

1 submit a work plan/report, as set forth in more detail below. Petitioner AMR further requests a
2 formal hearing on this petition, pursuant to 23 CCR § 2050, §§ 648 et seq., Chapter 5 of the
3 California Administrative Procedure Act (“APA”) (see Gov. Code, §§ 11500, et. seq.), and all
4 applicable law.

5 Petitioner AMR alleges as follows:

6 1. Petitioner AMR is a Delaware corporation with its principal place of
7 business in Greenwood Village, Colorado. Its name, physical address, and phone number are as
8 follows:

9 American Medical Response, Inc.
10 6200 South Syracuse Way, Suite 200
11 Greenwood Village, Colorado 80111
12 (303) 495-1283

13 AMR is represented by and can and should be contacted concerning this Petition
14 through:

15 Arthur F. Coon
16 Mark A. Cameron
17 Miller Starr Regalia
18 1331 N. California Blvd., Fifth Floor
19 Walnut Creek, CA 94596
20 (925) 935-9400

21 2. Respondent, the California Regional Water Quality Control Board, San
22 Francisco Bay Region (the “Regional Board” or “SFBRWQCB”) is, and at all relevant times
23 herein was, a regional agency created pursuant to the provisions of the Water Code §§ 174, et
24 seq.

25 3. The State Water Resources Control Board (the “State Board”) is a state
26 agency created pursuant to the Water Code §§ 174 et seq. and 13200, et seq., and is charged
27 with formulating and adopting state policy for water quality control within the State of
28 California. Pursuant to California Water Code §§ 13320, et seq. and the regulations
promulgated thereunder, the State Board has jurisdiction over this Petition.

4. The date on which the action or failure to act which is the subject of this
Petition occurred is July 26, 2012. The specific actions and failures to act which the State Board
is requested to reconsider are the Regional Board’s orders, directives, and determinations, made

1 without any prior notice or adjudicatory hearing, in the letter of its Executive Officer, Bruce
2 Wolfe, dated July 26, 2012 (copy attached hereto as Exhibit A). The key orders, determinations,
3 and directives of the Regional Board of which AMR seeks review are: (1) that AMR is a
4 responsible party for contamination at and emanating from the real property at 14205 San Pablo
5 Avenue, San Pablo, Contra Costa County, California (owned by responsible party DWB
6 Partners LLC), and (2) that AMR must submit a work plan/report, as specified, concerning the
7 contamination, by October 26, 2012.

8 5. Petitioner AMR is aggrieved because it has been improperly and
9 unlawfully determined by the Regional Board – without any adjudicatory hearing or meaningful
10 opportunity to respond, and based on wholly insufficient supporting evidence – to be a
11 responsible party required to submit a work plan/report pursuant to Water Code § 13267. The
12 Regional Board’s unsupported and unlawful administrative determinations and directives will
13 become final and binding unless rescinded or vacated by the Regional Board, or reviewed
14 pursuant to this Petition and overturned by the State Board, or a court of law, and could
15 ultimately cost AMR hundreds of thousands of dollars, or more, for actions it has been and/or
16 may be ordered to take based thereon to monitor, characterize, report on and remediate the
17 subject contamination. The order purports to compel AMR to prepare and submit, or participate
18 in the preparation and submission of, detailed technical reports based on insufficient evidence
19 and within an unreasonably short period of time, i.e., by October 26, 2012, without any prior
20 notice, and with respect to a property that responsible party DWB Partners LLC has owned,
21 tested and monitoring for *over eight years* (with Regional Board oversight and directions for a
22 significant portion of the time). The SFBRWQCB issued its July 26, 2012 letter directive based
23 solely on a letter and certain documents submitted by DWB Partners LLC 3 months earlier,
24 without any independent investigation or verification on its own part. Because AMR has not
25 been shown by the record evidence to be a responsible party under the relevant regulatory
26 criteria, and because it will be forced to incur substantial costs to prepare the ordered reports, the
27 burden of preparing such reports does not meet the statutory criteria of bearing a reasonable
28 relationship to the need for the report and the benefits to be obtained from it. Additionally,

1 failure to comply with the Water Code § 13267 order potentially subjects AMR to onerous
2 administrative civil liability of up to thousands of dollars per day, a \$25,000 fine, and a 6-month
3 jail term. (Wat. Code, § 13268(a), (b), (e); Penal Code, § 19.)

4 6. Persons or entities other than Petitioner AMR that are known or believed to
5 have an interest in the subject matter of this Petition include: the State Board; the SFBRWQCB,
6 including Bruce Wolf, Chuck Headlee, and Barbara Sieminski; the owner of the subject property
7 at 14205 San Pablo Avenue, San Pablo, CA, and acknowledged responsible party DWB Partners
8 LLC; others named as responsible parties in the Regional Board's July 26 letter (former property
9 owners Preston L. Noe, Jr., Marlene A. Noe, James G. Noe, Leona M. Noe, and former owner/
10 gasoline station operator Virgil Clifton); and Petitioner AMR's alleged predecessors-in-interest,
11 Cadillac Ambulance Service ("Cadillac") and Regional Ambulance Service ("RAS"). This
12 Petition has been sent to the appropriate Regional Board Executive Officer, Bruce Wolfe, and to
13 all entities and individuals above who are still existing or living.

14 7. A copy of the request to Regional Board Executive Officer Bruce Wolfe of
15 Petitioner AMR's request for preparation of the record of proceedings, including transcripts of
16 any pertinent hearings (if any), is attached hereto as Exhibit B.

17 8. Petitioner AMR was not provided notice of or an opportunity to be heard in
18 connection with any process (e.g., public hearing testimony, discussions or correspondence with
19 agency personnel, etc.), if any, that may have occurred prior to the Regional Board's issuance of
20 the July 26, 2012 letter, and its orders, directives and determinations that are the subject of this
21 Petition. Petitioner AMR would have participated in such a process had one been made
22 available to it. Petitioner AMR requested the Regional Board to vacate or rescind the
23 challenged orders and determinations to allow it sufficient time to investigate the relevant facts
24 and respond to the Regional Board's determinations without need of filing this Petition, but the
25 Regional Board refused this request.

26 9. The Regional Board Executive Officer's actions in issuing the responsible
27 party determination/work plan orders and directives, by his July 26, 2012 letter (hereinafter the
28

1 “letter directive”), and allegedly pursuant to Water Code § 13267, were improper and unlawful
2 for the following reasons, inter alia:

3 (a) The letter directive fails to cite or apply, or reference any evidence
4 satisfying, the standards of the governing California regulation (23 Cal. Code Regs., § 2720) that
5 defines a “responsible party” for purposes of corrective action requirements for petroleum
6 underground storage tanks (“USTs”).

7 (b) The letter directive fails to cite substantial evidence, or sufficient
8 evidence that reasonable persons would rely on, to establish AMR’s alleged “responsible party”
9 status under any of its four prongs, which are:

10 (1) Any person who owns or operates an underground storage
11 tank used for the storage of any hazardous substance;

12 (2) In the case of any underground storage tank no longer in
13 use, any person who owned or operated the underground storage
14 tank immediately before the discontinuation of its use;

15 (3) Any owner of property where an unauthorized release of a
16 hazardous substance from an underground storage tank has
17 occurred; and

18 (4) Any person who had or has control over an underground
19 storage tank at the time of or following an unauthorized release of a
20 hazardous substances.

(23 Cal. Code Regs., § 2720.)

21 (c) With regard to § 2720(1), there is no evidence that AMR, or any of
22 its alleged predecessors, is currently an owner or operator of any UST on the 14205 San Pablo
23 property. The Regional Board’s July 26, 2012 letter does not make, recite or attach evidence
24 supporting such a contention, and the attached evidence actually indicates there are no currently
25 existing USTs on the subject property, and any formerly existing USTs were removed over 30
26 years ago. Neither AMR, nor any of its alleged predecessors, ever owned the subject property.

