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Cross-Defendants CLOPAY, INC. and LIGHTRON
CORPORATION

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the Matter of Appeal of Cleanup and
Abatement Order – Los Angeles Region Order
R4-2009-018

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**PETITION FOR REVIEW AND
REQUEST FOR STAY OF ORDER**

Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), GRIFFON CORPORATION, CLOPAY, INC. and LIGHTRON CORPORATION (collectively "Petitioners") petition the State Water Resources Control Board ("State Board") to review and vacate or amend the Cleanup and Abatement Order, R4-2009-018 ("Order") of the California Regional Water Quality Control Board for the Los Angeles Region ("Regional Board") which found the Petitioners were the dischargers responsible for volatile organic compounds ("VOCs") found in soil and groundwater at 19200 South Reyes, Rancho Dominguez, CA ("19200 South Reyes Property"). *See* Order No. R4-2009-018. Additionally, Petitioners request that the Order be stayed pending this review due to the substantial prejudice caused by the issuance of this Order in ongoing litigation. The issues raised in this petition were raised in timely written comments.

1. NAME AND ADDRESS OF THE PETITIONERS:

Griffon Corporation/Clopay Inc./Lightron Corporation
100 Jericho Quadrangle
Jericho, New York, 11753
Attn: Patrick Alesia

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUIRED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioner seeks review of Cleanup and Abatement Order R4-2009-018, dated August 13, 2009 ("Order"). A copy of the Order is attached to the Declaration of Perry S. Hughes, filed concurrently, as Exhibit 1.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

August 13, 2009.

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

As Petitioners have set forth in greater detail in their Memorandum of Points and Authorities, filed concurrently, Petitioners contend that the following actions by the Regional Board were improper and lacked merit:

1. The Order jointly named Griffon, Clopay and Lightron as "dischargers" as a result of potential releases of tetrachloroethylene ("PCE") from the operations of O.B. Masco, a division of Lightron. Though Griffon was a master tenant, subleasing the property to O.B. Masco, it never conducted actual operations at the property located at 2930 East Maria Street, Rancho Dominguez, CA (the "2930 East Maria Street Property").

2. Clopay admits to having conducted operations at the 2930 East Maria Street Property from approximately 1987 to 1990. However, the Regional Board fails to show substantial evidence of any release of PCE caused by its operations. Instead, Clopay is apparently named as a discharger simply because of its corporate relationship with Griffon and Lightron.

3. The Petitioners are being ordered to investigate an area (commonly referred to as Area 1) with no signs of PCE, three years after they submitted their Report on the Remediation showing non-detect levels of PCE in Area 1.

4. The Regional Board has failed to name American Racing Equipment, Inc. ("American Racing") or Arthur Hale as possible dischargers and responsible parties given the obvious

release of PCE from operations by American Racing, as well as sewer mains located on the property located at 19200 South Reyes, Rancho Dominguez, owned by Mr. Hale.

5. THE MANNER IN WHICH THE PETITIONS ARE AGGRIEVED.

The Petitioners are being ordered to investigate and remediate contamination for which they are not responsible, primarily the PCE contamination found on and beneath the 19200 South Reyes Property. Moreover, the Order is being cited by American Racing in on-going litigation brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et. seq.* ("CERCLA"). The conclusions in the Order were reached without a complete analysis of the 19200 South Reyes Property and are unfairly prejudicial. American Racing is in the process of filing a motion for summary judgment, arguing that based on the conclusions set forth in the Order, it cannot be liable for contribution under CERCLA.

Due to the substantial prejudice caused by the Order in the related litigation, the Petitioners request that the State Board stay the Order pending its review. This stay will not result in any risk to the environment or human health as Petitioners were already conducting remediation pursuant to an approved Work Plan and the additional investigation is obviously not time sensitive as the Regional Board has delayed over three years in making the request.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS.

The Petitioners seek an immediate stay of the Order, while the Board reviews this Petition.

Further, the Petitioners seek the following action:

1) The Petitioners respectfully request that the Board vacate the Order, and allow the Petitioners to continue to perform the approved remediation under the voluntary agreement.

2) In the alternative, the Petitioners request that the Board amend the Order in the following manner:

a) limit the requirement of the Petitioners obligation to investigate and remediate to the 2930 East Maria Street Property;

b) withdraw the requirement to conduct additional investigation in Area 1 on the 2930 East Maria Street Property; and

c) name American Racing and Arthur Hale as dischargers and order them to investigate and remediate any VOC contamination coming from the 19070 and 19200 South Reyes Properties, including without limitation any contamination originating from the sewer mains on such properties.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION.

Petitioners' arguments in support of this Petition are contained in the Memorandum of Point and Authorities filed concurrently and their Response to the Draft Cleanup and Abatement Order dated March 9, 2009, which is attached as Exhibit 3 to the Hughes Declaration.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER.

A true and correct copy of this Petition and all supporting documentation were sent by personal delivery to Executive Officer Tracey Egoscue at the Regional Water Quality Control Board – Los Angeles Region, located at 320 W. 4th Street Suite, 200, Los Angeles, California, 90013. Additionally, electronic copies were sent to Jeffrey Hu and Dr. Arthur Heath, also of the Los Angeles Region, as well as Michael Levy, counsel for the Regional Board.

Additionally, true and correct copies were sent via overnight delivery and electronically to Tom Vandenburg, counsel for American Racing, and Todd Lander, counsel for Arthur Hale.

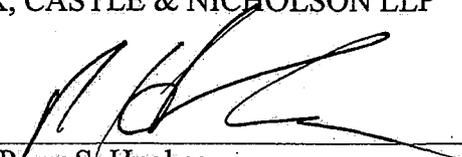
9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.

The issues raised in the Petition were first presented to the Regional Board in Petitioners' Response to the Draft Cleanup and Abatement Order. However, some additional information is contained in the Memorandum of Points and Authorities to reply to new information contained in the Order. The Order contains information regarding VOC contaminants found on the 19070 South Reyes Property which are also found at the 19200 South Reyes Property. This information did not exist at the time of the Response. The Points and Authorities also includes a

discussion regarding the Regional Board's prior request in November, 2007, to American Racing to investigate the sewer mains on the 19200 South Reyes Property. Petitioners discovered the letter requesting the testing after submitting the Response. Given that the Regional Board authored the request, they have always been aware of it.

DATED: September 14, 2009

COX, CASTLE & NICHOLSON LLP

By: 

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**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION FOR REVIEW AND
REQUEST FOR STAY OF ORDER**

Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), GRIFFON CORPORATION (“Griffon”), CLOPAY, CORPORATION (“Clipay”) and LIGHTRON CORPORATION (“Lightron” and together with Griffon and Clipay, collectively “Petitioners”) file this Memorandum of Points and Authorities in support of their Petition to the State Water Resources Control Board (“State Board”) to review, vacate and/or amend the Cleanup and Abatement Order No. R4-2009-018 (“Order”) of the California Regional Water Quality Control Board for the Los Angeles Region (“Regional Board”), which found the Petitioners were the dischargers responsible for volatile organic compounds (“VOCs”) found in soil and groundwater at 19200 South Reyes, Rancho Dominguez, CA (“19200 South Reyes Property”).¹ Additionally, Petitioners request that the Order be stayed pending this review due to the substantial prejudice its issuance ostensibly is creating in a CERCLA contribution action (the

¹ See Order attached as Exhibit 1 to the Declaration of Perry Hughes (“Hughes Declaration”).

“Contribution Action”) pending in the United States District Court for the Central District of California between the Petitioners and American Racing Equipment, Inc. (“American Racing”)

I. Introduction

The Petitioners hereby appeal, and request a stay of, the findings set forth in the Order on the grounds that the Order ignores groundwater data provided by the Petitioners, and otherwise fails to name American Racing as a discharger responsible for releases of VOCs at the properties located at 19070 and 19200 South Reyes, Rancho Dominguez, CA.

Prior to the issuance of the Order, the only party related to the subject contamination that was not complying with requests of the Regional Board was American Racing, the current tenant at the 19200 South Reyes Property. The Petitioners, on the other hand, were performing the previously requested remediation and monitoring pursuant to an approved Work Plan.

In the Order, the Regional Board ordered the Petitioners to investigate and remediate the VOCs, primarily tetrachloroethylene (“PCE”), at the 19200 South Reyes Property. Importantly, however, in November 2007, the Regional Board directed American Racing to investigate the leaking sewer mains located in the immediate vicinity of the highest levels of PCE contamination in the groundwater. Despite this unequivocal directive from the Regional Board, almost two years later, American Racing still has not performed the investigation. Surprisingly, American Racing is not named in the Order.

The failure of the Regional Board to include American Racing in the Order is even more surprising in light of the fact that American Racing has admitted to using PCE in degreasers on the 19200 South Reyes Property, and PCE has been detected in shallow soil down to groundwater at the 19200 South Reyes Property. More importantly the groundwater flow is clearly from the 19200 South Reyes Property, flowing towards the property operated by the Petitioners at 2930 East Maria Street, Rancho Dominguez (the “2930 East Maria Street Property”). Additionally, the Board has confirmed the presence of VOCs originating from the adjacent property at 19070 South Reyes, which is a property that also was operated by American Racing. This site is believed to have elevated levels

of 1,1-DCA and trichloroethylene ("TCE"), both of which appear in low levels at the 2930 East Maria Street Property, but in high levels on the 19200 South Reyes Property.

