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7
8 BEFORE THE STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
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IN RE 2907 E STREET, EUREKA,
HUMBOLDT COUNTY

No. _____

**PETITION FOR REVIEW OF
REGIONAL WATER QUALITY
CONTROL BOARD FAILURE TO ACT;
REQUEST TO BE HELD IN ABEYANCE**

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18 **INTRODUCTION**

19 KFD Enterprises, Incorporated ("Petitioner"), pursuant to California Water Code Section
20 13320 and Title 23 of the California Code of Regulations Section 2050 et seq., respectfully
21 requests that the State Water Resources Control Board ("State Board") review the inaction of the
22 North Coast Regional Water Quality Control Board ("Regional Board") in refusing to amend
23 Cleanup and Abatement Order No. R1-2003-0088 ("CAO"), with respect to the property owned
24 by Petitioner at 2907 E Street, Eureka, Humboldt County, California.

25 **1. Name and Address of Petitioner:**

26 KFD Enterprises, Inc., 2907 E Street, Eureka, California 95501. Any and all notices for
27 Petitioner should be forwarded to Petitioner's Counsel: Jan A. Greben, GREBEN &
28 ASSOCIATES, 1332 Anacapa, Suite 110, Santa Barbara, CA 93101; Tel. (805) 963-9090; Fax:

1 (805)963-9098; Email: jan@grebenlaw.com.

2 **2. Specific Failure to Act by the Regional Board Which Petitioner Requests the State**
3 **Board Review:**

4 Petitioner requests review of the inaction of the Regional Board in refusing to amend
5 CAO No. R1-2003-0088 to name the City of Eureka ("City"), Chevron Corporation, Union Oil
6 Company, and Unocal Corporation (collectively "Chevron") as dischargers. A copy of the CAO
7 is attached as Exhibit "A" and incorporated herein by this reference. A copy of the letter
8 requesting the Regional Board take action is attached as Exhibit "B" and incorporated herein by
9 this reference. Attached as Exhibit "C" and incorporated herein by this reference is a copy of the
10 letter from the Regional Board refusing to act.

11 **3. The Dates on which the Regional Board was Requested to Act and Refused to Act**

12 Petitioner requested that the Regional Board act on September 8, 2008; the Regional
13 Board refused to act on October 7, 2008.

14 **4. The Reason the Inaction was Inappropriate and Improper**

15 The Regional Board has: 1) failed to name dischargers in a manner consistent with State
16 Board rules and policies. The Regional Board has failed to name all responsible parties as it
17 excludes: 1) the City of Eureka ("City"), which owns and controls the sanitary sewer, from which
18 there is evidence of the release of tetrachloroethene ("PCE") and other contaminants into soil and
19 groundwater; and 2) Chevron, which formerly operated a gasoline service station at the Site
20 during which time releases of contaminants occurred and has subsequently conducted operations
21 on the Site that have resulted in releases of contaminants.

22 **5. The Manner in Which Petitioner is Aggrieved:**

23 Petitioner is aggrieved by the Regional Board's failure to act because responsibility and
24 liability for investigation and remediation of the Site continues to be placed solely on Petitioner,
25 even in light of substantial evidence of the City's and Chevron's responsibility for the
26 contamination at the Site.

27 **6. The Specific Action Requested by Petitioner:**

28 Petitioner respectfully requests that the State Board determine that the Regional Board's

1 inaction in failing to name the City and Chevron is inappropriate and improper, and that the State
2 Board amend the CAO to include as Responsible Parties, the City and Chevron, or in the
3 alternative, direct the Regional Board to amend the CAO to include as Responsible Parties, the
4 City and Chevron. Petitioner requests the State Board to hold in abeyance this petition for
5 review and request for hearing pending the Regional Board hearing requested by Petitioner.
6 Petitioner will notify the State Board if it intends to activate this Petition. Petitioner understands
7 that it will be given the opportunity to amend this petition and submit detailed points and
8 authorities, as well as additional evidence presented to the Regional Board, in the event the
9 Petition is activated.

10 **7. Points and Authorities in Support of Legal Issues Raised in this Petition:**

11 In the event this Petition is made active, Petitioner will submit an amended Petition
12 including a detailed points and authorities in support of legal issues raised in the petition.

13 **FACTUAL BACKGROUND**

14 The approximately 1400-foot long groundwater contamination plume that is the subject
15 of this Petition and the Regional Board's action emanates near the intersection of E and Grotto
16 Streets in Eureka, California ("Site"). Petitioner has owned and operated a dry cleaning business
17 at 2907 E Street since on or about 1980. Union Oil Company (aka Unocal, now Chevron)
18 constructed and operated a gasoline motor fuel dispensing and vehicle repair service station on
19 the property at 2907 E Street between 1964 and 1979.

20 Soil and groundwater investigations have been conducted at the Site since 1998. Results
21 of soil investigations revealed the presence of contaminants including: total petroleum
22 hydrocarbons as gasoline, total petroleum hydrocarbons as motor oil, benzene, toluene, ethyl
23 benzene, xylenes, trimethylbenzenes, isopropylbenzene and others. The 1998 investigations also
24 revealed contamination with chlorinated volatile organic compounds in soil including PCE, as
25 well as its breakdown products, trichloroethene ("TCE") and cis-1,2-dichloroethene ("DCE").
26 These contaminants originated from releases during motor vehicle fueling, vehicle repair and dry
27 cleaning.

28 In July 2003, the Regional Board issued the existing CAO for the groundwater

1 contamination at the Site naming Petitioner; Chevron, despite being a known discharger at the
2 Site was not included on the July 2003 CAO. The CAO required that the horizontal and vertical
3 extent of the soil and groundwater contamination at the Site be determined and an appropriate
4 feasibility study/remedial action plan be prepared to address the contamination.

5 Since 2003, soil and groundwater investigations were conducted pursuant to the CAO.
6 Soil and groundwater samples have been collected to delineate the lateral and vertical extent of
7 contaminants. In February 2007, Petitioner's Consultant, WEST, prepared its Site Investigation
8 Work Plan that incorporated previous findings, presented a conceptual site model (CSM), data
9 gap analysis, and a proposed sampling to complete the delineation of contamination in soil gas
10 and groundwater. The Site Investigation Work Plan also included a scope-of-work to: evaluate
11 preferential migration through underground utilities. In April 2007, Petitioner's consultant
12 performed utility investigations, soil gas sampling, lithologic characterization, and groundwater
13 sampling.

14 The utility investigations revealed defects in the sanitary sewer main downstream from
15 2907 E Street. The defects observed in the sewer main included: broken pipe segments; offset
16 joints; grease buildup; sags; and surcharged conditions.

17 Based on analysis of Site investigations, it was concluded that PCE was released as a
18 dense non-aqueous phase liquid ("DNAPL"). The data also indicated that PCE was released from
19 onsite operations at 2907 E Street and from defects in the sewer main beneath E Street. The
20 investigation findings also revealed that petroleum hydrocarbons had been released from gasoline
21 and waste oil underground storage tanks (USTs) and that drilling activities by Chevron's
22 consultants had opened pathways for contamination migration from the shallow groundwater to
23 the deeper groundwater.

24 In response to requests from the Petitioner, the Regional Board has indicated since
25 February 2007 that it was in the process of revising or about to issue a revised CAO including
26 other responsible parties. By way of example, and not the entire history-which Petitioner
27 incorporates by reference as to the entire Regional Board file- the following relevant facts are
28 noted: In February 2007, the Regional Board stated that a revised CAO would be issued that

1 included Chevron as a responsible party. [Ex. "D"; Ex. "E" at 2 ("Existing CAO No. R1-2003-
2 0088 . . . is in-place, but focuses on only one responsible party when there are two known
3 responsible parties. The other responsible part (sic) is Chevron Corporation . . ."; Ex. "F"
4 ("There was general verbal agreement among the attendees that the proposed project scope of
5 work and time schedule were acceptable and a likely avenue to follow is revising the existing
6 Cleanup and Abatement Order (CAO) include Chevron Corporation as a responsible party . . .").
7 In June 2007, the Regional Board indicated that the draft CAO was drafted. [Ex. "G" ("A draft
8 CAO is now being circulated to CRWQCB management. I am trying to send the project team a
9 draft final version prior to it going final.")] The Regional Board advised that, along with
10 Chevron, the City would be also added as a responsible party to the amended CAO. [Ex. "G" at 3
11 ("issuing the new Cleanup and Abatement Order (CAO) which identifies KFD Enterprises,
12 Chevron Corporation and the City of Eureka as responsible parties for the co-mingled
13 groundwater plume.")].

14 In July 2007, the Regional Board again stated that it intended to provide a draft version of
15 the CAO in the near future. [Ex. "H" at 2 ("CRWQCB discussed status of CAO and I expressed a
16 desire to provide all team members with a copy of the draft-legal-review version if allowed by
17 legal council.")]. In September 2007, due to protests from the City of Eureka that there was not
18 adequate data to support including them in the revised CAO the Regional Board, agreed to until
19 September 28 to address perceived data gaps said that it expected to issue the CAO in draft form
20 within the month, i.e., by first part of October 2007. [Ex. "I" ("the Regional Board plans to issue
21 the CAO in draft form in the first part of October.")] However, a draft CAO was not provided in
22 October 2007, even though the Regional Board acknowledged that the current and, still to this
23 date, operative CAO for the Site was not accurate. [Ex. "J" ("The existing CAO is not, in fact,
24 the Regional Water Boards current view of the facts, findings, etc. We recognize that at least one
25 responsible party was mistakenly not included . . ."). Despite earlier representations by the
26 Regional Board, in October 2007, a revised CAO was not drafted. [Ex. "K" ("the revised CAO
27 has not been drafted . . ."). Over a year later, the Regional Board has yet to issue a revised
28 CAO.

1 In response to requests from the City and Chevron, additional time was permitted by the
2 Regional Board for the parties to present their own conceptual site models explaining the
3 contamination. At the December 3, 2007 meeting at the Regional Board, Chevron's consultants
4 presented their explanation of the contamination that attributed contamination to releases from
5 the City of Eureka sewers (GeoMega, An Evaluation of PCE sources at Norman's Eureka Site),
6 As a follow up to the Chevron presentation, on December 7, 2007, Mr. David Parson of the
7 Regional Board conducted a site inspection of the Site. His report regarding this inspection
8 determined "that the location of [a] potential break [in the City's sewer mainline] correlates to
9 the existing groundwater plume orientation and geometry." [Ex. "L" at 2]. He also recognized
10 that "the exact location of the former grease interceptor lateral discharge line [from the Chevron
11 service station] is not known precisely, but it may be that the same entry location into the
12 mainline that served the former grease interceptor lateral discharge line and now serves the action
13 later C Sanitary Sewer Line from the Project Site." [Ex. "L" at 3].

14 In response to the Regional Board's inspection, the City's consultant wrote to the
15 Regional Board in January 2008 and indicated that there was inadequate data to support the
16 current conceptual site model and that additional sampling was necessary. However, the City's
17 consultant did not propose an alternative explanation to explain the high concentrations found
18 away from the site along the City's sewer main. The City also did not propose any additional
19 investigations that would exculpate their responsibility. In March 2008, Chevron proposed an
20 extensive onsite sampling program designed to delineate their contributions from those of the dry
21 cleaner. On March 14, 2008, the City wrote the Regional Board and once again raised concerns
22 regarding the adequacy of the data being used to assess responsibility for discharges.

23 In response to an April 30, 2008 letter from the City, requesting that the Board issue a
24 statement that it would not be naming the City, the Regional Board stated that it "is unable to
25 issue a written notice by May 12, 2008 that it will not add the City as a responsible party for
26 cleanup and abatement of the Norman's Dry Cleaning site." [Ex. "M" at 4].

27 In an effort to resolve any unanswered questions regarding responsibility for
28 contamination, a meeting was held by the Regional Board on August 13, 2008 to present the data

1 that historically have led to discharges, such as leakage of pollutants from wastewater collection
2 and conveyance systems . . .” [Ex. “O” at 4].

3 In December 1992, the Chief Counsel for the State Board elaborated upon its naming
4 policy in a memorandum to Regional Board Executive Officers entitled, “Responsible Party
5 Orders,” attached hereto as Exhibit “P”. In this memo, Chief Counsel William Attwater, states
6 that Regional Boards should “name all persons who have caused or permitted a discharge,”
7 including “both active discharges and continuing discharges.” [Ex. “P” at 2]. It further states that
8 Regional Boards should name prior landowners and government parties. This policy was
9 designed to promote the objective of ensuring adequate funding and resources to effectuate the
10 remediation of environmental contamination.