27 (d) With regard to § 2720(2), there is no evidence of the
28 “discontinuation” date/s of the relevant UST or USTs in question (apparently those allegedly
removed in or about 1979; the record shows the only documented USTs with holes in them were
removed by the Noes in late 1964), or that AMR or any of its alleged predecessors owned or

1 operated any UST or USTs immediately before that unknown date/s. No evidence indicates the
2 post-1964 USTs which would have been on the site during Cadillac's alleged occupancy ever
3 leaked. The currently available evidence indicates that Cadillac stored medical supplies on the
4 site pursuant to a lease for a very short time in the late 1970s, and did not use the USTs. AMR
5 and RAS never leased or occupied the site or used the USTs. Cadillac, RAS and AMR never
6 owned any USTs. AMR is not Cadillac, and no evidence in the record establishes the nature of
7 any transactions between Cadillac, RAS and/or AMR, or that AMR has succeeded to any legal
8 obligations or liabilities of either Cadillac or RAS with respect to the contamination.

9 (e) With regard to § 2720(3), DBW Partners LLC, is the acknowledged
10 owner of the subject property, having purchased the property in 2004 with knowledge of the
11 contamination (but apparently without disclosing it to the SFBRWQCB until 2009 or 2010), and
12 there is no evidence that AMR or any of its alleged predecessors (i.e., Cadillac and RAS) own or
13 have ever owned the subject real property (including any USTs) at 14205 San Pablo Avenue,
14 San Pablo, California, and the Regional Board's July 26, 2012 letter identifies other parties as
15 past property owners (e.g., Preston L. Noe, Jr., Marlene A. Noe, James G. Noe, Leona M. Noe).

16 (f) With regard to § 2720(4), there is no evidence that AMR or any of
17 its alleged predecessors (i.e., Cadillac and RAS) controlled any relevant UST or USTs at the
18 time of any unauthorized release; to the contrary, the Regional Board's letter states the Noes
19 were owners of the real property "at the time of the activity (operation of gasoline station) that
20 resulted in the discharge" Other record evidence shows Noes had documented fuel leaks
21 from gas station operations on the property in 1961-1962, and that in late 1964 they removed
22 and replaced USTs with holes in them. In their capacity or capacities as owners of the property,
23 the owner or owners necessarily controlled the USTs on and within it to the exclusion of all
24 others, absent evidence of any legally effective agreement or agreements to the contrary; no such
25 evidence appears in the record. Further, there is no evidence that AMR or any of its alleged
26 successors "controlled" any relevant UST or USTs "following an unauthorized release of a
27 hazardous substance" from those USTs. There is no evidence that any post-1964 USTs had
28 holes or leaked. Cadillac apparently leased the property for a short time around late 1977, but it

1 never owned the site, and there is no evidence or even allegation that the terms of its lease gave
2 it the right to “control” any USTs, or that it ever, in fact, exercised such control. Further, there
3 is no evidence that Cadillac ever even used any USTs in the brief period it leased the property
4 (or if it did that any such USTs leaked), only that it applied for and was granted by the City a
5 one-year use permit giving it permission to use the gas pumps on the property for its
6 ambulances, among other permitted uses. There is no evidence in the record that the conditions
7 imposed on the use permit by the City were acceptable to Cadillac, that the use permit was ever
8 exercised, in whole or in part, or that it was ever renewed. Further, the nature of the alleged
9 contamination is consistent with the evidence of holes in pre-1964 USTs that were never even
10 on the property at the time of Cadillac’s apparent brief occupancy around 1977.

11 (g) The letter directive contains no findings or evidence of the terms of
12 the acquisition of Cadillac by RAS, and current records of the California Secretary of State
13 reflect that Cadillac has been “merged” out of existence. AMR is not Cadillac. There is not
14 only no evidence that Cadillac itself is (or would have been) a responsible party under 23 Cal.
15 Code Regs., § 2720, but no evidence or authority cited in the letter directive that its relevant
16 liabilities (if any) ever passed to RAS – much less to AMR which was another step removed –
17 either as a matter of California corporate law or contract.

18 (h) The application of Water Code § 13267 through the letter directive
19 to AMR here, without any prior notice or any opportunity to be heard, improperly shifted the
20 burden of proof and production to AMR and violated its procedural and substantive due process
21 rights under the California and United States Constitutions as well as the Water Code.

22 (i) As contained in its letter directive, the Regional Board’s Water
23 Code § 13267 order violates the terms of that statute, and all applicable law, as it purports to
24 compel the creation of extensive new (as opposed to the production of existing) technical
25 reports, and it fails to establish the statutory predicate conditions for its application, i.e., that the
26 Regional Board is establishing or reviewing a water quality control plan or WDR permit to
27 which the order is ancillary. (Wat. Code, § 13467(e).)
28

1 (j) As contained in its letter directive, the Regional Board's Water
2 Code § 13267 order violates the terms of the statute by failing to (1) contain a "written
3 explanation with regard to the need for the reports," (2) demonstrate that the "burden, including
4 costs, of these reports shall bear a reasonable relationship to the need for the report and the
5 benefits to be obtained from the reports," and (3) "identify the evidence that supports requiring
6 that person to provide the report."

7 (k) As contained in its letter directive and applied to AMR, the
8 Regional Board's responsible party determination and work plan/report order also violate due
9 process, applicable statutes of limitation and the principle of laches, and legal and equitable
10 principles of estoppel, waiver, comparative fault, and unclean hands, inter alia. It is illegal,
11 inequitable, and prejudicially violates AMR's potential right to contribution, indemnity, cost
12 recovery, and other remedies and defenses, for the Regional Board and DBW Partners, LLC, to
13 wait over 8 years to attempt to name AMR as a responsible party based on evidence in the
14 public record that is between 20 to almost 50 years old, while key witnesses (e.g., Cadillac
15 owner James Runions) have died, memories have faded, and documents have been lost or
16 destroyed during the 8-plus year delay. DWB Partners LLC and the Regional have operated for
17 many years on the assumption that DWB Partners LLC is the *only* responsible party for
18 contamination at the subject property, and the Regional Board has for years allowed DWB
19 Partners LLC to largely control testing, monitoring, development and design of work plans,
20 remediation plans, etc., which have apparently failed to stop the migration of contamination and
21 actually worsened the situation by spreading the contamination and increasing the costs of
22 cleanup; these actions and inactions of DWB Partners LLC and the SFCRWQCB have spoiled
23 evidence, and resulted in the prejudicial loss of witnesses, memories, policies and documents
24 available in 2004. The Regional Board and DWB Partners LLC have waived any right to
25 attempt to name AMR as a responsible party under these circumstances, and at this late date, and
26 are barred, precluded, and estopped by law and equity from doing so now to AMR's extreme
27 prejudice.

1 10. For these reasons, inter alia, Petitioner AMR respectfully requests that the
2 State Board review the Regional Board's letter directive in its entirety, and specifically as to all
3 orders, determinations and directions therein as affecting AMR, including the determination that
4 AMR is a responsible party based on the alleged responsible party status of Cadillac for actions in
5 or about 1977 under a brief lease which has not yet been located or placed in the record, and on
6 alleged corporate successor liability twice removed, based on transactions whose relevant terms
7 are not even alleged and have not been shown by any evidence whatsoever in this record.