Unlike American Racing, there were no outstanding requests from the Regional Board to the Petitioners at the time of the Order. The Petitioners had been remediating the contamination at the 2930 East Maria Street Property pursuant to an approved Work Plan, and conducting quarterly monitoring. Prior to the Order, there had been no requests from the Regional Board to the Petitioners to expand the scope of its ongoing remediation. Accordingly, the Order appears unwarranted. Moreover, Petitioners are undertaking to conduct remediation at both the 2930 and 2970 East Maria Street Properties, pursuant to an agreement negotiated by the parties connected with such properties. Such a voluntary agreement, which is supported by consideration and expressly states therein that there has been no admission of wrongdoing or liability on the part of any of the parties thereto, clearly cannot provide a factual or legal predicate for the Order.

The Order fails both to establish when a release occurred at the 2930 East Maria Street Property, or to provide any factual support for finding that any of the Petitioners were responsible. Griffon never conducted operations at the 2930 East Maria Street Property. Though it was the master tenant for a short period of time, it subleased the property to O.B. Masco Corp. ("O.B. Masco"), which was originally a separate corporation but later made a division of Lightron. In the Order, the Regional Board fails to show that a release occurred when Griffon was the master tenant at the Property, or during the short period (three years) in which Clopay was the tenant. Moreover, the Regional Board fails acknowledge the corporate distinction between O.B. Masco and Griffon. Essentially, the Regional Board has pierced the corporate veil without providing any legal basis for doing so.

II. Summary of Ongoing Remediation and Investigation.

Pursuant to an approved Work Plan, the Petitioners initially implemented remediation efforts, including a soil vapor extraction and air sparge system ("SVE system") at the 2930 East Maria Street Property from August, 1998 through October, 2000. In or around 2000, the SVE system no longer appeared to have an impact on the PCE in the soil and groundwater. Vapor samples taken in 2000 were asymptomatic. This coincided with an access dispute with the owner of the 2930 East

Maria Street Property which later led to litigation between the owners and operators of the 2930 and 2970 East Maria Street Properties regarding access and responsibility for the PCE contamination. After years of litigation, the matter was resolved between those parties.

Following finalization of the settlement, the SVE system was renovated during the third quarter of 2008, including a change-out of motor and carbon canisters, re-plumbing and wiring, new control equipment, and restoration of power feed to the compound. The remediation system was restarted on October 1, 2008, as authorized by a South Coast Air Quality Management District Permit ("AQMD Permit"), and upon notification to Mr. Jeffrey Hu of the Regional Board. The system operated through an initial monitoring period in accordance with the AQMD Permit, then continued in full-time operation. During the fourth quarter of 2008, the system removed approximately 1,323 pounds of volatile organic compounds ("VOCs"); through the end of March 2009, the cumulative total was approximately 1,550 pounds.

The system configuration includes four dual-completion SVE wells, and five air sparge ("AS") wells. The SVE wells were installed in a shallow interval (5 to 17 feet deep), and a deeper interval (25 to 45 feet deep); the AS wells were installed to approximately 20 feet below the groundwater surface. The system extracts soil vapors, through a positive-displacement blower (vacuum) for treatment by granular activated carbon.

Groundwater monitoring and sampling was initiated in May, 1997, and has continued on a quarterly basis during the years of 1997 to 2000, and from 2005 to the present. Currently, twelve monitoring wells (one dual-completed) are monitored on a quarterly basis, including one well installed in 2007 at the Regional Boards' direction, to evaluate possible upgradient conditions.

III. Griffon and Clopay Should Not be Named as Dischargers as the Regional Board Failed to Show Substantial Evidence That They Caused The Alleged Release at the 2930 East Maria Street Property.

The Order is addressed to Griffon, Lightron and Clopay. However, of the three Petitioners, only Lightron, through its division O.B. Masco, conducted significant operations at the 2930 East Maria Street Property. As established in prior State Board precedent cited in the Regional Board's Order, the Regional Board must show "substantial evidence" to name a party as a discharger.

See WQ 86-16 (*Stinnes-Western Chemical Corp.*) and WQ 85-7 (*Exxon*). In the Order, the Regional Board does not meet the established standard by failing to show that Griffon conducted any operations at the subject property. Also, though Clopay conducted operations for a short period, there is no evidence that it released PCE.

Though Griffon has had an ownership interest in Clopay and Lightron, Griffon never conducted operations at the 2930 East Maria Street Property. The 2930 East Maria Street Property was developed in 1969. O.B. Masco operated at the site from 1969 to approximately 1987. In or around 1987, Clopay begin operations at the site, concluding operations three years later in 1990. Deposition testimony of Mike Livingston, a former O.B. Masco employee and Arnold Schnitz, the former President of O.B. Masco, confirm that Griffon had no involvement with the operations of O.B. Masco.² Though Griffon was the master tenant, subleasing the property to O.B. Masco for a short period of time, there is no evidence that Griffon had any knowledge of O.B. Masco's use of PCE or any potential release. Moreover, there is no evidence of a release during the time frame Griffon was a master tenant. Given the Regional Board's failure to meet its burden of showing substantial evidence that Griffon was a discharger, there is no basis to include Griffon in the Order.

Though Clopay operated the site for approximately three years, the Regional Board fails to identify or present any evidence that Clopay used significant amounts of PCE, or that a release of PCE took place during, or as a consequence of, Clopay's operations. The only evidence cited is an indication that PCE was one of the listed chemicals in a waste profile. The Regional Board failed to show any evidence that an actual release of PCE took place. If the mere use of PCE qualifies as "substantial evidence" then American Racing, who also used PCE, should be included as a discharger.

To compensate for this dearth of proof, the Regional Board has intentionally blurred the lines between and among the entities, and further fails to distinguish the difference between the Petitioners when issuing the Order. Somewhat incredibly, though the distinction between these entities is mentioned in the Order, it is ignored without explanation in assessing and/or allocating responsibility. Simply stated, there is absolutely no legal or factual basis to include Griffon in the

² See excerpts from the depositions of Mike Livingston and Arnold Schnitz attached as Exhibit 7 to Hughes Declaration, specifically pages GRIF 491 and 504.

Order as it never conducted operations at the 2930 East Maria Street Property. And, as noted previously, to the extent that Clopay did conduct operations at the 2930 East Maria Street Property, the Regional Board has failed to identify any release during its operations.

IV. Area 1 Has Been Remediated and Does Not Require Further Testing.

The southwestern portion of the 2930 East Maria Street Property, designated as Area 1, formerly had two localized areas with elevated concentrations of PCE in shallow soils. In 1998, approximately 106 cubic yards of impacted soil were removed from Area 1 for offsite treatment. In 2004, the Regional Board requested a Remedial Action Plan (RAP) for additional remediation of Area 1, with cleanup objectives to be site-specific Soil Screening Levels (SSLs) for groundwater resource protection.

In accordance with the RAP authorized by the Regional Board, additional remediation of Area 1 was conducted in 2006, with removal of approximately 126 tons of impacted soil for offsite treatment. Soil removal was conducted to depths ranging from about 3 to 5 feet, downward to as much as 20 feet, and excavation limits were confirmed by analytical results from 37 verification samples. **All final verification samples were Non-Detect for PCE, except one sidewall sample with a low PCE concentration (14 ug/kg; less than the site-specific SSL authorized by Regional Board).** Groundwater monitoring results from wells in and around Area 1 show PCE at non-detect or trace levels. The combination of the soil and groundwater results clearly indicate that the soil contamination in Area 1 has been adequately remediated.

The results of the remediation were presented to Regional Board in June 2006.³ The report documented the successful completion of soil remediation and mitigation of environmental concerns at the site, and recommended that the Area 1 portion of the site be designated for No Further Action and that the case file be closed by the Regional Board.

The Regional Board failed to respond to the work done in Area 1 for almost three years. Now, after ignoring the Soil Correction Report for almost three years, the Board issues the Order, demanding that more testing be done in Area 1. The use of an Order to seek additional

³ The Report of Soil Correction Actions, dated June 1, 2006 is attached as Exhibit A to the Response, which is Exhibit 1 to the Hughes Declaration.

sampling in an area where there is no trace of PCE is at best unusual, and arguably inappropriate, where, as here, the Regional Board ignored the Soil Correction Report for almost three years.

Moreover, the Regional Board's opinion that the lack of soil data down to groundwater in Area 1 should be considered a "data gap" is in stark contrast to its handling of the data at the 19200 South Reyes Property. Soil vapor sampling at the 19200 South Reyes Property taken directly below the location of a former solvent degreaser revealed PCE at levels **above** the California Human Health Screening Levels ("CHHSLs") at five feet below ground level.⁴ The Regional Board has failed to request that American Racing perform any additional sampling in the area of the solvent degreaser. Instead, the Regional Board has turned a blind eye to the PCE detections beneath the former degreaser on the 19200 South Reyes Property.

