stated this conclusion in its 3/22/23 CSM report.	gas at 1654 E. Valley Parkway. The RWP is designed to provide additional data (i.e., groundwater quality and flow direction, vertical distribution of soil and/or soil gas at "hot spot" and other locations) that could support or refute our previous conclusions. Since in a December 19, 2022 letter to the RPs of 1718 E. Valley Parkway, the RWQCB finally that a PCE release "*has occurred*" at 1718 E. Valley Parkway, we feel that it is clear that these issues would be more appropriately addressed by the RPs of the confirmed release from 1718 E. Valley Parkway. With regard to the RWQCB's dissemination of our conclusion, IES could not locate any statement made matching what the RWQCB has quoted. Please provide the location of your reference. IES believes that the RWQCB is referring to our statement "The vapor plume appears largely contained in the subsurface beneath Valley Plaza as it migrates along pressure gradients and with groundwater, and vapors preferentially migrate with influence from pore water saturation and soil clay content, which can cause significant temporal variability in soil gas	study questions in the revised Work Plan per our recommendation. If IES disagrees, provide rationale. <u>Comment 2</u> IES is correct regarding the statement, *"Vapor plume beneath Valley Plaza is migrating due to pore water saturation and soil clay content, which can cause significant temporal variability in soil gas concentrations."* We paraphrased Section 4.5.3 of the 3/22/23 CSM report (page 14).	

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
					concentration. This will be discussed further in Sections 5 and 6 of this CSM." (Page 14, CSM) "The United States Environmental Protection Agency (US EPA) *Conceptual Model Scenarios for the Vapor Intrusion Pathway,* February 2012, conducted experiments studying the effect of soil moisture content on the transient concentration profiles in the subsurface for recalcitrant vapor sources utilizing homogenous soils with pore water saturations of 20% versus 60%. In the shallow source (3 meters bgs) study, transport in the soils with 20% saturation was six orders of magnitude greater than the transport in soils with 60% saturation over the course of one week. Per the San Francisco Bay RWQCB *Vapor Intrusion Mitigation Guidance*, June 2022 (RWQCB VIMG) "The presence of continuous, wet, fine-grained soil layers can significantly limit the potential for VI." (Page 18, CSM) Pore-water saturation and soil clay content influence soil vapor migration by inhibiting it. Soil clay content is (typically) a static condition, however, pore water saturation, as described in the IES CSM, is subject to variability, i.e., during a water leak that		

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
					occurred during the PSGS deployment phase.		
4a	Section 5.3 – Soil, Groundwater, and Soil Gas Assessment	Soil, groundwater, and soil gas samples are proposed to be collected and analyzed at four boring/well locations (DPG-5 through DPG-8). According to the Work Plan, the boring/well locations have been positioned based on the passive soil gas hotspots shown on Figures 6 and 7 of the Work Plan and the location of the historical dry cleaning equipment. The San Diego Water Board's comments and recommendations regarding the proposed boring/well locations are provided below. a. Figure 3 of the Work Plan shows elevated PCE concentrations detected in soil gas samples collected at 1654 E. Valley Parkway. The four proposed boring/well locations may not be positioned in appropriate areas to delineate the elevated PCE concentrations. Adjust the four boring/well locations and/or add more boring/well locations to identify and delineate potential source areas at or near the elevated PCE concentrations.	IES will adjust Figure 9 to have the proposed drilling locations more closely align with historical sample locations. Please note that the historical sample location traces are still present at the Site and therefore these borings can be placed precisely in the field. IES will identify what historical sample locations will be targeted in the Revised Work Plan.	The proposed adjustments to the four boring/well locations should adequately identify ~~and delineate~~ potential source areas at or near all of the areas of concern described in comment 4d below. Revise the Work Plan based on our comments.	This directive appears to continue RWQCB expectations for this RP to assess PCE clearly not associated with 1654 E. Valley Parkway. The RWQCB states "[t]he proposed adjustments to the four boring/well locations should adequately identify and delineate potential source areas at or near all of the areas of concern described in comment 4d below." Comment 4d directs that all "hot spots shown on Figures 6 and 7 of the Work Plan." are delineated. Figures 6 and 7 illustrate several PCE "hot spots", none of which exist at or near the HDCE or waste storage areas at 1654 E. Valley Parkway. The only PCE "hot spot" identified during the PSGS in the vicinity of 1654 E. Valley parkway was at sample PS-54, collected, over 50-feet from HDCE or waste storage areas at 1654 E. Valley Parkway at 1652 E. Valley Parkway. The results of the Passive Soil Gas Survey supported the Preliminary Site Investigation, which identified the presence of a buried UST at 1718 E. Valley Parkway as well as PCE impacted soil, groundwater and soil gas at that location. This was further	<u>Comment 1</u> To clarify, for this investigation phase, Board staff did not intend on recommending the delineation of potential source areas. Rather, our intent was to recommend the <u>identification</u> of potential source areas within and directly adjacent to 1654 E. Valley Parkway due to the dry cleaning operations conducted at Suzy's Cleaners. As such, comments 4a, 4b, and 4d in our 10/27/23 comments have been revised in redline/strikeout. <u>Comment 2</u> Board staff disagrees that none of the soil gas hot spots shown on Figures 3, 6, and 7 of the Work Plan are near the historical dry cleaning equipment and the historical waste storage area. It appears that the soil gas hot spot defined by the following soil gas samples is located near these historical features: • PS-83 (6,360 µg/m^3) • PS-84 (4,440 µg/m^3) • PS-88 (4,250 µg/m^3) • PS-90 (6,240 µg/m^3) • SGP-1-5 (6,800 µg/m^3) • SSP-1 (5,100 µg/m^3)	<u>Comment 1</u> No additional comments. <u>Comment 2</u> The IES Work Plan dated April 21, 2023 proposed three (3) DPT drilling locations for the purposes of identifying the source of PCE gas in the subsurface at 1654 E. Valley Parkway and at the "hot spot " identified at 1652 E. Valley Parkway. Our evaluations have concluded that detected PCE concentrations at 1654 E. Valley Parkway do not correlate with source soil being present in those locations. Nevertheless, we have proposed the three locations on-site to satisfy RWQCB requirements and provide supporting data. IES agrees that the drilling locations can be refined, but does not recommend an expansion of the proposed scope of work at this time. This evaluation by the RWQCB appears to ignore that historical soil gas samples collected from 1680 E. Valley Parkway were detected at concentrations up to 24,000 µg/m^3 further illustrating that the samples referenced by the RWQCB are not