8 11. Petitioner AMR therefore requests that the State Board:

9 (a) Issue an order vacating all the directives, determinations and orders
10 directed to AMR in the July 26, 2012 letter from the Regional Board;

11 (b) Order the Regional Board to conduct an evidentiary hearing on
12 such aspects of the July 26, 2012 letter, applying the relevant standards of 23 Cal. Code Regs.,
13 § 2720, if it still wishes to proceed against AMR on the matter, either directly or through the
14 alleged liability of its alleged predecessors, or any of the matters set forth therein;

15 (c) Conduct a formal hearing to consider testimony, or other evidence,
16 and argument pursuant to 23 Cal. Code Regs. §§ 648, et seq., and § 2050.6(b), the
17 Administrative Procedure Act, and all applicable law;

18 (d) Issue an Order providing for such other and further relief as is just
19 and proper and as may be requested by Petitioner AMR; and

20 (e) Award costs, attorneys' fees and other expert fees incurred in
21 pursuing this Petition to AMR, to the extent allowed and provided by law.

22 12. Petitioner AMR has filed or will timely file a preliminary memorandum of
23 points and authorities in support of this Petition under separate cover in satisfaction of the
24 requirement of 23 Cal. Code Regs., § 2050(a)(7), and which it fully incorporates herein by
25 reference; however, it is impossible to prepare a complete memorandum or statement of points
26 and authorities in the absence of a complete administrative record, which is not yet available, and
27 AMR reserves all its rights to supplement its preliminary memorandum of points and authorities
28 and this Petition following receipt and review of the administrative record.

1 13. As indicated above, Petitioner AMR was unable to raise the substantive
2 issues or objections raised in this Petition to the Regional Board in the first instance because the
3 letter directive containing the responsible party determination and Water Code § 13267 order was
4 issued by the Executive Officer without any prior notice or hearing. AMR's attorneys were
5 unable to persuade the Regional Board to vacate its determination so as to allow AMR time to
6 investigate the matter and meet with the Executive Officer or Regional Board staff to discuss the
7 issues raised in this Petition.

8 14. Pursuant to 23 Cal. Code Regs., § 2050.5(d), Petitioner AMR requests that
9 the State Board initially hold this Petition in abeyance to allow time for AMR to attempt to
10 resolve the issues raised in this Petition with the Regional Board informally. AMR will promptly
11 notify the State Board when AMR seeks to have its Petition considered.

12 Dated: August 24, 2012

Respectfully submitted,

MILLER STARR REGALIA

14
15 By: 

ARTHUR F. COON
Attorneys for Petitioner
AMERICAN MEDICAL RESPONSE, INC.



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

July 26, 2012
File No. 07-0889 (BGS)

DWB Partners LLC
Attn: Bradford F. Marks
bmarks@otre.net
1721 Broadway, Suite 202
Oakland, CA 94612

Preston L. Noe Jr. and Marlene A. Noe
2675 Hegan Ln.
Chico, CA 95928

James G. Noe and Leona M. Noe
P.O. Box 101
San Pablo, CA 94806

Virgil Clifton
2203 Cypress Ave
San Pablo, CA 94806

American Medical Response, Inc. as successor in interest to
Cadillac Ambulance Service
6200 S Syracuse Way, Suite 200, MS 600
Greenwood Village, CO 80111

**SUBJECT: Additional Responsible Party Determination and Requirement for a Work Plan,
14205 San Pablo Avenue, San Pablo, Contra Costa County**

Dear Mses and Messrs:

This letter identifies additional responsible parties for site investigation and cleanup. This letter also requires the responsible parties to submit a work plan to complete plume delineation and evaluate human health and environmental risks associated with the site pollution.

The environmental information submitted by the current responsible party, DWB Partners LLC (DWB), indicates that significant hydrocarbon contamination is present in soil and groundwater beneath the subject site. The subsurface contamination is likely the result of a fuel leak from the former underground storage tanks (USTs), as the site was previously operated as a fueling station. High hydrocarbon concentrations (up to 30,000 ug/L of TPHg and 910 ug/L of benzene) are currently present in groundwater downgradient of the former USTs. The dissolved plume has migrated offsite, and has not been fully delineated. The pollution present beneath the site may pose unacceptable risks to human health and the environment.

JOHN MULLER, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

1515 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

RECYCLED PAPER

EXHIBIT A

In our January 11, 2010, directive letter, we named DWB (as the current property owner) the responsible party for the site pollution, and required DWB to perform environmental investigation and cleanup of site pollution. DWB has thus far cooperated with the Regional Water Board, and has coordinated various tasks to facilitate the investigation and clean-up of the site. However, the site investigation/cleanup has not been yet completed.

Recently, DWB requested that the Regional Water Board name additional responsible parties for investigation/cleanup of the site pollution. In their July 11, 2012, letter, DWB provided information about individuals and business entities that owned the site and/or operated the former USTs, and who may seek funding from the California UST Cleanup Fund to assist in cleaning up the contamination.

The Regional Water Board considers the former property/UST owners/operators responsible parties for site pollution. Specifically, we name the listed below persons/entities the responsible parties for investigation/cleanup of the site pollution for the following reasons:

- **Preston L. Noe Jr, Marlene A. Noe, James G. Noe, and Leona M. Noe** are named the responsible parties for site cleanup because they owned the property between May 5, 1976 to July 13, 1977, at the time of the activity (operation of gasoline station) that resulted in the discharge of hydrocarbons into subsurface and contamination of soil and groundwater beneath the site.
- **Virgil Clifton** is named the responsible party for site cleanup because he operated the gasoline station ("Virgil Clifton's Service Station") and thus USTs, from July 13, 1977, to an unknown date, that resulted in discharge of hydrocarbons into subsurface and contamination of soil and groundwater beneath the site.
- **American Medical Response, Inc. (AMR)** is named as a discharger and a responsible party for site cleanup as a successor in interest to Cadillac Ambulance Service (CAS), which operated an ambulance repair facility starting sometime in late 1977. This facility included fueling station, and thus USTs. CAS was acquired by Regional Ambulance Service in 1986. Regional Ambulance Service was acquired by AMR in 1992.

The responsible parties (Preston L. Noe Jr, Marlene A. Noe, James G. Noe, Leona M. Noe, Virgil Clifton, AMR, and DWB) are required to submit a work plan to delineate the offsite plume and evaluate human health and environmental risks associated with the site pollution by October 26, 2012.

Please note, that the satisfactory work plan to complete such tasks had been previously submitted by DWB, and conditionally approved in our directive letter dated August 4, 2011. However, the work proposed in DWB's work plan has not been fully implemented or reported, and the report requirement was rescinded until we could identify and name the additional responsible parties. We advise you to check the status of the DWB proposed tasks, prior to preparation of the required work plan. The work plan is available in the State's Cleanup Programs database:
http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000001749).

This requirement for a report is made pursuant to Water Code Section 13267, which allows the Regional Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. The attachment provides additional information about Section 13267 requirements. Any extension in the above deadline must be confirmed in writing by Regional Water Board staff.

You are required to submit all documents in electronic format to the State Water Resources Control Board's GeoTracker database. Guidance for electronic information submittal is available at http://www.waterboards.ca.gov/water_issues/programs/ust/electronic_submittal/. All reports submitted should have the Regional Board file number 07-0889 on the first page of the report. A copy of any submittal should also be sent to the CCCHSD in Martinez.

Please direct all questions and correspondence regarding this matter to Barbara Sieminski at 510-622-2423 or via e-mail at bsieminski@waterboards.ca.gov.

Sincerely,

Chuck Headlee
for

Digitally signed by
Chuck Headlee
Date: 2012.07.26
13:08:36 -07'00'

Bruce H. Wolfe
Executive Officer

Enclosure: Fact Sheet – Requirements For Submitting Technical Reports Under Section 13267 of the California Water Code

cc:

Ms. Sue Loyd
sloyd@hds.co.contra-costa.ca.us
CCCHSD
4585 Pacheco Boulevard, Suite 100
Martinez, CA 94553

Mr. Ed Hemmat
edhemmat@yahoo.com
3840 San Pablo Ave
Emeryville, CA 94608

Mr. Tim Cook
tcCook@cookenvironmental.com
Cook Environmental Services, Inc.
1485 Treat Blvd., Ste 203A
Walnut Creek, CA 94597

San Francisco Bay Regional Water Quality Control Board

Fact Sheet – Requirements for Submitting Technical Reports Under Section 13267 of the California Water Code

What does it mean when the Regional Water Board requires a technical report?

