

1 JEFFER MANGELS BUTLER & MITCHELL LLP  
2 KENNETH A. EHRLICH (SBN 150570)  
3 REBECCA COUCH BARNHARDT (SBN 243205)  
4 1900 Avenue of the Stars, Seventh Floor  
5 Los Angeles, California 90067-4308  
6 Telephone: (310) 201-3566  
7 Facsimile: (310) 712-8541  
8 Email: RCB@jmbm.com

9 Attorneys for Petitioner GCDP



10 **STATE WATER RESOURCES CONTROL BOARD**

11 In the Matter of Appeal of Order No. R4-2013-  
12 0056 Issued to Glendale Colorado Development  
13 Partners for 5040 San Fernando Road,  
14 Glendale, California.

**GLENDALE COLORADO DEVELOPMENT  
PARTNER'S ("GCDP") PETITION FOR  
REVIEW, REQUEST FOR HEARING, AND  
REQUEST FOR STAY;**

**DECLARATION OF REBECCA COUCH  
BARNHARDT FILED CONCURRENTLY  
HEREWITH**

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
JMBM  
Jeffer Mangels  
Butler & Mitchell LLP

1 **I. PETITION FOR REVIEW**

2 In accordance with California Water Code § 13320<sup>1</sup>, Glendale Colorado Development  
3 Partners ("GCDP" or "Petitioner") petitions the State Water Resources Control Board ("SWRCB"),  
4 to review and rescind Order No. R4-2013-0056 ("Order") issued by the Los Angeles Regional  
5 Water Quality Control Board ("RWQCB") to GCDP on October 9, 2013.<sup>2</sup> Declaration of Rebecca  
6 Couch Barnhardt, concurrently submitted in support of this Petition ("Barnhardt Decl."), Exh. 6.  
7 The Order requires GCDP to implement a workplan and submit a Subsurface Soil Investigation  
8 Report ("Report") by January 15, 2014, for the real property at 5040 San Fernando Road, Glendale,  
9 California ("Property"). Barnhardt Decl., Exhs. 12 and 13.

10 The Order, as applied to GCDP, cannot stand because: 1) no historical or current evidence  
11 demonstrates, or even suggests, the existence of any releases of heavy metals at the Property; 2)  
12 prior environmental assessments do not indicate the presence of heavy metals or recommend  
13 additional testing for heavy metals; and 3) to the extent any heavy metals are found at the Property,  
14 the source of such would be releases from other known dischargers in the area, including Excello  
15 Plating Company<sup>3</sup>, Drilube<sup>4</sup>, and/or the dischargers in the Glendale Chromium Operable Unit of the  
16 San Fernando Valley Superfund Site. For these reasons, the SWRCB should rescind the Order.

17 GCDP requests a hearing on this Petition pursuant to Water Code § 13320 and Title 23  
18 § 2050 of the California Code of Regulations ("CCR"). GCDP also requests that the Order be  
19 stayed, pending the outcome of the SWRCB's decision, pursuant to Water Code § 13321 and 23  
20 CCR § 2053.

21  
22  
23  
24  
25 <sup>1</sup> All further references to the Water Code refer to the California Water Code unless otherwise noted.

26 <sup>2</sup> This is GCDP's first opportunity to contest the RWQCB's decision to issue the Order pursuant to Water Code § 13320  
and 23 CCR § 2050. Although the Order was originally issued on April 10, 2013, GCDP was not named as a  
responsible party under that Order until the RWQCB's October 9, 2013 correspondence. See Barnhardt Decl., Exhs. 6  
and 12.

27 <sup>3</sup> See Consent Order, Docket HWCA 2003-0175 August 5, 2004, Barnhardt Decl., Exh. 16.

28 <sup>4</sup> See Cleanup and Abatement Order R4-2002-0068, Barnhardt Decl., Exh. 17.

1           A.     NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS OF  
2           PETITIONER

3           Glendale Colorado Development Partners  
4           Attn: Mr. David Nagel  
5           6222 Wilshire Blvd.  
6           Suite 400  
7           Los Angeles, CA 90048  
8           Telephone: (323) 556-6600  
9           Email: [Dnagel@decronproperties.com](mailto:Dnagel@decronproperties.com)

10           GCDP requests that copies of all communications and documents relating to this Petition  
11           also be sent to:

12           Kenneth Ehrlich, Esq.  
13           Rebecca Couch Barnhardt, Esq.  
14           Jeffer, Mangels, Butler & Mitchell LLP  
15           1900 Avenue of the Stars, 7th Floor  
16           Los Angeles, CA 90067  
17           Telephone: (310) 203-0566  
18           Email: [KAE@jmbm.com](mailto:KAE@jmbm.com)  
19                 [RCB@jmbm.com](mailto:RCB@jmbm.com)

20           B.     RWQCB'S SPECIFIC ACTION FOR WHICH GCDP SEEKS SWRCB  
21           REVIEW: RESCIND THE ORDER

22           GCDP requests that the SWRCB review and rescind the Order (No. R4-2013-0056) issued  
23           to GCDP by the RWQCB.

24           C.     DATE ON WHICH THE RWQCB ACTED OR FAILED TO ACT

25           The RWQCB acted on October 9, 2013, when it revised the Order and named GCDP as a  
26           responsible party. Barnhardt Decl., Exh. 12.

27           D.     PETITIONER'S STATEMENT OF REASONS THE RWQCB'S ACTION OR  
28           INACTION WAS INAPPROPRIATE AND IMPROPER

1.         History of Operations at the Property.

          The Property occupies approximately eight (8) acres in the western part of the City of  
Glendale. Barnhardt Decl., Exh. 1 at 2. Various businesses historically occupied the western  
portion of the Property while residences have historically occupied the eastern side. *Id.* In 1942,

1 Kinnear Motors occupied two buildings on the Property. Barnhardt Decl., Exh. 1 at 3. In 1946,  
 2 Mitchell Camera purchased the Property from Kinnear Motors and began operating. *Id.*

3 a. Mitchell Camera's Alleged Operations.

4 In or about 1991, ENVIRON interviewed Mr. Chuck Mallory, the former Vice-President  
 5 and Operations Manager of Mitchell Camera, pursuant to the consultant's completion of the June  
 6 1991 Report for the Property. *Id.* Mr. Mallory allegedly stated that Mitchell Camera manufactured  
 7 motion picture cameras for the entertainment industry. *Id.* The company's manufacturing activities  
 8 included milling, tool/die, gear hobbing, deburring, painting, grinding, heat treating, plating,  
 9 degreasing, and lathing. *Id.* at 4. According to Mr. Mallory, waste solids from manufacturing  
 10 activities were stored in drums in the alley behind the southeastern wall of the main building and  
 11 removed by a waste disposal company. *Id.* Mr. Mallory stated that spent solvents were not  
 12 generated; vapors were released through the roof, and residual sludge materials were collected and  
 13 placed in 55 gallon drums for offsite disposal. *Id.*

14 Mr. Mallory also told ENVIRON that plating activities were conducted in the degreasing  
 15 area. *Id.* Mr. Mallory could not recall the degreasing agent used, but remembered it was kerosene  
 16 based and manufactured by Standard Oil. *Id.* Plating equipment included six aboveground 40  
 17 gallon plating tanks, and three 50 gallon acid tanks. Mr. Mallory stated that plating solutions may  
 18 have contained aluminum and copper, and acid tanks may have contained sulfuric acid. *Id.*  
 19 Significantly, Mr. Mallory did not believe that any releases or spills of plating fluids had occurred  
 20 during the period of operations. *Id.* In summary, the "waste management practices described by  
 21 Mr. Mallory indicated that all liquid and solid hazardous wastes were contained in drums,  
 22 temporarily stored in the alley behind the main building, and hauled off-site for disposal." *Id.*

23 To date, GCDP has not had the opportunity to speak with Mr. Mallory. To GCDP's  
 24 knowledge, Mr. Mallory has never testified under oath as to any of the "facts" allegedly conveyed to  
 25 ENVIRON.

26 b. Anderson Desk's Alleged Operations.

27 Anderson Desk manufactured desks at the Property from 1975 until 1990, when the Property  
 28 was sold to GCDP. *Id.* at 5. ENVIRON interviewed Mr. Darrell Wyatt, the Operations Manager at

1 Anderson Desk as part of its June 1991 Report. Manufacturing activities at Anderson Desk  
2 included woodworking, assembly, warehousing, and finishing. The finishing activities consisted of  
3 staining, sealing, and top coating. Barnhardt Decl., Exh. 1 at 5.

4 Anderson Desk appears to have used a number of solvent blends in its operations. These  
5 products were allegedly stored in drums, and piped to the finishing area in overhead piping. *Id.*  
6 Mr. Wyatt indicated that liquid wastes were contained in the water curtain paint booth, and removed  
7 from the Property using vacuum trucks. *Id.* Solid hazardous wastes were contained in drums,  
8 temporarily stored in the alley behind the main building, and then hauled offsite for disposal. *Id.* at  
9 6.

10 To date, GCDP has not had the opportunity to speak with Mr. Wyatt. To GCDP's  
11 knowledge, Mr. Wyatt has never testified under oath as to any of the "facts" allegedly conveyed to  
12 ENVIRON.

13 c. GCDP's Connection to the Property.

14 GCDP acquired the Property in 1990. Barnhardt Decl., Exh. 8. GCDP does not conduct any  
15 manufacturing or other operations at the Property; it is simply the owner and landlord. GCDP  
16 leased the Property to Home Depot in the early 1990s, and Home Depot continues to occupy the  
17 Property today. Barnhardt Decl., Exh. 7 at 2. Home Depot is a retail hardware and home  
18 improvement store with no history of any releases or discharges. *Id.*

19 2. Historical Investigations at the Property.

20 Anderson Desk conducted two subsurface investigations at the Property from 1975-1990.  
21 Barnhardt Decl., Exh. 1 at 6. Leroy Crandall (Crandall) conducted the first investigation in 1987.  
22 *Id.* Crandall noted four areas of concern and recommended further investigation. The areas of  
23 concern were: 1) the outdoor drum storage area in the southeast parking lot; 2) the outdoor drum  
24 storage area in the alley; 3) the vacant lot with a topographic depression acting as a sump; and 4) the  
25 possible location of underground storage tanks. *Id.* at 7. Seven borings were drilled during this  
26 investigation. *Id.* at 6.

27 Crandall concluded that the soil in Boring 3 might contain petroleum hydrocarbons because  
28 of its "moderate hydrocarbon odors." *Id.* at 6. IT Corporation was then retained to conduct an

1 environmental assessment at the Property in 1988. Barnhardt Decl., Exh. 1 at p. 6. IT Corporation  
 2 drilled 19 soil borings to evaluate the subsurface soil. Twelve borings were drilled in the areas of  
 3 concern listed above and analyzed for petroleum hydrocarbons. *Id.* at p. 7. In 1990, Patterson  
 4 Resources was retained to perform a soil excavation. ENVIRON concluded that the "excavation  
 5 conducted by Patterson Resources appears to have removed all chemically affected soil in this  
 6 area." *Id.*

7 In June 1991, ENVIRON conducted a soil gas investigation. The purpose of the soil gas  
 8 investigation was to evaluate the possible presence of volatile organic compounds ("VOCs") in soil  
 9 and groundwater. *Id.* Pursuant to the RWQCB's request, ENVIRON targeted ten borings within the  
 10 various areas of concern identified by the RWQCB. *Id.* at pp. 7-8.