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
					substantiated when the PSGS identified two cis-1-2, DCE chemical footprints at two distinct source areas at 1718 E. Valley Parkway. Contaminant migration patterns and the artificial barriers illustrated in the PSGS further supports this release scenario. Therefore, the RWP is intended to provide data that either supports or refutes the release scenario presented in the CSM, but is not designed to assess contaminants that are clearly not be derived from 1654 E. Valley Parkway. As reported, much, if not all, of assessment work conducted to date may ultimately be attributed to 1718 E. Valley Parkway. The County of San Diego stated in a May 5, 2020 letter that the "DEH concurs that there is sufficient information to suggest that Ha's may also be contributing to PCE discovered at JF". RWQCB also agreed that a source exists at this location, in your December 19, 2022 letter to them stating that "an unauthorized release of…(PCE) has occurred at 1718 East Valley Parkway at the former Ha's/Economy Cleaners, indicating that a source exists at this location." The work proposed in the RWP is designed to determine if 1654 E. Valley Parkway is a source	The PCE concentrations at this soil gas hot spot may have historically been much higher than the concentrations detected in the above soil gas samples. In April and December 2019, soil vapor extraction (SVE) activities were conducted at the former Joann Fabrics suite. Three SVE wells were installed within the suite. On Figure 6 of the updated CSM report, each SVE well is shown to have a radius of influence (ROI) of approximately 50 feet. In the SVE pilot test report, however, the ROI for SVE-1 and SVE-2 was reported to be approximately 53 feet. The above soil gas hot spots are located just outside of the 50/53-foot ROI for SVE-1 as shown on Figure 6. Given that the ROI is an estimated distance, there is a possibility that SVE-1's ROI reached the soil gas hot spot referenced above, as well as other soil gas hot spots beyond the approximate 50/53-foot ROI at 1654 E. Valley Parkway. Comment 3 There may be suspected sources within and/or directly adjacent to 1654 E. Valley Parkway, other than the historical dry cleaning equipment and the historical waste storage area, that may need to be investigated (see revised comment 4d in our 10/27/23 comments). These suspected sources include,	relative "hot spots" In fact, all samples listed fall with below the 50th percentile of samples collected during the passive investigation, which we know occurred after remediation at 1680 E. Valley Parkway. Regarding the remedial activities that occurred at 1680 E. Valley Parkway, by the same logic described by the RWQCB, the ROI as could have induced flow of PCE vapors from the 1652 E. Valley Parkway "hot spot" towards SVE-1 at 1680 E. Valley Parkway, via 1654 E. Valley Parkway, thus increasing concentrations detected. IES concludes that three direct push borings advanced at targeted indoor locations at 1654 E. Valley Parkway is adequate to identify potential source areas within and directly adjacent to 1654 E. Valley Parkway. IES disagrees with an expansion of the proposed scope of work at this time based on RWQCB speculation that *"[t]he PCE concentrations at this soil gas hot spot may have historically been much higher than the concentrations detected in the above soil gas samples."* Refined