Section 13267¹ of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

The requirement for a technical report is a tool the Regional Water Board uses to investigate water quality issues or problems. The information provided can be used by the Regional Water Board to clarify whether a given party has responsibility.

Are there limits to what the Regional Water Board can ask for?

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The Regional Water Board is required to explain the reasons for its request.

What if I can provide the information, but not by the date specified?

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

Are there penalties if I don't comply?

Depending on the situation, the Regional Water Board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

Do I have to use a consultant or attorney to comply?

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

What if I disagree with the 13267 requirements and the Regional Water Board staff will not change the requirement and/or date to comply?

You may ask that the Regional Water Board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the Regional Water Board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

If I have more questions, whom do I ask?

Requirements for technical reports include the name, telephone number, and email address of the Regional Water Board staff contact.

Revised May 2012

¹ All code sections referenced herein can be found by going to www.leginfo.ca.gov.

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5 Facsimile: 925 933 4126
arthur.coon@msrlegal.com;
6 mark.cameron@msrlegal.com

7 Attorneys for Petitioner
AMERICAN MEDICAL RESPONSE, INC.

8
9 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
10
11

12 IN THE MATTER OF THE PETITION
OF AMERICAN MEDICAL RESPONSE,
13 INC. FOR REVIEW OF ACTION AND
FAILURE TO ACT BY THE
14 CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SAN
15 FRANCISCO BAY REGION, IN
ISSUING ORDER MAKING
16 RESPONSIBLE PARTY
DETERMINATION AND REQUIRING
17 REPORT PURSUANT TO CALIFORNIA
WATER CODE SECTION 13267.
18
19

File No. 07-0889 (BGS)

PETITIONER AMERICAN MEDICAL
RESPONSE, INC.'S REQUEST TO SAN
FRANCISCO BAY REGIONAL WATER
QUALITY CONTROL BOARD AND ITS
EXECUTIVE OFFICER BRUCE WOLFE
FOR PREPARATION OF RECORD OF
PROCEEDINGS

20
21 Petitioner AMERICAN MEDICAL RESPONSE, INC. ("AMR" or "Petitioner")
22 hereby requests in the above-captioned matter that the San Francisco Bay Regional Water Quality
23 Control Board ("SFCRWQCB" or "Regional Board") and its Executive Officer Bruce Wolfe
24 prepare the complete record of proceedings in the above-captioned matter, SFCRWQCB File
25 No. 07-0889 (BGS), including all documents, pleadings, letters, reports, notices, orders,
26 decisions, exhibits, evidence, photos, or other papers, and any transcripts in the matter that are
27 related in any way to Mr. Wolfe's July 26 2012 letter directive addressed to Petitioner AMR and
28 others, or its subject matter. This request is made in connection with Petitioner's Petition to the

1 State Water Resources Control Board for review of said July 26, 2012 letter directive and the
2 Regional Board's orders, determinations and directives pertaining to Petitioner.

3 Dated: August 24, 2012

Respectfully submitted,

MILLER STARR REGALIA

4
5
6 By: 

7 ARTHUR F. COON
8 Attorneys for Petitioner
9 AMERICAN MEDICAL RESPONSE, INC.
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1 **PROOF OF SERVICE**

2 I, Karen Wigylus, declare:

3 I am a resident of the State of California and over the age of eighteen years, and
4 not a party to the within action; my business address is 1331 N. California Blvd., Fifth Floor, Post
5 Office Box 8177, Walnut Creek, CA 94596. On August 24, 2012, I served the within
6 documents:

7 **PETITIONER AMERICAN MEDICAL RESPONSE, INC.'S PETITION FOR REVIEW
8 OF SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD'S
9 ORDER MAKING RESPONSIBLE PARTY DETERMINATION AND REQUIRING
10 REPORT PURSUANT TO WATER CODE § 13267 [Wat. Code, § 13320]**

11 **Via E-Mail:** by transmitting the document listed above via pdf format to the
12 email addresses set forth below by 5:00 p.m.(Pacific Time).

13 **Via Overnight Mail:** by placing the document(s) listed above in a sealed
14 envelope for overnight delivery via *Federal Express*, or other overnight mail
15 service, with fees fully prepaid, and deposited for same-day pick-up by an
16 authorized representative.

17 Philip G. Wyels jbashaw@waterboards.ca.gov **and**
18 Assistant Chief Counsel pwyels@waterboards.ca.gov
19 State Water Resources Control Board
20 1001 I Street, 22nd Floor
21 Sacramento, CA 95814
22 916.341.5178 (phone)
23 916.341.5199 (fax)

24 **Via Mail:** by placing the document listed above in a sealed envelope with postage
25 thereon fully prepaid, in the United States mail at Walnut Creek, California
26 addressed as set forth below.

27 DWB Partners LLC Preston L. Noe, Jr. and Marlene A. Noe
28 Attn: Bradford F. Marks 2675 Hegan Lane
1721 Broadway, Suite 202 Chico, CA 95928
Oakland, CA 94612

Virgil Clifton James G. Noe and Leona M. Noe
2203 Cypress Avenue P. O. Box 101
San Pablo, CA 94806 San Pablo, CA 94806

29 I am readily familiar with the firm's practice of collection and processing
30 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
31 Service on that same day with postage thereon fully prepaid in the ordinary course of business. I
32 am aware that on motion of the party served, service is presumed invalid if postal cancellation
33 date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

3 Executed on August 24, 2012, at Walnut Creek, California.

4 

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6 Karen Wigylus
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1 **PROOF OF SERVICE**

2 (File No. 07-0889)

3 I, Karen Wigylus, declare:

4 I am a resident of the State of California and over the age of eighteen years, and
5 not a party to the within action; my business address is 1331 N. California Blvd., Fifth Floor, Post
6 Office Box 8177, Walnut Creek, CA 94596. On August 27, 2012, I served the within
7 documents:

8 **PETITIONER AMERICAN MEDICAL RESPONSE, INC.'S PETITION FOR REVIEW**
9 **OF SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD'S**
10 **ORDER MAKING RESPONSIBLE PARTY DETERMINATION AND REQUIRING**
11 **REPORT PURSUANT TO WATER CODE § 13267**

12 **Via E-Mail:** by transmitting the document listed above via pdf format to the
13 email addresses set forth below by 5:00 p.m.(Pacific Time).

14 **Via Hand Delivery Via Courier:** by causing the document(s) listed above to be
15 hand-delivered to the following person(s) at the address(es) set forth below.

16 Bruce H. Wolfe, Executive Director
17 San Francisco Bay Regional Quality
18 Control Board
19 1515 Clay Street, Suite 1400
20 Oakland, CA 94612
21 bsieminski@waterboards.ca.gov

22 Ms. Sue Loyd
23 CCCHSD
24 4585 Pacheco Blvd., Suite 100
25 Martinez, CA 94553
26 sloyd@hsd.co.contra-costa.ca.us

27 **Via Mail:** by placing the document listed above in a sealed envelope with postage
28 thereon fully prepaid, in the United States mail at Walnut Creek, California
addressed as set forth below.