11 Background levels of selected chemicals were determined in the soil gas at six locations. *Id.*  
 12 at 8. Soil gas samples were then collected from 54 sampling locations and analyzed for VOCs. *Id.*  
 13 Carbon tetrachloride (CCl<sub>4</sub>) was detected at concentrations exceeding background levels at seven  
 14 probe locations, mainly near the clarifier and the Anderson Desk finishing area. *Id.*  
 15 Trichloroethylene (TCE), tetrachloroethylene (PCE), and 1,1,1-trichloroethane (TCA) detections  
 16 also exceeded background levels in the vicinity of the clarifier, near the chemical storage area, and  
 17 northwest of the drum storage area. *Id.*

18 Although the shallow VOC contamination exceeded allowable limits, a relatively small  
 19 volume of soil was impacted. The RWQCB determined that the attenuation of impact with depth  
 20 and depth to groundwater did not present a substantial continuing threat to groundwater quality.  
 21 Barnhardt Decl., Exh. 3 at 1. Therefore, cleanup was not warranted. *Id.* In its August 1991  
 22 Subsurface Investigation Report, ENVIRON stated that:

**[T]he property does not appear to have contributed to known  
 regional ground water contamination in the area. It is  
 ENVIRON's opinion that all necessary work at this site has been  
 completed, and not further work is warranted.**

26 Barnhardt Decl., Exh. 2 at 2 (emphasis added). In 1997, the RWQCB issued a No Further  
 27 Requirements ("NFA Letter") letter with respect to the VOC issues at the Property. Barnhardt  
 28 Decl., Exh. 3.

1 No further action was taken at the Property until fifteen years later, in 2012, when the  
2 RWQCB issued a § 13267 order to Home Depot.

3 3. Recent RWQCB Action at the Property.

4 On October 24, 2012, the RWQCB issued a § 13267 order to Home Depot, GCDP's lessee at  
5 the Property. Barnhardt Decl., Exh. 4. The § 13267 order states, "Regional Board has evidence in  
6 the case file for the Site indicating that there is or has been a potential for discharge of waste at or  
7 from the Site." *Id.* at p. 1. No additional evidence or information regarding any alleged discharges  
8 was provided.

9 On February 13, 2013, the undersigned ("JMBM") responded on behalf of Decron Properties  
10 ("Decron") and informed the RWQCB that Home Depot was not the owner of the Property.  
11 Barnhardt Decl., Exh. 5. JMBM also informed the RWQCB that the Order was improper because:  
12 1) no historical or current evidence demonstrates or even suggests that any releases of heavy metals  
13 have occurred at the Property; 2) prior environmental assessments do not indicate the presence of  
14 heavy metals or recommend additional testing for heavy metals; and 3) to the extent any heavy  
15 metals are found at the Property, they would emanate from other known dischargers in the area,  
16 including Excello Plating Company, Drilube, and/or the dischargers in the Glendale Chromium  
17 Operable Unit. Further, any attempt to investigate and/or cleanup potential heavy metal  
18 contamination would be duplicative of and/or interfere with ongoing investigations and cleanup  
19 efforts. Accordingly, the Order should be withdrawn. *Id.*

20 On April 10, 2013, the RWQCB issued the current Order to Decron and Stevenson Real  
21 Estate ("Stevenson"). The Order directed Decron and Stevenson to "prepare and submit a  
22 Subsurface Soil Investigation Workplan in order to evaluate the conditions at the Site and determine  
23 if any unauthorized release of heavy metal compounds, specifically chromium, has impacted the  
24 soils beneath the Site that could consequently pose a threat to groundwater." Barnhardt Decl., Exh.  
25 6 at p. 2. The RWQCB's April 10, 2013 correspondence failed to provide any new evidence or  
26 information in support of its Order. Rather, without any substantiation or confirmation, the  
27 RWQCB states:  
28

1 Mitchell Camera operations at the Site consisted of motion picture  
2 camera manufacturing for the entertainment industry. The  
3 manufacturing processes involved the use of various chemicals such  
4 as solvents, acids, and electrolyte solutions which may impact  
5 groundwater quality if released to the subsurface environment.

6 Barnhardt Decl., Exh. 6.

7 On July 17, 2013, GCDP, Decron, and Stevenson informed the RWQCB that: 1) GCDP  
8 owned the Property, and 2) the RWQCB had failed to substantively address any of the issues raised  
9 in its February 13, 2013 correspondence or present any evidence to justify the issuance of the Order.  
10 Barnhardt Decl., Exh. 7. On July 22, 2013, GCDP's counsel participated in a conference call with  
11 Mr. Jeffrey Hu of the RWQCB to inform the RWQCB, once again, that GCDP owned the Property.  
12 Barnhardt Decl., ¶ 9. GCDP also provided Mr. Hu with a copy of the 1990 Grant Deed for the  
13 Property on July 22, 2013. Barnhardt Decl., Exh. 8.

14 On August 19, 2013, the RWQCB disregarded the Grant Deed, and the other substantive  
15 issues raised by counsel, and informed Decron and Stevenson that, "the RWQCB has considered the  
16 comments in the letter and has determined that the information available supports the conclusion  
17 that the entities named in the Order are suspected of causing a discharge and are properly named."  
18 Barnhardt Decl., Exh. 10. The RWQCB's August 19, 2013 correspondence did not provide any  
19 evidence or other information to support these new allegations.

20 On September 4, 2013, counsel for Decron, GCDP, and Stevenson informed the RWQCB,  
21 once again, that GCDP was the owner of the Property. Counsel also reiterated that: 1) no data or  
22 other information supports the RWQCB's allegations concerning potential discharges; and 2) the  
23 RWQCB has failed to provide any evidence to support the issuance of the Order. Barnhardt Decl.,  
24 Exh. 11.

25 On October 9, 2013, the RWQCB finally admitted GCDP was the owner of the Property, as  
26 the proper, potentially responsible party—to the extent that the current owner of the Property should  
27 be responsible for any historic contamination at the Property. Barnhardt Decl., Exh. 12. The  
28 October 9, 2013 letter also named GCDP as a responsible party and ordered GCDP to implement  
the approved workplan. Barnhardt Decl., Exhs. 12 and 13. Although the RWQCB finally identified

1 the correct owner of the Property, it again failed to provide any evidence to support the issuance of  
2 the Order against GCDP. The RWQCB's October 9, 2013 letters fail to address any of the  
3 substantive issues raised in counsel's letters of February, 13, 2013, July 17, 2013, July 22, 2013, or  
4 September 4, 2013, concerning the lack of evidence of any known or suspected discharges of heavy  
5 metals. Barnhardt Decl., Exhs. 12 and 13.

6 4. The Burden of the RWQCB's Order is Not Justified in Light of the  
7 Limited/Non-Existent Benefits to Be Gained.

8 Water Code § 13267(b)(1) provides: "[t]he burden, including costs, of these reports shall  
9 bear a reasonable relationship to the need for the report and benefits to be obtained from the  
10 reports." *City of Arcadia v. State Water Resources Control Board*, 135 Cal.App.4th 1392, 1413-  
11 1414 (2006) ("when [a Regional Board] requires a polluter to furnish 'technical or monitoring  
12 program reports,' the 'burden, including costs, of these reports shall bear a reasonable relationship  
13 to the need for the report[s] and the benefits to be obtained from the reports.'"). Here, no benefit  
14 exists by naming GCDP as a responsible party and requiring GCDP to implement the workplan  
15 because: 1) there is no historical or current evidence of heavy metal discharges or releases at the  
16 Property; and 2) to the extent heavy metals are present, they are consistent with releases from other  
17 known dischargers in the area, including Excello Plating Company, Drilube, and/or the Glendale  
18 Chromium Operable Unit. No new or helpful information will be gained as a result of forcing  
19 GCDP to implement the workplan. Accordingly, the Order issued to GCDP should be rescinded.

20 a. No evidence of discharges or releases of heavy metals, including  
21 chromium, exists at the Property.

22 No evidence, current or historic, justifies the issuance of the Order against GCDP. GCDP's  
23 letters of February 13, 2013, July 17, 2013, July 22, 2013, and September 4, 2013 clearly state this  
24 point. *See* Barnhardt Decl., Exhs. 5, 7, 8 and 11. GCDP is not a known, or even suspected,  
25 discharger of heavy metals. Further, there is no evidence of any historical or recent discharges of  
26 heavy metals at the Property, and the RWQCB can point to none. The Order itself fails to provide  
27 any real evidence regarding alleged discharges:

28 Regional Board staff has obtained evidence indicating that there has  
been a *potential for discharge* of waste at or from the Site... The

1 information is necessary to assure adequate cleanup of the former  
2 Mitchell Camera facility, which as described above *may have*  
3 *discharged chromium waste...*

4 Barnhardt Decl., Exh. 6 at 2 (emphasis added).

5 The RWQCB relies on statements allegedly made by Mr. Mallory regarding the purported  
6 plating operations. *Id.* at 4 ("Mr. Chuck Mallory stated that Mitchell Camera conducted plating  
7 activities at the Site. Mr. Chuck Mallory also stated that plating equipment at the Site consisted of  
8 six (6) 40-gallon plating tanks and three (3) 50-gallon acid tanks.") However, the RWQCB chooses  
9 to ignore other statements made by Mr. Mallory, including his recollection that spills and leaks did  
10 not occur. Barnhardt Decl., Exh. 1 at 4 ("Mr. Mallory did not believe that releases/spills of plating  
11 fluids had occurred during the period of operation.")

12 The RWQCB also argues that the Order is appropriate because "there is no documentation  
13 that any subsurface soil investigation for heavy metals was performed." Barnhardt Decl., Exh. 6 at  
14 1. This argument fails to acknowledge that: 1) an NFA was issued for the Property in 1997; 2) past  
15 environmental reports do not recommend additional testing or investigation; and 3) the current  
16 lessee is a retail home improvement store that has been onsite for more than fifteen (15) years and is  
17 not suspected of any of discharges or releases. The absence of an unnecessary and unwarranted  
18 subsurface soil investigation for heavy metals does not justify the issuance of the Order against  
19 GCDP. *See In the Matter of the Petition of HR Textron, Inc.*, WQ 94-2 at 14 (1994) Barnhardt  
20 Decl., Exh. 14 (stating that the need for technical reports is "site specific" and "[s]ince the evidence  
21 supports the conclusion that it is unlikely that waste from the tanks has discharged to ground water,  
22 it is not reasonable to require ground water monitoring.")

23 b. The Required Investigation Will Not Provide New Or Beneficial  
24 Information Because, Even If Heavy Metals Are Present At The  
25 Property, They Are Likely From Known Dischargers In The Area.

26 To the extent heavy metals are present at the Property, which GCDP presently denies, such  
27 presence remains consistent with releases from other known dischargers in the area, including  
28 Excello Plating Company, Drilube, and/or the Glendale Chromium Operable Unit. Consequently,  
no new or helpful information is gained by naming GCDP as a responsible party and requiring them

1 to investigate the Property. In fact, any investigation or cleanup by GCDP will likely interfere with  
2 or be duplicative of other ongoing efforts. If the RWQCB is concerned about the scope and extent  
3 of nearby heavy metal contamination, it should require the existing dischargers to further delineate  
4 the scope and extent of existing contamination before naming innocent landowners as responsible  
5 parties and forcing them to expend their own time, money and resources.

6 **E. PETITIONER IS AGGRIEVED BECAUSE, IF THE ORDER IS NOT**  
7 **RESCINDED, IT WILL BE FORCED TO SPEND TIME AND MONEY TO**  
8 **CONDUCT AN UNWARRANTED INVESTIGATION THAT WILL NOT**  
9 **YIELD ANY NEW OR BENEFICIAL INFORMATION.**

10 The RWQCB's decision to revise the Order, and name GCDP as a responsible party,  
11 aggrieves GCDP because it is now required to spend additional time, money, and resources to  
12 conduct an unwarranted and unnecessary investigation regarding *potential* releases of heavy metals.  
13 GCDP is further aggrieved because the required investigation will not provide any benefit to the  
14 RWQCB or the public. There is no history of heavy metal releases (suspected or known) at the  
15 Property. To the extent heavy metals are discovered, they are consistent with the existing, nearby  
16 known dischargers; *i.e.*, Excello Plating Company, Drilube, and/or the dischargers in the Glendale  
17 Chromium Operable Unit. Accordingly, the required investigation will only serve to aggrieve  
18 GCDP.

19 **F. THE SPECIFIC ACTION BY THE SWRCB THAT THE PETITIONER**  
20 **REQUESTS: GRANT GCDP'S REQUEST FOR STAY AND RESCIND THE**  
21 **RWQCB'S ORDER.**

22 GCDP requests that the SWRCB: 1) stay the Order pending the SWRCB's decision on the  
23 Petition; and 2) rescind the Order issued against GCDP.