Given that all soil and groundwater data clearly indicates that the PCE contamination in Area 1 has been adequately remediated, the Petitioners respectfully request that the sampling requirements for Area 1 be removed from the Order.

V. The 2930 East Maria Street Property Is Not the Source of the PCE in Soil and Groundwater at the 19200 South Reyes Property.

The Regional Board's Order also fails to set forth substantial evidence that a historic release of PCE on the 2930 East Maria Street Property is the source of soil and groundwater contamination found at the 19200 South Reyes Property. The 19200 South Reyes Property is unquestionably upgradient from the 2930 East Maria Street. Moreover, there are multiple potential sources of PCE on the 19200 South Reyes Property which have been ignored by the Regional Board in drafting the Order, including 1) releases of PCE at the surface as evidenced by PCE in shallow soil; 2) releases of PCE from sewer mains in the location of highest PCE levels, and 3) confirmed VOC releases from the adjacent 19070 South Reyes Property. Rather than name the Petitioners as the dischargers responsible for contaminating the 19200 South Reyes Property, the Regional Board should have named American Racing, the former operator, and Arthur Hale, the current owner, as dischargers.

⁴ See Soil Gas Survey dated December 18, 2006, attached as Exhibit 8 to the Hughes Declaration, specifically pages GRIF 536, 545, 608.

At set forth in WQ 86-16 (*Stinnes-Western Chemical Corp.*), it is in keeping with public policy to name all responsible parties, especially when liability is disputed. As set forth below, there is substantial evidence that American Racing, both at the 19070 South Reyes Property and the 19200 South Reyes Property, is a discharger of PCE and other VOCs into the soil and groundwater.

A. 19200 South Reyes Property is Upgradient from the 2930 East Maria Street Property.

Quarterly groundwater monitoring results from both American Racing and the Petitioners over the last 4 years have consistently demonstrated that the 19200 South Reyes Property is upgradient from the 2930 East Maria Street Property. Groundwater elevations in wells on the 19200 South Reyes Property are typically reported to be 1 to 3 feet higher than groundwater elevations in wells on the 2930 East Maria Street Property, and demonstrate a hydraulic gradient toward the 2930 East Maria Street Property.⁵

The Order cites the groundwater flow beneath the 19200 South Reyes Property as flowing **south/southeasterly**. This is not supported by any of the groundwater reports submitted to the Regional Board by either American Racing or the Petitioners. Quarterly groundwater contour maps have consistently depicted a groundwater mound in the vicinity of the flood control channel south of 2930 and 2970 East Maria Street Properties, and also in the northwestern portion of the 19200 South Reyes Property (exemplified by Figure 2 of Fourth Quarter 2008 report attached as Exhibit B to the Response attached as Exhibit 3 to Hughes Declaration.). **The contour maps show groundwater flow from the 19200 South Reyes Property to be westerly/northwesterly, towards the 2930 East Maria Street Property.**⁶ This northwesterly flow direction **precludes** groundwater impacts at the 2930 East Maria Street Property from flowing further south towards the 19200 South Reyes Property. On the other hand, the 19200 South Reyes Property impacts can be shown to have a flow direction **toward** the 2930 and 2970 East Maria Street Properties. American Racing's consultant

⁵ See Site Assessment Report from Environmental Audit, Inc. ("EAI") dated May 15, 2007, and Second Quarter 2009 Combined Status Report from Trak Environmental Group ("Trak"), dated July 31, 2009, attached as Exhibits 5 and 6 to the Hughes Declaration, respectively. On page GRIF 225, when describing the groundwater flow, EAI states that it is flowing "westerly." A map on page GRIF 239 confirms this characterization. The groundwater map prepared by Trak at page GRIF 386 exhibits the same westerly flow.

⁶ *Id.*

also depicts the groundwater to be heading in a westerly direction.⁷ Simply put, there is no legitimate basis for the Regional Board's conclusion that groundwater is flowing in a south/southerly direction.

In concluding that the 2930 East Maria Street Property is the source of the PCE contamination found at the 19200 South Reyes Property, the Regional Board ignores the historic levels found in MW-102 and MW-105 at the 19200 South Reyes Property. MW-102 sits the furthest away from the 2930 East Maria Street, with MW-105 sitting between MW-102 and the alleged source on 2930 East Maria Street. The Regional Board fails to explain how in 2007 and 2008 MW-102 could have levels of PCE ranging from 402-1080 parts per billion ("ppb"), when MW-105 had PCE only at levels of 9-13 ppb.⁸ Given that MW-105 is closer to the alleged source on 2930 East Maria Street, the levels of PCE should have been higher, or at least consistent with, those found in MW-102. The higher levels of PCE suggests a source of PCE originating from either the 19200 South Reyes Property or the 19070 South Reyes Property; both were operated by American Racing.

Lastly, the Regional Board attempts to argue that the parties are unable to determine the actual groundwater flow because the wells have not been consistently surveyed. In fact, in order to confirm that the higher groundwater elevations south of the flood control channel were real, and not due to errors in casing elevation surveys, the wells were resurveyed in 2007 at the direction of Mr. Hu of the Regional Board. All wellhead elevations on the 2930 and 2970 East Maria Street Properties, and wells on the northern margin of the 19200 South Reyes Property, are tied to the same benchmark, verifying the quarterly groundwater elevation data. The new survey data obtained by the Petitioners is now almost identical to that of American Racing.⁹ The combined survey data shows that the differences in surveyed elevations amount to approximately 0.05 ft – about half an inch. Given that

⁷ In its last groundwater monitoring report, American Racing presents a distorted view of the groundwater picture based on false data. A copy of the Groundwater Monitoring Report – Fourth Quarter, by EAI, dated February 26, 2009, is attached as Exhibit 11 to the Hughes Declaration. In the map found on page GRIF 763, American Racing misrepresents the elevation of MW-3 on the 2930 East Maria Street Property, showing it to be higher in elevation than MW-7 on the 19200 South Reyes Property. In order to mislead the Regional Board, American Racing has failed to list the actual elevation for MW-3 on the map. Instead, it disingenuously includes contour lines, showing MW-3 to be higher than the surrounding wells. This is simply incorrect. MW-3 is at least one foot below MW-7. At the time of the sampling referenced in the diagram, MW-3 was 5.75 ft. (the contour lines seem to indicate approximately 7.8 ft) and MW-7 was a 6.73 ft. See pages GRIF 774 and 778, contained in the same report. During the last monitoring event, MW-3 elevation was 6.31 ft and MW-7 elevation was 7.37 feet. This is consistent with the historic elevations of these wells. See Table 1, at pages GRIF 392 and 396, of Second Quarter 2009 Combined Status Report attached as Exhibit 6 to the Hughes Declaration.

⁸ See groundwater data set for in Table 1, at pages GRIF 756 and 757, in Exhibit 11 to the Hughes Declaration.

⁹ See well survey data set forth in Table 3, at page GRIF 759, in Exhibit 11 to the Hughes Declaration.

the gradient differences between 2930 East Maria Street Property and the 19200 South Reyes Property are between 1-3 feet, the half inch difference caused by different survey benchmarks is hardly relevant.

There is no scientific, factual or logical basis for the Regional Board's conclusion that the groundwater is flowing south/southeasterly. Indeed, even American Racing has not concluded or maintained that this is the case. It is thus undeniable that groundwater on the 2930 East Maria Street Property flows away from the 19200 South Reyes Property. The Regional Board has offered no explanation for how the heart of the plume could migrate upgradient over a steep grade over such a long distance. Instead, it refuses to acknowledge the most likely scenario that the contamination on the 19200 South Reyes Property originated at the 19200 South Reyes Property.

B. American Racing Has Failed to Investigate Leaking Sewer Mains Near Elevated Levels of PCE in Groundwater.

County records indicate that three large sewer mains cross the 19200 South Reyes Property in the immediate vicinity of the PCE contamination found in MW-7 – the highest levels found in any well.¹⁰ Public sewers are a notorious release point of chlorinated solvents such as PCE. In a letter dated November 19, 2007, Mr. Hu indicated that he believed that the sewers were leaking, and instructed American Racing to investigate the sewers, including tracer testing.¹¹ Mr. Hu recently testified under oath at a deposition taken in connection with the Contribution Action that American Racing's consultant has confirmed that he was aware that the sewers were believed to be leaking and had been repaired by the operator of the sewer. The leaking sewers are located immediately adjacent to MW-7, the monitoring well which has exhibited the highest levels of PCE. These levels of PCE are even higher than the area of the 2930 East Maria Street, where the Regional Board alleges the PCE was released.¹²

Despite the Regional Board's request that it investigate the leaking sewer mains, American Racing has refused to conduct the test. During his deposition, Mr. Hu stated under oath that

¹⁰ See the copy of the sewer map is attached as Exhibit 9 to the Hughes Declaration.

¹¹ See the copy of Mr. Hu's letter is attached as Exhibit 4 to the Hughes Declaration.

¹² Though some remediation has taken place in the area of MW-3, the levels of PCE in MW-7 exceed pre-remediation levels of PCE in MW-3 as well.

it is his expectation that American Racing still must conduct the requested investigations. Under the circumstances, given that the sewer mains are a well known source of PCE contamination, it is premature for the Regional Board to conclude that the Petitioners are responsible for, and, therefore obligated to remediate, the PCE contamination at the 19200 South Reyes Property.