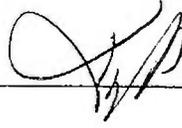
29 Mr. Ed Hemmat
30 edhemmat@yahoo.com
31 3840 San Pablo Ave
32 Emeryville, CA 94608

33 Mr. Tim Cook
34 tcook@cookenvironmental.com
35 Cook Environmental Services, Inc.
36 1485 Treat Blvd., Suite 203A
37 Walnut Creek, CA 94597

38 I am readily familiar with the firm's practice of collection and processing
39 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
40 Service on that same day with postage thereon fully prepaid in the ordinary course of business. I
41 am aware that on motion of the party served, service is presumed invalid if postal cancellation
42 date or postage meter date is more than one day after date of deposit for mailing in affidavit.
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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on August 27, 2012, at Walnut Creek, California.

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6 Karen Wigylus
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1 ARTHUR F. COON (Bar No. 124206)
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6 mark.cameron@msrlegal.com

7 Attorneys for Petitioner
AMERICAN MEDICAL RESPONSE, INC.

8
9 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

10
11
12 IN THE MATTER OF THE PETITION
OF AMERICAN MEDICAL RESPONSE,
13 INC. FOR REVIEW OF ACTION AND
FAILURE TO ACT BY THE
14 CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SAN
15 FRANCISCO BAY REGION, IN
ISSUING ORDER MAKING
16 RESPONSIBLE PARTY
DETERMINATION AND REQUIRING
17 REPORT PURSUANT TO CALIFORNIA
WATER CODE SECTION 13267.

SFBRWQCB File No. 07-0889 (BGS)

PETITIONER AMERICAN MEDICAL
RESPONSE, INC.'S PRELIMINARY
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF PETITION
FOR REVIEW OF SAN FRANCISCO BAY
REGIONAL WATER QUALITY CONTROL
BOARD'S ORDER MAKING RESPONSIBLE
PARTY DETERMINATION AND
REQUIRING REPORT PURSUANT TO
WATER CODE § 13267

[Wat. Code, § 13320]



1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 Petitioner AMERICAN MEDICAL RESPONSE, INC. (“AMR” or “Petitioner”),
3 pursuant to Water Code § 13320, 23 Cal. Code Regs. §§ 2050 et seq., and all applicable law, has
4 petitioned the State Water Resources Control Board (the “State Board”) for review of the San
5 Francisco Bay Regional Water Quality Control Board’s (the “SFBRWQCB” or “Regional
6 Board”) July 26, 2012 letter directive, purportedly made pursuant to Water Code § 13267, and
7 issued without prior notice to AMR or a hearing, which: (1) determines AMR to be a responsible
8 party for certain hydrocarbon soil and groundwater contamination at and emanating from real
9 property located at 14205 San Pablo Avenue, San Pablo, Contra Costa County; and (2) purports
10 to require AMR to submit a work plan/report, as set forth in more detail in the letter directive.
11 Petitioner AMR has requested a formal hearing on its Petition, pursuant to 23 CCR § 2050,
12 §§ 648 et seq., Chapter 5 of the California Administrative Procedure Act (“APA”) (see Gov.
13 Code, §§ 11500, et. seq.), and all applicable law, and has also requested pursuant to 23 CCR
14 § 2050.5(d) that its petition be held in abeyance pending further notice to permit AMR an
15 opportunity to attempt to informally resolve the issues raised therein with the Regional Board.
16 The Regional Board’s July 26, 2012 letter directive, and the orders, determinations and directives
17 contained therein affecting AMR are improper, unlawful and should be reversed and set aside for
18 reasons set forth in more detail below.¹

19 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

20 On July 26, 2012, the Regional Board, without any prior notice or hearing, and
21 through a letter of that date sent by its Executive Officer, Bruce Wolfe, made the following key
22 orders, determinations, and directives of which AMR seeks State Board review: (1) that AMR is
23 a responsible party for contamination at and emanating from the real property at 14205 San Pablo
24 Avenue, San Pablo, Contra Costa County, California (owned by responsible party DWB Partners
25 LLC) (the “property” or “site”); and (2) that AMR must “submit a work plan to delineate the
26

27 ¹ This is a skeletal, preliminary memorandum of points and authorities submitted prior to the
28 preparation of a record of proceedings to satisfy the requirement of 23 CCR § 2050(a)(7);
Petitioner AMR reserves all rights to file a supplemental memorandum in support of its Petition
in the event its abeyance request is denied, or if the Petition is later reactivated.

1 offsite plume and evaluate human health and environmental issues associated with the site
2 pollution by October 26, 2012.”

3 The Regional Board’s letter references File No. 07-0889 and states in pertinent
4 part that it:

5 ... identifies additional responsible parties for site investigation and
6 cleanup. This letter also requires the responsible parties to submit a
7 work plan to complete plume delineation and evaluate human
8 health and environmental risks associated with the site pollution.

9 In our January 11, 2010, directive letter, we named DWB (as the
10 current property owner) the responsible party for the site pollution,
11 and required DWB to perform environmental investigation and
12 cleanup of site pollution.

13 Recently, DWB requested that the Regional Water Board name
14 additional responsible parties for investigation/cleanup of the site
15 pollution. In their July 11, 2012, letter, DWB provided information
16 about individuals and business entities that owned the site and/or
17 operated the former USTs....

18 The Regional Water Board considers the former property/UST
19 owners/operators responsible parties for site pollution. Specifically,
20 we name the listed below persons/entities the responsible parties for
21 investigation/cleanup of the site pollution for the following reasons:

- 22 • **Preston L. Noe Jr, Marlene A. Noe, James G. Noe, and
23 Leona M Noe** are named the responsible parties for site
24 cleanup because they owned the property between May 5,
25 1976 to July 13, 1977, at the time of the activity (operation of
26 gasoline station) that resulted in the discharge....
- 27 • **Virgil Clifton** is named the responsible party for site cleanup
28 because he operated the gasoline station (“Virgil Clifton’s
Service Station”) and thus USTs, from July 13, 1977, to an
unknown date, that results in discharge....
- **American Medical Response, Inc. (AMR)** is named as a
discharger and a responsible party for site cleanup as a
successor in interest to Cadillac Ambulance Service (CAS),
which operated an ambulance repair facility starting
sometime in late 1977. This facility included fueling station,
and thus USTs. CAS was acquired by Regional Ambulance
Service in 1986. Regional Ambulance Service was acquired
by AMR in 1992.

**The responsible parties are required to submit a work plan
to delineate the offsite plume and evaluate human health and
environmental risks associated with the site pollution by
October 26, 2012.**

1 (7/26/12 letter from Bruce H. Wolfe, pp. 1-13, emph. in orig.)²

2 Relevant facts shown by the Regional Board's limited evidence include:

3 • DWB Partners LLC is the current owner and responsible party that **bought**
4 **the property 8 years ago with knowledge of its contamination.** DWB and Ed Hemmat
5 investigated the site in 2004, discovered the contamination through ACC Consultants (*see* 10/5/09
6 Enviro Soil Tech Consultants report by Frank Hamedi-Fard, at p. 3), and proceeded to purchase it
7 anyway. *DWB Partners LLC is thus barred by the expiration of all applicable statutes of*
8 *limitation from suing AMR, RAS, Cadillac or anyone else for past contamination at the site; its*
9 *April 2012 letter to the SFCRWQCB requesting it to name additional responsible parties is an*
10 *improper and illegal attempt to use the Regional Board to circumvent the operation of the*
11 *statutes and AMR's conclusive defenses to its claims which have accrued thereunder.*

12 • Following its initial discovery of the contamination and subsequent
13 purchase of the property, DWB Partners LLC hired ESTC three (3) years later, in 2007, to install
14 monitoring wells. *It is unclear from the vague and incomplete current SFCRWQCB record, but*
15 *DWB Partners LLC may not have submitted a timely required report to the Regional Board at*
16 *this time. There is no record evidence showing that DWB Partners LLC reported the 2004*
17 *contamination to the Regional Board until 2009 or 2010 at the earliest.*

18 • The 2004 ACC report disclosed free product – i.e., gasoline in relatively
19 pure form in test borings – as of 2004. Had DWB Partners LLC reported this contamination to
20 the SFCRWQCB and chosen to act responsibly at that time, prompt remediation actions could
21 have been extraordinarily effective in reducing the extent of any future contaminant plume and
22 groundwater migration from the site. *DWB Partners LLC's choice instead to do essentially*
23 *nothing, including undertaking no remediation efforts, for 5-6 years, thus to a large extent caused*
24 *the problems it now seeks to foist upon AMR based on the flimsiest of "evidence."*

25 • The current record is vague as to the Regional Board's conclusions as to
26 what USTs were in the ground at the site, when they were there, when they were removed, and

27 ² Further information, obtained from the "geotracker" link provided in the Regional Board's
28 letter, concededly contained all evidence upon which the letter's conclusions, determinations and
directives were based. (8/21/12 email from Regional Board staff member Sieminski ["All the
evidence we used in naming responsible parties is on Geo Tracker."].)