11 Here, the Regional Board has failed to name parties in the CAO for whom there is
12 substantial evidence and grounds to name. This decision by the Regional Board directly
13 contradicts State Board policy and impedes the objectives of the State Board, namely to “achieve
14 a unified and effective water quality control program in the state.” [Ex. “O” at 1]. This inaction
15 has prejudiced Petitioner, in requiring Petitioner to expend resources and money for more than
16 three years at the Site as the only name responsible party and in dealing with continued attempts
17 by the City and Chevron to foster delay.

18 Persuasive evidence of both the City and Chevron’s responsibility has been presented to
19 the Regional Board by Petitioner, including submittals and data from Petitioner’s consultant,
20 West Environmental and rebuttal from the City and Chevron has not been provided. As this
21 evidence is in the Regional Board’s file and should be included in the administrative record to be
22 prepared by the Regional Board, Petitioner incorporates the evidence and submittals by reference
23 in this Petition. Should the Regional Board fail to include any of this evidence in the
24 administrative record, Petitioner reserves the right to amend this Petition to include such
25 evidence.

26 **GROUND NO. 1: The Regional Board Refusal to Name the City of Eureka in the CAO**

27 The City owns and operates the sanitary sewer, which received wastewater containing
28 contaminants from 2907 E Street. Because of the City’s exclusive control of the sanitary sewer

1 and its failure to prevent the release of wastewater containing contaminants from its sewers to
2 soil and groundwater, the City should be named as a discharger by the Regional Board.

3 **I. Sewer Operators are Widely Recognized as Responsible Parties**

4 For over 15 years, Regional Boards have recognized operations of sewers as a major
5 source of groundwater contamination via leakage from sanitary sewer lines. In 1992, the Central
6 Valley Regional Board, produced a report detailing how PCE from dry-cleaners enters the
7 groundwater via leaks from sewers. [Ex. "Q"]. This report concluded "the majority of dry
8 cleaners had only one discharge point and that was to the sewer." [Ex. "Q" at 10]. This PCE
9 leakage is believed to occur a number of ways including through joints and cracks in the sewer
10 line. [Ex. "Q" at 19]. The report concluded that "leakage through sewers is the major avenue
11 through which PCE is introduced to the subsurface" resulting in groundwater contamination
12 from dry cleaners [Ex. "Q" at 2]. On August 1, 2008, Mr. Parson of the Regional Board noted
13 that this report provided "a verifiable and repeatable basis for the SWRCB and regional boards
14 evaluating PCE discharge sources and conceptual models." [Ex. "R"].

15 Rather than using its municipal authority to aid in investigating and addressing the
16 contamination, the City has unreasonably attempted to delay work at the Site [Ex. "I"; Ex. "S"]
17 and inappropriately lobbied the Regional Board not to name the City in the amended CAO. The
18 City unreasonably withheld encroachment permits on several occasions, which were necessary
19 for investigating the extent of contamination near the City's sewer. In its lobbying effort, the
20 City attorney, who was recused for work on the matter due to her recent tenure as an attorney for
21 the Regional Board, at the end of her recusal period, immediately scheduled a private meeting
22 between the Regional Board and the City on October 18, 2007, for the purpose of allowing "the
23 City to express its concerns regarding whether it should be named in the CAO." [Ex. "T" at 2].
24 The Regional Board's attorney later acknowledged that this private meeting was inappropriate.
25 [Ex. "U"].

26 Section 13304 of the California Water Code instructs Regional Boards to name "any
27 person . . . who has caused or permitted, causes or permits, or threatens to cause or permit any
28 waste to be discharged or deposited where it is, or probably will be discharge into waters of the

1 state.” Other Regional Boards have named sewer operators in Cleanup and Abatement Orders,
2 based on their control of the sewers. In 2004, the Central Valley Regional Water Board named
3 the City of Lodi, among others, in Cleanup and Abatement Order No. R5-2004-0043. The basis
4 for naming the City was that the City “as owner and operator of a waste disposal conveyance
5 system the City has caused or permitted waste to be discharged . . . [Further] [t]he City has had
6 actual or constructive (legally presumed) knowledge of discharges from its sewers, and the ability
7 to prevent further sewer discharges . . .” [Order No. R5-2004-0043 at 1].

8 **II. Significant Evidence of the City’s Responsibility**

9 The data for the Site shows that the City’s sewers have leaked PCE, as well as other
10 chemicals to groundwater. To compound matters, the City has unduly obstructed Petitioner’s
11 investigations, refused access to their sewers, delayed necessary permits and most importantly,
12 despite being on notice of the conditions for more than a year, has not undertaken any efforts to
13 correct the conditions.

14 The City currently owns the property where the sewer line leaked and contamination
15 continues to occur. In *Spitzer*, Order No. WQ 89-8, the State Board found that a property owner
16 was liable for the condition of the property, even if they were not involved in the day-to-day
17 operations on the property.

18 In *Spitzer*, the State Board deemed the property owner as having knowledge of the
19 contamination, because the owner knew that the property was currently contaminated and they
20 had sufficient control of the property to permit them to conduct a cleanup. Similarly, the City of
21 Eureka is in control and has been in control of the sewer and associated property at all relevant
22 times, and unlike *Spitzer*, the City has actually had control of the day-to-day operations.

23 The City permitted the discharge of wastewater containing PCE and other contaminants.
24 The State Board has held that the ability to take action to obviate a condition and failing to do so,
25 was to permit a discharge. “A discharge continues as long as the PCE remains in the soil and
26 groundwater.” [Order No. WQ 89-8].

27 Further, the City has offered no scientifically supportable alternative Conceptual Site
28 Model (CSM) that explains how the presence of PCE at up 10,000 micrograms per liter ($\mu\text{g/l}$ or

1 parts per billion) is found in groundwater near the sewer, other than from leaks through the City's
2 sewers. There is substantial evidence that the PCE present in groundwater downgradient of the
3 sewer manhole in E and Grotto Streets originated from discharges from the City's sewer system.
4 Specifically, it is acknowledged that PCE was discharged to the sewer and that the City's sewers
5 leaked. [Ex. "V" at 6 ("City staff acknowledged that the sewer mains leaked . . .")]. In addition,
6 closed circuit television (CCTV) inspections of the sewers in 2007 revealed missing pieces of
7 pipe and active leaks. The presence of the higher concentrations of PCE near the sewer manhole
8 at E and Grotto Streets than those found at the Site cannot and has not been explained as having
9 originated from any other source than the leaks from the City's sewers, nor did the City present
10 any evidence exculpating its responsibility despite its knowledge of the conditions for over 17
11 months.

12 The Petitioner's consultant, WEST, has provided technical information to the City and
13 Regional Board regarding the releases from the sewer since May 2007. These findings were
14 presented by WEST at a meeting at the Regional Board with the City and Chevron on May 17,
15 2007 and subsequently in its June 8, 2007 Feasibility Study/Pilot Study Work Plan for the E &
16 Grotto Streets PCE Plume. The findings were discussed at a follow up Regional Board meeting
17 in December 2007.

18 In response to the City's request, the Regional Board's decision to issue the revised CAO
19 was postponed pending the results of additional investigations. Despite delays caused by the
20 City's obstruction in issuing encroachment permits, the subsequent investigations were
21 completed in July 2008. The results of the investigations were presented to the Regional Board,
22 City and Chevron at the August 13, 2008 meeting. Once again, Petitioner's consultant provided
23 a technical analysis that related the distribution of PCE in the subsurface to the alignment and
24 defects in the City's sewer main. The 2008 data revealed the presence of chemicals related to
25 wastewater co-present, e.g., methylene blue active substances (MBAS), a component of
26 detergents and chloroform, a chemical formed by chlorination of water containing organic
27 matter. The City never refuted that the presence of MBAS and chloroform co-present with the
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1 PCE in groundwater were clear evidence that their sewers have discharged wastewater containing
2 PCE to groundwater.

3 Despite its numerous requests for extensions for additional time, the City has not
4 generated any independent data that contradicts the conclusions presented in Petitioner's
5 technical analyses indicating the City is a discharger of PCE to groundwater. Additional delay in
6 adding the City to the CAO is not justified. In accordance with Water Quality Order 85-7, "it is
7 appropriate and responsible for a Regional Board to name all parties for which there is
8 reasonable evidence of responsibility, even in the cases of disputed responsibility."

9 **GROUND NO. 2: The Regional Board Has Failed to Name Chevron, Unocal and Union Oil**
10 **in the CAO**

11 It is unrefuted that Chevron was the owner of the Site when discharges occurred. As
12 noted above, Spitzer (WQ 89-8), supports naming previous property owners when they were the
13 owner when discharges occurred. Chevron operated a gasoline service station and performed
14 automobile repair. It is unrefuted that there were releases of contaminants to soil and
15 groundwater at the Site when Chevron was the owner and operator. Additionally, it is unrefuted
16 that Chevron has conducted investigations on the Site, and these investigations included
17 installing monitoring wells that were screened across the aquitard separating the shallow and
18 deep groundwater. Chevron has not refuted that the installation of these monitoring wells
19 allowed DNAPL PCE to drain into the deeper aquifer, exacerbating the extent of contamination
20 and the ultimate cost of cleanup. The data for the Site supports the conclusion that Chevron's
21 activities resulted in discharges of contaminants, including petroleum hydrocarbons and PCE to
22 the deeper aquifer through cross contamination. Chevron has failed to provide any evidence
23 rebutting Petitioner's analysis of their contribution. Coupled with the fact that Chevron clearly
24 used gasoline and likely used solvents during its ownership and during its operation on the Site,
25 both of which are found in the subsurface - -a fact that also went unchallenged- - Chevron should
26 also be appropriately named on the CAO.

27 Among evidence that should be considered in identifying dischargers is the historical
28 waste disposal practices of an industry. [Ex. "O" at 4]. Chevron failed to rebut the evidence

1 submitted of well more than a dozen of their sites in which both solvents and gasoline are found
2 in the subsurface despite previously representing to the Regional Board that they do not have
3 PCE or solvent problems at other sites.

4 Further support for naming Chevron is the fact that the contamination at the Site consists
5 of a commingled plume of solvents and petroleum hydrocarbons. The State Board has found that
6 where there is a commingled plume, the Regional Board should not attempt to apportion
7 responsibility, but to jointly name all dischargers. *See In the Matter of the Petitions of County of*
8 *San Diego, et al.*, 1996 Cal. Env Lexis 3 (1996) (“It is not within the authority of the SWRCB or
9 the SDRWQCB to apportion responsibility for the remediation activities”); *In the Matter of the*
10 *Petitions of Lloyd Walker*, 1980 Cal. ENV LEXIS 24 (1980) (“[i]n a situation where several
11 dischargers have caused a water quality problems, a Regional Board need not attempt to
12 apportion the blame or focus on a particular discharger when ordering cleanup efforts”); *Zoecon*
13 *Corporation*, State Board Order No. WQ 86-2 (“neither the waste discharge requirements nor
14 this order speak to the issue of apportioning responsibility between [parties] for the clean up of
15 the site. There are other forums that provide a more appropriate setting for the resolution of that
16 matter”); *United States v. Burlington Northern & Santa Fe Ry.*, 2007 U.S. App. LEXIS 21079,
17 48-49 (9th Cir. 2007) (“defendants whose products have become commingled in the soil face an
18 uphill battle in attempting to demonstrate that volumetric contribution is a reasonable basis for
19 apportioning liability of a single harm.”). It is clear that given the evidence before the Regional
20 Board of Chevron’s responsibility for the contamination at the Site, Chevron should be named in
21 the CAO.

22 CONCLUSION

23 The Regional Board has stated that “Regional Water Board staff is unable to thoroughly
24 analyze the data using only the August powerpoint presentation [and that] [a]fter completion of
25 the analysis of all accumulated data for the site, Regional Water Board staff will consult with
26 management.” Given that the Regional Board has been aware of the data implicating the City
27 and Chevron for months, if not years, there is no reason for further delay in naming the City and
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1 Chevron. For the reasons stated above, Petitioner requests that the State Board name the City of
2 Eureka and Chevron in the CAO.