24 **G. PETITIONER'S STATEMENT OF POINTS AND AUTHORITIES IN**  
25 **SUPPORT OF LEGAL ISSUES RAISED BY THE PETITION**

26 Water Code § 13267 allows the RWQCB to issue orders to "any person who has discharged,  
27 discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste  
28 within its region..." Cal. Water Code § 13267. GCDP is not a discharger of heavy metals and

1 does not propose to discharge heavy metals. Further, no evidence exists of any heavy metal  
 2 discharges at the Property. Accordingly, the SWRCB should rescind the Order because the  
 3 RWQCB has not provided sufficient evidence in support of its decision to name GCDP as a  
 4 responsible party.

5 The RWQCB seeks to justify its decision stating: "there is no documentation that any  
 6 subsurface soil investigation for heavy metals was performed" and Mitchell Camera conducted  
 7 "plating activities at the Site." Barnhardt Decl., Exh. 6 at 1-2. Even if Mitchell Camera conducted  
 8 plating activities, Mr. Mallory stated that he "did not believe that releases/spills of plating fluids had  
 9 occurred during the period of operation." Barnhardt Decl., Exh. 1 at 4. The mere existence of  
 10 alleged plating activities, and the absence of an unnecessary report, does not provide the substantial  
 11 evidence that is required in order to uphold the RWQCB's decision to issue the Order against  
 12 GCDP. *See In the Matter of Petition of Exxon Company, U.S.A., et al.*, WQ 85-7 at 10-11 (1985)  
 13 Barnhardt Decl., Exh. 15 ("Thus, while we can independently review the Regional Board record, in  
 14 order to uphold a Regional Board action, we must be able to find that finding of ownership was  
 15 founded upon substantial evidence.") Because the RWQCB has failed to provide, and cannot  
 16 provide, the substantial evidence required for the SWRCB to uphold its actions, the Order issued to  
 17 GCDP must be rescinded.

18 **H. PETITIONER HAS PROVIDED THE RWQCB WITH A COPY OF THE**  
 19 **PETITION.**

20 A copy of this Petition, along with the documents filed concurrently herewith, was sent via  
 21 email and U.S. Mail on November 8, 2013, to the following addresses:

22 Ms. Luz Rabelo  
 23 Water Resources Control Engineer  
 24 Los Angeles Regional Water Quality Control Board  
 25 320 West 4th Street, Ste. 200  
 26 Los Angeles, CA 90013  
 27 [Luz.Rabelo@waterboards.ca.gov](mailto:Luz.Rabelo@waterboards.ca.gov)

28 State Water Resources Control Board  
 Office of Chief Counsel  
 Jeannette L. Bashaw, Legal Analyst

1 P.O. Box 100  
2 Sacramento, CA 95812-0100  
3 [jbashaw@waterboards.ca.gov](mailto:jbashaw@waterboards.ca.gov)

4 **I. THE SUBSTANTIVE ISSUES AND OBJECTIONS RAISED IN THE**  
5 **PETITION WERE RAISED BEFORE THE RWQCB**

6 The substantive issues and objections raised in this Petition were raised with the RWQCB in  
7 letters dated February 13, 2013, July 17, 2013, July 22, 2013, and September 4, 2013. Barnhardt  
8 Decl., Exhs. 5, 7, 8 and 11.

9 **J. PETITIONER'S REQUEST FOR HEARING**

10 GCDP requests a hearing on the Petition. In support of this request, GCDP makes the  
11 following points:

- 12 1. A summary of the arguments GCDP intends to make at the hearing is  
13 provided in this Petition;
- 14 2. A summary of the testimony or evidence GCDP intends to introduce is  
15 provided in the Petition, including all documents referenced in this Petition.  
16 GCDP reserves the right to supplement the testimony or evidence at the  
17 hearing pursuant to 23 CCR § 2050.6.

18 **II. PETITIONER'S REQUEST FOR STAY**

19 GCDP requests an immediate stay of the Order, pending the SWRCB's decision on the  
20 Petition. GCDP makes this request because: 1) GCDP will suffer substantial harm if the stay is not  
21 granted; 2) the public will not suffer substantial harm if the stay is granted; and 3) GCDP has raised  
22 substantial questions of law and fact. Barnhardt Decl., ¶¶ 13-22.

23 **A. LEGAL GROUNDS IN SUPPORT OF REQUEST FOR STAY**

24 In accordance with 23 CCR § 2053(a), a Request for Stay shall be granted if the petitioner  
25 can show "proof of harm to it, lack of harm to the public interest and the existence of substantial  
26 legal or factual issues." *Colton/San Bernardino Regional Tertiary Treatment and Water*  
27 *Reclamation Authority v. California State Water Resources Control Board*, 2003 WL 22073188, at  
28 \* 1 (2003).

1                   1.       GCDP Will Suffer Substantial Harm if a Stay is Not Granted.

2                   GCDP challenges the RWQCB's Order on the grounds that the RWQCB has not met its  
3 burden under Water Code § 13267. The RWQCB has failed, and continues to fail, to provide any  
4 substantial evidence to establish that the burden, including costs, of the Report bears a reasonable  
5 relationship to the need for the Report and the benefits to be obtained by the Report. Water Code §  
6 13267.

7                   GCDP will suffer substantial harm if the Request for Stay is not granted. GCDP's Report is  
8 currently due on January 15, 2014. Unless a stay, or final decision by the SWRCB, is issued in  
9 advance of this date, GCDP will have no choice but to expend the time and resources to implement  
10 the workplan in order to meet the RWQCB's deadline-- or choose not to comply with the Order.<sup>5</sup>  
11 GCDP should not face such a *Hobson's Choice*: either comply and undertake potentially  
12 unnecessary work or not comply and potentially face fines and penalties. If GCDP implements the  
13 workplan and discovers heavy metals as a result of other known dischargers in the area (*i.e.*, Excello  
14 Plating Company, Drilube, and/or the Glendale Chromium Operable Unit), GCDP, as a responsible  
15 party, will almost certainly face potential liability for extraordinary investigation and cleanup costs.  
16 In the event GCDP discovers heavy metals contamination and believes it was deposited or  
17 otherwise caused by others, the practical chances of the RWQCB agreeing with such an argument  
18 are virtually nil.

19                  The Request for Stay is necessary and imperative. GCDP is faced with a lose-lose situation  
20 if its Request for Stay is not timely granted. GCDP can: 1) comply with the Order and expend  
21 additional and unnecessary time, money, and other resources to implement the workplan and  
22 potentially expose itself to unwarranted future liability based on the existing nearby discharges of  
23 chromium; or 2) refuse to comply with the Order and face substantial monetary penalties and a  
24 potential misdemeanor conviction.

25  
26  
27  
28       <sup>5</sup> On November 5, 2013, counsel for GCDP requested an extension of the Jan. 15, 2014 deadline. The RWQCB has not responded to counsel's request as of November 8, 2013.

1 If the SWRCB issues a stay pending its decision on the Petition, GCDP will avoid this lose-  
2 lose scenario and have an opportunity to present and argue the substantive issues the RWQCB has  
3 ignored for more than nine (9) months. A stay will allow GCDP to avoid spending unnecessary  
4 time, money, and resources to conduct the investigation.

5 2. The Public Will Not be Substantially Harmed if the SWRCB Grants GCDP's  
6 Stay Request.

7 The public will not suffer substantial harm if GCDP's Request for Stay is granted. If the  
8 Request for Stay is granted, the workplan will be placed on hold for approximately 270 days or until  
9 the SWRCB renders a decision. The responsible parties of the Glendale Chromium Operable Unit,  
10 under EPA supervision, are already investigating and remediating the heavy metal contamination  
11 adjacent to the Property. These ongoing efforts will not halt if the SWRCB grants GCDP's Request  
12 for Stay. Further, no additional benefit will be gained by the public if GCDP is forced to  
13 prematurely investigate the area in and around its Property.

14 The RWQCB waited more than fifteen (15) years before deciding that additional  
15 investigation at the Property was necessary. The RWQCB's lack of urgency to date, and lack of  
16 evidence regarding any alleged discharges at the Property, is further proof that the public will not  
17 suffer substantial harm if the request for stay is granted.

18 3. GCDP's Petition Raises Substantial Questions of Law and Fact.

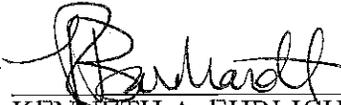
19 GCDP's Petition raises substantial questions of law and fact that were largely ignored by the  
20 RWQCB for more than nine (9) months. These questions include, but are not limited to, the  
21 RWQCB's justification for issuing the Order despite the lack of any evidence of heavy metal  
22 discharges. The RWQCB has not provided any evidence ("substantial" or otherwise) to support its  
23 position that the burden imposed on GCDP, including the costs, bears a reasonable relationship to  
24 the need for the Report and the alleged benefits that will be obtained from such Report. Cal. Water  
25 Code § 13267. Substantial questions of fact and law still remain and warrant granting GCDP's  
26 Request for Stay.

1 **III. CONCLUSION**

2 GCDP respectfully requests that the SWRCB grant GCDP's Request for Stay and rescind the  
3 Order issued to GCDP.

4  
5 DATED: November 8, 2013

JEFFER MANGELS BUTLER & MITCHELL  
LLP

6  
7 By:   
8 KENNETH A. EHRLICH  
9 REBECCA COUCH BARNHARDT  
10 Attorneys for Petitioner GCDP

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Jeffers Mangels  
Butler & Mitchell LLP

JMBM

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JEFFER MANGELS BUTLER & MITCHELL LLP  
KENNETH A. EHRLICH (SBN 150570)  
REBECCA COUCH BARNHARDT (SBN 243205)  
1900 Avenue of the Stars, Seventh Floor  
Los Angeles, California 90067-4308  
Telephone: (310) 201-3566  
Facsimile: (310) 712-8541  
Email: RCB@jmbm.com

Attorneys for Petitioner GCDP



**STATE WATER RESOURCES CONTROL BOARD**

In the Matter of Appeal of Order No. R4-2013-0056 Issued to Glendale Colorado Development Partners for 5040 San Fernando Road, Glendale, California.

**GLENDALE COLORADO DEVELOPMENT PARTNER'S ("GCDP") REQUEST FOR STAY**

**PETITION AND DECLARATION OF REBECCA COUCH BARNHARDT FILED CONCURRENTLY HEREWITH**

**REQUEST FOR STAY**

1  
2 Glendale Colorado Development Partners ("GCDP" or "Petitioner") requests an immediate  
3 stay of the Los Angeles Regional Water Quality Control Board's ("RWQCB") Order No. R4-2013-  
4 0056 ("Order") pending the State Water Resources Control Board's ("SWRCB") decision on the  
5 concurrently filed Petition for Review, Request for Hearing and Request for Stay (the "Petition").  
6 GCDP makes this request because: 1) GCDP will suffer substantial harm if the stay is not granted;  
7 2) the public will not suffer substantial harm if the stay is granted; and 3) GCDP has raised  
8 substantial questions of law and fact. Declaration of Rebecca Couch Barnhardt ("Barnhardt Decl."),  
9 ¶¶ 13-22.

10 **I. LEGAL GROUNDS IN SUPPORT OF REQUEST FOR STAY**

11 In accordance with 23 CCR § 2053(a), a Request for Stay shall be granted if the petitioner  
12 can show "proof of harm to it, lack of harm to the public interest and the existence of substantial  
13 legal or factual issues." *Colton/San Bernardino Regional Tertiary Treatment and Water*  
14 *Reclamation Authority v. California State Water Resources Control Board*, 2003 WL 22073188, at  
15 \* 1 (2003).

16 **A. GCDP Will Suffer Substantial Harm if a Stay is Not Granted**

17 GCDP challenges the RWQCB's Order on the grounds that the RWQCB has not met its  
18 burden under Water Code § 13267. The RWQCB has failed, and continues to fail, to provide any  
19 substantial evidence to establish that the burden, including costs, of the requested heavy metals  
20 assessment bears a reasonable relationship to the need and/or benefits received by such assessment.  
21 Cal. Water Code § 13267. *See*, accompanying Petition, filed concurrently, for a more thorough  
22 discussion of this point.