1 which one (or ones) allegedly leaked. In late 1964, three USTs with holes in them were removed
2 and replaced by contractor “Robert Je. Miller”; these were allegedly three (3) 550-gallon tanks
3 that were replaced by two 2000-gallon tanks. (See Fire Prevention Bureau Reports, contained in
4 Attachment A to 4/18/12 Cook letter [10/8/64 and 10/16/64 entries].) *While ACC and others*
5 *suggest that the USTs removed at some unspecified date or dates in or about 1979 had holes in*
6 *them, the record actually contains no evidence to support such a claim.*

7 • The striking absence of almost any MTBE in all testing disclosed by the
8 current record documents suggest an older leak source, consistent with the evidence that the leaks
9 occurred in tanks installed, operated and removed 15 years before the removal of tanks that
10 occurred in or about 1979. *Other record evidence also suggests fuel leaks occurred in the 1960-*
11 *1962 time frame, before the older USTs were removed and replaced. (See Fire Prevent Bureau*
12 *Reports, contained in Attachment A to 4/18/12 Cook letter [2/24/60 and 2/21/62 entries].)*

13 • *DWB Partners LLC has failed to act diligently as a responsible party in*
14 *complying with the Regional Board’s directives, or in pursuing additional responsible parties.*
15 DWB Partners LLC was required by the Regional Board to submit an HRP Report/Work Plan or
16 PAR by May 2, 2012 (see 8/4/11 B. Sieminski letter), but just two weeks before this deadline –
17 after having had nearly 9 months to comply – it requested a 90-day extension due to alleged site
18 access difficulties regarding off site properties. (4/17/12 letter from DWB Consultant Tim Cook,
19 P.E., of Cook Environmental Services, Inc., to B. Sieminski.) The very next day, for the first
20 time ever, DWB Partners LLC sent a letter to Ms. Sieminski requesting the Regional Board to
21 name additional responsible parties, including AMR, based on documents attached to the letter,
22 including a purported copy of October 4, 1977 San Pablo City Council Meeting Minutes affecting
23 the grant of a one-year conditional use permit to Cadillac Ambulance Services (“Cadillac” or
24 “CAS”), represented by its owner, James Runions (misspelled “Ruinous” in the minutes). *There*
25 *is no record evidence that CAS ever exercised its rights under the referenced use permit.*³

26 ³ The record shows that the stated owner of CAS, James Runions, passed away in the Spring of
27 2011 at age 67, after a long illness, and that DWB Partners LLC and its consultant inexplicably
28 waited until after his death to send their letter to the Regional Board requesting that AMR be
named a responsible party based on CAS’s alleged involvement with the site and USTs thereon.
Mr. Runions is thus no longer available as a witness in this matter. AMR understands from recent
contact with CAS’s former Sacramento attorney that his widow, Mrs. Runions (whom consultant

1 • The very first time that AMR learned anything about this matter was from
2 the Regional Board’s July 26, 2012 letter naming it a responsible party and directing it to submit
3 a work plan/report by October 26, 2012. The Regional Board’s letter was based *solely* on the
4 information provided three months earlier in Cook’s 4/18/12 letter, and reflects *no independent*
5 *investigation or verification of facts or evidence on the Regional Board’s part*. The Regional
6 Board’s letter directive was issued *without any hearing or any advance notice or opportunity to*
7 *be heard* by AMR.⁴

8 • AMR’s timely Petition to the State Board for review of the SFCRWQCB’s
9 July 26, 2012 letter directive followed in order to exhaust its administrative remedies and
10 preserve all of its legal rights to contest the Regional Board’s July 26, 2012 responsible party
11 determination and other directives.

12 **III. LEGAL ANALYSIS**

13 Petitioner AMR has been unlawfully determined by the Regional Board – without
14 any adjudicatory hearing or meaningful opportunity to respond, and based on insufficient
15 supporting evidence – to be a responsible party for the contamination required to submit a work
16 plan/report pursuant to Water Code § 13267. The Regional Board’s unsupported administrative
17 determinations and directives will become final and binding unless rescinded or vacated by the
18 Regional Board, or reviewed and overturned by the State Board, or a court, and could ultimately
19 cost AMR hundreds of thousands of dollars, or more, for actions it has been and/or may be
20 ordered to take based thereon to monitor, characterize, report on and remediate the subject
21 contamination.⁵ Because AMR has not been shown by the record evidence to be a responsible

22 Tim Cook represents he called on 4/17/12 and who allegedly “confirmed that CAS did operate an
23 ambulance repair facility at the site but did not own the site”) is currently aged, frail and bed-
24 ridden and further that all relevant CAS documents in the Runions’ possession have been
25 destroyed.

24 ⁴ AMR engaged its current counsel, who requested the Regional Board to rescind, vacate or
25 withdraw its letter directive, in order to provide AMR with additional time to investigate the facts
26 and response to the Regional Board’s contentions, but this request was refused, and the Regional
27 Board’s counsel responded by email that there was “nothing unique” about AMR’s situation.

26 ⁵ The order purports to compel AMR to prepare and submit, or participate in the preparation and
27 submission of, detailed technical reports based on insufficient evidence and within an
28 unreasonably short period of time, i.e., by October 26, 2012, without any prior notice, and with
respect to a property that responsible party DWB Partners LLC has owned and has been
investigating and testing (with Regional Board oversight of testing and monitoring for a
substantial portion) for *over 8 years*.

1 party under the relevant regulatory criteria, and because it will be forced to incur substantial
2 costs to prepare the ordered reports, the burden of preparing such reports does not meet the
3 statutory criteria of bearing a reasonable relationship to the need for the report and the benefits
4 to be obtained from it, as required by the statute, and the Regional Board's letter directive fails
5 to make the statutorily-required showing.⁶

6 Petitioner AMR was not provided notice of or an opportunity to be heard in
7 connection with any process (e.g., public hearing testimony, discussions or correspondence with
8 agency personnel, etc.), if any, that may have occurred prior to the Regional Board's issuance of
9 the July 26, 2012 letter, and its orders, directives and determinations that are the subject of this
10 Petition.⁷

11 The Regional Board Executive Officer's actions in issuing the responsible party
12 determination/work plan orders and directives, by his July 26, 2012 letter (the "letter directive"),
13 and allegedly pursuant to Water Code § 13267, were improper and unlawful because, inter alia:

14 (a) The letter directive fails to cite or apply, or reference any evidence
15 satisfying, the standards of the governing California regulation (23 Cal. Code Regs., § 2720) that
16 defines a "responsible party" for purposes of corrective action requirements for petroleum
17 underground storage tanks ("USTs").