3 **8. Statement of Transmittal to the Regional Board and the Dischargers:**

4 A copy of this Petition has been sent to the Regional Board, the City and Chevron.

5 **9. Raising of Substantive Issues Before the Regional Board**

6 In the event this Petition is made active, Petitioner will submit an amended Petition
7 including a statement that the substantive issues and objections raised in the petition were raised
8 before the Regional Board, or an explanation of why Petitioner was not required or was unable to
9 raise these substantive issues or objections, before the Regional Board.

10 **10. Request to Present Supplemental Evidence**

11 In the event this Petition is made active, Petitioner reserves the right to request that State
12 Board consider evidence not previously considered by the Regional Board. Petitioner will submit
13 an amended petition containing a statement that additional evidence is available that was not
14 presented to the Regional Board or that evidence was improperly excluded by the Regional
15 Board and detailing the nature of the evidence and of the facts to be proved. If the evidence was
16 not presented to the Regional Board, Petitioner will provide a detailed explanation of the reasons
17 why the evidence could not previously have been submitted. If Petitioner contends that the
18 evidence was improperly excluded, the request will include a specific statement of the manner in
19 which the evidence was improperly excluded.

20 **11. Request for Hearing before the State Board**

21 In the event this Petition is made active, Petitioner reserves the right to request a hearing
22 before the State Board to consider testimony, other evidence, and argument. Petitioner will
23 submit an amended petition containing a summary of contentions to be addressed or evidence to
24 be introduced and a showing of why the contentions or evidence have not been previously or
25 adequately presented.

26 **CONCLUSION**

27 For all the reasons stated herein, Petitioner requests that the State Board amend the CAO
28 to include as Responsible Parties, the City and Chevron, or in the alternative, direct the Regional

1 Board to amend the CAO to include as Responsible Parties, the City and Chevron. Petitioner
2 requests the State Board to hold in abeyance this petition for review and request for hearing
3 pending the Regional Board hearing requested by Petitioner.
4

5 Dated: November 6, 2008

GREBEN & ASSOCIATES

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8 JENNA L. MOTOLA
9 Attorneys for Petitioner KFD Enterprises,
10 Incorporated
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EXHIBIT “A”

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2003-0088

For

KFD Enterprises, Incorporated

dba

Norman's Dry Cleaners and Laundry
2907 E Street
Eureka, California

Humboldt County

The California Regional Water Quality Control Board, North Coast Region, hereinafter Regional Water Board, finds that:

1. KFD Enterprises, Incorporated operates Norman's Dry Cleaners and Laundry located at 2907 E Street in Eureka, California, identified as Assessor Parcel Nos. 10-252-020, 10-252-021, and 10-252-022, hereinafter Site, (**Attachment A**). The cleaning solvent tetrachloroethene (PCE) is used in the fabric cleaning process at the site. Site operations include a dry-to-dry cleaning system. From 1980 until approximately 1984, during operation of the dry-to-dry system, used filters and still wastes containing PCE were discarded at the rear of the building in a dumpster for disposal at the local landfill. Since 1984, the used filters and still waste have been transported and recycled by Safety Kleen Corporation.
2. From 1964 to 1979 Unocal Corporation (Unocal) operated a petroleum retail sales facility at the Site. Petroleum underground storage tanks were removed from the Site prior to 1979. No environmental sampling was conducted at the time of tank removal. KFD Enterprises, Incorporated (KFD) purchased the Site from Unocal in 1979 and constructed the present building, which houses a dry cleaning facility with office space on the second story.
3. In April of 1998, consultants for KFD installed seven borings to ascertain the impact on soil and groundwater from any potential discharges associated with historical petroleum resale operations and dry cleaning operations. Soil samples were collected at depths of five-and-one-half feet below the ground surface with laboratory analytical results indicating PCE at 90 parts per billion (ppb). Laboratory analytical results from a grab groundwater sample from boring B-7 indicated 880 ppb of PCE, and 60 ppb of the breakdown compounds trichloroethene (TCE) and cis-1,2-dichloroethene (DCE). Laboratory analytical results from a grab groundwater sample from boring B-1 indicated 75 ppb of benzene, and 1,300 ppb of xylene.
4. On May 22, 2000, Unocal assumed responsibility for investigation of the petroleum-retail-sales-related discharges at the Site after being informed of the 1998 findings by Mr. Kenneth Daer of KFD. At this time, KFD assumed responsibility for the investigation and cleanup of the cleaning solvent PCE and its breakdown products.

5. On October 17, 2000, consultants for Unocal installed a monitoring well at the site. Laboratory analytical results for groundwater from monitoring well MW-1 indicated 95 ppb of Total Petroleum Hydrocarbons (TPH) as gasoline. On October 20, 2000, consultants for Mr. Daer installed two monitoring wells at the site. Laboratory analytical results for groundwater from monitoring well MW-2 indicated 1.3 ppb of PCE. Laboratory analytical results for groundwater from monitoring well MW-3 indicated 6,600 ppb of TCE, 150 ppb of DCE, and 9,600 ppb of TPH-gasoline.
6. On June 25, 2002, Regional Water Board staff obtained grab groundwater samples from four monitoring wells located at 414 Harris Street in Eureka. Laboratory analytical results indicated 0.36 ppb PCE and 0.61 ppb of TCE. The monitoring wells are located approximately 1,000 feet to the south of the Site. There are no identified dry cleaning operations or other operations that may use PCE between the Site and the monitoring wells located at 414 Harris Street in Eureka.
7. Unocal is continuing to investigate the petroleum-retail-sales-related discharges at the Site and has recently installed additional wells adjacent to the Site.
8. KFD Enterprises, Incorporated and Norman's Dry Cleaners and Laundry are hereinafter referred to as the "Dischargers" for the cleanup and abatement of discharges of the cleaning solvent PCE and the associated breakdown products.
9. The Site is located in Eureka approximately 1.5 miles east of Humboldt Bay and overlies shallow groundwater, which is approximately five feet below the surface. Groundwater emerges at the ground surface in a steep canyon approximately 1000 feet to the southwest of the site.
10. The beneficial uses of shallow areal groundwater include:
 - a) domestic water supply
 - b) agricultural supply
 - c) industrial supply
11. The beneficial uses of Humboldt Bay include:
 - a) industrial supply
 - b) navigation
 - c) water contact recreation
 - d) non-contact water recreation
 - e) ocean commercial and sport fishing
 - f) saline water habitat
 - g) wildlife habitat
 - h) preservation of rare and endangered species
 - i) marine habitat
 - j) fish migration
 - k) fish spawning
 - l) shellfish harvesting

12. The Dischargers named in this Order have caused or permitted, cause or permit, or threaten to cause or permit waste to be discharged where it is, or probably will be, discharged into waters of the State and creates, or threaten to create, a condition of pollution or nuisance. The discharge and threatened discharge of contaminants has unreasonably affected water quality in that the discharge or threatened discharge is deleterious to the above described beneficial uses of State waters, and has impaired water quality to a degree which creates a threat to public health and public resources and therefore, constitutes a condition of pollution or nuisance. These conditions threaten to continue unless the discharge or threatened discharge is permanently cleaned up and abated.
13. The California Water Code, and regulations and policies developed thereunder, require cleanup and abatement of discharges and threatened discharges of waste to the extent feasible. Cleanup activities at this Site must comply with Title 23, Chapter 15 of the California Code of Regulations (Chapter 15), which regulates the disposal of wastes to land. Cleanup to background levels is the presumptive standard. Alternative cleanup levels greater than background concentrations shall be permitted only if the Dischargers demonstrate that: it is not feasible to attain background levels; the alternative cleanup levels are consistent with the maximum benefit to the people of the State; alternative cleanup levels will not unreasonably affect present and anticipated beneficial uses of such water; and they will not result in water quality less than prescribed in the Basin Plan and Policies adopted by the State and Regional Water Board. Any proposed alternative that will not achieve cleanup to background levels, must be supported with evidence that it is technologically or economically infeasible to achieve background levels, and that the pollutant will not pose a substantial present or potential hazard to human health or the environment for the duration of the exceedence of background levels (SWRCB Res. Nos. 68-16 and 92-49, Title 23, California Code of Regulations Section 2550.4, subds. (c), and (d)).
14. Water quality objectives exist to ensure the beneficial uses of water. Several beneficial uses of water exist, and the most stringent objective for protection of all beneficial uses is selected as protective for water quality. A listing of the water quality objectives for waters of the State impacted by discharges from the Site is included as **Attachment B** to this Order.
15. Discharge prohibitions contained in the Basin Plan apply to this Site. State Water Resources Control Board Resolution 68-16 applies to this Site. State Water Resources Control Board Resolution 92-49 applies to this Site and sets out the "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Section 13304 of the California Water Code."
16. Reasonable costs incurred by Regional Water Board staff in overseeing cleanup or abatement activities are reimbursable under Section 13304(c)(1) of the California Water Code.
17. The workplans and reports required by this Order are necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly abated and controlled. More detailed information is available in the Regional Water Board's public file on this matter.

18. The Regional Water Board will ensure adequate public participation at key steps in the remedial action process, and shall ensure that concurrence with a remedy for cleanup and abatement of the discharges at the Site shall comply with the California Environmental Quality Act (Public Resources Code Section 21000 et seq. (CEQA)).
19. The issuance of this Cleanup and Abatement Order is an enforcement action being taken for the protection of the environment and, therefore, is exempt from the provisions of CEQA in accordance with Title 14, California Code of Regulations, Sections 15308 and 15321.
20. Failure to comply with the terms of this Order may result in enforcement under the California Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code Section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to Water Code Section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.
21. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such requests must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights.

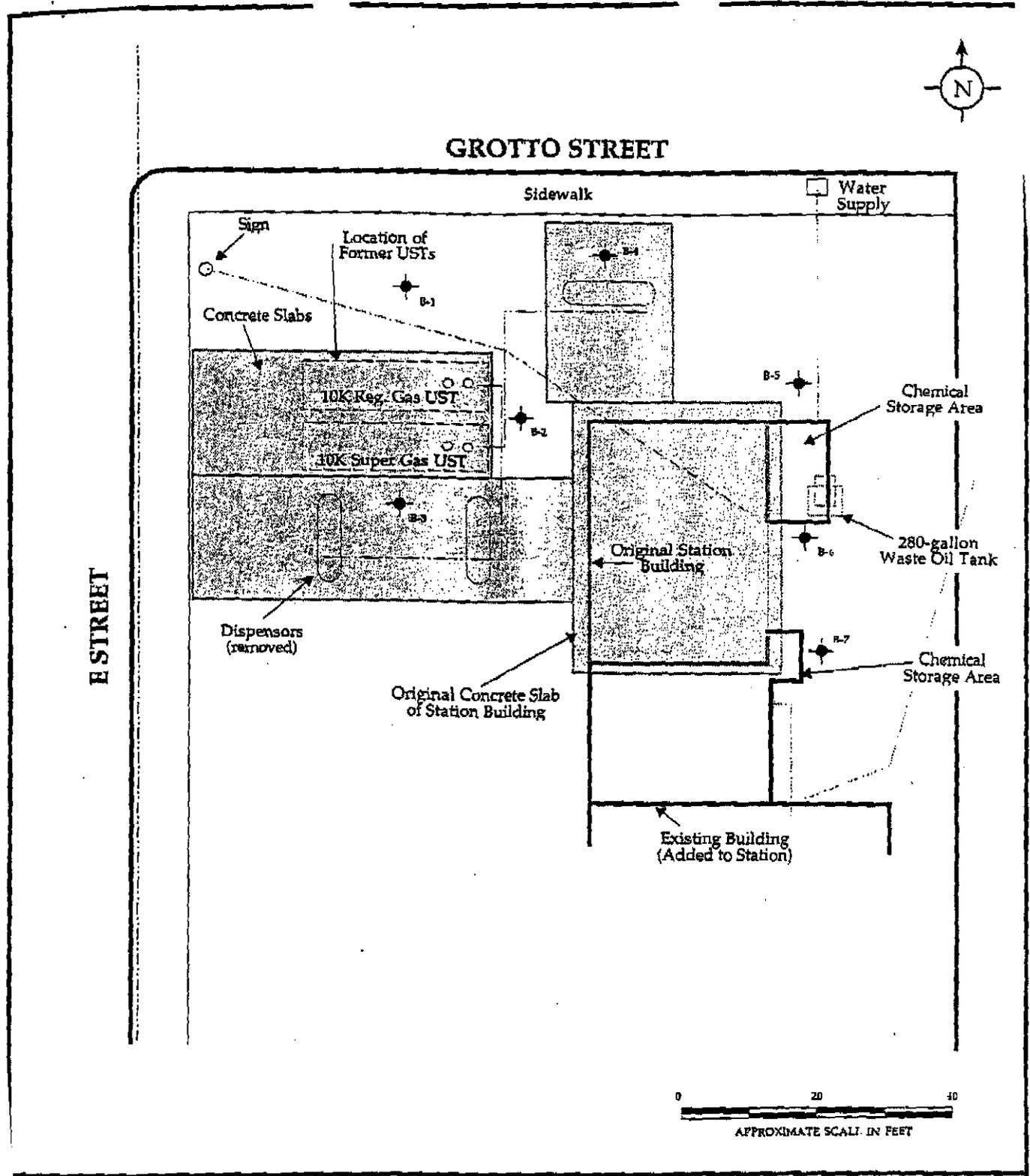
THEREFORE, IT IS HEREBY ORDERED that pursuant to California Water Code Sections 13267(b) and 13304, the Dischargers shall cleanup and abate the discharge and threatened discharge of cleaning solvents forthwith and shall comply with the following provisions of this Order:

1. All work performed at this Site shall be conducted in accordance with all local ordinances under the direction of a California Registered Geologist or Registered Civil Engineer experienced in chlorinated solvent pollution investigation and cleanup. All necessary permits shall be obtained.
2. By September 15, 2003, submit a workplan for the complete horizontal and vertical definition of soil and groundwater contamination at the Site. The workplan shall be implemented within 45 days of Executive Officer concurrence.