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
					property, or has more likely been impacted by an off-site source.	but are not limited to, the following: • **Bathroom** – Potential disposal of PCE in the sink, toilet, and/or floor drain. Discharges into soil could occur due to leaks from damaged seals. • **Sewer Line** – Potential discharge of PCE into the sewer line from the sink, toilet, and/or floor drain in the bathroom. Discharges into soil could occur due to holes or cracks in the sewer line. • **Underground Utilities Backfill** – Backfill material for underground utilities (e.g., sewer and water lines) could potentially serve as preferential pathways for PCE migration either in the liquid or gas phase. This release scenario is shown on Figure 10 of the CSM report and labeled as "Engineered Fill (Utility Trench and Foundational Grade Material)." In January 2022, a limited geophysical survey was conducted at 1654 E. Valley Parkway. The underground	DPT locations will be included in the RWP. <u>Comment 3</u> The RP strongly objects to the unfounded implications of these RWQCB comments, that the RP has illegally discharged waste PCE to the toilet or sinks at the property. The RP has reported that his waste was properly stored and disposed of by Safety Kleen and that he discontinued PCE use at the property in 2012. He knows where his HDCE was and where the waste was stored. He has entered a Site Cleanup Agreement with the RWQCB. These actions are not consistent with the RWQCB's accusations. In addition, passive soil gas sampling near the bathroom at 1654 E. Valley Parkway (PS-86) was the lowest PCE concentration detected in this area. The sewer line identified in northern portion of 1654 E. Valley Parkway is the only subsurface line present on-site. No floor drains are present. The gas line enters and terminates at the boiler room and the electrical conduits are all above ground. As has been reported, the entire western half of the Valley Plaza has been built on

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
						utilities could not be mapped because of surface obstructions and the steel-reinforced concrete floor. As such, data gaps currently exist in terms of (1) presence and layout of the underground utilities, and (2) whether the underground utilities are sources of the soil gas hot spots located within and directly adjacent to 1654 E. Valley Parkway (e.g., the soil gas hot spot defined by passive soil gas sample PS-54 (16,100 µg/m^3) located at 1652 E. Valley Parkway). Based on our comments above, we recommend proceeding with our recommendations in revised comment 4d on 10/27/23. When responding to our comments, indicate whether IES agrees or disagrees with our recommendation. If IES disagrees, provide rationale.	engineered fill. We have proposed to advance a DPT at the PS-54 sample location. According to the VIG, bathrooms are targeted for VI due to the fact that sewer lines can act as preferential routes of migration of subsurface soil gas, not because they suspect people of dumping wastes in toilets. In comment 3f, IES agreed that an additional co-located sub-slab and indoor air sampling in the bathroom is justified for this reason. The other proposed DPT locations will identify soil, groundwater and soil gas conditions at or near true "hot-spots" as well as HDCE and sewer line, so IES disagrees with any additional expansion of the scope of work at this time.
4b		b. Figure 2 of the November 2, 2021, *Revised Work Plan for Preliminary Soil, Soil Gas, Groundwater and Soil Gas Assessment* prepared by IES shows a water line, floor drain, and current dry cleaning and washing machines. These features are missing from Figure 9, including the aboveground steel drums described in comment no. 2 above. Update Figure 9 with these features. Adjust the four boring/well locations and/or	In the Revised Work Plan, IES will adjust Figures 2, 3 and 9 to include the sewer line, historical dry cleaning equipment locations and the historical waste storage area at 1654 EVP. The Figure from the November 2021 Work Plan was prepared prior to the Geophysical investigation and was based on historical Figures prepared by others, which erroneously showed 1652 and 1654 EVP as a combined suite. All that is	The proposed adjustments to the four boring/well locations should adequately identify ~~and delineate~~ potential source areas at or near all of the areas of concern described in comment 4d below. Revise the Work Plan based on our comments.	SEE 4a. In addition, areas near (~10 feet) the historical waste storage area have already been assessed and found to be free of soil and groundwater contamination (see SB-1 of PSI and PS-85 through PS-87 of the PSGS). The work proposed in the RWP includes MW-2, a permanent groundwater monitoring well, proposed approximately 25 feet west of the historical waste	See comment 4a. Board staff will provide comments on this response after reviewing the revised figures in the revised Work Plan.	No additional comments.