In order to remain consistent in its approach to the alleged dischargers, at the very least, the Regional Board should be compelled to amend the Order to include American Racing as a responsible party.

C. PCE is Present In Shallow Soil on the 19200 South Reyes Property.

To date, only minimal soil investigation has been conducted on the 19200 South Reyes Property. However, the limited soil analytical results for borings and monitoring wells installed in the northern portion of the 19200 South Reyes Property demonstrate shallow soil impacts by PCE at several locations in proximity to the former drum storage area and sewer trunk line north of the foundry building. For example, three American Racing borings in this area reported detectable PCE concentrations in the shallowest soil samples (5 feet) and throughout the soil column downward to the deepest samples collected at 35 to 40 feet.¹³ The presence of PCE in shallow soils at widely separated locations indicates multiple sites of releases, with sufficient fluid volume to migrate downward to the groundwater table.

The PCE in the shallow soil simply could not have originated on the 2930 East Maria Street Property. The 2930 East Maria Street Property is separated from the 19200 South Reyes Property by a cement-line flood control channel. The drainage channel is approximately 10 feet deep, and is a physical barrier preventing the migration of PCE through shallow soil.

It is significant that the PCE impacts are detected in shallow soils in the northern portion of the 19200 South Reyes Property; which was an area that was utilized for multiple purposes, such as storage of hazardous wastes and drums, cleaning, rinsing and other industrial processes associated with the foundry and metals fabrication. The pavement surface in these areas is cracked and degraded, which typically enables downward penetration of released solvents to subsurface soils.

¹³ See copies of sample data attached as Exhibit C to the Response (at page GRIF 193), attached as Exhibit 3 to the Hughes Declaration.)

At the northern margin of this area is a thin planter strip (dirt surface), beyond which is the flood control channel. The concrete surface of the flood control channel wall is extensively stained along the northern margin of the 19200 South Reyes Property, appearing to indicate drainage from the American Racing work areas, across the thin planter strip to the flood control channel.¹⁴ It should be noted that well MW-7 is located in this area adjacent to the flood control channel; soil samples from the well installation reported PCE impacts in the shallowest soils at 5 feet, and downward to the groundwater interface, and groundwater PCE concentrations are typically the highest, or second highest, of all wells monitored on a quarterly basis.¹⁵

Lastly, as discussed above, soil vapor sampling at the 19200 South Reyes Property has detected levels of PCE above CHHSLs at five feet below ground surface immediately beneath the former location of a vapor degreaser.¹⁶ This area is far removed from the other contamination found on the northern border of the 19200 South Reyes Property. American Racing has admitted to having a solvent degreaser, and records indicate that it used significant amounts of PCE in its operations.¹⁷ The only plausible explanation for the detection is a release of PCE during American Racing's use of the vapor degreaser. Despite the elevated level of PCE in shallow soil vapor beneath the degreaser, the Regional Board has failed to order American Racing to conduct follow up sampling to determine the scope of the contamination.

Based on the confirmed presence of PCE in shallow soil, it is indisputable that PCE was historically used and released at the 19200 South Reyes Property. Yet, to date, only minimal testing has been conducted by American Racing to find the potential source. Rather than explore these areas for a possible source (including the three sewer mains along the north edge of the 19200 South Reyes Property), the Regional Board has simply assigned blame to the Petitioners and the 2930 East Maria Street Property. To reach this tenuous conclusion, the Regional Board was obliged to

¹⁴ See copies of photos of the stained wall of the flood control channel behind the 19200 South Reyes Property are attached as Exhibit D to the Response (at page GRIF 199), attached as Exhibit 3 to Hughes Declaration.)

¹⁵ See soil sampling data attached as Exhibit E (at page GRIF 204) and groundwater sampling data included in Exhibit B (at page GRIF 133) to the Response, attached as Exhibit 3 to the Hughes Declaration).

¹⁶ See Soil Vapor Report attached as Exhibit 8 to the Hughes Declaration.

¹⁷ Notes taken by Mr. Hu stating that American Racing had a vapor degreaser is attached as Exhibit 12 to the Hughes Declaration. Waste manifests showing the disposal of large quantities of PCE by American Racing are attached as Exhibit 13 to the Hughes Declaration.

suspend the operation of the law of physics at the site and blatantly disregard both the obvious groundwater gradient disparity and the evidence of PCE in shallow soil which are part of the record in this matter.

D. Adjacent Former American Racing Property Reveals TCE Levels Consistent with TCE Levels Found in Groundwater at the 19200 South Reyes Property.

In the Petitioners' response to the Draft Order, they raised the issue that the adjacent property located at 19070 South Reyes was currently undergoing investing for the release of VOCs. In a memo dated August 12, 2009 from Samuel Unger to Tracey Egoscue, Mr. Unger confirms that an assessment of the 19070 South Reyes Property has revealed the presence of 1,1-DCA, 1,1-DCE, 1,2-DCE, TCE, and vinyl chloride in the soil and groundwater.¹⁸ These hazardous chemicals are also impacting the groundwater beneath the 19200 South Reyes Property. Monitoring wells identified as MW-8, MW-104 and MW-105 at the 19200 South Reyes Property, and immediately adjacent to the 19070 South Reyes Property, have indicated elevated levels of TCE, 1,1-DCA and 1,1-DCE which are inconsistent with groundwater results taken from any of the other monitoring wells in the impacted area.¹⁹

In MW-8, MW-104 and MW-105, the levels of TCE exceed the levels of PCE by an order of magnitude. In other wells in the impacted area, TCE is always significantly less than the level of PCE. Additionally, elevated levels of 1,1-DCA are found in wells MW-8, MW-104, and MW-105. 1,1-DCA is rarely detected in the other monitoring wells and only in trace amounts. It is obvious from the levels of TCE and 1,1-DCA found in MW-8, MW-104 and MW-105 that there has been a release of VOCs at the 19200 South Reyes Property or the former American Racing facility at the 19070 South Reyes Property which is migrating towards both the 19200 South Reyes Property as well as the 2930 East Maria Street Property. Given that there is a confirmed release of 1,1-DCA and TCE on the former American Racing property located at 19070 South Reyes which has reached the groundwater at the 19200 South Reyes Property, it is improper to look to the Petitioners to investigate

¹⁸ A copy of Mr. Unger Memo is attached as Exhibit 10 to the Hughes Declaration.

¹⁹ See historic results from MW-8 at page GRIF 397 of Exhibit 6 to the Hughes Declaration, and from MW 1-4 and MW 105 at page GRIF 757 of Exhibit 11 to the Hughes Declaration.

or remediate that contamination. Instead, if the Order is to remain in effect, it should be amended to name American Racing as a discharger and hold it responsible for its former operations.

VI. A Stay of the Order is Necessary to Prevent Substantial Prejudice in the Related Litigation.

The Petitioners and American Racing are currently parties in the Contribution Action to determine liability for the cost of remediating the PCE contamination. As there otherwise is no evidence in the record on which American Racing could reasonably rely, it has notified the Petitioners that it intends to file a motion for summary judgment in the coming days based exclusively on the Order. American Racing apparently intends to argue to the Court that because the Regional Board did not name it as a discharger it cannot be liable. While the Petitioners intend to vigorously contest this motion and are likely to prevail in this regard, there is no disputing the substantial prejudice caused by the one-sided nature of the Order. Indeed, even if it is unsuccessful in summarily disposing of the Contribution Action, as it has little else, American Racing's defense to liability at the forthcoming trial in January, 2010, will be predominately premised on the unsupported conclusions of the Regional Board in the Order. As set forth above, there is ample evidence that: (1) American Racing's operations on the 19200 and 19070 South Reyes Properties resulted in the release of VOCs, including PCE, into the groundwater, and (2) American Racing has failed to perform the requested investigation of the sewers to determine if it is also a source of PCE contamination. Under these circumstances, the Regional Board should have named American Racing as a "discharger" in the Order. Accordingly, if the State Board does not stay or immediately amend the Order to include American Racing, the Regional Board's failure to have done so will substantially and unfairly prejudice the Petitioners in the Contribution Action and otherwise.

VII Conclusion

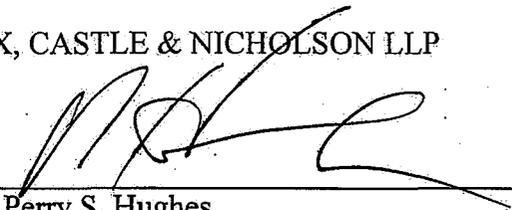
As set forth above, the Regional Board has failed to provide "substantial evidence" to show that either Griffon or Clopay are responsible for the discharge of PCE at the 2930 East Maria Street. Moreover, the Regional Board's conclusion that PCE released at 2930 East Maria Street Property has migrated to impact the soil and groundwater at the 19200 South Reyes Property ignores obvious sources of PCE and other VOCs on the 19200 South Reyes Property and adjacent 19070

South Reyes Property. Accordingly, the Petitioners respectfully request that the State Board vacate the Order. If, the Order is to remain, the State Board should amend the Order to remove Griffon and Clopay as dischargers, and if Lightron is to remain as a discharger, its responsibility should be limited to the contamination on or immediately adjacent to the 2930 East Maria Street Property. Further the Order should be amended to include both American Racing and Arthur Hale, the current owner of 19200 South Reyes Property as dischargers.