3. By January 15, 2004, submit a report of fieldwork completed under Provision 2 to the Executive Officer.
4. By July 15, 2004, submit a feasibility study and/or remedial action plan for the Site to the Executive Officer for concurrence. Within 45 days following Executive Officer concurrence with a final remedial alternative, submit a corrective action workplan and schedule for implementing the selected cleanup and abatement alternative.
5. Within 30 days following Executive Officer concurrence, initiate the permitting process, as needed, to implement the approved corrective action workplan. Implementation of corrective actions shall commence no later than 30 days following receipt of required permits. The Dischargers shall implement the corrective action workplan in accordance with the schedule concurred by the Executive Officer.
6. The Dischargers shall promptly pay in accordance with the invoicing instructions all invoices for Regional Water Board oversight.
7. If, for any reason, the Dischargers are unable to perform any activity or submit any documentation in compliance with the work schedule contained in this Order or submitted pursuant to this Order and approved by the Executive Officer, the Dischargers may request in writing, an extension of time as specified. The extension request must be submitted 5 days in advance of the due date and shall include justification for this delay including the good faith effort performed to achieve compliance with the due date. The extension request shall also include a proposed time schedule with new performance dates for the due date in question and all subsequent dates dependent on the extension. A written extension may be granted for good cause, in which case the Order will be revised accordingly.

Ordered by _____
Susan A. Warner
Executive Officer

July 28, 2003



SITE PLAN
 Norman's Dry Cleaning
 2907 E Street
 Eureka, California

CLEARWATER GROUP, INC.		
Project No. E-161	Report Date 12/98	Figure 1

Attachment B

Groundwater Water Quality Objectives

Constituent of Concern	Practical Quantitation Limit ug/l	Water Quality Objective ¹ ug/l
Trichloroethene	<0.5	5 ^a
Tetrachloroethene	<0.5	5 ^a
Cis-1,2-Dichloroethene	<0.5	6 ^a
Trans-1,2-Dichloroethene	<0.5	10 ^a
Vinyl Chloride	<0.5	0.5 ^a

¹ Practical quantitation limits are based on current technology. For instances where technology cannot achieve the water quality objective the practical quantitation limit will be used.

^a California Maximum Contaminant Level (MCL) for protection of domestic supply, Title 22, Section 64444.5.

EXHIBIT “B”

GREBEN & ASSOCIATES

ATTORNEYS AT LAW

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jan@grebenlaw.com

JENNA L. MOTOLA
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SACRAMENTO
WELLS FARGO CENTER
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TELEPHONE 916.447.4450
FACSIMILE 916.447.2414

September 8, 2008

VIA E-MAIL and CERTIFIED MAIL

Return Receipt Requested

Article #: 70073020000118915507

David W. Parson, P.G.
California Regional Water Quality Control Board
North Coast Region
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Re: E & Grotto Streets Plume, Eureka, California, Regional Water Board Case No. 1NHU630

Dear Mr. Parson,

As you know, we are counsel to KFD Enterprises, Inc ("KFD") aka Norman's Dry Cleaners.

We request the California Regional Water Quality Control Board - North Coast Region ("the Board") take action, pursuant to Water Code § 13320(a), with respect to amendment of the Clean Up and Abatement Order R1-2003-0088 ("CAO"). Specifically, KFD requests that the Board amend the CAO to add the City of Eureka ("Eureka"), Chevron Corporation ("Chevron"), and Union Oil Company ("Unocal") as dischargers.

We recognize and appreciate the efforts the Board has expended to carefully consider the extensive data collected to date, as well as to distinguish between differing interpretations of data offered by the parties participating in this process.

During this process, the Board has indicated on numerous occasions over the past 18 months that it was on the brink of issuing an amended CAO that would include the additional dischargers (Eureka and Chevron/Unocal). Most recently, interested parties attended an August 13, 2008 meeting at the Board which was scheduled for the stated purpose of assessing the data collected to date so that the amended CAO could be finalized. Almost a month has passed since the meeting and yet the CAO has not been amended.

As was presented by KFD on August 13, and is supported by the Board file for case 1NHU630, it is appropriate to issue an amended CAO which includes as dischargers Eureka, Chevron, and Unocal.

Eureka:

The unrebutted data shows that Eureka's sewers have leaked tetrachloroethene (PCE) as well as other chemicals to groundwater (methylene blue active substances [MBAS], chloroform, etc.). To compound matters, Eureka has unduly obstructed KFD's investigations, refused access to their sewers, delayed necessary permits and most importantly, despite being on notice of the conditions for more than a year, has not undertaken any efforts to correct the conditions.

Further, despite some implausible hypotheses postulated by Eureka over the preceding 18-months, they have offered no scientifically supportable alternative Conceptual Site Model (CSM) that explains how the presence of PCE at up 10,000 µg/l is found near the sewer, other than through leaks through its sewers. At this point there is substantial evidence that the PCE present in groundwater downgradient of the sewer manhole in E and Grotto Streets originated from discharges from Eureka sewer system. Specifically, it is acknowledged that PCE was discharged to the sewer and Eureka sewer leaks. Further, the presence of the higher concentrations near the sewer manhole at E and Grotto Streets cannot and has not been explained as having originated from any other source than Eureka's sewers. Additionally, it has been well understood for over 15 years that "leakage through sewers is the major avenue through which PCE is introduced to the subsurface" resulting in groundwater contamination from dry cleaners (California Regional Water Quality Control Board - Central Valley Region, March 1992).

During the August 13, 2008 meeting, West Environmental provided a technical analysis that related the distribution of PCE in the subsurface to the alignment and defects in the Eureka's sewer main. Eureka never refuted that the presence of MBAS and chloroform were clear evidence that their sewers have discharged wastewater to groundwater.

It is also our understanding that their existing Waste Discharge Requirements (WDRs) R1-2004-013 prohibits the discharge of "waste from anywhere within the collection, treatment, or disposal system." Section 13304 of the Water Code authorizes a Regional Board to issue cleanup and abatement orders to "any person who has discharged waste into the waters of the state in violation of any waste discharge requirement or other order or prohibition issued by a regional board." It was through Eureka's sewers that the discharges occurred; therefore Eureka should be properly named on the CAO as a discharger.

State Water Resources Control Board Resolution No. 92-49, requires that Regional Boards "make a reasonable effort to identify the dischargers" and "[w]here necessary to protect water quality, name other persons as dischargers." [Res. No. 92-49(I)(B)&(II) (A)(4).] Specifically, Resolution 92-49 states that the Regional Board shall use any relevant evidence including: "[i]ndustry-wide operational practices that historically have led to discharges, such as leakage of pollutants from wastewater collection and conveyance systems..." [Res. No. 92-49(I)(A)(4).]

In December 1992, Chief Counsel for the State Board elaborated upon the policy for naming parties in cleanup orders in a memorandum to Regional Board Executive Officers entitled, "Responsible Party Orders." In this memo, Chief Counsel William Atwater, states that Regional Boards should "name all persons who have caused or permitted a discharge," including "both active discharges and continuing discharges." It further states that Regional Boards should name prior landowners and government parties. This policy was designed to promote the objective of ensuring adequate funding and resources to effectuate the remediation of contamination.

Eureka has and still owns the property where the sewer line leaked and contamination continues to occur. In Spitzer, Order No. WQ 89-8, the State Board found that a property owner was liable for the condition of the property, even if they were not involved in the day-to-day operations on the property.

In Spitzer, the State Board deemed the property owner as having knowledge of the contamination because the owner knew that the property was currently contaminated and they had sufficient control of the property to permit them to conduct a cleanup. Similarly, Eureka is in control and has been in control of

the sewer and associated property, and unlike Spitzer, Eureka has actually had control of the day-to-day operations.

Despite its numerous requests for extensions for additional time, Eureka has not generated any independent data that contradicts the conclusions presented in KFD's technical analyses indicating Eureka is a discharger of PCE to groundwater. The types of information requested at the August 13, 2008 meeting by the Eureka are immaterial to whether they are a discharger. Additional delay in adding Eureka to the CAO is not justified. In accordance with Water Quality Order 85-7, "it is appropriate and responsible for a Regional Board to name all parties for which there is reasonable evidence of responsibility, even in the cases of disputed responsibility."

Chevron and Unocal:

Both of these entities should be named, as they have yet to provide a plausible explanation distinguishing the liability of the original operator, Unocal v. its successor in interest, Chevron. Under clear Water Code authority, both entities are responsible.

Substantively, these entities have been given numerous opportunities to rebut KFD's analysis of their contribution. Specifically, at the presentation on August 13 they offered no rebuttal that their activities resulted in discharges of PCE to the deeper aquifer through cross contamination. Coupled with the fact that these companies clearly utilized solvents and gasoline, both of which are found in the subsurface - - a fact that was also went unrebutted- - these entities should also be appropriately named on the CAO.

Among evidence that should be considered in identifying dischargers is the historical waste disposal practices of an industry. Chevron and Unocal failed to rebut the evidence submitted of well more than a dozen of their sites in which both solvents and gasoline are found in the subsurface despite previously representing to the Board that they do not have PCE problems at other sites.

It is also unrebutted that Unocal, now Chevron, was the owner of the property when discharges occurred. As noted above, Spitzer (WQ 89-8), supports naming previous property owners when they were the owner when discharges occurred.

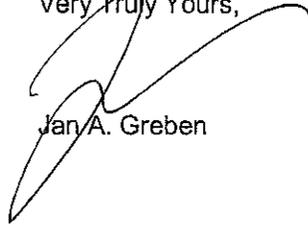
And the fact that we have a mixed plume of solvents and petroleum hydrocarbons also supports naming all parties to the CAO, based on extensive Board precedent. *In the Matter of the Petitions of COUNTY OF SAN DIEGO, et al.*, 1996 Cal. ENV LEXIS 3 (Cal. ENV 1996) ("It is not within the authority of the SWRCB or the SDRWQCB to apportion responsibility for the remediation activities"); *In the Matter of the Petitions of Lloyd Walker*, 1980 Cal. ENV LEXIS 24 (1980) ("[i]n a situation where several dischargers have caused a water quality problems, a Regional Board need not attempt to apportion the blame or focus on a particular discharger when ordering cleanup efforts"); *Zoecon Corporation*, State Board Order No. WQ 86-2 ("neither the waste discharge requirements nor this order speak to the issue of apportioning responsibility between [parties] for the clean up of the site. There are other forums that provide a more appropriate setting for the resolution of that matter"); see also *United States v. Burlington Northern & Santa Fe Ry.*, 2007 U.S. App. LEXIS 21079, 48-49 (9th Cir. 2007) ("defendants whose products have become commingled in the soil face an uphill battle in attempting to demonstrate that volumetric contribution is a reasonable basis for apportioning liability of a single harm.").