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
		add more boring/well locations to identify and delineate potential source areas at or near these features (including the 2-inch sewer line and boiler room already shown on Figure 9).	present at 1654 EVP is the bathroom and a sewer line. There is no floor drain or subsurface water pipes.		storage area and HDCE. DGP-6 is proposed immediately adjacent to the HDCE and sewer line at 1654 E. Valley Parkway. DGP-5 was placed at the "hot spot" identified at 1652 E. Valley Parkway, and DGP-7 and DGP-8 were placed near historical soil gas sample SGP-2-5' (from the PSI) and PS-83 (from the PSGS) to provide "worst case scenario" samples from this area and to establish a vertical gradient for contaminant distribution. Sampling all media at each DGP location will allow a determination if a near surface (or localized) source is present, or if the PCE appears to have been mobilized (no source soil present) indicating contaminant migration.		
4c		c. Based on comment nos. 4.a and 4.b above, include a table that describes the rationale used to position each proposed boring/well location.	In the Revised Work Plan, IES will include a table that describes the rationale used to position each proposed boring/well location.	No additional comments.	No additional comments.	No additional comments.	No additional comments.
4d		d. Based on comment nos. 4.a and 4.b above, add the proposed boring/well locations to (1) Figure 3 of the Work Plan to confirm the appropriate placement of boring/well locations at or near the elevated PCE concentrations detected in soil gas, (2) Figures 6 and 7 of the Work Plan to confirm the appropriate placement of boring/well locations at or near the passive soil gas	In the Revised Work Plan, IES will include revised Figures 3, 6 and 7. Please note that the historical sample location traces are still present at the Site and therefore these borings can be placed precisely in the field.	The Work Plan should demonstrate how the proposed adjustments to the four boring/well locations will adequately identify **~~and delineate the potential source areas~~ suspected sources** at or near all of the following areas of concern: 1. Passive soil gas hot spots **located within and directly adjacent to 1564 E. Valley**	SEE 4a. No additional comments.	See comment 4a. We recommend proceeding with our recommendations in revised comment 4d on 10/27/23. When responding to our comments, indicate whether IES agrees or disagrees with our recommendation. If IES disagrees, provide rationale.	IES agrees that the Revised Work Plan will demonstrate how the proposed adjustments to the four DPT locations will adequately identify suspected sources at or near 1652 and 1654 E. Valley Parkway as discussed in 3a Comment 2 and 4a Comment 2. IES disagrees with any additional expansion of

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
		hotspots, and (3) Figure 9 to confirm the appropriate placement of boring/well locations at or near specific features (e.g., sewer line, floor drain, historical dry cleaning equipment, and boiler room).		**Parkway as** shown on Figures 6 and 7 of the Work Plan. 2. Elevated PCE concentrations in soil gas **located within and directly adjacent to 1564 E. Valley Parkway as** shown on Figure 3 of the Work Plan. 3. At a minimum, the following specific features **located within and directly adjacent to 1564 E. Valley Parkway**: historical dry cleaning equipment, historical waste storage area, boiler room, bathroom, and sewer line. If the four boring/well locations cannot adequately investigate all areas of concern, San Diego Water Board staff recommends adding boring/well locations to determine whether 1654 E. Valley Parkway caused or contributed to the wastes found beneath the commercial strip mall. Revise the Work Plan based on our comments.			the scope of work at this time. Please correct the RWQCB's repeated administrative errors within the already corrected 10/27/2023 RWQCB "redline" comments identifying the Site as 1564 E. Valley Parkway and not its correct address of 1654 E. Valley Parkway.
5	Section 5.3.1 – DPT Soil and Groundwater Sampling	The four soil borings are proposed to be continuously cored to depths of approximately 15 feet below ground surface (bgs). Soil samples will be collected at approximately 3, 8, and 13 feet bgs and/or at changes in lithology, immediately above the perceived	In the revised Work Plan IES will include a table that provides the rationale for coring the boreholes to 15 feet below ground surface (bgs) and collecting soil samples at 3, 8 and 13 feet bgs. IES will also describe	No additional comments.	IES will include provisions to collect soil samples where photoionization detects elevated chemical concentrations, and continuously logging each boring by slicing open the acetate sample sleeves so that soil moisture and grain	No additional comments.	No additional comments.

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
		soil/water interface, and at the bottom of each proposed soil boring. Provide the rationale for coring the boreholes to approximately 15 feet bgs and collecting soil samples at approximately 3, 8, and 13 feet bgs. Also, we recommend collecting soil samples for chemical analysis at depths where the photoionization detector detects elevated chemical concentrations, and also continuously logging each boring by slicing open the acetate sample sleeves so that soil moisture and grain size, for example, can be appropriately logged.	soil vapor screening and associated sample selection.		size, for example, can be appropriately logged.		
6	Section 5.3.2 – Temporary Dual Completion Soil Gas Well Installations and Sampling	Four dual-nested soil vapor wells are proposed to be constructed within the same boreholes used to collect soil samples and grab groundwater samples. The vapor points will be installed at 5 and 13 feet bgs. Provide the rationale for installing the vapor points at these depths.	In the revised Work Plan IES will include a table that provides the rationale for setting temporary soil gas wells at 5 and 13 feet bgs.	No additional comments.	No additional comments.	No additional comments.	No additional comments.
7	Section 5.3.3 – Extent of Chemicals in Vadose Zone Soil	Three 2-inch-diameter groundwater monitoring wells are proposed to be installed to depths of approximately 22 feet bgs with 15-foot screens (7 to 22 feet bgs) to assess potential impacts to groundwater and to define the groundwater gradient and flow direction. Undisturbed soil samples will be collected at 5-foot intervals, changes in lithology, and within the perceived soil/water interface. Provide the rationale for installing the wells to approximately 22 feet bgs with a 15-foot screen and collecting soil samples at 5-foot intervals. Also,	In the revised Work Plan IES will include a table that provides the rationale for installing the wells to 22 feet bgs with a 15-foot screen. It is impractical and unnecessary to continuously log from hollow stem auger borings (HSA) that are advanced in peripheral locations. IES has proposed 4 other direct push borings at indoor locations which will be continuously logged and are sufficient to determine Site-specific geology. IES therefore proposes to collect soil samples at 5-foot	We disagree that it is impractical and unnecessary to continuously log the borings for the three groundwater monitoring wells based on the following: 1. Continuously logging these borings will (1) provide detailed geologic and stratigraphic data that will allow the development of robust cross-sections, which will provide a better understanding of the geology (e.g.,	IES will include provisions to collect soil samples where photoionization detects elevated chemical concentrations, and continuously logging each boring by examining sample sleeves so that soil moisture and grain size, for example, can be appropriately logged.	No additional comments.	No additional comments.