Lastly, due to the substantial prejudice caused by the Order in the related litigation, the Petitioners request that the State Board stay the Order pending its review. This stay will not result in any risk to the environment or human health as Petitioners were already conducting remediation pursuant to an approved Work Plan and the additional investigation is obviously not time sensitive as the Regional Board has delayed over three years in making the request.

DATED: September 14, 2009

COX, CASTLE & NICHOLSON LLP

By: 

Perry S. Hughes
Attorneys for Petitioners GRIFFON
CORPORATION and Cross-Defendants
CLOPAY, INC. and LIGHTRON
CORPORATION

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Attorneys for Petitioners GRIFFON CORPORATION and
Cross-Defendants CLOPAY, INC. and LIGHTRON
CORPORATION

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the Matter of Appeal of Cleanup and
Abatement Order – Los Angeles Region Order
R4-2009-018

VIA: Electronic Submission with Hardcopy to
Follow

**DECLARATION OF PERRY S. HUGHES
IN SUPPORT OF PETITION FOR
REVIEW AND REQUEST FOR STAY OF
ORDER**

I, Perry S. Hughes, declare as follows:

1. I am an attorney at law duly licensed to practice in the state of California, and am an attorney in the law firm of Cox, Castle & Nicholson LLP, counsel of record for Petitioners GRIFFON CORPORATION and Cross-Defendants CLOPAY, INC. and LIGHTRON CORPORATION (“Petitioners”). The facts stated in this Declaration are true of my personal knowledge, and if called as a witness to testify, I could and would competently do so to each fact stated.
2. A true and correct copy of the Cleanup and Abatement Order – Los Angeles Region Order R4-2009-018 (“Order”), dated August 13, 2009, is attached hereto as Exhibit 1.
3. A true and correct copy of the Draft Cleanup and Abatement Order, dated March 9, 2009, is attached hereto as Exhibit 2.
4. A true and correct copy of the Petitioners’ Response to the Draft Cleanup and Abatement Order, is attached hereto as Exhibit 3.

5. A true and correct copy of the letter from Jeffrey Hu to American Racing Equipment, Inc. ("American Racing"), dated November 19, 2007, directing American Racing to inspect the sewer mains, is attached hereto as Exhibit 4.

6. A true and correct copy of the Site Assessment Report by Environmental Audit, Inc. ("EAI") dated May 15, 2007, is attached hereto as Exhibit 5. EAI concludes in this report that groundwater is flowing in a westerly direction.

7. A true and correct copy of the Second Quarter 2009 Combined Status Report by Trak Environmental Group, dated July 31, 2009, is attached hereto as Exhibit 6.

8. A true and correct copy of relevant pages of the Depositions of Mike Livingston, a former O.B. Masco employee, and Arnold Schnitz, the former President of O.B. Masco, is attached hereto as Exhibit 7.

9. A true and correct copy of the Soil Vapor Survey by EAI, dated December 18, 2006, is attached hereto as Exhibit 8.

10. A true and correct copy of a map depicting the sewer mains in the relevant area, is attached hereto as Exhibit 9.

11. A true and correct copy of the memo from Samuel Unger to Tracy Egoscue, dated August 12, 2009, is attached hereto as Exhibit 10.

12. A true and correct copy of the Fourth Quarter Groundwater Monitoring Report by EAI, dated February 26, 2009, is attached hereto as Exhibit 11.

13. A true and correct copy of the handwritten notes by Jeffrey Hu of the Regional Board, stating that American Racing had indicated during a meeting that it had used a solvent-based degreaser, is attached hereto as Exhibit 12.

14. A true and correct copy of hazardous waste manifests from American Racing, indicating the disposal of tetrachloroethylene ("PCE") from a degreaser, is attached hereto as Exhibit 13.

15. The Petitioners and American Racing are currently parties in the Contribution Action to determine liability for the cost of remediating the PCE contamination. American Racing has notified the Petitioners that it intends to file a motion for summary judgment in the coming days based

exclusively on the Order. American Racing apparently intends to argue to the Court that because the Regional Board did not name it as a discharger it cannot be liable. While the Petitioners intend to vigorously contest this motion and are likely to prevail in this regard, there is no disputing the substantial prejudice caused by the one-sided nature of the Order.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct, and that this declaration was executed in Los Angeles, California.

DATED: September 14, 2009

COX, CASTLE & NICHOLSON LLP

By: 

Perry S. Hughes
Attorneys for Petitioners GRIFFON
CORPORATION and Cross-Defendants
CLOPAY, INC. and LIGHTRON
CORPORATION



California Regional Water Quality Control Board
Los Angeles Region



Linda S. Adams
Cal/EPA Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

August 13, 2009

Certified Mail
Return Receipt Requested
Claim Nos. Listed below

Mr. Ron Kramer
Griffon Corporation/Clopay Corporation/Lightron Corporation
100 Jericho Quadrangle
Jericho, NY 11753
(Claim No. 7009 0820 0001 6811 7691)

Mr. John P. Godsil
c/o J.O.L. ENTERPRISES, INC.
3415 S. Sepulveda Blvd., #1200
Los Angeles, CA 90034
(Claim No. 7009 0820 0001 6811 7660)

**CLEANUP AND ABATEMENT ORDER NO. R4-2009-018, - FORMER CLOPAY FACILITY AT
2930 EAST MARIA STREET, RANCHO DOMINGUEZ, CALIFORNIA (SCP NO. 458, SITE ID
2048500)**

Dear Gentlemen:

Enclosed is Cleanup and Abatement Order No. R4-2009-018, directing Griffon Corporation, Clopay Corporation, Lightron Corporation, and J.O.L. ENTERPRISES, INC to assess, monitor, and cleanup and abate the effects of volatile organic compounds (VOCs) and other contaminants of concern discharged to soil and groundwater at 2930 East Maria Street, Rancho Dominguez, California. This Order is issued under section 13304 of the California Water Code. Should you fail to comply with any provision of this Order, you may be subject to further enforcement action, including injunction and civil monetary penalties, pursuant to appropriate California Water Code sections including, but not limited to, sections 13268, 13304, 13308, and 13350.

Pursuant to California Water Code section 13320, you may seek review of this Order by filing a petition with the State Water Resources Control Board (State Board). Such a petition must be received by the State Board, located at 1001, I Street, Sacramento, California 95814, within 30 days of the date of this Order.

Should you have any questions, please contact Dr. Kwangil Lee at (213) 576-6734 or Mr. Jeffrey Hu at (213) 576-6736.

Sincerely,


Tracey J. Egoscue
Executive Officer

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Mr. Ron Kramer
Mr. John Gosil
Former Clopay Site

- 2 -

August 13, 2008

Enclosure: Cleanup and Abatement Order R4-2009-018

cc: Mr. Bob Cashier, Trak Environmental Group, via email (Bob@trakenviro.com)
Mr. Mike Coy, ERC Company, via email (MCOY@ERCCO.COM)
Mr. Ron Kramer, Griffon Corporation/ Clopay Corporation/ Lightron Corporation
Mr. John Godsil, Freeman, Freeman & Smiley, LLP., C/O J.O.L. ENTERPRISES, INC.
Mr. Garry Hildebrand, Los Angeles County Public Works – Flood Maintenance Division,
via email (ghildeb@dpw.lacounty.gov)
Mr. Perry Hughes, Cox, Castle & Nicholson LLP, via email (PHughes@coxcastle.com)
Mr. Gary Meyer, Parker, Milliken, Clark, O'Hara & Samuelian's, via email
(GMEYER@pmcos.com)
Ms. Shahin Nourishad, Los Angeles County Fire Department - Health Hazard Division
Mr. Joel Strafelda, Union Pacific Railroad, 1400 Douglas St., Mall Stop 1030, Omaha, NE
68179-1030
Mr. Robert Swelgin, American Racing Custom Wheels
Mr. Thomas F. Vandenburg, Dongell Lawrence Finney LLP, C/O American Racing Custom
Wheels, via email (tvandenburg@dlflawyers.com)
Mr. Edward S. Wactler, Blau, Kramer, Wactler & Lieberman, via email (ewactler@bkwl.com)

California Environmental Protection Agency

 Recycled Paper

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

CLEANUP AND ABATEMENT ORDER NO. R4-2009-018

**REQUIRING GRIFFON CORPORATION, CLOPAY CORPORATION, LIGHTRON
AND JOL ENTERPRISES
TO CLEANUP AND ABATE
CONDITIONS OF SOIL, SOIL GAS AND GROUND WATER POLLUTION
CAUSED BY THE RELEASE OF VOLATILE ORGANIC COMPOUNDS
AT 2930 EAST MARIA STREET
RANCHO DOMINGUEZ, CALIFORNIA**

(FILE NO. 95-087)

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter Regional Board) finds that:

1. **DISCHARGE OF SOLVENT WASTE.** Environmental investigations completed to date indicate that previous owners and/or operators at 2930 East Maria Street, Rancho Dominguez, California, known as the former Clopay site (Site), have caused or permitted wastes from their operations, including tetrachloroethylene (PCE) among others, to be released to soil, soil gas and groundwater underlying the Site. Figure 1 shows the Site location. The relevant operations that caused the discharge of wastes at the Site include those conducted by O.B. Masco Drapery Hardware Co. (Masco) and Griffon Corporation (Griffon) from 1969 until 1990. These released wastes from the Site have caused and threaten to cause conditions of pollution, contamination, and nuisance by exceeding applicable water quality objectives for chlorinated solvent chemical waste constituents set forth in Water Quality Control Plan (Basin Plan) for the Coastal Watersheds of Los Angeles and Ventura Counties.
2. **RESPONSIBLE PARTIES.** JoL Enterprises owned and developed the Site in 1969 and sold the Site to Laskey Trustees in late November 1998. Masco, a company owned by members of JoL Enterprises, leased the Site and conducted its operations on it from 1969 to 1971. In 1971, Griffon, through its predecessor (Instrument System Corporation) or wholly-owned subsidiaries (Lightron and Clopay Corporation), acquired Masco and operated on the Site until August 1990. Evidence shows that the release of wastes occurred prior to 1998. Griffon Corporation, Clopay Corporation, Lightron, and JoL Enterprises, are collectively referred to as "Dischargers" in this Cleanup and Abatement Order.