We expect, in response to this correspondence, that Eureka and the oil companies will reiterate their request for more data, as discussed in the Board's September 2, 2008 letter. However, as should be clear at this point, more data are not necessary to establish discharger responsibility; the only assistance additional data would provide is to potentially assist with allocation, a determination that is not relevant to the issues at hand. Thus, the burden of providing such information far outweighs any benefit, as is clearly set forth in Water Code § 13267. Further, this conclusion is consistent with those presented by the Regional Board in their May 9, 2008 letter, where it was explained that Eureka's request for historical materials management history does not fit "within the policies and procedures established by 92-49, and is

not necessary for the cleanup of the site. Because Norman's is already a responsible party, the Regional Board staff does not have any need to require it to submit information regarding its handling of hazardous materials and disposal practices."

Thank you for your expected prompt response. We will pursue appropriate relief pursuant to Section 13320 if the Board fails to take action within the requisite time. Please contact us if you should have questions or input.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Jan A. Greben', written over the typed name below it.

Jan A. Greben

JAG/bh

cc via E-mail:

Ken Daer
Russel Juncal
Peter Morris
Peter Krasnoff
John Inglis
Kent Baugh
Sergio Borgiotti
Andrew Mortl, Esq.
David Peacock
Luis Rivera
Kim Niemeyer, Esq.
David Evans
Kasey Ashley
Bruce Young
Gary Hokkanen
Mark Verhay
Gabriel Sabadell
Michael Knight
Sheryl Schaffner, Esq.
Lee Henig-Elona
Aaron Costa
Morris Davidovitz, Esq.
Charles Bolcom, Esq.

EXHIBIT “C”



**California Regional Water Quality Control Board
North Coast Region
Bob Anderson, Chairman**



Linda S. Adams
Secretary for
Environmental Protection

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

Arnold
Schwarzenegger
Governor

October 7, 2008

Mr. Ken Daer
KFD Enterprises, Incorporated
2907 E Street
Eureka, CA 95501

Dear Mr. Daer:

Subject: Response to Letter of September 8, 2008

File: Norman's Dry Cleaners and Laundry, 2907 E Street, Eureka, California
Case No. 1NHU630 and Case No. 1THU694

Regional Water Board staff is in receipt of the September 8, 2008 letter from Mr. Jan Greben counsel to KFD Enterprises. This letter focuses on two issues, the revision of Cleanup and Abatement Order No. R1-2003-0088 (Order No. 0088) and the response to Regional Water Board staff's request for a complete history of the amount of dry cleaning materials used at the site.

With regard to the first issue, Regional Water Board staff is currently analyzing the data submitted by all interested parties. Regional Water Board staff is unable to thoroughly analyze the data using only the August powerpoint presentations. After completion of the analysis of all the accumulated data for the site, Regional Water Board staff will consult with management. All decisions on revisions to Order No. 0088 will be made after Regional Water Board management staff make a determination on responsible parties.

When Regional Water Board technical staff is directed to revise Order No. 0088, it will take time for the revisions to be made and the draft document to be reviewed by the necessary Regional Water Board staff and legal counsel. It is anticipated that the earliest a draft cleanup and abatement order will be transmitted to all parties will be by January 15, 2009. We apologize for any inconvenience this delay may cause.

The second issue concerns Regional Water Board staff's request in the letter dated September 2, 2008 that requested KFD Enterprises to submit a complete history of the amount of dry cleaning materials used at the site. This information is to include, at a minimum, the information that WEST used to calculate mass estimates in the

California Environmental Protection Agency

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Mr. Len Dyer

20

Company Name

Mr. Morris Davidovitz, Davidovitz & Bennett, LLP, One Embarcadero Center,
Suite 750, San Francisco, CA 94111-3650.

Mr. Charles Bolcom, Esquire, Davidovitz & Bennett, LLP, 1 Embarcadero Center,
Suite 750, San Francisco, CA 94111

Mr. James Lenzen, ENSR, 300 Lakeside Drive, Suite 220, Oakland, CA 94612.

Mr. Russell Juncal, Ground Zero Analysis, Inc., 1714 Main Street,
Escalon, CA 95320

Mr. Sergio Borgiotti, Chevron Environmental Practice Group, Law Department,
6001 Bollinger Canyon Road, T-3292, San Ramon, CA 94583.

Mr. Andrew T. Mortl, Glyn & Finley, LLP, One Walnut Creek Center,
100 Pringle Avenue, Suite 500, Walnut Creek, CA 94596.

Mr. Kent Baugh, ENSR, 300 Lakeside Drive, Suite 220, Oakland, CA 94612.

Mr. Dave Peacock, ENSR 300 Lakeside Drive, Suite 220, Oakland, CA 94612

Mr. Gary Hokkanen, Hokkanen Environmental LLC, 6125 Aspinwall Road,
Oakland, CA 94611.

Mr. Gabriel P. Sabadell, TSC Group, Inc., 5400 Ward Road, Suite V-100,
Arvada, CO 80002.

California Environmental Protection Agency

Recycled Paper

EXHIBIT “D”

Subject: Norm's Dry Cleaners (former Unocal Service Station)
From: "Dave Parson" <DParson@waterboards.ca.gov>
Date: Thu, 01 Feb 2007 09:42:22 -0800
To: <ssteinme@ffic.com>, <jan@grebenlaw.com>, <Kfd@sbcglobal.net>, <peterk@westenvironmental.com>
CC: <Gaynor.Dawson@calibresys.com>, <mverhey@co.humboldt.ca.us>, <kbaugh@ensr.aecom.com>, <devens@waterboards.ca.gov>, "Luis Rivera" <LRivera@waterboards.ca.gov>, "Tuck Vath" <TVath@waterboards.ca.gov>

Gentlemen

I send this email to provide thanks to the team for their presentation on the subject matter on January 29th in the CRWQCB, North Coast Region office.

As most of you know I am in the process of preparing two documents: (1) letter to project file discussing findings and 2) revising existing Cleanup and Abatement Order for the subject site

In addition, I have been in contact with Mark Verey-Humboldt County LOP and with Kent Bough of ENSR toward contacting Darren Rouse at Chevron.

I have provided a general explanation to Mark Verhey and have asked him to contact his boss Jim Clark so that he is informed.

I also provided a general explanation to Kent Baugh and asked this information be forwarded to Mr. Rouse. ENSR is Chevron's consultant. My understanding is that Mr. Rouse is Chevron's lead for former Unocal sites. Today, Mr. Baugh indicated to me that provided information has been forwarded to Chevron's legal department. Apparently, Chevron's policy is to forward regulatory order issues to their legal department. At this point it is unclear who specifically from Chevron will be participating.

In an effort to provide clarity, bring all parties current on findings, and where we are heading on the project I am requesting that a common date (in the near future) be identified by all parties so that we can meet and hear the same presentation that we heard on January 29th.

Please indicate several dates over the next couple of weeks that we can meet here

Norm's Dry Cleaners (former Unocal Service Station)

in Santa Rosa at the CRWQCB, North Coast Region office. I will attempt to coordinate these schedules and identify a common date to meet.

TX Much

Dave Parson PG 6037, CEG 1889
CRWQCB, North Coast Region

EXHIBIT “E”

Subject: Potential Noticing Meeting for Norman's Dry Cleaner and Laundry Site

From: "Dave Parson" <DParson@waterboards.ca.gov>

Date: Thu, 08 Feb 2007 14:40:57 -0800

To: <Gaynor.Dawson@calibresys.com>, <drouse@chevron.com>, <jclark@co.humboldt.ca.us>, <mverhey@co.humboldt.ca.us>, <KBaugh@ensr.aecom.com>, <ssteinme@ffic.com>, <Jan@grebenlaw.com>, <Kfd@sbcglobal.net>, <peterk@westenvironmental.com>

CC: "David Evans" <DEvans@waterboards.ca.gov>, "Luis Rivera" <LRivera@waterboards.ca.gov>, "Tuck Vath" <TVath@waterboards.ca.gov>

Good Day Project Team Members

Based on communications with team members the subject meeting is scheduled for February 27th (Tuesday) 2007. This meeting is scheduled for 10:00AM-12:00PM at the California Regional Water Quality Control Board (CRWQCB), North Coast Region office located at 5550 Skylane Blvd., Suite A, Santa Rosa, CA for potential noticing of a Cleanup and Abatement Order (CAO). Attendance is strongly encouraged.

The reason that Potential Noticing for CAO is used is because of previously discussed issues and newly emerging issues that not all of the project team has heard.

Much of the project team previously met on Monday January 29, 2007. At this meeting we discussed avenues to proceed toward rapid site characterization and cleanup and one avenue emerged, that is using a foundation document to provide public disclosure toward preparation and implementation of a revised CAO. I have attached a predraft version of the foundation document for review and for discussion purposed at the February 27, 2007 meeting. Please review and check the CC listing for accuracy.

Based on recent discussions with Chevron representative (Mr. Darin Rouse) another potential avenue has emerged that the team needs to discuss. This other potential avenue is to maintain the current CAO (although schedule modifications are necessary) and for the responsible parties to enter into a cost-sharing agreement. This potential avenue has merit and has been successfully used on other projects of similar nature I am told. I also understand that Mr. Rouse will bring Chevron's legal council with him.

I would like to request that the same power point presentation heard on January 29, 2007 be re-presented on February 27, 2007 so the entire project team is brought current on the project. Humboldt County LOP representatives have also been contacted and I understand will participate.

I trust that our project team will have a successful meeting by agreeing upon the avenue most beneficial to cleaning up existing contamination and upon the schedule proposed on January 29, 2007.

Thanks Much for everyone's willingness to cooperate.

Sincerely

David W. Parson PG 6037, CEG 1889

CRWQCB, North Coast Region

Cleanups Division

707.576.2556

PS If you require driving directions to the CRWQCB office in Santa Rosa please contact me.

NDC_#1NHU630_foundation to revised CAO_RBtransltr_TVrev.doc Content-Type: application/msword
Content-Encoding: base64



California Regional Water Quality Control Board
North Coast Region
William R. Massey, Chairman



Linda S. Adams
Secretary for
Environmental Protection

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Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

Arnold
Schwarzenegger
Governor

February 8, 2007

PREDRAFT

The Public
State of California

Dear Public:

Subject: Foundation for Revised Cleanup and Abatement Order

File: Norman's Dry Cleaners and Laundry
2907 E Street
Eureka, California
Case Nos. 1NHU630 and 1THU694

This letter to the project file is prepared by the California Regional Water Quality Control Board (CRWQCB), North Coast Region staff and is directed to the public within the State of California regarding releases of petroleum hydrocarbon compounds and chlorinated solvents to soils and groundwater on-site and off-site at and down-gradient of 2907 E Street in Eureka, California.

This informational letter to the project file is intended to provide public notification and hence is part of the foundational basis for developing and implementing a revised Cleanup and Abatement Order (CAO) for identified Case Numbers (1NHU630 and 1THU 694). Existing CAO No R1-2003-0088 for KDF Enterprises, Incorporated (dba Norman's Dry Cleaners and Laundry) is in-place, but focuses on only one responsible party when there are two known responsible parties. The other responsible part is Chevron Corporation as they purchased Unocal Corporation and Unocal formerly owned and/or operated a service station at the same location now occupied by Norman's Dry Cleaners and Laundry. Hence, existing CAO No. R1-2003-0088 is being revised to include both responsible parties. It is anticipated that the revised CAO will be in place prior to the end of February 2007.

Historically, Case No. 1NHU 630 was assigned to the chlorinated solvents associated with operations at Normans Dry Cleaners and Laundry and Case No. 1THU694 was assigned to the former Unocal gasoline and service station. Further, CRWQCB staff focused resources primarily on 1NHU630 while Humboldt County Department of Environmental Health Underground Storage Tank (UST) Local Oversight Program

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-2-

February 7, 2007

(LOP) focused on 1THU694. To preserve this history and to keep the LOP fully involved we plan on using a team approach with the CRWQCB taking overall project lead and Humboldt County LOP being an integral team-member on this project. Hence, future project documentation added to the Geotracker system for each project should be similiar in content reflecting this integrated approach.

Groundwater contamination exists in a multi-zone system beneath and down-gradient from the project site. At least two water-bearing zones (WBZs), the shallower perched zone is labeled as Zone A and a deeper WBZ is labeled as Zone B. Both zones are impacted with concentrations of Total Petroleum Hydrocarbons (TPH) and THP constituents including Benzene, Toluene, Ethylbenzene, and Xylene (BTEX) as well as chlorinated solvents (primarily tetrachloroethylene [PCE]) and associated breakdown compounds (Trichloroethene [TCE] and cis-1,2-dichloroethene [DCE]) at concentrations exceeding water quality objectives. These contaminants exist as a commingled groundwater plume within each WBZ and continuing investigation and remediation efforts will address both types of contaminants in both WBZs.