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
		we recommend that the boring for each well be continuously logged.	intervals from borings drilled by HSA.	preferential pathways and contaminant migration) beneath and directly adjacent to 1654 E. Valley Parkway, and (2) help to make informed decisions towards closure. 2. Continuously logging these borings will allow for identification of depth to first groundwater and the appropriate well screen depth intervals during well installation. We agree that the three groundwater monitoring wells can be used to define the groundwater gradient and flow direction. However, we disagree that these wells could also be used to assess potential impacts to groundwater from wastes potentially discharged from 1654 E. Valley Parkway. The three groundwater monitoring wells may not be positioned in the correct locations to evaluate the downgradient and cross-gradient plume directions. Revise the Work Plan based on our comments.			
8	Section 5.4 – Indoor and Outdoor Air Sampling	Indoor and outdoor air samples are proposed to be collected and analyzed to evaluate the potential risk to building occupants from vapor intrusion. Sub-slab soil gas samples,	In the revised Work Plan IES will include the installation and sampling of two sub-slab soil gas vapor points to be co-located with the proposed indoor and outdoor air samples.	As recommended in our 9/28/23 comments, revise the Work Plan to incorporate Steps 3 and 4 of the Final Draft VI Guidance. Note that the indoor air and sub-slab sample pairs should target	Although the Guidance suggests three indoor air sample locations for suites that are less than or equal to 1,500 ft^2, given the relatively low results at 1654 E. Valley Parkway detected in soil gas	Board staff disagrees with collecting just one co-located sub-slab and indoor air sample to evaluate the potential risk to building occupants from vapor intrusion.	IES agrees that one additional co-located sub-slab soil point/indoor air sample should be collected in the bathroom due to the potential for subsurface vapors to

Comment No.	Section	9/28/23 San Diego Water Board Staff	10/20/23 Innovative Environmental Solutions	10/27/23 San Diego Water Board Staff	11/6/23 Innovative Environmental Solutions	11/14/23 San Diego Water Board Staff	12/8/23 Innovative Environmental Solutions
		however, are not proposed in the Work Plan. The indoor and outdoor air sampling should be conducted in accordance with Steps 3 and 4 of the February 2023 Final Draft Supplemental Vapor Intrusion Guidance (Final Draft VI Guidance). Step 3 describes an indoor air investigation to determine if vapor intrusion is occurring and to assess potential human health risks posed by subsurface vapor-forming chemicals migrating into indoor air. Note that Step 3 requires collecting and analyzing indoor/outdoor air samples and sub-slab soil gas samples concurrently to provide information about the source(s) of indoor air contamination by comparing detected vapor-forming chemical concentrations directly beneath the building to concentrations in indoor air. Step 4 describes the process of using the characterization of health risks and all lines-of-evidence, both qualitative and quantitative, to determine the appropriate response action(s). Revise the Work Plan to incorporate Steps 3 and 4 of the Final Draft VI Guidance.		these locations (see Step 3C.4): 1. Primary work areas. 2. Near slab/floor penetrations (e.g., bathroom). Field screening results from Step 3B.3 may be helpful in selecting sampling locations. 3. Near suspected maximum subsurface contamination (e.g., near the center of the building or known subsurface source).	samples collected from that location to date, one centralized co-located sub-slab and indoor air sample is adequate to determine preliminary inhalation risk information. Similarly, the very localized "hot spot" at 1652 E. Valley Parkway is targeted, providing a "worst case scenario" at that location.	We recommend proceeding with our recommendations in comment 8 on 10/27/23. When responding to our comments, indicate whether IES agrees or disagrees with our recommendation. If IES disagrees, provide rationale.	preferentially migrate from the subsurface to engineered trenches. IA-2 in the work plan has already been placed in the primary work area. Based on sub-slab detections to date, IES believes this is adequate for this preliminary vapor intrusion evaluation.