SOLVENT WASTE DISCHARGES

3. **EVIDENCE, STATUS, AND IMPACT OF WASTE DISCHARGES.** Records and completed environmental assessment reports indicate that Masco and Griffon used, stored, and/or improperly disposed of chlorinated solvents and other wastes at the Site during their occupancy from 1969 to 1990. Soil and groundwater investigations by

August 13, 2009

Dames & Moore in the 1990's detected elevated levels of PCE among other volatile organic compounds (VOCs) and petroleum hydrocarbons in both soils and groundwater at two identified areas of concern on the Site, referred as Area 1 and Area 2. Area 1 is an isolated area of concern with VOCs in both soil and groundwater located in the southern portion of the Site. Area 2 is located in the southeastern portion of the Site, centered at the former waste storage and disposal area (also referred as the drum storage pad) (see Figure 2). The highest PCE concentrations in soil were detected in Area 2 at 2,800,000 micrograms per kilogram ($\mu\text{g}/\text{kg}$) at 1 foot below ground surface (bgs), directly beneath the former drum storage pad (at boring B-5, Figure 2). Subsequent subsurface investigations by Griffon/Clopay, ERC, and American Racing Equipment have determined that the subsurface VOCs impacts are greater than previously known. The contamination extends and surrounds Area 2, including part of adjacent ERC property, the adjacent railroad spur and flood control channel easement, as well as part of American Racing Equipment property adjacent to the flood control channel off Area 2.

The most frequently-occurring VOCs detected include PCE, trichloroethene (TCE), and 1,1-dichloroethene (1,1 DCE), with PCE being the predominant contaminant. Site investigations have also found PCE, TCE and their associated chemical breakdown products, *cis*-1,2-dichloroethylene (*cis*-1,2-DCE), *trans*-1,2-dichloroethylene (t-DCE), 1,1,1-trichloroethane (1,1,1-TCA) and 1,1,2-trichloroethane (1,1,2-TCA) in ground water underlying the Site in concentrations in excess of applicable Basin Plan water quality objectives.

Griffon, ERC, and American Racing Equipment have conducted additional subsurface environmental investigations for other sources and contributions to the identified VOCs impact. Environmental investigations to date have not revealed significant offsite VOCs source(s) that contributed to the PCE-dominant VOCs impact in the soil, soil gas, and groundwater underlying the Site and its vicinities.

4. **BASIN PLAN VIOLATIONS:** The discharge of chlorinated solvent waste constituents and petroleum wastes from the former Clopay Site is a violation of General Prohibition of Waste Discharge Requirements of the Water Quality Control Plan for the Los Angeles Region (4) (Basin Plan, page 4-31). General Prohibition states "Neither the treatment nor the discharge of waste shall create pollution, contamination or nuisance as defined by Section 13050 of the California Water Code." Also, the discharge is a violation of Regional Objectives for Groundwaters of the Basin Plan (page 3-18); it states, "Groundwaters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use."
5. **STATUS OF SITE INVESTIGATION.** Several subsurface environmental investigations have been carried out at the former Clopay site and its vicinities. The Dischargers not have yet completed site investigations needed to completely delineate the vertical and horizontal extent of VOCs impact in soil, soil gas, and groundwater. The Dischargers must establish the vertical and horizontal extent of chlorinated solvent wastes (PCE, TCE & their degradation products) and any other waste constituents with sufficient detail to identify affected or threatened waters of the state and provide the basis

for decisions regarding subsequent cleanup and abatement actions, if any are determined by the Regional Board to be necessary.

6. **CLEANUP AND ABATEMENT ACTIONS.** Griffon has neither completed the required remedial actions on the Site to meet cleanup goals, nor initiated any offsite cleanup efforts to remediate the VOC-impact.

Griffon conducted two excavations to remove the top 20 feet of impacted soils at Area 1, in August 1998 and May 2006, respectively. During the two excavation actions, Griffon removed contaminated soils from the top 20 feet. However, the soil conditions between 20 feet below ground surface (bgs) and the groundwater remain unknown.

Griffon performed soil and groundwater remediation at Area 2 of the former Clopay Site from August 1998 to October 2000 using a soil vapor extraction (SVE) and air sparging (AS) system. The soil confirmation sampling conducted in 2001 and other subsurface investigation and monitoring reports show that the VOCs impact in soil and groundwater at Area 2 and its vicinities is still above levels for human health and groundwater quality protection. The onsite soil and groundwater remediation using SVE/AS system has been resumed since October 2008.

No offsite soil, soil gas, and groundwater cleanup actions have been taken.

STATUTORY AND REGULATORY FINDINGS

7. **LEGAL AND REGULATORY AUTHORITY.** This Cleanup and Abatement Order is based on (1) Section 13267 and Chapter 5, Enforcement and Implementation commencing with Section 13300 of the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000); (2) applicable state and federal regulations; (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board and the Basin Plan adopted by the Regional Board including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board policies, including State Water Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*) and Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*); and (5) relevant standards, criteria, and advisories adopted by other State of California and federal agencies.
8. **California Environmental Quality Act (CEQA) EXEMPTION.** This enforcement action is exempt from the provisions of the CEQA in accordance with Section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.
9. The document entitled "Draft Technical Analysis Supporting Cleanup and Abatement Order No. R4-2009-018", dated March 3, 2009, is herein incorporated by reference as additional findings in support of this order.

ORDER AND DIRECTIVES

IT IS HEREBY ORDERED, pursuant to California Water Code Section 13304, that Griffon Corporation, Clopay Corporation, Lightron, and JoL Enterprises (Dischargers), shall adequately assess, monitor, report, and cleanup and abate the effects of VOCs and petroleum and other contaminants of concern discharged to soil and groundwater.

Compliance with this order shall include, but not be limited to completing the tasks listed below. The Dischargers shall:

1. **Development of a Site Conceptual Model:** Develop and submit a site conceptual model (SCM). The SCM shall include a written presentation with graphic illustrations of the release scenario and the dynamic distribution of waste at the former Clopay site and its vicinities. Dischargers shall construct the SCM based on actual data collected from the former Clopay site, ERC site, and American Racing Equipment. The SCM shall be updated, as new information becomes available. Updates to the SCM shall be included in all future technical reports submitted. The first SCM is due no later than **November 16, 2009**.
2. **Delineation of Contamination in the Unsaturated and Saturated Zone:** Completely delineate the extent of soil, soil gas, and groundwater contamination caused by the release of VOCs, and petroleum and other contaminants of concern from the former Clopay site. The Dischargers shall submit a Work Plan for a complete delineation of the impact of VOCs released from the former Clopay site by **October 30, 2009**. The Work Plan must include the following areas:
 - Area 1. Conduct verification soil and soil gas sampling in soils between 20 feet bgs to groundwater table, to demonstrate that no remaining VOCs are at levels threatening human health or groundwater quality.
 - Area 2. Completely delineate the onsite and offsite impact of VOCs release, both laterally and vertically, from Area 2, in soil gas, soil, and groundwater, including the former Clopay Site, ERC site, rail road spur, flood control channel easement, American Racing Equipment site, and any other offsite impacted areas.

The Work Plan shall also include a protocol for identifying the cause of local groundwater mounding at MW-4 and its vicinity.

3. **Groundwater Monitoring:** Dischargers are currently performing quarterly groundwater monitoring on the former Clopay Site, ERC site and wells Griffon/Clopay installed on part of American Racing Equipment site. To track the dynamic migration of the VOCs-plume and assess the progress of cleanup activities, the Dischargers shall implement a quarterly groundwater monitoring program which shall cover the existing groundwater monitoring wells installed by Griffon/Clopay, ERC, and American Racing Equipment, and any additional groundwater monitoring wells related to this investigation to be installed in the future. The quarterly groundwater monitoring reports shall be submitted according to the following

schedule with the next report due by **October 15, 2009**.