An integrated team composed of CRWQCB and Humboldt County LOP personnel, the RPs and their consultants, RP insurance companies and their consultants have met and are committed to a schedule to finish investigating and beginning cleanup at the project site in 2007. This schedule will be detailed within the forthcoming revised CAO. Public participation is an important part of this effort and we trust that interested members of the public will find this letter, the revised CAO, and forthcoming information on the project helpful in understanding the overall project. Based on all available information we do not believe that there is any completed exposure pathway that would place the public in harms way.

If you have questions or require clarification on the content of this letter please contact my staff assigned to this project, Mr. David W. Parson PG 6037 CEG 1889 at (707) 576-2556 (or email at DParson@waterboards.ca.gov).

Sincerely,

Ms. Catherine E. Kuhlman
Executive Officer

NDC_#1NHU630_foundationtorevisedCAO_RBtransltr.doc

Cc: Mr. Ken Daer, KFD Enterprises, Inc. 2907 E Street, Eureka, CA 95501
Mr. Jan A. Greben, Greben & Associates, 1231 State Street, Suite 200, Santa Barbara, California, 93101

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February 7, 2007

Mr. Peter Krasnoff, WEST Environmental Services & Technology, 711 Grand Avenue, Suite 220, San Rafael, CA 94901
Mr. Darin Rouse, Chevron Environmental Management Company, 6001 Bollinger Canyon Rd., Room K2260, San Ramon, CA 94583
Mr. Kent Baugh, ENSR, 300 Lakeside Drive, Suite 220, Oakland, CA 94612
Mr. Scott Steinmetz, Fireman's Fund Insurance Company, 777 San Marin Drive C87, Novato, CA 94998
Mr. Gaynor Dawson, Calibre Systems, Inc., 64209 Grover PR NE, West Richland, WA 99353
Mr. Mark Verhey, Humboldt County Department of Environmental Health, 100 H Street, Suite 100, Eureka, CA, 95501
Mr. Jim Clark, Humboldt County Department of Environmental Health, 100 H Street, Suite 100, Eureka, CA, 95501

California Environmental Protection Agency

Recycled Paper

EXHIBIT “F”

Subject: Normans Dry Cleaners RB Case Nos. 1THU694 and 1NHU630
From: "Dave Parson" <DParson@waterboards.ca.gov>
Date: Wed, 21 Feb 2007 15:09:54 -0800
To: <gaynor.dawson@calibresys.com>, <drouse@chevron.com>, <kesters@chevron.com>, <jclark@co.humboldt.ca.us>, <mverhey@co.humboldt.ca.us>, <KBaugh@ensr.aecom.com>, <ssteinme@ffic.com>, <Jan@grebenlaw.com>, <kfd50@sbcglobal.net>, <peterk@westenvironmental.com>
CC: "David Evans" <DEvans@waterboards.ca.gov>, "Luis Rivera" <LRivera@waterboards.ca.gov>, "Tuck Vath" <TVath@waterboards.ca.gov>

Dear Project team members

I send this email and attachment on the subject project in anticipation of our meeting next week, Tuesday February 27, 2007, here at the CRWQCB, North Coast Region office.

You will note an addition to the project team roster, Ms. Kelly Esters of Chevron. For Ms. Esters benefit and to remind us of some outstanding issues I offer the following information.

On January 29, 2007, many of the project team met here to 1) listen to a presentation given by Mr. Krasnoff of West Environmental, discuss project schedule going forward, discuss findings from my project site visit, and to identify an avenue to proceed. There was general verbal agreement among attendees that the proposed project scope of work and time schedule were acceptable and a likely avenue to follow is revising the existing Cleanup and Abatement Order (CAO) to include Chevron Corporation as a responsible party and to include the time schedule provided by West Environmental. One action item was for Mr. Daer to provide Calibre Systems with authorization to place their site characterization documentation onto Geotracker. A review of Geotracker today indicates this has not occurred. Hence, the CRWQCB does not have Calibre Systems site characterization documentation.

Subsequent to this meeting (on February 7, 2007) I made contact with Mr. Rouse of Chevron Corporation and he informed me that it is company policy to send projects to their legal team when they are named in a regulatory order, such as a CAO. He suggested that it is common for Chevron to enter into cost-sharing

agreements with other responsible parties if they are not named in a regulatory order. This suggestion offered another (previously unidentified) potential avenue to proceed and would only require revising the existing CAO time schedule.

On February 8, 2007 I sent an email with attachment to the project team identifying this other potential avenue and attached a predraft document titled "Foundation for Revised CAO" and reminded project team members of the planned February 27, 2007 meeting. On the same day I received a FAX from Mr. Greben requesting a deadline extension for the existing CAO and it included four bulleted items reiterating the revised schedule for the CAO. A hard copy letter with the same content as the FAX from Mr. Greben was received on February 12, 2007. We felt it was implicit that the requested extension was granted as the project avenues were discussed, agreed upon, and implemented.

A complete working draft of the revised CAO with revised schedule and naming Chevron Corporation along with KFD Enterprises, Incorporated exists and is ready for internal review. I was under the impression that the other potential avenue suggested by Chevron has some merit as it would create cost sharing among the responsible parties allowing KFD Enterprises, Incorporated to recover existing and future expenditures. However, as a State agency, the CRWQCB is not typically a signatory party to such agreements, as our legislated mandate is protect water quality and restore beneficial uses of impacted waters of the State using our Water Quality Control Plan (Basin Plan) and the State Water Code as appropriate. For this project a CAO exists and it will be revised to contain a revised schedule. Addition of Chevron as a responsible party may still be up to some debate.

This debate may already have been settled because on Tuesday February 20, 2007 I received a telephone message from Mr. Rouse in which he indicated that suit had been filed against Chevron Corporation by Mr. Greben on the behalf of KFD Enterprises, Incorporated to recover existing and future expenditures. I have returned Mr. Rouse's call but have not spoken with him directly nor have I seen documentation to verify that such a lawsuit exists. Verification of this issue needs to occur.

We hope that there is still room to discuss the two potential avenues next week on February 27, 2007.

We have some questions on the agreed upon schedule that need to occur. Toward answering these questions I have prepared a very draft time line (attached) that includes the four agreed upon dates and also contains a number of additional scheduling items that need to be discussed and agreed upon (such as accelerated review times and public participation frequency. Please bring this draft time line with you to the meeting and be prepared to discuss and finalize. Currently it only goes through 2007. Lastly, please note that the first deliverable under the revised schedule is also on February 27, 2007.

I appreciate everyone's willingness to discuss and move forward on this project.

Respectfully,
David W. Parson PG 6037, CEG 1889
CRWQCB, North Coast region
Cleanups Division
707.576.2556

Late yesterday

Norman's_CAOTimeline.xls **Content-Type:** application/vnd.ms-excel
Content-Encoding: base64

EXHIBIT “G”

Jan A. Greben

From: Dave Parson [DParson@waterboards.ca.gov]
Sent: Thursday, June 21, 2007 9:16 AM
To: jmark.inglis@chevron.com; sziegler@chevron.com; byoung@ci.eureka.ca.gov; MVerhey@co.humboldt.ca.us; KBaugh@ensr.aecom.com; amortl@glynnfinley.com; Jan A. Greben; ghokkanen@hokenv.com; kfd50@sbcglobal.net; gps@tscgroup-inc.com; peterk@westenvironmental.com; peterm@westenvironmental.com
Cc: David Evans; Tuck Vath
Subject: Followup on items for Normans sent May 31, 2007

Good Morning Project Team Members

I send this email to the project team members as a followup primarily to item 3 with attachment sent May 31, 2007 to all team members.

Item 3 and attachment focus on the new Cleanup and Abatement Order (CAO) and Public Participation (PP).

A draft CAO is now being circulated to CRWQCB management. I am trying to send the project team a draft final version prior to it going final. Please stay tuned. 

With regard to PP the CRWQCB has taken another step, sending out two notifications: Prop 65 notification and another notification to Mr. David Tyson, Eureka City Manager, and to Ms. Melissa Martel, Supervising EHS Humboldt County Dept. of Environmental Health. All project team members are CCd on these notifications. The first PP step was attached to the May 31, 2007 email which contained a Public Participation Plan (PPP) proposal.

It is now time to discuss the PPP proposal to determine some specifics. To assist in this effort because we all will need to participate we should meet, discuss, select dates and implement. Because of the long distance for some of the team members to travel I am thinking that a conference call is likely more practical.

I am hoping that one of the consultants can take the lead in arranging this conference call. Does anyone volunteer?

Please let us know at your earliest opportunity.

TX Much
David W. Parson PG 6037, CEG 1889
CRWQCB, North Coast Region
Cleanups Division
707.576.2556

----- Original Message -----

From: Dave Parson <DParson@waterboards.ca.gov>
To: jmark.inglis@chevron.com <jmark.inglis@chevron.com>;
sziegler@chevron.com <sziegler@chevron.com>; byoung@ci.eureka.ca.gov
<byoung@ci.eureka.ca.gov>; MVerhey@co.humboldt.ca.us
<MVerhey@co.humboldt.ca.us>; KBaugh@ensr.aecom.com <KBaugh@ensr.aecom.com>;
amortl@glynnfinley.com <amortl@glynnfinley.com>; Jan A. Greben;
ghokkanen@hokenv.com <ghokkanen@hokenv.com>; kfd50@sbcglobal.net
<kfd50@sbcglobal.net>; gps@tscgroup-inc.com <gps@tscgroup-inc.com>;
peterk@westenvironmental.com <peterk@westenvironmental.com>;
peterm@westenvironmental.com <peterm@westenvironmental.com>
Cc: David Evans <DEvans@waterboards.ca.gov>; Tuck Vath
<TVath@waterboards.ca.gov>
Sent: Thu May 31 14:39:20 2007
Subject: Items for Normans Dry Cleaners and Laundry Project_RB Case
No.1NHU630

Dear Project Team Members

I send this email and attachments to your attention as new information.

1. I will be on out of state government travel business from June 1 and should return on June 12.
2. I received an official letter from Chevron indicating that a temporary change of Chevron Project Manager from Mr. Darin Rouse to J. Mark Inglis. This temporary change should last about four months.
3. Temporally concomitant with the new CAO we want Public Participation (PP) to begin. Toward PP implementation I have prepared and my supervisor has reviewed and concurred with the attached draft proposal and time line through 2007. Please review this proposal during my absence and be prepared upon my return to meet, discuss (later part of June) and begin implementation. We want the PP to be a team effort both in preparation and in terms of meeting with the public.

TX Much
David W. Parson PG 6037, CEG 1889
CRWQCB, North Coast Region
Cleanups Division
707.576.2556

Proposal for
Public Participation Plan
for the
Normans Dry Cleaners Project Site
(RB Case Nos. 1NHU630 (chlorinates) and 1THU694 (non-chlorinates))

The California Regional Water Quality Control Board (CRWQCB), North Coast Region is the regulatory lead on the chlorinated groundwater plume while the Humboldt County Department of Environmental Health UST Local Oversight Program is the local regulatory lead on the non-chlorinated portion of the groundwater plume. The plumes are co-mingled and data indicates that the chlorinated part of the groundwater plume extends considerably farther off-site than the non-chlorinated part of the groundwater plume.

California statute and regulations specify what the CRWQCB needs to do in terms of Public Participation (PP) for groundwater cleanups. We have decided to go beyond those specific requirements to include:

- Applicable portions of Section V (Public Involvement) of the Memorandum of Agreement between the Department of Toxic Substances Control and the State Water Resources Control Board (SWRCB) and CRWQCBs (dated March 1, 2005), and
- Applicable portions of SWRCB Resolution 92-49 (as Amended on April 21, 1994 and October 2, 1996)

The goals are to inform local decision makers and the public about the status and plans to address the co-mingled plume and to provide ample opportunities for public input and involvement to participate in the decision making process. This proposal is to implement several activities for PP which includes, but is not limited to outreach efforts, establishing information repositories, publishing notifications, and holding public meeting(s). Each of these PP activities is bolded and temporally linked to the existing project schedule shown on Attachment A through 2007.