EXHIBIT 4

Sand Diego Water Board's

Directive Dated August 18, 2021

San Diego Regional Water Quality Control Board

August 18, 2021

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

Mr. Guhn Y. Kim
5490 Wolverine Terrace
Carlsbad, CA 92010
guhnykim@gmail.com

Subject: **Work Plan for Preliminary Soil, Groundwater, and Soil Gas Assessment – Suzy Cleaners, 1654 East Valley Parkway, and Former Ha's and Economy Cleaners, 1718 East Valley Parkway, Escondido, CA (Site ID #2090111)**

Mr. Kim:

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), has reviewed the April 28, 2021, work plan for the above sites prepared by Innovative Environmental Solutions and the July 12, 2021, revisions to the work plan as agreed to by the Parties[1]. Our comments and recommendations are provided below. Please submit written responses by **September 3, 2021**.

Section 4.0 – Conceptual Site Model

1. The San Diego Water Board recommends supplementing the Conceptual Site Model (CSM) information presented in this section by including the following:

    - A graphical illustration of the environmental features (e.g., dry cleaning equipment, underground storage tank, etc.), source areas, and contaminant migration/exposure pathways in soil, soil gas, and groundwater.
    - A flow chart showing the primary/secondary sources and release mechanisms, tertiary sources and release mechanisms, quaternary sources and release mechanisms, potential exposure pathways, and receptors.

[1] https://geotracker.waterboards.ca.gov/getfile?filename=/regulators%2Fdeliverable_documents%2F6147748649%2FJuly%2012%2C%202021%20Letter%20Agreement%20re%20Work%20Plan%20to%20Tom%20Alo.pdf

- A discussion of the site investigation data gaps associated with source identification, lateral and vertical extents of contamination, and potential threats to water quality and human health.

This supplemental CSM information will help to develop a comprehensive framework that can be used to identify data gaps and support the characterization and remedial decision-making processes. The Board expects that this initial CSM will be periodically updated throughout the life of the project as additional data are collected.

Respond to our comments/recommendations in your written responses.

Section 5.0 – Study Purpose, Scope, and Data Quality Objectives

2. The work plan proposes a phased approach to determine the location and source of subsurface contaminants and to provide a preliminary evaluation of the soil, groundwater, and soil gas impacts at the two dry cleaner sites. The Parties have agreed to specific revisions to the phased work plan, as described in a July 12, 2021, letter.

    a. Phase 1a – Geophysical Survey

    According to this section, the objectives of Phase 1a are to identify subsurface utility lines and other possible anomalies that will assist in the development of the CSM and assist with refining the locations of the soil borings, temporary groundwater wells, and nested soil gas probes.

    Upon completion of the geophysical survey, the Board requires that you prepare a technical memorandum that, at a minimum, includes (1) a summary of the geophysical survey results, (2) a figure showing the subsurface utility lines and anomalies, as well as the proposed groundwater well, soil gas probe, and soil boring locations, and (3) recommendations and rationale for the proposed temporary well, soil gas probe, and soil boring locations based on the geophysical survey results. **The technical memorandum must be submitted to the Board within 30 calendar days after the geophysical survey is completed.**

    b. Phase 1b – Soil Borings, Temporary Groundwater Wells, and Nested Soil Gas Probes

    According to this section, the objectives of Phase 1b are to determine the location and source of subsurface contaminants and to provide a preliminary evaluation of the soil, groundwater, and soil gas impacts within the vicinity of the two dry cleaner sites.

    In this phase, soil borings, temporary groundwater wells, and nested soil gas probes are (1) proposed to be advanced/constructed inside the Suzy

Cleaners suite, (2) proposed to be advanced/constructed in the Former Ha's/Economy Cleaners breezeway to prevent disruption to business operations, and (3) not proposed to be advanced/constructed in the Jo-Ann Fabrics suite to prevent disruption to business operations.

The Board recommends that the Parties advance the soil borings and construct the temporary wells and nested probes inside the Former Ha's/Economy Cleaners suite and the Jo-Ann Fabrics suite, as originally proposed in the work plan. Assessing soil, soil gas, and groundwater data beneath these suites provides the information needed to identify the source and evaluate the risk to building occupants. This work can be done outside of business hours, which is not uncommon. Late night to early morning indoor subsurface investigations have been conducted at numerous sites regulated by the Board.

The field work for advancing the soil borings and constructing the temporary groundwater wells and nested soil gas probes must not begin until the Board approves the proposed locations following the geophysical survey.

Respond to our comments/recommendations in your written responses.

c. Phase 1b – Sub-slab Probes

Per the July 12, 2021, letter, the Parties agree that sub-slab probes should be installed in the suites in between the JoAnn Fabrics suite and the two dry cleaner sites to evaluate the potential VI risk to occupants of these suites. The Board recommends conducting a more comprehensive VI risk evaluation than what is proposed by the Parties, in accordance with the draft document titled, *"Supplemental Guidance: Screening and Evaluating Vapor Intrusion" (February 2020)*[2]. The VI risk evaluation should be conducted for all suites that have the potential for vapor-forming chemicals to migrate into indoor air from contaminated soil/groundwater and preferential pathways (e.g., sewers, utilities, and engineered backfill material). At a minimum, sub-slab and indoor/outdoor air samples should be collected concurrently, consistent with the February 2020 guidance. The VI risk evaluation can be conducted during Phase 2 when the permanent groundwater monitoring wells are constructed.