<u>Quarter</u>	<u>Report Due Date</u>
January 1 - March 31	April 15
April 1 - June 30	July 15
July 1 - September 30	October 15
October 1 - December 31	January 15

4. **Remedial Action:** Implement a cleanup and abatement program with the cleanup of any remaining soil and groundwater contamination and the abatement of threatened beneficial uses of groundwater and pollution sources as highest priority. Specifically, Dischargers must:

- Continue the operation and optimization of the Area 2 onsite subsurface remediation activities using SVE/AS system resumed since October 2008, and re-evaluate the cleanup efficiency as needed.

- Develop a comprehensive Remedial Action Plan (RAP) and submit it for Regional Board's review by **December 30, 2009**. The RAP shall include:

- 1) A program for effectively removing VOCs sources in all the areas impacted by the VOCs released from the former Clopay site;
- 2) A program for preventing the continuing migration of the existing VOCs-plume in groundwater;
- 3) Cleanup goals to appropriately protect human health and water quality, and remedies and time schedule to reach them.
- 4) Use of the updated SCM as a basis to modify the remedial actions.

- Submit quarterly remediation progress reports to this Regional Board. The quarterly remediation progress reports shall document all performance data including, but not limited to, total operational time, total VOCs mass removal, among others. The results obtained during the previous quarter shall be submitted according to the following schedule with the next report due by **October 15, 2009**.

<u>Quarter</u>	<u>Report Due Date</u>
January 1 - March 31	April 15
April 1 - June 30	July 15
July 1 - September 30	October 15
October 1 - December 31	January 15

5. **GeoTracker Database:** Dischargers shall submit site data via the internet to the SWRCB's GeoTracker database. The required data include laboratory data (i.e., soil or water chemical analysis), the latitude and longitude of groundwater monitoring wells accurate to within one meter, the surveyed elevation relative to mean sea level of any groundwater monitoring well sampled, boring logs, site maps, and reports.

6. **Contractor/Consultant Qualification:** A California registered civil engineer or geologist, or a certified engineering geologist or hydrogeologist shall conduct or direct the subsurface investigation and cleanup program. All technical documents shall be signed by and stamped with the seal of the above-mentioned qualified professionals.
7. **Access for Oversight Activities:** The Regional Board's authorized representative(s) shall be allowed:
 - Entry upon premises where a regulated facility or activity is located, conducted, or where records are stored, under the conditions of this Order;
 - Access to copy any records that are stored under the conditions of this Order;
 - Access to inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
 - The right to photograph, sample, and monitor the Site for the purpose of ensuring compliance with this Order, or as otherwise authorized by the California Water Code.
8. **Change of Ownership:** The Dischargers shall submit a 30-day advance notice to the Regional Board of any planned changes in name, ownership, or control of their company or the Site. In the event of a change in ownership, that Discharger also shall provide a 30-day advance notice, by letter, to the succeeding owner of the existence of this Order, and shall submit a copy of this advance notice to the Regional Board.
9. **Well Abandonment:** Abandonment of any groundwater well(s) at the site must be approved by and reported to the Executive Officer in advance. Any groundwater wells removed must be replaced within a reasonable time, at a location approved by the Executive Officer. With written justification, the Executive Officer may approve the abandonment of groundwater wells without replacement. When a well is removed, all work shall be completed in accordance with California Monitoring Well Standards, Bulletin 74-90, Part III, Sections 16-19.

GENERAL PROVISIONS

The following provisions shall apply:

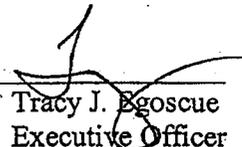
1. This Order requires cleanup of the site in compliance with the Water Code, the applicable Basin Plan, Resolution 92-49, and other applicable plans, policies, and regulations.
2. If the Dischargers violate this Order, the Executive Officer may request the Attorney General to petition the superior court for the issuance of an injunction.

3. If the Dischargers violate this Order, the Dischargers may also be liable civilly in a monetary amount provided by the Water Code.
4. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.
5. This Order is not intended to permit or allow the Dischargers to cease any work required by any other Order issued by this Regional Board, nor shall it be used as a reason to stop or redirect any investigation or cleanup or remediation programs ordered by this Board or any other agency. Furthermore, this Order does not exempt the Dischargers from compliance with any other laws, regulations, or ordinances which may be applicable, nor does it legalize these waste treatment and disposal facilities, and it leaves unaffected any further restrictions on those facilities which may be contained in other statutes or required by other agencies.
6. This Order may be rescinded or modified. Grounds for such action would include, but not be limited to the occurrence of any of the following:
 - A determination by the Executive Officer or the Regional Board that additional Dischargers has been identified to be responsible for or to have contributed to the contamination of the VOCs-plume in the groundwater beneath the former Clopay Site and its vicinity;
 - A determination by the Executive Officer that additional contamination or risk from the existing plume is present at the Site or its vicinity;
 - A determination by the Executive Officer that the level of VOCs- impact at the area of concern has been reduced to all applicable cleanup levels.
7. This Order is not intended to interfere with the right of Dischargers, if it is determined in the future that other parties have responsibility for the contamination of the VOCs- plume in the groundwater beneath the former Clopay Site and its vicinity.
8. The Regional Board, through its Executive Officer, may revise this Order as additional information becomes available. Upon request by the Dischargers, and for good cause shown, the Executive Officer may defer, delete or extend the date of compliance for any action required of the Dischargers under this Order.

9. This Order in no way limits the authority of the Regional Board, as contained in the California Water Code, to require additional investigation and cleanup pertinent to this project. It is the intent of this Regional Board to issue Waste Discharge Requirements or other Orders pursuant to Sections 13260, 13304, and 13350 of the California Water Code when appropriate to facilitate this cleanup and abatement activity. Additionally, continued monitoring of the groundwater quality beneath the areas of concern after the completion of this cleanup and abatement activity may be required.

10. Section 13304 of the California Water Code allows the Regional Board to recover reasonable expenses from responsible parties to oversee cleanup and abatement of unregulated discharges which have adversely affected waters of the State.

Ordered by:


Tracy J. Egoscue
Executive Officer

Date: August 13, 2009.

**TECHNICAL ANALYSIS
SUPPORTING
CLEANUP AND ABATEMENT ORDER NO. R4-2009-018**

This technical analysis provides a summary of factual evidence supporting issuance of Cleanup and Abatement Order (CAO) R4-2009-018 to Griffon Corporation, Clopay Corporation, Lightron, and JoL Enterprises, for discharges from the property at 2930 East Maria Street, Rancho Dominguez, California, known as the former Clopay site.

August 13, 2009

I. BACKGROUND

The subject site contains a single-story industrial building, approximately 113,694 square feet, located at 2930 East Maria Street, Rancho Dominguez, California (Figure 1. Site Location). The former Clopay site abuts ERC Company (ERC) to the east at 2970 East Maria Street, and the railroad tracks and drainage channel to the south. American Racing Equipment, at 19200 South Reyes Avenue, is immediately across the railroad tracks and drainage channel.

Environmental investigations completed to date indicate that previous operators on the property (Property) at 2930 East Maria Street, Rancho Dominguez, California, known as the former Clopay site (Site), have caused or permitted wastes from their operations, including tetrachloroethylene (PCE) among others, to be discharged to groundwater underlying the Site and to be deposited in soil at the Site from which wastes have been and probably will be discharged to groundwater.

The operations that caused the discharge of the wastes at the Site include those conducted by O.B. Masco Drapery Hardware Co. (Masco) and Griffon Corporation (Griffon) from 1969 until 1990. These released wastes from the Site have caused and threaten to cause conditions of pollution, contamination, and nuisance by exceeding applicable water quality objectives for chlorinated solvent chemical waste constituents set forth in Water Quality Control Plan (Basin Plan) for the Coastal Watersheds of Los Angeles and Ventura Counties.

Further assessment and cleanup and abatement is necessary to protect ground water quality and beneficial uses as required under Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*).

II. BASIS FOR FINDINGS

1. **DISCHARGE OF SOLVENT WASTE.** Records and environmental investigation reports indicate that Griffon used, stored, and improperly disposed of wastes, including chlorinated solvents at the subject Property.
 - a. According to an industrial waste survey conducted by Los Angeles County Sanitation District in March 1970 and an environmental due diligence investigation by M. B. Gilbert Associates (April 1990), both O.B. Masco and Clopay, during their occupation of the Property, conducted similar operations involving metal parts processing, painting, degreasing in cold chlorinated solvent, and paint stripping with caustic solvent.
 - b. Records and an inspection report from Los Angeles County Department of Health Services (LACDHS), dated October 22, 1985 (during Lightron's leasing of the Property), cited that O.B. Masco improperly stored and disposed of hazardous wastes at the Property. Specifically, violations cited in the inspection report include outdoor oil spillage onto soil, disposal of reaming waste outdoors to the ground and improper storage of hazardous wastes onto permeable surface. According to the LACDHS inspection report, chemicals and hazardous wastes

stored and/or used at the Property are painter's thinner, spent oil, spent solvents, cutting oil, motor oil, degreaser, and paint.