18 (b) The letter directive fails to cite substantial evidence, or sufficient
19 evidence that reasonable persons would rely on, to establish AMR's alleged "responsible party"
20 status under any of its four prongs, which are:

21 (1) Any person who owns or operates an underground storage
22 tank used for the storage of any hazardous substance;

23 (2) In the case of any underground storage tank no longer in
24 use, any person who owned or operated the underground storage
tank immediately before the discontinuation of its use;

25 ⁶ Additionally, failure to comply with the Water Code § 13267 order potentially subjects AMR to
26 onerous administrative civil liability of up to thousands of dollars per day, a \$25,000 fine, and a
6-month jail term. (Wat. Code, § 13268(a), (b), (e); Penal Code, § 19.)

27 ⁷ Petitioner AMR would have participated in such a process had one been made available to it.
28 Petitioner AMR requested the Regional Board to vacate or rescind the challenged orders and
determinations to allow it sufficient time to investigate the relevant facts and respond to the
Regional Board's determinations without need of filing this Petition, but the Regional Board
refused this request.

1 (3) Any owner of property where an unauthorized release of a
2 hazardous substance from an underground storage tank has
occurred; and

3 (4) Any person who had or has control over an underground
4 storage tank at the time of or following an unauthorized release of a
hazardous substances.

5 (23 Cal. Code Regs., § 2720.)

6 (c) With regard to § 2720(1), there is no evidence that AMR, or any of
7 its alleged predecessors, is currently an owner or operator of a UST on the 14205 San Pablo
8 property. The Regional Board's July 26, 2012 letter does not make, recite or attach evidence
9 supporting such a contention, and the attached evidence actually indicates there are no currently
10 existing USTs on the subject property and that they were removed on an unknown date or dates
11 over 30 years ago. Neither AMR, nor any of its alleged predecessors, ever owned the subject
12 property.

13 (d) With regard to § 2720(2), there is no evidence of the
14 "discontinuation" date/s of the particular UST or USTs in question (which consultant Cook
15 suggests are the newer USTs installed by the Noes after removal of the old ones in late 1964), or
16 that AMR or any of its alleged predecessors ever owned or operated any relevant UST or USTs
17 immediately before those (unknown) date/s. Additionally, AMR is informed and believes that
18 currently available evidence not contained in the record due to the Regional Board's lack of due
19 process and independent investigation indicates that Cadillac stored medical supplies on the site
20 pursuant to a lease for a very short time in the late 1970s, and did not even use any USTs, much
21 less any that USTs that were ever shown to have leaked. AMR and RAS never leased or
22 occupied the site or used any USTs. Cadillac, RAS and AMR never owned any USTs. *Further,*
23 *AMR is not Cadillac. No evidence in the record establishes the nature of any transactions*
24 *between Cadillac, RAS and/or AMR, or that AMR has succeeded to any legal obligations or*
25 *liabilities of either Cadillac or RAS with respect to the contamination. The relevant regulation*
26 *does not on its face even provide for liability of successor entities.*
27
28

1 (e) With regard to § 2720(3), DBW Partners LLC, is the acknowledged
2 current owner of the subject property (having purchased it with knowledge of the contamination
3 in 2004) and there is no evidence that AMR or any of its alleged predecessors (i.e., Cadillac and
4 RAS) own or have ever owned the subject real property (including any USTs) at 14205 San
5 Pablo Avenue, San Pablo, California, and the Regional Board's July 26, 2012 letter identifies
6 others as past property owners (e.g., Preston L. Noe, Jr., Marlene A. Noe, James G. Noe, Leona
7 M. Noe).

8 (f) With regard to § 2720(4), there is no evidence that AMR or any of
9 its alleged predecessors (i.e., Cadillac and RAS) controlled any relevant UST or USTs at the
10 time of any unauthorized release; to the contrary, the Regional Board's letter states the Noes
11 were owners of the real property "at the time of the activity (operation of gasoline station) that
12 resulted in the discharge"⁸ Further, there is no evidence that AMR or any of its alleged
13 predecessors "controlled" any relevant UST or USTs "following an unauthorized release of a
14 hazardous substance" from those UST/s. Cadillac may have leased the property for a short time
15 around late 1977, but it never owned the site, and there is no evidence or even allegation that the
16 terms of its lease gave it the right to "control" any USTs, or that it ever, in fact, exercised such
17 control.⁹

18 (g) The letter directive contains no findings or evidence of the terms of
19 the acquisition of Cadillac by RAS, and the records of the California Secretary of State reflect
20 that Cadillac has been "merged" out of existence. *There is thus not only no evidence that*
21 *Cadillac itself is (or would have been) a responsible party under 23 Cal. Code Regs., § 2720,*
22 *but no evidence or authority cited in the letter directive that its relevant liabilities (if any) ever*

23 ⁸ In their capacity or capacities as owners of the property, the owner or owners necessarily
24 controlled the USTs on and within it to the exclusion of all others, absent evidence of any legally
25 effective agreement or agreements to the contrary; no such evidence appears in the record.

26 ⁹ As noted, there is no evidence that Cadillac ever even used the USTs in the brief period it leased
27 the property, only that it applied for and was granted by the City a one-year use permit giving it
28 permission to use the gas pumps on the property for its ambulances, among other permitted uses.
There is no evidence in the record that all the conditions imposed on the use permit were
acceptable to Cadillac, that the use permit was ever exercised, in whole or in part, or that it was
ever renewed. Additionally, the record contains no evidence of holes in or leaks from the newer,
post-1964 USTs at the site, which were the only USTs even in existence at the time of any
involvement of CAS with the 14205 San Pablo site.

1 *passed to RAS – much less to AMR which was another step removed – either as a matter of*
2 *California corporate law or contract.*

3 (h) The application of Water Code § 13267 through the letter directive
4 to AMR here, without any prior notice or any opportunity to be heard, improperly shifted the
5 burden of proof and production to AMR and violated its procedural and substantive due process
6 rights under the California and United States Constitutions as well as the Water Code. Due
7 process requires a fair procedure, including notice and a meaningful opportunity to be heard
8 before the deprivation of substantial or property rights or the imposition of significant liabilities.

9 (i) As contained in its letter directive, the Regional Board’s Water
10 Code § 13267 order violates the terms of that statute, and due process and all applicable law, to
11 the extent it purports to compel the creation of extensive new (as opposed to the production of
12 existing) technical reports, and it fails to establish the statutory predicate conditions for its
13 application, i.e., that the Regional Board is establishing or reviewing a water quality control plan
14 or WDR permit to which the order is ancillary. (Wat. Code, § 13467(e).)

15 (j) As contained in its letter directive, the Regional Board’s Water
16 Code § 13267 order violates the terms of the statute by failing to (1) contain a “written
17 explanation with regard to the need for the reports,” (2) demonstrate that the “burden, including
18 costs, of these reports shall bear a reasonable relationship to the need for the report and the
19 benefits to be obtained from the reports,” and (3) “identify the evidence that supports requiring
20 that person to provide the report.”

21 (k) As contained in its letter directive and applied to AMR, the
22 Regional Board’s responsible party determination and work plan/report order also violate due
23 process, applicable statutes of limitation, the principle of laches, and legal and equitable
24 principles of estoppel, waiver, comparative fault, and unclean hands, inter alia. It is illegal,
25 inequitable, and prejudicially violates AMR’s potential right to contribution, indemnity, cost
26 recovery, and other remedies and defenses, for DWB Partners LLC and the Regional Board to
27 wait over 8 years since DWB Partners LLC first bought the property with knowledge of the
28 contamination to attempt to name AMR (or anyone else) as a responsible party, based on

1 evidence in the public record that is in some instances nearly 50 years old, allowing key
2 witnesses (e.g., James Runions) to die, memories to fade, and key documents to be lost or
3 destroyed during the wholly unnecessary 8-plus year delay. The Regional Board and DWB
4 Partners LLC have both operated for over many years on the assumption that DWB Partners
5 LLC is the *only* responsible party for contamination at the subject property, and the Regional
6 Board has allowed DWB Partners LLC to largely control testing, monitoring, development and
7 design of work plans, remediation plans, etc., which have apparently failed to stop the migration
8 of contamination and actually worsened the situation by allowing or exacerbating the spread of
9 the contamination and increasing the costs of cleanup. The Regional Board and DWB Partners
10 LLC are barred by all applicable statutes of limitation and have waived any right to attempt to
11 name AMR as a responsible party under these circumstances, and at this late date they are
12 barred, precluded, and estopped by law and equity from doing so now to AMR's extreme
13 prejudice.