The first proposed PP activity temporally coincides with issuing the new Cleanup and Abatement Order (CAO) which identifies KFD Enterprises, Chevron Corporation and the City of Eureka as responsible parties for the co-mingled groundwater plume. The first PP activity includes:

- Fact Sheet preparation with plan view map showing the aerial extent of the co-mingled plume.
- Transmittal letter from the CRWQCB Executive Officer to the Eureka City Manager, Eureka City Fifth and First Ward City Council Members, Chamber of Commerce, North Coast Environmental Center, Humboldt County Administrator's Office for the Board of Supervisors, establishment of electronic and hard copy information repositories, posting on the

CRWQCB website, and placement of an informational item in the CRWQCB Executive Officer's Summary Report for board meetings.

The second proposed PP activity temporally coincides with pilot scale testing of treatment technologies and should include a public meeting in Eureka for interested parties to attend. This activity will include a significant outreach effort including formal public noticing to hold an informational meeting on proposed groundwater cleanup activities, both pilot-scale and full-scale.

The third proposed PP activity temporally coincides with reviewing and implementing the Remedial Action Plan (RAP) and possibly the Corrective Action Plan (CAP) for the co-mingled groundwater plume. This activity will also include a significant outreach effort including formal public noticing to hold an informational meeting on proposed groundwater cleanup activities.

EXHIBIT “H”

Subject: Followup to 7-3-07 Norman's Meeting

From: "Dave Parson" <DParson@waterboards.ca.gov>

Date: Tue, 03 Jul 2007 14:46:23 -0700

To: <jmark.inglis@chevron.com>, <sergioborgiotti@chevron.com>, <sziegler@chevron.com>, <byoung@ci.eureka.ca.gov>, <MVerhey@co.humboldt.ca.us>, <KBaugh@ensr.accom.com>, <amortl@glynnfinley.com>, <jan@grebenlaw.com>, <ghokkanen@hokenv.com>, <kfd50@sbcglobal.net>, <gps@tscgroup-inc.com>, <peterk@westenvironmental.com>, <peterm@westenvironmental.com>

CC: "David Evans" <DEvans@waterboards.ca.gov>, "Tuck Vath" <TVath@waterboards.ca.gov>

Good Afternoon Project Team Members

I send this email with attachments as a followup to this mornings call-in-conference call. The California Regional Water Quality Control Board (CRWQCB), North Coast Region appreciates your participation on this conference call and in continuing project functions.

We worked our way through the agenda and several items emerged that require different levels of action. They are:

- 1) Introductions: We have one new project team member, Mr. Sergio Borgiotti with Chevron. I have added Mr. Borgiotti to the team roster and he is on this email. Some of the Project Team Members or their designees did not participate this morning and they include Mark Verhey, Bruce Young, and Andy Mortyl. A CRWQCB notification letter dated June 21, 2007 and cc'd to team member John Inglis with Chevron was returned to the CRWQCB office. Another CRWQCB notification letter dated June 18, 2007 was apparently received. Mailing addresses were verified. I have attached two PDF versions of the June 18, 2007 and June 21, 2007 letters.
- 2) Status of review comments on WEST's FS/PS WP. CRWQCB provided comments and Chevron has indicated that they will provide written comments before July 13, 2007. Discussion between Peter Krausnoff of WEST and David Parson of the CRWQCB on the CRWQCB comments occurred. WEST indicated that they will provide written responses to CRWQCB comments. The team also discussed Attachment A to the CRWQCB comments and determined that additional clarification is needed. Attachment A is labeled as Attachment B to the forthcoming Cleanup and Abatement Order (CAO). Attachment A modifications include retaining 1,1,1-TCA and 1,1,2-TCA was not retained. In addition, some of the COCs (e.g. Trimethylbenzene) listed under CVOCs need to be moved so they are under NCTPH compounds. Finally, I encouraged each team member to review Attachment A Water Quality Objectives (WQOs) concentrations. The need to differentiate the chlorinated COCs from the non-chlorinated COCs exists. CRWQCB indicated the need for a detailed task-driven time line of activities (in addition to the existing time line that also needs some modification) because of potential permitting and notification requirements for pilot scale testing.
- 3) Chevron Work Plan. Humboldt County and Chevron met on May 8, 2007 to discuss the project site and subsequently Mark Verhey issued a letter (dated June 27, 2007) approving the Work plan for Additional Assessment of Residual Hydrocarbon Source Areas. For some team members the Chevron Work Plan events were surprising because either we had not seen or received this work plan or were not invited to the May 8, 2007 meeting. The CRWQCB received a 16-page electronic copy of this work plan today after the meeting (thank you Chevron/ENSR). Hard copies to the CRWQCB and other team members were apparently lost in the mail. The CRWQCB and WEST will review this work plan. Comments are due to all team members before July 13, 2007.

The CRWQCB continues to remind all team members to follow the guiding principles for this project that were established early in this year. Please include all team members on project-related events and all communications. We all know that items get lost and sometimes we forget. Hence, the need for this reminder.

Because of the outstanding issues on Items 2 and 3 discussions occurred regarding the need for another follow-on conference call meeting. Herein I suggest two different

dates and times to accomplish another conference call; Monday July 16, 2007 2-4 PM or Tuesday July 17, 2007 10-12 PM. Please check your calendars and see which of these two dates and times works for you. Please confirm with me no later than Thursday July 12, 2007 2:00 PM. Thank you. I am hoping that Jan Greben's office is willing to arrange for the DIAL In Number and PASSCODE, like they did for today's call, once the date and time is established. Please confirm.

4) Public Participation Plan (PPP). I reminded the team about the PPP Proposal that was sent to all team members on May 31, 2007. Not all team members had this which was puzzling since the email which the PPP proposal was attached to was received by all team members. Please confirm receipt of emails in the future as one way to ensure all team members have received. The CRWQCB wants to make sure all team members have all of the information. The PPP proposal is again attached to this email. Discussion of the PPP proposal occurred and I indicated that the City of Eureka had expressed a desire to get a complete copy of project files. WEST offered diskette(s) of these information to assist the City of Eureka. This offer would represent a significant time and cost savings in terms of copying the file materials. The CRWQCB waits to hear from the City what their pleasure is in this regard. I described the PPP proposals first, second, and third activities. Establishment of both hard copy and electronic information repositories for the project are needed. The CRWQCB will be sending a letter in the near future to the entities indicated on the proposal and will also begin providing informational items to our Board through the Executive Officer's Summary Report (EOSR). An action item in this regard is to evaluate Geotracker for the electronic repository use. Much more to occur on the PPP.

5) Future Schedule Items: Time lines both coarse and fine temporal scales are needed. WEST and CRWQCB have offered to work on this. All team members were asked to do a little homework in this regard both through 2007 and into 2008. Please send all project team members your input in this regard.

6) Other Items-open discussion: CRWQCB discussed status of CAO and I expressed a desire to provide all team members with a copy of the draft-legal-review version if allowed by our legal council. I should know about this next week when a revised copy of the existing working draft is provided to our legal council Ms. Samantha Olson.

I have tried to capture the majority of items we discussed today. I hope this is helpful to all project team members.

I look forward to receipt of your input on items identified herein.
Thank you and have a great July 4th Holiday.

Sincerely
David W. Parson PG 6037, CEG 1889
CRWQCB, North Coast Region
Cleanups Division

No virus found in this incoming message.

Checked by AVG Free Edition.

Version: 7.5.476 / Virus Database: 269.9.14/885 - Release Date: 7/3/2007 10:02 AM

6212007_LTR to DTyson_MMartel_RBCase#1NHU630.pdf	Content-Type: application/pdf
	Content-Encoding: base64

HUMCO_Prop65_Normans.pdf	Content-Type: application/pdf
	Content-Encoding: base64

PP_Proposal_for_Normans.doc	Content-Type: application/msword Content-Encoding: base64
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Part 1.5	Content-Description: "AVG certification" Content-Type: text/plain Content-Encoding: quoted-printable
-----------------	---

EXHIBIT “I”

Subject: Updates

From: "Kim Niemeyer" <KNiemeyer@waterboards.ca.gov>

Date: Wed, 19 Sep 2007 14:54:01 -0700

To: <jmark.inglis@chevron.com>, <sergioborgiotti@chevron.com>, <byoung@ci.eureka.ca.gov>, <mverhey@co.humboldt.ca>, <jhking@downeybrand.com>, <dpeacock@ensr.aecom.com>, <kbaugh@ensr.aecom.com>, <Amortl@glynnfinley.com>, <jan@grebenlaw.com>, <ghokkanen@hokenv.com>, <KFD50@sbcglobal.net>, <pbhubbard@treadwellrollo.com>, <gps@tscgroup-inc.com>, "David Evans" <DEvans@waterboards.ca.gov>, "Dave Parson" <DParson@waterboards.ca.gov>, "Kim Niemeyer" <KNiemeyer@waterboards.ca.gov>, "Tuck Vath" <TVath@waterboards.ca.gov>, <peterk@westenvironmental.com>, <peterm@westenvironmental.com>

The City of Eureka has asked for an extension until Sept. 28 for determining whether there are specific data gaps that it would like filled. The Regional Board has agreed to this extension because it does not interfere with the current schedule.]

The City has also asked whether parties will have the opportunity to review and comment upon the Cleanup and Abatement Order (CAO) before it is issued. The Regional Board plans to issue the CAO in draft form in the first part of October. The parties will then be given time to comment on the CAO, likely 30 days. After the opportunity to review and respond to those comments, the Regional Board would then issue the final CAO. Any party could then petition the Regional Board for a hearing, if so desired. More complete information regarding the rehearing process and State Water Board review process will be included within the CAO.]

Please let me know if you have any questions or concerns.

Kimberly McFarlin Niemeyer
Staff Counsel

State Water Resources Control Board

1001 I Street
P.O. Box 95812-0100
Sacramento, CA 95814

(916) 341-5547 (phone)
(916) 341-5199 (fax)
kniemeyer@waterboards.ca.gov

EXHIBIT “J”

Subject: RE: Revised Update Project Distribution List
From: "Kim Niemeyer" <KNiemeyer@waterboards.ca.gov>
Date: Tue, 16 Oct 2007 16:39:47 -0700
To: <sschaffner@ci.eureka.ca.gov>, "Dave Parson"
<DParson@waterboards.ca.gov>
CC: <JMark.Inglis@chevron.com>, <SergioBorgiotti@chevron.com>, <byoung@ci.eureka.ca.gov>, <MVerhey@co.humboldt.ca.us>, <cbolcom@dblawsf.com>, <mdavidovitz@dblawsf.com>, <dpeacock@ensr.aecom.com>, <KBaugh@ensr.aecom.com>, <amortl@glynnfinley.com>, <jan@grebenlaw.com>, <rjuncal@groundzeroanalysis.com>, <ghokkanen@hokenv.com>, <KFD50@sbcglobal.net>, <gps@tscgroup-inc.com>, "David Evans" <DEvans@waterboards.ca.gov>, "Tuck Vath" <TVath@waterboards.ca.gov>, <peterk@westenvironmental.com>, <peterm@westenvironmental.com>

Sheryl,

I will consider your comments and your request. The issue had not previously been raised, and we had not actually thought about it. The existing CAO is not, in fact, the Regional Water Boards current view of the facts, findings, etc. We recognize that at least one responsible party was mistakenly not included, and the facts and findings are changing as the investigation of the site continues.

Although I will consider the reasons that you are offering for including it, I do not see the benefit in doing so because the new CAO will be substantially changed from the current one, and the current CAO does not now represent the Regional Water Board's "official position." Although the existing CAO may offer a point for comparison when we issue the new CAO, I'm not sure it provides anything more. The Regional Water Board's position is evolving as we analyze the comments submitted by the parties, including the City; fill data gaps identified by the parties; and review the information provided as part of the continuing site investigation.

I assure you that the Regional Water Board staff is not being blindly led around by Norman's and/or West. Dave has spent a lot of time reviewing and analyzing the work done to date and the comments submitted by the parties. The Regional Water Board has tried to get the City engaged in commenting on the conceptual site model and identifying those data gaps that the City sees as being important to making the conceptual site model accurate. The City has expressed reluctance to

participate in identifying data gaps, at one point stating that they did not feel comfortable telling us how to do our job. To the extent that the City has identified data gaps that should be addressed, those comments are being incorporated. It is my understanding from Dave that other comments submitted by the City thus far have not raised any issues that have caused the Regional Water Board staff to reexamine the work done to date or have altered the current understanding of the cleanup site. This has nothing to do with undo influence over the Regional Water Board staff, but rather the fact that the Regional Water Board staff has not been convinced by the City's criticisms of the conceptual site model and the lack of arguments presenting a convincing counter-interpretation of the evidence. This does not mean, however, that the Regional Water Board has already come to any firm conclusion at this point regarding whether the City should be named as a responsible party.