23 GCDP will suffer substantial harm if the Request for Stay is not granted. GCDP's written  
24 report on the requested and challenged heavy metals assessment work is currently due on January  
25 15, 2014. Unless a stay, or final decision by the SWRCB, is issued prior to this date, GCDP will  
26 have no choice but to expend the time and resources to implement the workplan in order to meet the  
27  
28

1 RWQCB's deadline-- or choose not to comply with the Order.<sup>1</sup> GCDP should not face such a  
 2 *Hobson's Choice*: either comply and undertake potentially unnecessary work or not comply and  
 3 potentially face fines and penalties. If GCDP implements the workplan and discovers heavy metals  
 4 as a result of other known dischargers in the area (*i.e.*, Excello Plating Company, Drilube, and/or  
 5 the Glendale Chromium Operable Unit), GCDP, as a responsible party, will almost certainly face  
 6 potential liability for extraordinary investigation and cleanup costs. In the event GCDP discovers  
 7 heavy metals contamination and believes it was deposited or otherwise caused by others, the  
 8 practical chances of the RWQCB agreeing with such an argument are virtually nil.

9 The Request for Stay is necessary and imperative. GCDP is faced with a lose-lose situation  
 10 if its Request for Stay is not timely granted. GCDP can: 1) comply with the Order and expend  
 11 additional and unnecessary time, money, and other resources to implement the workplan and  
 12 potentially expose itself to unwarranted future liability based on the existing nearby discharges of  
 13 chromium; or 2) refuse to comply with the Order and face substantial monetary penalties and a  
 14 potential misdemeanor conviction.

15 If the SWRCB issues a stay pending its decision on the Petition, GCDP will avoid this lose-  
 16 lose scenario and have an opportunity to present and argue the substantive issues the RWQCB has  
 17 ignored for more than nine (9) months. A stay will allow GCDP to avoid spending unnecessary  
 18 time, money, and resources to conduct the investigation.

19 **B. The Public Will Not be Substantially Harmed if the SWRCB Grants GCDP's**  
 20 **Stay Request**

21 The public will not suffer substantial harm if GCDP's Request for Stay is granted. If the  
 22 Request for Stay is granted, the workplan will be placed on hold for approximately 270 days or until  
 23 the SWRCB renders a decision. The responsible parties of the Glendale Chromium Operable Unit,  
 24 under EPA supervision, are already investigating and remediating the heavy metal contamination  
 25 adjacent to the Property. These ongoing efforts will not halt if the SWRCB grants GCDP's Request

---

27 <sup>1</sup> On November 5, 2013, counsel for GCDP requested an extension of the Jan. 15, 2014 deadline. The RWQCB has not  
 28 responded to counsel's request as of November 8, 2013.

1 for Stay. Further, no additional benefit will be gained by the public if GCDP is forced to  
2 prematurely investigate the area in and around its Property.

3 The RWQCB waited more than fifteen (15) years before deciding that additional  
4 investigation at the Property was necessary. The RWQCB's lack of urgency to date, and lack of  
5 evidence regarding any alleged discharges at the Property, is further proof that the public will not  
6 suffer substantial harm if the request for stay is granted.

7 **C. GCDP's Petition Raises Substantial Questions of Law and Fact**

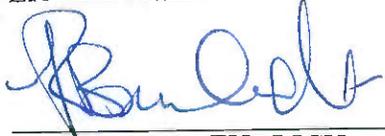
8 GCDP's Petition raises substantial questions of law and fact that were largely ignored by the  
9 RWQCB for more than (9) months. These questions include, but are not limited to, the RWQCB's  
10 justification for issuing the Order despite the lack of any evidence of heavy metal discharges. The  
11 RWQCB has not provided any evidence ("substantial" or otherwise) to support its position that the  
12 burden imposed on GCDP, including the costs, bears a reasonable relationship to the need for the  
13 Report and the alleged benefits that will be obtained from such Report. Cal. Water Code § 13267.  
14 Substantial questions of fact and law still remain and warrant granting GCDP's Request for Stay.

15 **II. CONCLUSION**

16 GCDP respectfully requests that the SWRCB grant GCDP's Request for Stay.

17  
18 DATED: November 8, 2013

JEFFER MANGELS BUTLER & MITCHELL  
LLP

19  
20 By: 

KENNETH A. EHRLICH  
REBECCA COUCH BARNHARDT  
Attorneys for Petitioner GCDP

1 JEFFER MANGELS BUTLER & MITCHELL LLP  
2 KENNETH A. EHRLICH (SBN 150570)  
3 REBECCA COUCH BARNHARDT (SBN 243205)  
4 1900 Avenue of the Stars, Seventh Floor  
5 Los Angeles, California 90067-4308  
6 Telephone: (310) 201-3566  
7 Facsimile: (310) 712-8541  
8 Email: RCB@jmbm.com

9 Attorneys for Petitioner GCDP



10 **STATE WATER RESOURCES CONTROL BOARD**

11 In the Matter of Appeal of Order No. R4-2013-  
12 0056 Issued to Glendale Colorado Development  
13 Partners for 5040 San Fernando Road,  
14 Glendale, California.

**DECLARATION OF REBECCA COUCH  
BARNHARDT IN SUPPORT OF  
GLENDALE COLORADO DEVELOPMENT  
PARTNER'S ("GCDP") PETITION FOR  
REVIEW, REQUEST FOR HEARING, AND  
REQUEST FOR STAY**

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
JMBM  
Jeffer Mangels  
Butler & Mitchell LLP

**DECLARATION OF REBECCA COUCH BARNHARDT**

I, REBECCA COUCH BARNHARDT, declare and state as follows:

1. I am an attorney licensed to practice law in the State of California and am of counsel to the law firm of Jeffer Mangels Butler & Mitchell LLP ("JMBM"), counsel of record for petitioner Glendale Colorado Development Partner ("GCDP"). This declaration is submitted in support of GCDP's Petition to the State Water Resources Control Board (the "SWRCB") appealing the issuance of Order No. R4-2013-0056 (the "Order") and GCDP's Request for Stay. The following facts are based on my own personal knowledge and/or from my review of the file in this matter, and if called to testify as a witness, I could and would testify competently thereto.

2. In 1991, ENVIRON conducted a subsurface investigation on property located at 5040 San Fernando Road, Glendale (the "Property"). A true and correct copy of ENVIRON's June 1991 Subsurface Investigation Program is attached hereto as Exhibit 1.

3. On or about August 14, 1991, ENVIRON submitted a Subsurface Investigation Report to Ms. Laurie Morgan at the Los Angeles Regional Water Quality Control Board (the "RWQCB"). A true and correct copy of ENVIRON's August 1991 Subsurface Investigation Report and correspondence is attached hereto as Exhibit 2.

4. On March 5, 1997, the RWQCB issued a No Further Requirements letter for the Property, a true and correct copy of which is attached hereto as Exhibit 3.

5. On October 24, 2012, the RWQCB issued a Water Code § 13267 order to Home Depot, the current lessee of the Property, a true and correct copy of which is attached hereto as Exhibit 4.

6. On February 13, 2013, JMBM responded on behalf of Decron Properties ("Decron"), and informed the RWQCB that Home Depot was not the owner of the property. JMBM also informed the RWQCB that the Order was improper because: 1) there is no historical or current evidence that demonstrates or even suggests there were any releases of heavy metals at the Property; 2) prior environmental assessments do not indicate the presence of heavy metals or recommend additional testing for heavy metals; and 3) to the extent any heavy metals are found at the Property, they would be consistent with releases from other known dischargers in the area,

1 including Excello Plating Company, Drilube, and/or the dischargers in the Glendale Chromium  
2 Operable Unit. A true and correct copy of JMBM's February 13, 2013 letter is attached hereto as  
3 Exhibit 5.

4 7. On April 10, 2013, the RWQCB issued Order No. R4-2013-0056 (the "Order") to  
5 Decron and Stevenson Real Estate ("Stevenson"). The Order required Stevenson and Decron to  
6 prepare and submit a Subsurface Soil Investigation Workplan regarding the Property. A true and  
7 correct copy of the Order is attached hereto as Exhibit 6.

8 8. On July 17, 2013, counsel sent another letter to the RWQCB informing it that (1)  
9 GCDP owned the Property, and (2) the RWQCB had failed to present any significant evidence to  
10 justify the issuance of the Order. A true and correct copy of counsel's July 17, 2013 letter is  
11 attached hereto as Exhibit 7.

12 9. On July 22, 2013, GCDP's counsel, JMBM, participated in a conference call with  
13 Mr. Jeffrey Hu of the RWQCB to inform the RWQCB, once again, that GCDP owned the Property.  
14 Later that day, JMBM forwarded Mr. Hu a copy of a Grant Deed for the Property evidencing  
15 GCDP's ownership of the Property since 1990. A true and correct copy of JMBM's July 22, 2013  
16 email attaching the Grant Deed for the Property is attached hereto as Exhibit 8.

17 10. On July 23, 2013, JMBM wrote another letter to the RWQCB, again informing them  
18 about JMBM's conversation with Mr. Hu regarding GCDP's ownership of the Property. A true and  
19 correct copy of JMBM's July 23, 2013 letter is attached hereto as Exhibit 9.

20 11. On August 19, 2013, the RWQCB sent another letter to Decron and Stevenson, a true  
21 and correct copy of which is attached hereto as Exhibit 10.

22 12. On September 4, 2013, JMBM once again informed the RWQCB that GCDP owned  
23 the Property and that there was absolutely no data or information to support the issuance of any  
24 Order concerning the Property. A true and correct copy of JMBM's September 4, 2013 letter is  
25 attached hereto as Exhibit 11.

26 13. On October 9, 2013, the RWQCB revised Order No. R4-2013-0056 and named  
27 GCDP as a responsible party. On October 9, 2013, the RWQCB also directed GCDP to comply  
28 with the workplan and submit a Subsurface Soil Investigation Report (Report) by January 15, 2014.

1 Based on information and belief, GCDP would need to begin to implement the workplan no later  
2 than December 15, 2013, in order to meet the RWQCB's deadline of January 15, 2014. True and  
3 correct copies of the RWQCB's October 9, 2013 decisions are attached hereto as Exhibits 12 and  
4 13.

5 14. Because the RWQCB has failed to provide any evidence to support issuing the Order  
6 to GCDP, on November 8, 2013, JMBM timely filed the instant Petition. The Petition challenges  
7 the RWQCB's decision to issue the Order to GCDP, pursuant to Water Code § 13320. The Petition  
8 also requests that the SWRCB stay the Order, pending the outcome of the SWRCB's decision.

9 15. In order for GCDP's Request for Stay to be granted, pursuant to Water Code §  
10 13321 and 23 CCR § 2053, GCDP must show: 1) that it will suffer substantial harm if a stay is not  
11 granted; 2) the public will not be substantially harmed if a stay is granted; and 3) the petition raises  
12 substantial questions of law and fact.

13 16. GCDP will Suffer Substantial Harm if the Stay is not Granted: GCDP is the owner  
14 of the Property and the landlord; it does not conduct any manufacturing or other operations at the  
15 Property. Nevertheless, the RWQCB has directed GCDP to implement the workplan and submit a  
16 report by January 15, 2014.<sup>1</sup> Even though GCDP is improperly named as responsible party, unless a  
17 stay is granted or the SWRCB reaches a decision prior to December 15, 2013, GCDP will be forced  
18 to the expend the time, money and resources to implement the workplan.

19 17. According to GCDP's contractors, it will cost GCDP at least \$15,000 to implement  
20 the workplan.

21 18. If a Stay is not granted and GCDP is forced to implement the workplan, and heavy  
22 metals are discovered as a result of the nearby, known chromium dischargers such as the Excello  
23 Plating Company, Drilube, and/or the Glendale Chromium Operable Unit, GCDP, as a responsible  
24 party, will be forced to incur extraordinary costs.

25 19. If the Request for Stay is not timely granted, GCDP will be faced with a lose-lose

26 <sup>1</sup> GCDP's counsel sent a letter to the RWQCB on November 5, 2013, requesting that the due date be  
27 extended from January 15, 2014 to February 14, 2013. GCDP's counsel has not received any response to  
28 this extension request as of the time of the filing.