14 **IV. CONCLUSION**

15 For the above reasons, inter alia, Petitioner AMR respectfully requests that the
16 State Board review the Regional Board's letter directive in its entirety, and specifically review
17 and reverse it as to all orders, determinations and directions therein affecting AMR, including the
18 determination that AMR is a responsible party based on the alleged responsible party status of
19 Cadillac actions under a brief lease around 1977 which has not yet been located or placed in the
20 record, and on alleged corporate successor liability twice removed, based on transactions whose
21 relevant terms are not even alleged and have not been shown by any evidence whatsoever in this
22 record. The record evidence utterly fails to support any finding that AMR is a responsible party
23 and affirmatively shows it is not.

24 Dated: August 24, 2012

Respectfully submitted,

MILLER STARR REGALIA

26 By: 

27 ARTHUR F. COON

Attorneys for Petitioner

28 AMERICAN MEDICAL RESPONSE, INC.

1 **PROOF OF SERVICE**

2 I, Karen Wigylus, declare:

3 I am a resident of the State of California and over the age of eighteen years, and
4 not a party to the within action; my business address is 1331 N. California Blvd., Fifth Floor, Post
5 Office Box 8177, Walnut Creek, CA 94596. On August 24, 2012, I served the within
6 documents:

7 **PETITIONER AMERICAN MEDICAL RESPONSE, INC.'S PRELIMINARY
8 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR
9 REVIEW OF SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL
10 BOARD'S ORDER MAKING RESPONSIBLE PARTY DETERMINATION AND
11 REQUIRING REPORT PURSUANT TO WATER CODE § 13267_[Wat. Code, § 13320]**

12 **Via E-Mail:** by transmitting the document listed above via pdf format to the
13 email addresses set forth below by 5:00 p.m.(Pacific Time).

14 **Via Overnight Mail:** by placing the document(s) listed above in a sealed
15 envelope for overnight delivery via *Federal Express*, or other overnight mail
16 service, with fees fully prepaid, and deposited for same-day pick-up by an
17 authorized representative.

18 Philip G. Wyels jbashaw@waterboards.ca.gov and
19 Assistant Chief Counsel pwyels@waterboards.ca.gov
20 State Water Resources Control Board
21 1001 I Street, 22nd Floor
22 Sacramento, CA 95814
23 916.341.5178 (phone)
24 916.341.5199 (fax)

25 **Via Mail:** by placing the document listed above in a sealed envelope with postage
26 thereon fully prepaid, in the United States mail at Walnut Creek, California
27 addressed as set forth below.

28 DWB Partners LLC Preston L. Noe, Jr. and Marlene A. Noe
Attn: Bradford F. Marks 2675 Hegan Lane
1721 Broadway, Suite 202 Chico, CA 95928
Oakland, CA 94612

Virgil Clifton James G. Noe and Leona M. Noe
2203 Cypress Avenue P. O. Box 101
San Pablo, CA 94806 San Pablo, CA 94806

I am readily familiar with the firm's practice of collection and processing
correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
Service on that same day with postage thereon fully prepaid in the ordinary course of business. I
am aware that on motion of the party served, service is presumed invalid if postal cancellation
date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

3 Executed on August 24, 2012, at Walnut Creek, California.

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6 Karen Wigylus
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1 **PROOF OF SERVICE**

2 (File No. 07-0889)

3 I, Karen Wigylus, declare:

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12 hand-delivered to the following person(s) at the address(es) set forth below.

13 Bruce H. Wolfe, Executive Director
14 San Francisco Bay Regional Quality
15 Control Board
16 1515 Clay Street, Suite 1400
17 Oakland, CA 94612
18 bsieminski@waterboards.ca.gov

19 Ms. Sue Loyd
20 CCCHSD
21 4585 Pacheco Blvd., Suite 100
22 Martinez, CA 94553
23 sloyd@hsd.co.contra-costa.ca.us

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17 thereon fully prepaid, in the United States mail at Walnut Creek, California
18 addressed as set forth below.

19 Mr. Ed Hemmat
20 edhemmat@yahoo.com
21 3840 San Pablo Ave
22 Emeryville, CA 94608

23 Mr. Tim Cook
24 tcook@cookenvironmental.com
25 Cook Environmental Services, Inc.
26 1485 Treat Blvd., Suite 203A
27 Walnut Creek, CA 94597

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1 ARTHUR F. COON (Bar No. 124206)
2 MARK A. CAMERON (Bar No. 100449)
3 MILLER STARR REGALIA
4 A Professional Law Corporation
5 1331 N. California Blvd., Fifth Floor
6 Post Office Box 8177
7 Walnut Creek, California 94596
8 Telephone: 925 935 9400
9 Facsimile: 925 933 4126
10 arthur.coon@msrlegal.com;
11 mark.cameron@msrlegal.com

12 Attorneys for Petitioner
13 AMERICAN MEDICAL RESPONSE, INC.

14 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

15 IN THE MATTER OF THE PETITION
16 OF AMERICAN MEDICAL RESPONSE,
17 INC. FOR REVIEW OF ACTION AND
18 FAILURE TO ACT BY THE
19 CALIFORNIA REGIONAL WATER
20 QUALITY CONTROL BOARD, SAN
21 FRANCISCO BAY REGION, IN
22 ISSUING ORDER MAKING
23 RESPONSIBLE PARTY
24 DETERMINATION AND REQUIRING
25 REPORT PURSUANT TO CALIFORNIA
26 WATER CODE SECTION 13267.

File No. 07-0889 (BGS)

PETITIONER AMERICAN MEDICAL
RESPONSE, INC.'S REQUEST TO SAN
FRANCISCO BAY REGIONAL WATER
QUALITY CONTROL BOARD AND ITS
EXECUTIVE OFFICER BRUCE WOLFE
FOR PREPARATION OF RECORD OF
PROCEEDINGS

27 Petitioner AMERICAN MEDICAL RESPONSE, INC. ("AMR" or "Petitioner")
28 hereby requests in the above-captioned matter that the San Francisco Bay Regional Water Quality
Control Board ("SFCRWQCB" or "Regional Board") and its Executive Officer Bruce Wolfe
prepare the complete record of proceedings in the above-captioned matter, SFCRWQCB File
No. 07-0889 (BGS), including all documents, pleadings, letters, reports, notices, orders,
decisions, exhibits, evidence, photos, or other papers, and any transcripts in the matter that are
related in any way to Mr. Wolfe's July 26 2012 letter directive addressed to Petitioner AMR and
others, or its subject matter. This request is made in connection with Petitioner's Petition to the

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State Water Resources Control Board for review of said July 26, 2012 letter directive and the Regional Board's orders, determinations and directives pertaining to Petitioner.

Dated: August 24, 2012

Respectfully submitted,

MILLER STARR REGALIA

By: 

ARTHUR F. COON
Attorneys for Petitioner
AMERICAN MEDICAL RESPONSE, INC.

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9 EXECUTIVE OFFICER BRUCE WOLFE FOR PREPARATION OF RECORD OF
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18 Assistant Chief Counsel pwyels@waterboards.ca.gov
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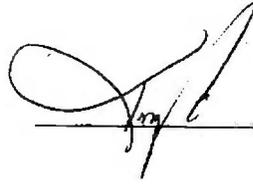
25 Mr. Ed Hemmat
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