Respond to our comments/recommendations in your written responses.

[2] https://dtsc.ca.gov/wp-content/uploads/sites/31/2020/02/Public-Draft-Supplemental-VI-Guidance_2020-02-14.pdf

In the subject line of any response, include reference codes **T10000014715:Talo** and **T10000017258:Talo**. For questions or comments, please contact me at (619) 521-3375 or Tom.Alo@waterboards.ca.gov.

Respectfully,

Tom C. Alo
Water Resource Control Engineer
Site Restoration Unit

Sarah Mearon, PG
Senior Engineering Geologist
Site Restoration Unit

TCA:sam:tca

cc: Mr. Manuel Corrales, Gilleon Law Firm, mannycorrales@yahoo.com
Mr. Michael Davis, Innovative Environmental Solutions, mdavis@iesconsultants.com
Mr. Gregory Hout, Law Offices of Gregory J. Hout, ghout@houtlaw.com
Mr. William Koska, Law Offices of William K. Koska & Associates, wkoska@koskalaw.com
Ms. Suzanne Varco, Varco & Rosenbaum Environmental Law Group LLP, svarco@envirolawyer.com
Mr. Grant Olsson, Varco & Rosenbaum Environmental Law Group LLP, golsson@envirolawyer.com
Ms. Katharine Tremblay, Tremblay Beck Law, katharinetremblay@me.com
Mr. Ryan Waterman, Brownstein Hyatt Farber Schreck LLP, rwaterman@bhfs.com
Mr. David Allen, Barnes & Thornburg LLP, david.allen@btlaw.com
Mr. Joel Meyer, Barnes & Thornburg LLP, joel.meyer@btlaw.com
Ms. Laura Drabandt, SWRCB Office of Enforcement, laura.drabandt@waterboards.ca.gov

Tech Staff Info & Use	
Geotracker Global IDs	T10000014715 T10000017258
Cost Recovery ID	2090111

EXHIBIT 5

Sand Diego Water Board's

Directive Dated May 12, 2022

San Diego Regional Water Quality Control Board

May 12, 2022

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

Guhn Y. Kim
5490 Wolverine Terrace
Carlsbad, CA 92010
guhnykim@gmail.com

Subject: **Response to Comments on Preliminary Soil, Groundwater, and Soil Gas Assessment Report – Suzy Cleaners, 1654 East Valley Parkway, and Former Ha's and Economy Cleaners, 1718 East Valley Parkway, Escondido, CA (Site ID #2090111)**

Guhn Kim:

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), has reviewed your May 6, 2022, letter responding to our April 14, 2022, comments on the *Preliminary Soil, Groundwater, and Soil Gas Assessment* report prepared by Innovative Environmental Solutions.

After further evaluating the preliminary results and discussing this case with State Water Board staff in the Site Cleanup Subaccount Program, we recommend that you delineate the lateral distribution of the tetrachlorethene (PCE) vapor plumes at Suzy Cleaners and the former Ha's/Economy Cleaners prior to conducting the proposed scope of work outlined in your May 6 letter. Delineating the lateral distribution of the PCE vapor plumes will (1) allow soil vapor contour lines to be drawn more accurately at Suzy Cleaners, the former Ha's/Economy Cleaners, and the adjacent suites, (2) help to refine the proposed soil, soil vapor, and subslab sample locations in your May 6 letter, and (3) guide the human health risk assessments at Suzy Cleaners, the former Ha's/Economy Cleaners, and the adjacent suites.

The San Diego Water Board recommends that you prepare a work plan that, at a minimum, describes the sampling methodology that will be used to delineate the lateral distribution of the PCE vapor plumes at Suzy Cleaners and the former Ha's/Economy Cleaners (e.g., passive soil gas sampling[1]), rationale for the proposed soil vapor sample locations, and analytical methods. Submit the work plan by **June 10, 2022**.

[1] Cost-effective method that allows a high density of passive soil vapor points to be installed in the shallow subsurface soil.

When the lateral distribution of the PCE vapor plumes is adequately delineated, the formal work plan described in your May 6 letter can then be prepared and submitted to the San Diego Water Board for review and approval.

In the subject line of any response, include reference codes **T10000014715:Talo** and **T10000017258:Talo**. For questions or comments, or to schedule a meeting to discuss the path forward for this case, please contact me at (619) 521-3375 or tom.alo@waterboards.ca.gov.