1 situation. GCDP will either have to: 1) comply with the Order and expend additional, unnecessary  
2 time, costs, and resources in order to implement the workplan, and potentially expose itself to  
3 unwarranted future liability based on the existing nearby discharges of chromium; or 2) refuse to  
4 comply with the Order and face substantial monetary penalties and a potential misdemeanor  
5 conviction.

6 20. The Public will not be Substantially Harmed if GCDP's Request for Stay is Granted:  
7 If a Stay is granted, it would simply result in a delay of the implementation of the workplan for, at  
8 most, approximately 270 days or until the SWRCB issues a decision on the Petition. *See* 23 CCR §  
9 2050.5. This Stay would not halt other ongoing investigations and cleanup efforts within the  
10 Glendale Chromium Operable Unit under the EPA's supervision. Thus, chromium contamination  
11 around the Property would continue to be investigated and, if applicable, remediated during any  
12 stay and the public would not be substantially harmed.

13 21. The RWQCB has failed to present any evidence of any heavy metal discharges at the  
14 Property. Previous environmental reports do not indicate the need for additional investigation or  
15 testing. Because there is no evidence of any releases of heavy metals at the Property, an  
16 approximately 270 day Stay of the Order will not substantially harm the public.

17 22. The Petition Raises Substantial Questions of Law and Fact: GCDP's Petition argues  
18 that the RWQCB has failed to present any evidence in support of its decision to issue the Order and  
19 name GCDP as a responsible party. Because the agency has failed to present any evidence, and  
20 there is no history of heavy metal discharges at the Property, the burden imposed on GCDP,  
21 including the fees and costs, does not bear a reasonable relationship to the need for the heavy metals  
22 assessment and the alleged benefits that will be obtained from such assessment. This is improper  
23 pursuant to Water Code § 13267. Further, because the RWQCB has failed provide any substantial  
24 evidence to support its decision to name GCDP as a responsible party, the Order issued to GCDP  
25 should be rescinded.

26 23. Attached hereto as Exhibit 14 is a true and correct copy of *In the Matter of the*  
27 *Petition of HR Textron, Inc.*, WQ 94-2 (1994).

28 24. Attached hereto as Exhibit 15 is a true and correct copy of *In the Matter of Petition*

1 of Exxon Company, U.S.A., et al., WQ 85-7 (1985).

2 25. Attached hereto as Exhibit 16 is a true and correct copy of Consent Order, Docket  
3 HWCA 2003-0175 August 5, 2004.

4 26. Attached hereto as Exhibit 17 is a true and correct copy of Cleanup and Abatement  
5 Order R4-2002-0068.

6  
7 I declare under penalty of perjury under the laws of the State of California that the foregoing  
8 is true and correct.

9 Executed November 8, 2013, at Los Angeles, California.

10  
11   
12 \_\_\_\_\_  
13 REBECCA COUCH BARNHARDT  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT 1**

FILE

10 1-6-91

**SUBSURFACE INVESTIGATION PROGRAM  
5040 SAN FERNANDO ROAD  
GLENDALE, CALIFORNIA**

Prepared for

**Glendale Colorado Development Partners  
Van Nuys, California**

Prepared by

**ENVIRON Corporation  
Irvine, California**

June 1991

# CONTENTS

I.	INTRODUCTION	1
	A. Objectives	1
	B. Approach	1
II.	SITE BACKGROUND AND SETTING	2
	A. General Features	2
	B. Site History	2
	1. Previous Occupants	2
	2. Mitchell Camera Operations	2
	3. Anderson Desk Operations	3
	4. Previous Investigations	5
	C. Soil Gas Survey	6
	D. Geology	7
	1. Regional Geology	9
	2. Local Geology	9
	E. Hydrogeology	9
		10
III.	SUBSURFACE INVESTIGATION PROGRAM	11
	A. Boring Location Rationale	11
	B. Property Access	11
	C. Soil Borings	14
	D. Surveying	14
	E. Equipment Decontamination	15
		15
IV.	ANALYTICAL PROCEDURES	16
V.	SUBSURFACE INVESTIGATION REPORT	17
VI.	SCHEDULE	18
	REFERENCES	18

## TABLES

- Table 1: Summary of Chronological Occupancy  
Table 2: Summary - Soil Gas Investigation Results

## FIGURES

- Figure 1: Vicinity Map  
Figure 2: Site Plan  
Figure 3: Location of Previous Investigations  
Figure 4: Location of Soil Gas Investigation Probes  
Figure 5: TCE Isoconcentration Map  
Figure 6: TCA Isoconcentration Map  
Figure 7: PCE Isoconcentration Map  
Figure 8: Location of Proposed Soil Borings

## ATTACHMENTS

- Attachment A: RWQCB letter dated April 15, 1991  
Attachment B: Chemical Use Information - Anderson Desk  
Attachment C: Soil Gas Investigation Data  
Attachment D: Sample Field Forms

## I. INTRODUCTION

This workplan presents the technical approach and scope of work for the subsurface investigation to be conducted at the vacant property located at 5040 San Fernando Road in Glendale, California (Figure 1), currently owned by Glendale Colorado Development Partners (GCDP). This workplan has been prepared to comply with Regional Water Quality Control Board (RWQCB) guidelines, as described in their letter to GCDP, dated April 15, 1991. This letter identified "areas of concern", requested certain work for the subsurface investigation, and included the "Workplan Requirements for Initial Subsurface Engineering/Geologic Soil Investigation (Well Investigation Program)". A copy of the April 15, 1991 RWQCB letter is included in Attachment A. This workplan presents a scope of work that is considered appropriate, given current knowledge of site conditions.

### A. Objectives

The subsurface investigation program has been designed to respond directly to RWQCB concerns and to achieve three main objectives:

- Provide available information regarding previous site occupants, facility operations, chemical use, and waste management.
- Compile and present data on the local geology and hydrogeology in the site vicinity, and
- Confirm the presence or absence of selected chemicals in soil at the site.

### B. Approach

The subsurface investigation recommended herein will be conducted to supplement information obtained during a soil gas investigation conducted at the site in mid-June 1991. Data obtained from the soil gas investigation has been used to target areas for further subsurface investigation. Depending upon the results of this investigation, additional work may be necessary to characterize adequately pertinent site conditions.

## II. SITE BACKGROUND AND SETTING

### A. General Features

The property is in western Glendale, approximately 0.5 miles east of the Los Angeles River (Figure 1). The fenced site occupies approximately 8 acres in an area of light commercial and residential development. The area is bounded on the north by Harvard Street, on the east by Kenilworth Avenue, on the south by Colorado Street, and on the west by San Fernando Road. Residential areas lie directly east and north of the site. Commercial and light industrial areas are adjacent to the property on the west and south.

The site lies at an elevation of approximately 470 feet above mean sea level. Surface topography slopes gently toward the west, however demolition activities have locally disrupted the land surface. Previously the property was occupied by three main buildings as depicted on Figure 2; the main building, the "test cell" building, and the storage building. In addition, several residences were present on the eastern portion of the property, adjacent to Kenilworth Avenue. The property is currently vacant; all structures and pavement have been removed.

### B. Site History

#### 1. Previous Occupants

Information regarding the chronology of previous property owners was obtained from reports prepared by Leroy Crandall and Associates (1987), and IT Corporation (1988). This information is summarized in Table 1. ENVIRON has also conducted certain witness interviews to supplement this information.

The property was previously subdivided into a number of parcels. Generally, the western half was owned or occupied by a variety of businesses, and the eastern half was occupied by residences. Review of historical aerial photographs dating back to 1929 by both IT Corporation and Leroy Crandall and Associates indicated that the western half of the property appeared to be undeveloped prior to 1940. However, residences were noted on the eastern portion of the property, adjacent to Kenilworth Avenue, during the same time period. Aerial photos taken in 1945 clearly show the presence of the main building and the "test cell" building on the western portion of the property.

Given the historical residential use of the eastern portion of the property, it is unlikely that significant quantities of hazardous materials were present in this area. Therefore, the probability of environmental impairment on the eastern portion

of the site is believed to be low.

As stated previously, the western portion of the site appeared to be undeveloped prior to 1940. The prior consultants reported that information regarding the operations of Crescent Creamery, Golden Cereal Company, or Arbuckle & Johnson (property owners through the 1930s) was unavailable (ENVIRON will review whether further attempts to obtain information should be made). However, in light of the aerial photographs, it is likely that these owners held the property in an undeveloped state, or used the property for agricultural purposes. Therefore, the use of significant quantities of hazardous materials by these owners is considered unlikely.

Beginning in 1942, Kinner Motors occupied the main building and the "test cell" building on the western portion of the site. Prior consultants reported that detailed information regarding Kinner Motors operations was not available (ENVIRON will review whether further attempts to obtain information should be made). During a previous investigation, IF Corporation (1988) located two room addition permits under the name of Kinner Motors on file at the Glendale Building Department. Information provided to ENVIRON during an interview conducted with Mr. Chuck Mallory of Mitchell Camera, who occupied the site immediately after Kinner Motors, indicated that Kinner may have conducted in-line aircraft engine manufacturing and testing activities. Engine manufacturing may have occurred in the main building, and testing operations may have been carried out in the "test cell" building. According to Mr. Mallory, Kinner Motors left approximately 12 milling machines, 6 tool/die machines, 5 grinders, 9 engine lathes, and 12 turret lathes in the main building as part of their purchase agreement with Mitchell Camera. Information regarding historic chemical use by Kinner was not available; however, operation of the equipment listed above would, at a minimum, require use of cutting and lubricating oils. Mr. Mallory indicated that Kinner vacated the property in 1947.

Mitchell Camera occupied the site from 1946 until 1975. The company manufactured motion picture cameras for the entertainment industry. Anderson Desk purchased the property in 1975 and initiated desk manufacturing operations. During its tenure, Anderson Desk purchased and demolished several of the residences on Kenilworth; the addresses were 211, 215, 217, and 219 S. Kenilworth Avenue. These residences were demolished in 1979. In 1986, Anderson Desk purchased and demolished the residence located at 606 W. Harvard Avenue. Detailed information regarding operations of Mitchell Camera and Anderson Desk are presented below.

## 2. Mitchell Camera Operations

ENVIRON interviewed Mr. Chuck Mallory, former Vice-president and operations manager of Mitchell Camera on June 5, 1991. All information contained herein was provided by Mr. Chuck Mallory. Mr. Mallory reported that Mitchell Camera moved into the Glendale facility in September 1946. Manufacturing

activities at Mitchell Camera included milling, tool/die, gear hobbing, deburring, painting, grinding, heat treating, plating, degreasing, and lathing. These activities were conducted in the main building.

The mills, tool/die machines, gear hobbing and deburring machines, grinders, drill presses, and lathes were electrically operated. Lubricating and cutting fluids were taken to each machine on an "as-needed" basis; these materials were not supplied by subsurface, surface, or overhead piping. Waste solids were stored in drums in the alley behind the southeastern wall of the main building. Drum storage was reportedly limited to a maximum of 10 to 15 drums at any time. Mr. Mallory reported that drums were removed by a waste disposal company. Mr. Mallory reported that the small quantity of metal cuttings generated from the machining process were swept up daily, collected in a 55-gallon drum, and stored in the alley; these wastes were removed and recycled by Westside Salvage.

Degreasing activities were conducted in the degreasing area, along the north wall of the main building at the location depicted on Figure 2. The degreasing process used an electrically heated vapor degreaser and fume hood. Mr. Mallory could not recall the name of the degreasing solvent, however, he stated that it was kerosene-based, and manufactured by Standard Oil. Mr. Mallory stated that spent solvents were not generated; vapors were released through the roof, and residual sludge material was collected and placed in 55-gallon drums for off-site disposal, as described above.

Other information provided by Mr. Mallory indicated that plating activities were also conducted in the degreasing area. Plating equipment included six above-ground 40-gallon plating tanks, and three 50-gallon acid tanks. Mr. Mallory indicated that plating solutions may have contained aluminum and copper; acid tanks may have contained sulfuric acid. He could not provide additional detail regarding plating operations. Mr. Mallory did not believe that releases/spills of plating fluids had occurred during the period of operation.