I will consider your request to include the existing CAO on the community webpage, and will get back to you when we meet on Thursday. In terms of the other concerns raised, I want to reiterate the Regional Water Board's commitment to a fair process, which includes the Regional Water Board exercising its independent judgment. I appreciate your willingness to speak frankly; it is important that all of the parties feel confident in the process, and we are working to gain that confidence.

Kimberly McFarlin Niemeyer
Staff Counsel
State Water Resources Control Board

1001 I Street
P.O. Box 95812-0100
Sacramento, CA 95814

(916) 341-5547 (phone)
(916) 341-5199 (fax)
kniemeyer@waterboards.ca.gov

||| **"Sheryl Schaffner"** <sschaffner@ci.eureka.ca.gov> |||

10/16/2007 12:26 PM >>>

Kim,

You ask below if I am suggesting that the CAO be added to the webpage, and if so, why. The answer is yes, absolutely. I have to ask why it would not be there?

The CAO is the core document containing the Regional Board's official and legally effective view of the facts, findings, law and requirements to date. The Regional Board may revise the CAO in response to Norman's long-standing lobbying to require the City to help pay the costs of cleanup for these dry cleaning industry discharges. Or it may not ultimately agree with staff's current recommendation on that point. That remains to be seen.

In the meantime, however, to my knowledge, the existing CAO is the only document that conveys the official position of the Regional Board and its findings as to this contamination site.

As regards the "facts" and "conclusions" put forth through the technical documents to support adding the City as a responsible party, only the views and representations of the primary discharger, Norman's, are included, without including any of the City's technical comments on the serious technical deficiencies in Norman's documents in this area -- and while conspicuously omitting the Regional Board's own existing and in-force CAO naming Norman's.

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Bottom line here though: I can't see how there would even be a question as to whether the existing CAO should be provided as the primary

Regional Board document in existence concerning this site on the website. I ask that this be addressed first and apart from our more general concerns expressed above, so as to not get sucked into a drawn out back and forth on larger issues.

Thanks for the opportunity to raise these concerns.

- Sheryl

Sheryl Schaffner
City Attorney
City of Eureka
707.441.4147 (voice)
707.441.4148 (fax)
sschaffner@ci.eureka.ca.gov

-----Original Message-----

From: Kim Niemeyer [<mailto:KNiemeyer@waterboards.ca.gov>]
Sent: Tuesday, October 16, 2007 10:24 AM
To: Sheryl Schaffner; Dave Parson; peterk@westenvironmental.com
Cc: JMark.Inglis@chevron.com; SergioBorgiotti@chevron.com; Bruce Young; MVerhey@co.humboldt.ca.us; cbolcom@dblawsf.com; mdavidovitz@dblawsf.com; dpeacock@ensr.aecom.com; KBaugh@ensr.aecom.com; amortl@glynnfinley.com; jan@grebenlaw.com; rjuncal@groundzeroanalysis.com; ghokkanen@hokenv.com; KFD50@sbcglobal.net; gps@tseggroup-inc.com; David Evans; Tuck Vath; peterm@westenvironmental.com
Subject: RE: Revised Update Project Distribution List

Sheryl, are you suggesting adding the existing CAO to the webpage? What would be the reason that you think that it should be included?

||| **"Sheryl Schaffner"** <sschaffner@ci.eureka.ca.gov> |||

10/16/2007 10:21 AM

Thanks for the update Peter.

How about the existing CAO: has that been added yet? If not, when will it be?

Dave, who decides this?

-----Original Message-----

From: Peter Krasnoff [mailto:peterk@westenvironmental.com]

Sent: Tuesday, October 16, 2007 10:10 AM

To: Dave Parson

Cc: JMark.Inglis@chevron.com; SergioBorgiotti@chevron.com; Bruce Young;

Sheryl Schaffner; MVerhey@co.humboldt.ca.us; cbolcom@dblawsf.com;

mdavidovitz@dblawsf.com; dpeacock@ensr.aecom.com;

KBaugh@ensr.aecom.com;

amortl@glynnfinley.com; jan@grebenlaw.com;

rjuncal@groundzeroanalysis.com; ghokkanen@hokenv.com;

KFD50@sbcglobal.net; gps@tscgroup-inc.com; David Evans; Kim Niemeyer;

Tuck Vath; peterm@westenvironmental.com

Subject: Re: Revised Update Project Distribution List

Dave:

The links for the sign-in sheet and powerpoint presentations have been added to the "Community" webpage.

Peter

Dave Parson wrote:

Good Morning again

I had to revise the earlier sent list as one of the email addresses I

was given was incorrect.

Please see the attachment for the most current listing.

TX Much

David W. parson PG 6037, CEG 1889

CRWQCB, North Coast Region

Cleanups Division

--

Peter M. Krasnoff, P.E.

WEST, Inc.

711 Grand Avenue, Suite 220

San Rafael, CA 94901

Direct: (415) 485-1660

Cellular: (415) 971-1600

Text Pager: 4159711600@vtext.com

Main: (415) 460-6770 ext. 208

Fax: (415) 460-6771

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460-6770. Thank you.

EXHIBIT “K”

Subject: RE: Revised Update Project Distribution List
From: "Kim Niemeyer" <KNiemeyer@waterboards.ca.gov>
Date: Wed, 17 Oct 2007 10:42:20 -0700
To: <sschaffner@ci.eureka.ca.gov>, "Dave Parson"
<DParson@waterboards.ca.gov>
CC: <JMark.Inglis@chevron.com>, <SergioBorgiotti@chevron.com>, <byoung@ci.eureka.ca.gov>, <MVerhey@co.humboldt.ca.us>, <cbolcom@dblawsf.com>, <mdavidovitz@dblawsf.com>, <dpeacock@ensr.aecom.com>, <KBaugh@ensr.aecom.com>, <amortl@glynnfinley.com>, <jan@grebenlaw.com>, <rjuncal@groundzeroanalysis.com>, <ghokkanen@hokenv.com>, <KFD50@sbcglobal.net>, <gps@tscgroup-inc.com>, "David Evans" <DEvans@waterboards.ca.gov>, "Tuck Vath" <TVath@waterboards.ca.gov>, <peterk@westenvironmental.com>, <peterm@westenvironmental.com>

If there is a legal aspect to that decision, then I would be advising the staff regarding that requirement. If it is a discretionary decision, staff would make that call.

I did not say that the City was an omitted RP. I noted that "at least one" RP was not previously included - which is Unocal. I reiterate that no decision has been made regarding whether the Regional Board will include the City as an RP in the revised CAO. Although the revised CAO has not been drafted, gone out to the parties for comment, or signed - it is the Regional Water Board staff position, including the AEO, that a revised CAO will include Unocal. You are correct that the CAO represents the staff's recommendation, which would then become final when it is signed. In this instance, the Asst. EO will be signing, not the EO.

**"Sheryl Schaffner" <sschaffner@ci.eureka.ca.gov>
10/17/2007 10:28 AM >>>**

To be clear, when you say below "I will consider your request to include the CAO," you are saying that you decide, not the management at the RB or the staff, what goes on the website? That was one of my previous questions: who decides this?

Also, in a related fashion, you say essentially that the decision is

made, the City is an omitted RP and that the old CAO isn't "the Regional Board's" position any more. I didn't know the revised CAO had been signed. I understood that to be staff's recommendation at this point, but has the EO actually decided to accept that recommendation and signed the revised order, or is the old one still the only one that is in place?

Sheryl Schaffner
City Attorney
City of Eureka
707.441.4147 (voice)
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sschaffner@ci.eureka.ca.gov

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-----Original Message-----

From: Kim Niemeyer [<mailto:KNiemeyer@waterboards.ca.gov>]
Sent: Tuesday, October 16, 2007 4:40 PM
To: Sheryl Schaffner; Dave Parson
Cc: JMark.Inglis@chevron.com; SergioBorgiotti@chevron.com; Bruce Young; MVerhey@co.humboldt.ca.us; cbolcom@dblawsf.com; mdavidovitz@dblawsf.com; dpeacock@ensr.aecom.com; KBaugh@ensr.aecom.com; amortl@glynnfinley.com; jan@grebenlaw.com; rjuncal@groundzeroanalysis.com; ghokkanen@hokenv.com; KFD50@sbcglobal.net; gps@tscgroup-inc.com; David Evans; Tuck Vath; peterk@westenvironmental.com; peterm@westenvironmental.com
Subject: RE: Revised Update Project Distribution List

Sheryl,

I will consider your comments and your request. The issue had not previously been raised, and we had not actually thought about it. The existing CAO is not, in fact, the Regional Water Boards current view of the facts, findings, etc. We recognize that at least one responsible party was mistakenly not included, and the facts and findings are changing as the investigation of the site continues. Although I will consider the reasons that you are offering for including it, I do not see the benefit in doing so because the new CAO will be substantially changed from the current one, and the current CAO does not now represent the Regional Water Board's "official position." Although the existing CAO may offer a point for comparison when we issue the new CAO, I'm not sure it provides anything more. The Regional Water Board's position is evolving as we analyze the comments submitted by the parties, including the City; fill data gaps identified by the parties; and review the information provided as part of the continuing site investigation.

I assure you that the Regional Water Board staff is not being blindly led around by Norman's and/or West. Dave has spent a lot of time reviewing and analyzing the work done to date and the comments submitted by the parties. The Regional Water Board has tried to get the City engaged in commenting on the conceptual site model and identifying those data gaps that the City sees as being important to making the conceptual site model accurate. The City has expressed reluctance to participate in identifying data gaps, at one point stating that they did not feel comfortable telling us how to do our job. To the extent that the City has identified data gaps that should be addressed, those comments are being incorporated. It is my understanding from Dave that other comments submitted by the City thus far have not raised any issues that have caused the Regional Water Board staff to reexamine the work done to date or have altered the current understanding of the cleanup site. This has nothing to do with undo influence over the Regional Water Board staff, but rather the fact that the Regional Water Board staff has not been convinced by the City's criticisms of the conceptual site model and the lack of arguments presenting a convincing counter-interpretation of the evidence. This does not mean, however, that the Regional Water

Board has already come to any firm conclusion at this point regarding whether the City should be named as a responsible party.

I will consider your request to include the existing CAO on the community webpage, and will get back to you when we meet on Thursday. In terms of the other concerns raised, I want to reiterate the Regional Water Board's commitment to a fair process, which includes the Regional Water Board exercising its independent judgment. I appreciate your willingness to speak frankly; it is important that all of the parties feel confident in the process, and we are working to gain that confidence.

Kimberly McFarlin Niemeyer
Staff Counsel
State Water Resources Control Board

1001 I Street
P.O. Box 95812-0100
Sacramento, CA 95814

(916) 341-5547 (phone)
(916) 341-5199 (fax)
kniemeyer@waterboards.ca.gov

"Sheryl Schaffner" <sschaffner@ci.eureka.ca.gov>
10/16/2007 12:26 PM

Kim,

You ask below if I am suggesting that the CAO be added to the webpage, and if so, why. The answer is yes, absolutely. I have to ask why it would not be there?

The CAO is the core document containing the Regional Board's official

and legally effective view of the facts, findings, law and requirements to date. The Regional Board may revise the CAO in response to Norman's long-standing lobbying to require the City to help pay the costs of cleanup for these dry cleaning industry discharges. Or it may not ultimately agree with staff's current recommendation on that point. That remains to be seen.

In the meantime, however, to my knowledge, the existing CAO is the only document that conveys the official position of the Regional Board and its findings as to this contamination site.

As regards the "facts" and "conclusions" put forth through the technical documents to support adding the City as a responsible party, only the views and representations of the primary discharger, Norman's, are included, without including any of the City's technical comments on the serious technical deficiencies in Norman's documents in this area -- and while conspicuously omitting the Regional Board's own existing and in-force CAO naming Norman's.

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Subject: RE: Revised Update Project Distribution List

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Peter

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I had to revise the earlier sent list as one of the email addresses I

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Please see the attachment for the most current listing.

TX Much

David W. parson PG 6037, CEG 1889

**CRWQCB, North Coast Region
Cleanups Division**

--

Peter M. Krasnoff, P.E.
WEST, Inc.
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=====

EXHIBIT “L”