- c. M. B. Gilbert Associates (April 1990) reported that an approximately 15-foot square area of concrete within a bermed area (also referred as the drum storage pad, See Figure 2) located in the southeast corner of the Property was covered with absorbent material and was significantly stained. Oil sheen was observed in parts of the bermed area, and dark-colored staining covered the rest of the bermed area.
- d. M. B. Gilbert Associates (April 1990) also reported an area of soil approximately 10-foot square located near the southwest corner of the subject Property was significantly stained. The stained soil, extended more than three inches beneath the ground surface, was located outside the main fencing that encloses the building and storage areas at the subject Property.
- e. A waste profiling document (Waste Data Profile #1391), record GR02629, from LACDHS, further indicates that PCE, 1,1,1-trichloroethane (1,1,1-TCA), among other VOCs, were detected in Clopay's paint and sand blasting material processed at the Property.

The Dischargers caused or permitted wastes from their previous onsite operations, including PCE, to be discharged to groundwater underlying the Site and to be deposited in soil at the Site from which waste has been and probably will be discharged to ground water. These discharges have caused and threaten to cause conditions of pollution, contamination, and nuisance by exceeding applicable water quality objectives for chlorinated solvent chemical waste constituents.

Basis for Finding No. 1

- Dames & Moore, April 11, 1995. Report – Soil and Groundwater Investigation for Clopay Corporation, Air Cargo Site, 2930 Maria Street, Rancho Dominguez, California
- Dames & Moore, July 22, 1997. Environmental Assessment Report, Air Cargo Site, 2930 Maria Street, Rancho Dominguez, California
- Water Quality Control Plan for the Los Angeles Basin (Basin Plan)

The Site is located in the Central Hydrologic Subarea (HSA) (405.15) and Los Angeles Coastal Plain Central Groundwater Basin; groundwater in the Central Basin is designated as having existing beneficial uses for municipal and domestic water supply (MUN)^{1, 2}, agricultural supply water (AGR), industrial process supply (PROC), and industrial service supply (IND). The Basin Plan contains numeric water quality objectives³ for chemical constituents to protect groundwaters designated for MUN. The numeric objectives are

¹ See Water Quality Control Plan for the Los Angeles Basin (Basin Plan), Page 2-1. The Basin Plan defines MUN as "Uses of water for community, military, or individual water supply systems including, but not limited to, drinking water supply."

² Basin Plan, Table 2-2 on page 2-17.

³ "Water quality objectives" are defined in Water Code section 13050(h) as "the limits or levels water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area."

derived from primary Maximum Contaminant Levels (MCLs)⁴ established by the Department of Public Health Services (Department) in Title 22 of the California Code of Regulations.⁵ In general, the Department establishes MCLs to ensure the safety of public drinking water supplies at the point of use, (e.g. at the tap.)

Elevated PCE concentrations was present in soil at 2,800,000 micrograms per kilogram ($\mu\text{g}/\text{kg}$) at 1 feet below ground surface (bgs) sampled in April 1992 at the boring B-5, located within the former drum storage pad. PCE and its associated chemical breakdown products, trichloroethylene (TCE), *cis*-1,2-dichloroethylene (*cis*-1,2-DCE), *trans*-1,2-dichloroethylene (*trans*-1,2-DCE) are present in the groundwater at the Site in concentrations above the applicable Basin Plan water quality objectives:

Waste Constituent	Basin Plan Water Quality Objective (Micrograms per liter or $\mu\text{g}/\text{L}$)	Ground Water Concentration, as of 12/19/2007 ($\mu\text{g}/\text{L}$)
PCE	5	14,000
TCE	5	1,100
<i>cis</i> -1,2-DCE	6	3,700
<i>trans</i> -1,2-DCE	10	44

The types and levels of waste constituents found in the soil, soil gas, and groundwater are associated with use, storage, and disposal of chlorinated wastes at the Site. Based on the foregoing, the discharge of waste at the Site has caused the presence of waste constituents in the groundwater in concentrations in excess of applicable public health protective water quality objectives and has therefore created a condition of pollution⁶ and contamination⁷ in waters of the State.

⁴ MCLs (Maximum Contaminant Levels) are public health-protective drinking water standards to be met by public water systems. MCLs take into account not only chemicals' health risks but also factors such as their detectability and treatability, as well as the costs of treatment. Primary MCLs can be found in Title 22 California Code of Regulations (CCR) sections 64431 - 64444. Secondary MCLs address the taste, odor, or appearance of drinking water, and are found in 22 CCR section 64449.

⁵ Basin Plan, Pages 3-8 to 3-10, and Table 3-7. The Basin Plan provides that "Water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in the following provisions of Title 22 of California Code of Regulations which are incorporated by reference into this plan: ...Table 64444-A of Section 64444 (Organic Chemicals). This incorporation by reference is prospective including future changes to the incorporated provisions as the changes take effect. (See Tables 3-5, 3-6, and 3-7.)"

⁶ "Pollution" is defined in Water Code section 13050 (1) as "an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) The waters for beneficial uses, (B) Facilities which serve these beneficial uses." Pollution" may include "contamination."

⁷ "Contamination" is defined in Water Code section 13050(k) as an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

The discharge of waste at the Site has also created or threatens to create a condition of nuisance⁸ in waters of the State. The presence of waste constituents in ground water in concentrations in excess of applicable public health protective water quality objectives is potentially injurious to the public health⁹. The interference and complications with the use of groundwater for drinking water purposes arising from the presence of waste constituents in concentrations well in excess of applicable water quality objectives, can be considered an obstruction to the free use of property as provided in Water Code Section 13050(m).

- 2: **RESPONSIBLE PARTIES:** Griffon Corporation, Clopay Corporation, Lightron, and JoL Enterprises, are the responsible parties, and are collectively referred to as "Dischargers" in this Cleanup and Abatement Order.

Basis for Finding No. 2

- Project Files.
- Secretary of the State Business Portal, Business License Information Search Website.

California Water Code section 13304 authorizes the Regional Board to order any person who "causes or permits" waste to be discharged where it "creates or threatens to create a condition of pollution or nuisance" to clean up or abate the effects of the waste. The State Water Resources Control Board (State Board) in a series of precedential orders has established general principles regarding naming responsible parties. These principles can be summarized as follows:

- In general, name all persons who have caused or permitted a discharge (Orders Nos. WQ 85-7 and 86-16).
- "Discharge" is to be construed broadly to include both active discharges and continuing discharges (Order No. WQ 86-2).
- There must be a reasonable basis for naming a responsible party (i.e., substantial evidence). It is inappropriate to name persons who are only remotely related to the problem such as suppliers and distributors of gasoline (WQ 85-7, 86-16, 87-1, 89-13, and 90-2).

⁸ Nuisance is defined in Water Code section 13050(m) "... anything which: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, and (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during or as a result of the treatment or disposal of wastes."

⁹ The United States Environmental Protection Agency (USEPA) classifies PCE and TCE as probable human carcinogens.

The Regional Board has applied these principles in determining the parties that should be named in this cleanup and abatement order. The following history of ownership and occupancy has established the basis for naming the Dischargers.

Historically, JoL Enterprises owned and developed the 2930 East Maria Street property in 1969. O.B. Masco Drapery Hardware Co. (Masco), a company owned by members of JoL Enterprises, leased the property and conducted its operations on it from 1969 to 1971. In 1971, Griffon, through its predecessor or wholly-owned subsidiaries, acquired Masco and operated on the Property until August 1990. In late 1998, JoL Enterprises sold the Property to Laskey Trustees who has been the fee title holder of the Property since. The property ownership and leasehold history is as follows:

- a. In 1969, JoL Enterprises developed the Property and leased it to O.B. Masco, a company that was owned and operated by the members of JoL Enterprise.
- b. In 1971, Griffon's predecessor, Instrument Systems Corporation (Instrument Systems Corporation changed its name to Griffon in 1995), acquired Masco and took over its lease at the Property. In August 1979, Griffon assigned its rights under the lease to its subsidiary, Lightron Corporation (Lightron).
- c. In 1986, Griffon acquired a 100% interest in Clopay Corporation (Clopay), a manufacturer of curtain and drapery fixtures, and garage doors.
- d. In 1987, Lightron assigned the leasehold interest in the Property to Clopay, its sister corporation.
- e. In August 1990, Clopay subleased its position to Air Cargo, a manufacturer of air freight equipment and a wholly-owned subsidiary of Telair International Inc. Telair International Inc. is wholly-owned by Teleflex Inc.
- f. In November 1998, JoL Enterprises sold the subject property to Laskey Trustees, the current owner of the Property.
- g. In September 1999, Air Cargo ended its sublease with Clopay and entered into a new lease with Laskey Trustees.

In sum, JoL Enterprises was the fee title owner of the Site from 1969 to 1998. Masco (from 1969 to 1971) and Griffon (from 1971 to 1990) leased the Site and conducted business with same operations involving the use of chlorinated solvents during their occupancy.

The Regional Board may hold landowners accountable for discharges which occur or occurred on the landowner's property based on three criteria: (1) ownership of the land; (2) knowledge of the activity causing the discharge; and (3) the ability to control the activity. JoL Enterprises meets all three of these criteria and should be named in the cleanup and abatement order as a responsible party.