Camera bodies were painted black in a water curtain spray booth located immediately west of the degreaser area. Mr. Mallory could not recall the exact location of the booth. According to Mr. Mallory, water was recirculated within the booth; particulate matter was periodically skimmed from the surface, and placed in a 55-gallon drum for off-site disposal. Drains, outlets, and discharge piping were not contained in the paint booth.

Mr. Mallory stated that the "test cell" building was used as a hardware storage room. Mitchell Camera used the eastern portion of the building for valve testing during an approximate 6-month period in 1961-1962. The testing procedure used liquid nitrogen; other chemicals were not used in this process. Activities were discontinued due to economic factors. Mitchell Camera used the storage building for corporate offices, and food service. In addition, a small maintenance shop was located in the northern portion of the building.

ENVIRON obtained several aerial photographs of the site and surrounding area from Mr. Mallory; the age of vehicles depicted in the photographs indicate that the photos may have been taken in the late 1940s and early 1950s. ENVIRON noted a

structure which appeared to be an incinerator located on a concrete pad south of the storage building as shown on Figure 2. The photograph also depicted drum storage near the incinerator. Mr. Mallory stated that the incinerator was not used by Mitchell Camera; he believed that it had been used by Kinner Motors.

ENVIRON questioned Mr. Mallory about the occurrence of sumps and clarifiers noted in the main and "test cell" buildings by the RWQCB during their April 3, 1991 inspection. Mr. Mallory stated that these structures were not used by Mitchell Camera, and that he was not aware of their existence. Leroy Crandall (1987) reported that Mitchell Camera had obtained an underground tank removal permit from the City of Glendale in 1962. The permit was reportedly for removal of a 4,500 gallon underground storage tank located at 666 West Harvard Avenue. Mr. Mallory had no knowledge of underground tanks at the site, and did not recall any removal operations.

In summary, Mitchell Camera appears to have used only small quantities of solvents, or hazardous chemicals at their facility. The waste management practices described by Mr. Mallory indicated that all liquid and solid hazardous wastes were contained in drums, temporarily stored in the alley behind the main building, and hauled off-site for disposal.

### 3. Anderson Desk Operations

ENVIRON interviewed Mr. Darrell Wyatt, current operations manager for Anderson Desk. Mr. Wyatt began working for the company in 1985. He managed the facility in Glendale from 1985 until it was sold to GCDP in 1990.

Anderson Desk manufactured desks at the facility from 1975 through 1990. Manufacturing activities included woodworking, assembly, warehousing, and finishing. Finishing activities consisted of a three-step function: staining, sealing, and topcoating. Finishing activities were conducted in the southeastern portion of the main building as shown on Figure 2. Mr. Wyatt stated that chemical use at the facility was confined to finishing activities, with the exception of minor amounts of lubricating and hydraulic oils for the compressors, presses, and routine maintenance. Mr. Wyatt provided ENVIRON with copies of Material Safety Data Sheets (MSDS) for the majority of the chemicals handled at the facility. These sheets are provided in Attachment B.

Stains, thinners, lacquers, varnishes, and oils were stored in the chemical storage room, shown on Figure 2. These chemical materials were transferred to the finishing area through overhead lined pipelines. Materials were transferred directly from drums in the chemical storage area to fill-lines in water curtain paint booths in which the finishing process was conducted. Three of these self-contained booths were present in the finishing area. After an unfinished product was placed in the booth, the finishing spray and water curtain were activated. A blower was used to draw excess spray through the water curtain and to vent the volatiles through the roof. Particulates contained in the water were allowed to settle, and the water was recycled. Two types of waste were generated from each booth. Solids (from settled

particulates) were skimmed monthly, placed in 55-gallon drums, temporarily stored in the alley behind the main building, and transported off-site for disposal. Solvent saturated water was removed annually by a vacuum truck and transported off-site for disposal.

Anderson Desk used the "test cell" building as a maintenance shop, and to build prototypes. The storage building was used for woodworking, and raw material storage (wood, hardware, and tools).

ENVIRON questioned Mr. Wyatt about the occurrence of sumps and clarifiers noted in the main and "test cell" buildings by the RWQCB during their April 3, 1991 inspection. Mr. Wyatt stated that these structures were not used by Anderson Desk and that he was not aware of their existence. Mr. Wyatt said that Anderson Desk did not generate process water, therefore they did not operate an industrial wastewater discharge system.

ENVIRON also questioned Mr. Wyatt about the "natural sump" and outdoor drum storage area located in the eastern portion of the property, identified by Leroy Crandall as "areas of concern" in 1987. Mr. Wyatt stated that a residence occupied the "natural sump" area until 1986. He knew of no dumping or disposal activities occurring in the area since 1986. He did not believe that the area had been used for waste disposal. Mr. Wyatt also stated that the drum storage area identified by Leroy Crandall in the southeastern portion of the property was not routinely used for drum storage. He stated that it was Company policy to store all drums containing waste in the alley behind the main building.

In summary, Anderson Desk appears to have used a variety of solvent blends to finish products. However, these products were stored in drums, and piped to the finishing area in overhead piping. The waste management practices described by Mr. Wyatt indicated that liquid wastes were contained in the water curtain paint booths, and removed from the site using vacuum trucks. Solid hazardous wastes were contained in drums, temporarily stored in the alley behind the main building, and hauled off-site for disposal.

#### 4. Previous Subsurface Investigations

Anderson Desk conducted two subsurface investigations at the facility during their period of operation. One foundation investigation/environmental audit was conducted by Leroy Crandall in 1987. In response to the results of this investigation, IT Corporation was retained to conduct an environmental assessment at the facility in 1988. Hydrocarbons detected in the soil during IT's investigation were excavated and removed by Patterson Resources in 1990. Both the Leroy Crandall and IT reports were previously transmitted to the RWQCB.

Leroy Crandall (1987) drilled seven soil borings during their investigation to evaluate geotechnical soil properties. Locations of these borings are depicted on Figure 3. Soil from Boring 3 exhibited "moderate hydrocarbon odors" to a depth of approximately 10 feet. Soil samples were monitored in the field with a portable organic vapor analyzer, and exhibited readings ranging from 11 to 220 units using a

photoionization detector (PID). Leroy Crandall concluded that soil contained in this boring potentially contained petroleum hydrocarbons. In addition, Leroy Crandall conducted a site reconnaissance on November 11, 1987. During this visit, four "areas of concern" were noted, and further investigation in these areas was recommended. The areas were (1) the outdoor drum storage area in the southeast parking lot; (2) the outdoor drum storage in the alley; (3) the vacant lot with a topographic depression acting as a sump; and (4) the possible location of underground storage tanks. As a direct result of Leroy Crandall's findings, Anderson Desk hired IT Corporation to perform further environmental assessment activities.

IT Corporation drilled 19 soil borings to evaluate subsurface soil quality. Soil samples were initially collected from 12 soil borings (Borings 1 through 12) drilled in the four "areas of concern" and chemically analyzed. Locations of these borings are depicted on Figure 3. Soil samples were tested for a variety of compounds. Samples from the drum storage areas (Borings 10 and 12) were tested for volatile organic compounds by EPA Method 8240; samples from the "natural sump" area (Boring 11) were tested for total fuel hydrocarbons by EPA Method 8015M, and petroleum hydrocarbons by EPA Method 418.1; and, samples from the suspected underground tank area (Borings 1 through 9) were tested for total fuel hydrocarbons (jet fuel) by EPA Method 8015M.

As a result of IT's investigation, Anderson Desk contracted with Patterson Resources to remove soil containing petroleum hydrocarbons from the area. Patterson Resources performed soil excavation activities in February 1990. The excavated area is depicted on Figure 2. The excavation extended to approximately 16 feet in depth. Confirmation soil samples were collected from the excavation and analyzed; although these samples appear to have been composited prior to analysis. However, analytical data obtained during IT's investigation indicate that the maximum depth of detected soil contamination in all soil borings was less than 15 feet below ground surface. In addition, soil samples analyzed from Borings 5, 14, 16, 18, and 19, located immediately adjacent to the area of excavation, did not contain detectable hydrocarbon concentrations. Therefore, excavation conducted by Patterson Resources appears to have removed all chemically affected soil in this area.

### C. Soil Gas Survey

ENVIRON conducted a soil gas investigation at the site from June 12 through 18, 1991 in order to help focus the subsurface investigation requested by the RWQCB in their letter dated April 15, 1991. The purpose of the soil gas investigation was to evaluate the possible occurrence of volatile organic compounds (VOCs) in soil, and possibly ground water, underlying the site through analysis of soil gas samples obtained from approximately 10 feet below ground surface at various locations across the site. ENVIRON initially recommended locating probes in a grid pattern across the site; the RWQCB preferred an approach in

which "areas of concern" were targeted. The soil gas investigation focused on ten "areas of concern" identified by ENVIRON and the RWQCB. Data obtained from the investigation was analyzed to help evaluate the location of potential sources of chemicals in the subsurface, and identify areas in which further investigation was warranted.

The soil gas survey was generally conducted in accordance with ENVIRON's original soil gas investigation workplan dated June 5, 1991, and workplan addendum dated June 7, 1991, and as modified by the RWQCB's workplan approval letter dated June 11, 1991. A representative from the RWQCB was periodically on site during the initial few days of the investigation. A summary of investigative procedures is presented in Attachment C.

Due to various factors, the final scope of the soil gas investigation was modified as follows:

- The contingency for confirmation probes, activated if chemical concentrations exceeded "background levels", was not fully implemented because "background levels" for selected chemicals were exceeded at most of the sampling locations, and the level of effort required to implement the contingency would have been excessive, especially in light of the need for soil borings. In addition, field data indicated that the permeable nature of subsurface soils allowed widespread migration of soil vapor from potential source areas, causing the 10-foot contingency probe spacing specified in the workplan to be ineffective in delimiting potential source areas.
- Five probes requested by the RWQCB (7-1, 7-6, 7-8, 7-11, and 9-3) were deleted and replaced by 8 probes added by ENVIRON, as shown on Figure 4. Probe locations were added in response to earlier findings from the soil gas investigation to provide improved areal coverage of the site, and to help evaluate data trends over the site. Locations were deleted from areas where data points were in close proximity, and data trends were apparent.

As outlined in our workplan, the investigation was initiated by evaluating "background levels" of selected chemicals in the soil gas at six locations. This information is presented in Table 2. After "background levels" had been determined, soil gas samples were collected from the 54 sampling locations shown on Figure 4 and analyzed for selected VOCs. Data obtained during the survey are included in Attachment C, and summarized in Table 2.

Carbon Tetrachloride (CCl<sub>4</sub>) was detected at concentrations exceeding "background levels" at seven probe locations, predominantly near the clarifier and the Anderson Desk finishing area. Trichloroethylene (TCE), tetrachloroethylene (PCE), and 1,1,1-trichloroethane (TCA) were detected at concentrations exceeding "background levels" at most of the sampling locations across the site. TCE, PCE, and TCA isoconcentration maps are presented on Figures 5 through 7. These data indicate three areas of relatively high soil gas concentrations. The first area is in the vicinity of the clarifier (Areas 5 and 10 in the soil gas investigation workplan); the second is near the chemical storage area (Area 4) and Anderson Desk's finishing area (Area 6); and the third is northwest of the drum storage area located in the southeastern portion of the property (Area 2). Chemical concentrations in the

soil gas samples clearly decrease as distance from each of these three areas increases. Further subsurface investigation is warranted in these three areas to evaluate the possible occurrence and distribution of chemicals in the soil.

Chemical concentrations obtained from the natural sump area located in the northeastern portion of the property were below "background levels." In addition, chemical concentrations from the area previously excavated by Patterson Resources were below "background levels" for all chemicals except PCE and TCA, which were slightly above established "background levels." Data obtained from the soil gas investigation, and from IT's investigation indicate that chemically affected soils are not present in these areas. Based on the data available to ENVIRON, further subsurface investigation of these areas does not appear to be necessary.

## D. Geology

### 1. Regional Geology

The GCDP site is located within the Los Angeles River Narrows (Narrows), near the southeastern end of the San Fernando Valley. The narrows is an erosional valley incised by the Los Angeles River into the bedrock of the bordering Santa Monica Mountains and Elysian Hills on the west and the Repetto Hills on the east. Bedrock consists of sedimentary, metamorphic, and granitic rocks (CSWRB, 1962).