Respectfully,

Tom C. Alo
Water Resource Control Engineer
Site Restoration Unit

Sarah Mearon, PG
Senior Engineering Geologist
Site Restoration Unit

TCA: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
William Koska, Law Offices of William K. Koska & Associates, wkoska@koskalaw.com
Suzanne Varco, Varco & Rosenbaum Environmental Law Group LLP, svarco@envirolawyer.com
Grant Olsson, Varco & Rosenbaum Environmental Law Group LLP, golsson@envirolawyer.com
Katharine Tremblay, Tremblay Beck Law, katharinetremblay@me.com
Ryan Waterman, Brownstein Hyatt Farber Schreck LLP, rwaterman@bhfs.com
David Allen, Barnes & Thornburg LLP, david.allen@btlaw.com
Joel Meyer, Barnes & Thornburg LLP, joel.meyer@btlaw.com
Michael Palmer, de maximis, mpalmer@demaximis.com
Laura Drabandt, SWRCB Office of Enforcement, laura.drabandt@waterboards.ca.gov

Tech Staff Info & Use	
Geotracker Global IDs	T10000014715 T10000017258

Cost Recovery ID	2090111

EXHIBIT 6

Sand Diego Water Board's

Electronic Mail to the Petitioner dated

December 12, 2023

From:	Mearon, Sarah@Waterboards
To:	Guhn Kim; Mike Davis; Manuel Corrales
Cc:	Alo, Tom@Waterboards; Sauerwein, Alex@Waterboards; Mitchell, Roger@Waterboards
Subject:	Follow-up on December 1 letter
Date:	Tuesday, December 12, 2023 2:19:13 PM

Mr. Kim and associates

The San Diego Water Board is in receipt of your December 1, 2023, letter requesting withdrawal from the voluntary oversight agreement. Unfortunately, we did not receive the letter until today (December 12) when it was forwarded to us from Mike Palmer, the consultant for the Ha's/Economy Cleaners site. My email address noted on the letter was incorrect. Please note my email address is sarah.mearon@waterboards.ca.gov. Further, although the letter was addressed to Tom Alo, he did not receive it by email either.

Due to this delay, we contacted the Site Cleanup Program administrator today to inform her of your request, and will close your account immediately and terminate the agreement.

We also are informing you that, given your decision to terminate voluntary oversight by the Water Board, we will be preparing and issuing you a Cleanup and Abatement Order, which is consistent with the enforcement policy of our agency. We will inform you when the Order will be available for a 30-day public comment period, which will be in early 2024 (exact date to be determined).

Regards,
Sarah

Sarah Mearon, PG
Senior Engineering Geologist
Site Restoration Unit
San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108
619.521.3363
sarah.mearon@waterboards.ca.gov

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, the undersigned, whose address is 11939 Rancho Bernardo Road, Suite 170, San Diego, California 92128, certify:

That I am, and at all times hereinafter mentioned was, more than 18 years of age and not a party to this action;

That on February 4, 2025, I served the within: **PETITION FOR REVIEW** on all interested parties in said action: **SEE ATTACHED SERVICE LIST**

[ ] (VIA U.S. MAIL or ~~UPS OVERNIGHT~~) I placed [ ] the original [] a true copy thereof enclosed in a sealed envelope(s) addressed as stated on the attached mailing list and placing such envelope(s) with first class postage fees, thereon fully prepaid, in the United States Mail at San Diego on this date following ordinary business practices.

[ ] (BY CERTIFIED MAIL) I placed [ ] the original [ ] a true copy thereof enclosed in a sealed envelope(s) addressed as stated on the attached mailing list and placing such envelope(s), certified mail, return receipt requested postage thereon fully prepaid, in the United States Mail at San Diego on this date following ordinary business practices.

[X] (BY ELECTRONIC TRANSMISSION) I transmitted a true copy thereof via electronic transmission on all interested parties to the action for immediate delivery to SEE ATTACHED SERVICE LIST.

[ ] (PERSONAL SERVICE) Personally served/Delivered to the addressed stated on the attached mailing list via DLS Attorney Service.

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

Dated: February 4, 2025

/s/ Carianne Steinman

Carianne Steinman

Service List

1. State Water Resources Control Board
Office of Chief Counsel
Adrianna M. Jerome
P.O. Box 100
Sacramento, CA 95812-0100
Email: waterqualitypetitions@waterboards.ca.gov

2. San Diego Regional Water Quality Control Board
David W. Gibson
Executive Officer
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700
Email: David.Gibson@waterboards.ca.gov
Tom.alo@waterboards.ca.gov
Sarah.Mearon@waterboards.ca.gov
Alex.Sauerwein@waterbioards.ca.gov
Chiara.Clemente@waterboards.ca.gov

3. Ryan R. Waterman, Esq.
BROWNSTEIN, HYATT, FARBER & SCHRECK, LLP
225 Broadway, Suite 1670
San Diego, CA 92101-5000
Email: rwaterman@bhfs.com
Attorney for M&E Brothers, LLC (present owners of 1718 EVP) and Flor De Lys Barawid

4. Matthew McMillan, Esq.
TROPEA & MCMILLAN, LLP
4747 Morena Blvd., Suite 250A
San Diego, CA 92117
Email: mmcmillan@tropeamcmillan.com
Attorneys for Kim Buhler and Norman Alton Hortman, III, as trustees for The Norman Alton Hortman and Barbara Hortman Revocable Trust No. 1, Dated July 2, 1985 (former owners of 11718 EVP)