The property is underlain by alluvial deposits derived from the San Gabriel Mountains and Verdugo Hills to the northeast; materials were deposited by the Los Angeles River. The Pleistocene alluvial deposits are approximately 200 to 300 feet thick in the vicinity of the property. Alluvium is generally comprised of a mixture of sand, gravels, and cobbles with discontinuous interbeds of silt and clay. The nature of the braided stream depositional environment, in conjunction with interfingering alluvial fans, has resulted in a highly variable alluvial sequence within the Narrows (CSWRB, 1962).

### 2. Local Geology

Information pertaining to local geology has been obtained through previous subsurface investigation at the property conducted by Leroy Crandall (1987), and IT Corporation (1988). Information obtained from these investigations is summarized below.

The subsurface sediments at the site appear to consist of a variable alluvial sequence consistent with the regional stratigraphic setting. Information obtained from foundation borings indicate that subsurface sediments are composed of intermixed sandy silt, silty sand, sand, and gravelly sand with small cobbles. Near surface sediments, to a depth of approximately 30 feet, are primarily silty sand, sand and gravelly sand. A layer of sandy silt is encountered below the sands at an approximate elevation of 440 to 441 feet above mean sea level. The sandy silt layer

# **EXHIBIT 2**

# ENVIRON

August 14, 1991

DRAFT

Ms. Laurie Morgan  
California Regional Water Quality  
Control Board  
Los Angeles Region  
101 Centre Plaza Drive  
Monterey Park, California 91754

VIA FEDERAL EXPRESS

Re: Subsurface Investigation Report  
5040 San Fernando Road  
Glendale, California

Dear Laurie:

Enclosed please find 4 copies of ENVIRON's report entitled "Subsurface Investigation, 5040 San Fernando Road, Glendale, California". This report presents the methodology used, and results obtained during the subsurface investigation. Upon reviewing the report, you will note that given the analytical results of the soil sampling performed during the investigation, ENVIRON has concluded in the report that no further work is warranted.

We request an expedient review of this report by your agency. You will recall from the site development schedule previously furnished to you, our client's tenant (Home Depot) initially planned to initiate construction months ago. Instead, two rounds of environmental investigation have been conducted by ENVIRON since May 1991. Home Depot now plans to commence construction activities by September 3, 1991 (immediately after Labor Day). Therefore, it is important that we receive your concurrence regarding the conclusions stated in the report by the end of this month.

We trust that this is all the information necessary at this time. Please call either Ed Casey with Alschuler, Grossman & Pines (213-277-1226) or Carol Serlin with ENVIRON (714-261-5151) if you have any questions.

Very truly yours,

Carol L. Serlin, R.G.  
Manager, Hydrogeology

ENVIRON CMO No. 01-2108C

filetag4p10.ltr

ENVIRON - Counsel in Health and Environmental Science Corporation  
One Park Plaza, Suite 700, Irvine, California 92714 - (714) 261-5151 - (213) 587-5151 - FAX (714) 261-6202

**DRAFT**

**SUBSURFACE INVESTIGATION  
5040 SAN FERNANDO ROAD  
GLENDALE, CALIFORNIA**

Prepared for

**Glendale Colorado Development Partners  
Van Nuys, California**

Prepared by

**ENVIRON Corporation  
Irvine, California**

August 9, 1991

DRAFT

## CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	INTRODUCTION	3
	A. Objectives	3
	B. Scope of Work	3
	C. Report Organization	4
III.	SITE BACKGROUND AND SETTING	5
	A. General Features	5
	B. Site History	5
	C. Previous Investigations	6
	D. Geology	7
	1. Regional Geology	7
	2. Local Geology	7
	E. Hydrogeology	8
IV.	SUBSURFACE INVESTIGATION	9
	A. Boring Locations	9
	B. Property Access	9
	C. Soil Borings	9
	D. Surveying	10
	E. Equipment Decontamination	10
	F. Waste Containment	11
V.	ANALYTICAL PROCEDURES	12

DRAFT

VI.	DISCUSSION	13
	A. Lithology	13
	B. Soil Quality	13
	1. Volatile Organic Compounds	13
	2. Total Fuel Hydrocarbons	13
	3. Total Petroleum Hydrocarbons	14 13
	a) Test Results	14 13
	b) Analysis of EPA Method 418.1	14
VII.	CONCLUSIONS	16
	REFERENCES	18

DRAFT

## TABLES

- Table 1: OVM Readings
- Table 2: Summary of Soil Analytical Test Data

## FIGURES

- Figure 1: Vicinity Map
- Figure 2: Site Plan
- Figure 3: Location of Soil Borings

## ATTACHMENTS

- Attachment A: RWQCB letters dated April 15 and July 15, 1991
- Attachment B: Lithologic Boring Logs: Soil Borings SB-1 through SB-18
- Attachment C: Soil Analytical Results
- Attachment D: Survey Data

DRAFT

## I. EXECUTIVE SUMMARY

In April 1991, Glendale Colorado Development Partners (GCDP) received a letter from the Los Angeles Regional Water Quality Control Board (RWQCB) regarding GCDP's vacant property located at 5040 San Fernando Road in Glendale, California. The RWQCB letter identified "areas of concern", and requested implementation of a subsurface investigation at the site. ENVIRON Corporation, consultant to GCDP, prepared a workplan for the subsurface investigation, and submitted it to the RWQCB for review in late June, 1991. The RWQCB approved the workplan, with slight modifications, in its July 15, 1991 letter to GCDP. The workplan was further modified during telephone conversations between the RWQCB and ENVIRON on July 22 and 23, 1991. The subsurface investigation was subsequently initiated on July 22, 1991.

During the subsurface investigation 18 soil borings were drilled, sampled, and abandoned. Sixteen borings were drilled to approximately 15 feet below ground surface, and soil samples were collected at approximately 5, 10, and 15 feet below ground surface. Two borings were drilled to approximately 30 feet below ground surface, in an area where soil containing fuel hydrocarbons had been previously excavated. Soil samples were collected below the base of the previous excavation, at approximately 18, 23 and 28 feet below ground surface. Fifty-five soil samples were analyzed by a state-certified laboratory for volatile organic compounds by EPA Method 8240 (modified to include use of a capillary column); total fuel hydrocarbons (TFH) by EPA Method 8015M; and total petroleum hydrocarbons (TPH) by EPA Method 418.1.

Analytical results indicated that TFH was not detected in any of the soil samples submitted for analytical testing. Soil Boring SB-7 contained trichloroethene (TCE) at a trace concentration of 0.1 milligrams per kilogram (mg/kg) at 5 feet below ground surface; however, TCE was not detected in deeper soil samples in that boring. The trace TCE concentration detected in Soil Boring SB-7 is not indicative of an area requiring remediation. VOCs were not detected in any other samples submitted for analytical testing.

Similarly, although low concentrations of TPH were detected at some on-site soil sampling locations, detected concentrations were not indicative of an area requiring remediation. Detected concentrations ranged from 1 mg/kg to 180 mg/kg. Considering the absence of TFH and benzene, toluene, xylenes, and ethylbenzene (BTXE) in all of the samples analyzed, the origin of the detected TPH does not appear to be attributable to gasoline or diesel fuel. Therefore, applicable remedial action levels would likely be the 1,000 mg/kg for diesel fuel suggested in California's Leaking Underground Fuel Tank Field Manual (CSWRCE, 1989). Detected TPH concentrations were approximately one order of magnitude below the suggested remedial action levels.

*Handwritten notes:*  
-1-  
...  
...

DRAFT

At some locations, detected TPH could be indicative of heavy fuel or lubricating oils, however it is also likely that the detected TPH could be indicative of naturally occurring humic and folic acids. Recent research (Thomey, 1989) also indicates that use of EPA Method 418.1 for the detection of petroleum hydrocarbons often produces a positive in the absence of petroleum compounds. Therefore, the reliability of EPA Method 418.1 for detecting TPH, under the circumstances of this investigation, is subject to question (see Section VI-B3).

The data collected during this investigation clearly indicate that petroleum hydrocarbons and VOCs are not present in soil underlying the property; therefore, the property does not appear to have contributed to known regional ground water contamination in the area. It is ENVIRON's opinion that all necessary work at this site has been completed, and no further work is warranted.

## II. INTRODUCTION

This report presents the results of ENVIRON's subsurface investigation conducted at the vacant property located at 5040 San Fernando Road in Glendale, California (Figure 1), which is currently owned by GCDP. This investigation was conducted in accordance with ENVIRON's workplan entitled "Subsurface Investigation Program, 5040 San Fernando Road, Glendale, California" (June 1991), which was submitted to the RWQCB for review in late June, 1991. The workplan was subsequently reviewed, slightly modified, and approved by RWQCB in its letter, dated July 15, 1991. As a result of discussions between the RWQCB and ENVIRON on July 22 and 23, 1991, the scope of work was further modified as specified in ENVIRON's letter to the RWQCB, dated July 25, 1991. Copies of these letters are included in Attachment A.

### A. Objectives

The subsurface investigation was designed to respond directly to RWQCB concerns originally expressed in its first letter to GCDP, dated April 15, 1991 (Attachment A), and to achieve two main objectives:

- Confirm the presence/absence of chemicals in soil at the site, and
- Assess the nature, concentration, and extent of chemicals in soil, if any, resulting from prior operations at the site.

### B. Scope of Work

The scope of work to achieve the desired objectives consisted of the following tasks:

- Stake all boring locations in the field, and confirm locations with RWQCB personnel
- Drill and sample 18 soil borings (16 borings to approximately 15 feet below ground surface, and 2 borings to approximately 30-feet below ground surface)
- Submit selected soil samples to a State-certified laboratory for chemical analysis
- Analyze the data and prepare this report summarizing ENVIRON's findings.

**DRAFT****C. Report Organization**

In addition to the Executive Summary (Section I), and this introduction, the report includes a brief review of background information, results of previous investigations, geology and hydrogeology (Section III), a summary of subsurface investigative methods (Section IV), a discussion of analytical procedures (Section V), a discussion of lithologic and chemical data generated during the investigation (Section VI), and presentation of conclusions (Section VII). Two tables summarizing field observations, and analytical test data are presented at the end of the text portion of the report. These tables are followed by figures, including a site location map, diagram of previously existing site facilities, boring locations, and boring logs. Three attachments are presented at the end of the report. Letters from the RWQCB are in Attachment A. Laboratory analytical reports, quality assurance and quality control (QA/QC) data, and chain-of-custody sheets are in Attachment B, and survey data are presented in Attachment C.

### III. SITE BACKGROUND AND SETTING

#### A. General Features

The GCDP property is in western Glendale, approximately 0.5 miles east of the Los Angeles River (Figure 1). The fenced site occupies approximately 8 acres in an area of light industrial, commercial and residential development. The area is bounded on the north by Harvard Street, on the east by Kenilworth Avenue, on the south by Colorado Street, and on the west by San Fernando Road. Residential areas lie directly east and north of the site. Commercial and light industrial areas are adjacent to the property on the west and south.

The site lies at an elevation of approximately 470 feet above mean sea level. Surface topography slopes gently toward the west, however prior demolition activities have locally disrupted the land surface. Previously the property was occupied by three main buildings as depicted on Figure 2; these buildings were referred to as the main building, the "test cell" building, and the storage building. In addition, several residences were present on the eastern portion of the property, adjacent to Kenilworth Avenue. The property is currently vacant and all previously existing structures and pavement had been removed.

#### B. Site History

Detailed information regarding previous site history, including past occupants, business practices, and previous investigations is presented in ENVIRON's workplan entitled "Subsurface Investigation Program, 5040 San Fernando Road, Glendale, California", dated June 1991. This information is briefly summarized below.

The property was previously divided into a number of parcels. Generally, the western half was owned or occupied by a variety of businesses, and the eastern half was occupied by residences. Review of historical aerial photographs dating back to 1929 by both IT Corporation (1988) and Leroy Crandall and Associates (1987) indicated that the western half of the property appeared to be undeveloped prior to 1940. However, residences were noted on the eastern portion of the property, adjacent to Kenilworth Avenue, during the same time period. Aerial photos taken in 1945 clearly show the presence of the main building and the "test cell" building on the western portion of the property.

As stated previously, the western portion of the site appeared to be undeveloped prior to 1940. The prior consultants reported that information regarding the operations of Crescent Creamery, Golden Cereal company, or Arbuckle & Johnson (property owners through the 1930s) was unavailable. However, in light of the aerial photographs, it is likely that these

DRAFT

owners held the property in an undeveloped state, or used the property for agricultural purposes.

Beginning in 1942, Kinner Motors occupied the main building and the "test cell" building on the western portion of the site. Mitchell Camera occupied the site from 1946 until 1975. The company manufactured motion picture cameras for the entertainment industry. ANCO Partnership owned and Anderson Desk co-operated the property beginning in 1975, and initiated desk manufacturing operations. During its tenure, Anderson Desk demolished several of the residences on Kenilworth; the addresses were 211, 215, 217, and 219 S. Kenilworth Avenue. These residences were demolished in 1979. In 1986, Anderson Desk demolished the residence located at 606 W. Harvard Avenue.

### C. Previous Investigations

Anderson Desk conducted two subsurface investigations at the facility during their period of operation. One foundation investigation/environmental audit was conducted by Leroy Crandall in 1987. Subsequently, IT Corporation was retained to conduct an environmental assessment at the facility in 1988. Both the Leroy Crandall and IT reports were previously transmitted to the RWQCB.

Leroy Crandall (1987) drilled seven soil borings during their investigation to evaluate geotechnical soil properties. Locations of these borings are depicted on Figure 3. Soil from Boring 3 exhibited "moderate hydrocarbon odors" to a depth of approximately 10 feet. Soil samples were monitored in the field with a portable organic vapor analyzer, and exhibited readings ranging from 11 to 220 units using a photoionization detector (PID). Leroy Crandall concluded that soil contained in this boring potentially contained petroleum hydrocarbons. In addition, Leroy Crandall conducted a site reconnaissance on November 11, 1987. During this visit, four "areas of concern" were noted, and further investigation in these areas was recommended. The areas were (1) the outdoor drum storage area in the southeast parking lot; (2) the outdoor drum storage in the alley; (3) the vacant lot with a topographic depression acting as a sump; and (4) the possible location of underground storage tanks. As a direct result of Leroy Crandall's findings, Anderson Desk hired IT Corporation to perform further environmental assessment activities.

IT Corporation drilled 19 soil borings to evaluate subsurface soil quality. Soil samples were initially collected from 12 soil borings (Borings 1 through 12) drilled in the four "areas of concern" and chemically analyzed. Soil samples were tested for a variety of compounds. Samples from the drum storage areas (Borings 10 and 12) were tested for volatile organic compounds by EPA Method 8240; samples from the "natural sump" area (Boring 11) were tested for total fuel hydrocarbons by EPA Method 8015M, and petroleum hydrocarbons by EPA Method 418.1; and, samples from the suspected underground tank area (Borings 1 through 9) were tested for total fuel hydrocarbons (jet fuel) by EPA Method 8015M.

**DRAFT**

As a result of IT's investigation, Anderson Desk contracted with Patterson Resources to remove soil containing petroleum hydrocarbons from the area. Patterson Resources performed soil excavation activities in February 1990. The excavated area is depicted on Figure 2. The excavation extended to approximately 16 feet in depth. Confirmation soil samples were collected from the excavation and analyzed; although these samples appear to have been composited prior to analysis. However, analytical data obtained during IT's investigation indicate that the maximum depth of detected soil contamination in all soil borings was less than 15 feet below ground surface. In addition, soil samples analyzed from Borings 5, 14, 16, 18, and 19, located immediately adjacent to the area of excavation, did not contain detectable hydrocarbon concentrations. Therefore, excavation conducted by Patterson Resources appears to have removed all chemically affected soil in this area.

**D. Geology**

**1. Regional Geology**

The GCDP site is located within the Los Angeles River Narrows (Narrows), near the southeastern end of the San Fernando Valley. The narrows is an erosional valley incised by the Los Angeles River into the bedrock of the bordering Santa Monica Mountains and Elysian Hills on the west and the Repetto Hills on the east. Bedrock consists of sedimentary, metamorphic, and granitic rocks (CSWRB, 1962).

The property is underlain by alluvial deposits of the Los Angeles River, which were derived from the San Gabriel Mountains and Verdugo Hills to the northeast. Materials were deposited by the Los Angeles River. The combination of a braided stream depositional environment, and interfingering alluvial fans, resulted in a highly variable alluvial sequence within the Narrows (CSWRB, 1962). The Pleistocene alluvial deposits are approximately 200 to 300 feet thick in the vicinity of the property. Alluvium is generally comprised of a mixture of sand, gravels, and cobbles with discontinuous interbeds of silt and clay.

**2. Local Geology**

Information pertaining to local geology was obtained through previous subsurface investigation at the property conducted by Leroy Crandall (1987), and IT Corporation (1988) and during ENVIRON's current investigation. Information obtained from these investigations is summarized below.

**DRAFT**

The subsurface sediments at the site appear to consist of a variable alluvial sequence consistent with the regional stratigraphic setting. Information obtained from foundation borings drilled by Leroy Crandall indicate that subsurface sediments are composed of intermixed sandy silt, sandy clay, silty sand, sand, and gravelly sand with small cobbles. Near surface sediments, to a depth of approximately 30 feet, are primarily silty sand, sand and gravelly sand. A layer of sandy silt is encountered below the sands at an approximate depth of 30 feet below ground surface. The sandy silt layer appears to range in thickness from approximately 2 to 7 feet. The silt is underlain by sand to the maximum depth explored (40 feet) (Leroy Crandall, 1987). Borings drilled by IT (1988) encountered similar conditions; these borings were drilled to a maximum depth of 25 feet. Borings drilled by ENVIRON during this investigation also encountered similar conditions (see Section VI-A); these borings were drilled to a maximum depth of 30 feet.

**E. Hydrogeology**

The property is located in the San Fernando Ground Water Basin. Water-bearing alluvial deposits beneath the site are part of the Gaspar Aquifer which underlies most of the Los Angeles Narrows (CSWRCB, 1962). The aquifer is generally unconfined in the vicinity of the property. Information obtained by ENVIRON from the Los Angeles Flood Control District (1991) suggests that the water table is approximately 50 to 60 feet below ground surface in the vicinity of the site. Ground water was not encountered in any of the borings drilled previously by any consultants at the site; the maximum depth of these borings was approximately 40 feet (Leroy Crandall, 1987; IT Corporation, 1988).

Historically ground water generally flowed in a southerly to southeasterly direction; the approximate hydraulic gradient was 0.003 feet per foot. However, the direction of ground water flow in the vicinity of the site has been influenced by ground water pumping in the Grandview-Crystal Springs well field (northwest of the site) (LADWP, 1983). When these wells are active, large cones of depression result, and the local ground water flow direction appears to shift to the north or northeast. Ground water extraction effects have created an artificial ground water divide in the area. Apparently, ground water north of Colorado Street generally flows to the north-northeast when the well field is operating. During periods of well inactivity, the ground water flow direction may revert to the south-southeast. Generally ground water flow south of Colorado Road, and in the vicinity of the site, is thought to be to the south-southeast (LADWP, 1991).

Ground water in the Los Angeles River Narrows has historically contained high total dissolved solids (TDS). Low levels of TCE and PCE have been detected in numerous wells in the Basin (LADWP, 1983); the Basin is currently a Federal Superfund site.

DRAFT

#### IV. SUBSURFACE INVESTIGATION PROGRAM

Drilling and soil sampling methods, and necessary testing procedures used during the subsurface investigation are summarized in this section. In addition, details of lithologic logging, and surveying are presented.

##### A. Boring Locations

Eighteen soil borings were drilled during this investigation. Boring locations were based on the results of an earlier soil gas survey (ENVIRON, 1991). Boring locations were staked in the field on July 22, 1991. ENVIRON met with Ms. Laurie Morgan of the RWQCB on July 22, 1991, who also reviewed and approved the locations of all borings except Soil Borings SB-17 and SB-18. Ms. Morgan requested modification of several boring locations during her review and ENVIRON adjusted these locations at her direction. ENVIRON telecopied the proposed locations for Soil Borings SB-17 and SB-18 to Mr. David Bacharowski of the RWQCB on July 23, 1991; Mr. Bacharowski verbally approved these proposed locations in a telephone discussion on the afternoon of the same day. Boring locations are depicted on Figure 3.

##### B. Property Access

Access to the site was arranged by GCDP. Prior to initiation of drilling activities, ENVIRON contacted Underground Services Alert (USA) which marked the location of all major utilities at the property boundary. Subsurface utilities were not detected at any of the proposed boring locations.

##### C. Soil Borings

Eighteen soil borings were drilled during this investigation. Generally borings were drilled to approximately 15-feet below ground surface. Soil Boring SB-1 was drilled to approximately 22-feet below ground surface because difficulty was encountered obtaining a soil sample at the 15-foot depth. Soil Boring SB-6 was drilled to approximately 26-feet below ground surface in response to conditions encountered in the field. Borings SB-17 and SB-18, were drilled to approximately 30-feet below ground surface to assess soil quality below the area previously excavated by Patterson Resources (1990).

Soil borings were drilled using 8-inch-diameter, hollow-stem auger drilling equipment.

**DRAFT**

All drilling activities were supervised by an ENVIRON geologist. Borings were visually logged in accordance with the Unified Soil Classification System (USCS). Lithologic logs were recorded in the field on boring log forms and subsequently verified by an ENVIRON registered geologist. Boring logs are presented in Attachment B.

Soil samples were collected at 5-foot intervals during drilling. Because near-surface sediments (0 to 4 foot depth) were disturbed during demolition of the facility, the first soil sample collected from each boring was at approximately 5 feet below ground surface (as previously approved by the RWQCB). Soil samples were collected using a Sprague and Henwood (S&H) sampler lined with three 6-inch-long by 2.4-inch-diameter brass sleeves. Two samples were collected at each interval. One tube was immediately sealed with Teflon-lined plastic caps, labeled, placed in a Ziploc plastic bag, and stored on ice in a closed container. Soil contained within the second tube was visually inspected, and monitored for volatile organic vapors using an organic vapor meter (OVM). All readings were recorded on the boring log. OVM monitoring results are presented in Table 1.

After sampling was completed, each boring was backfilled using a cement-bentonite grout. The location of each boring was marked with a stake to aid in subsequent surveying activities.

One soil sample collected from each of the 5, 10, and 15-foot sampling intervals from borings SB-1 through SB-16; and from the 18, 23, and 28-foot sampling intervals from borings SB-17 and SB-18 was submitted for analytical testing to a state-certified laboratory. Prior to transportation, the cooler containing these samples was sealed with custody tape. Soil samples were transported to the laboratory within 24-hours of collection. Chain-of-custody procedures were followed; custody forms were relinquished upon delivery of samples to the laboratory. Copies of executed chain-of-custody forms are included with the analytical laboratory reports in Attachment C.

**D. Surveying**

Elevations of all borings were surveyed using a surveyor licensed in California. Elevations were provided and referenced to the 1929 National Geodetic Vertical Datum (Mean Sea Level). Ground elevations were surveyed to the nearest 0.1 foot at each boring location. Borings were located horizontally to the nearest 1 foot using the California State Plane Coordinate System. Survey data are presented in Attachment D.

**E. Equipment Decontamination**

Prior to mobilizing the drill rig to the site, the rig and all associated equipment were cleaned with a high-pressure, hot-water washer to remove oil, grease, mud, tar, and other foreign matter. The augers were cleaned between borings using a self-contained hot-water

**DRAFT**

washer. Soil sampling equipment was cleaned prior to use, and after each use by rinsing with potable water, washing with an Alconox solution, and rinsing with distilled water.

**F. Waste Containment**

Waste soil produced during soil boring drilling was placed in Department of Transportation (DOT)-approved, 55-gallon drums. After completion of each boring, the drum was sealed and labeled with the boring number, depth interval, and date. Decontamination fluids were contained in the self-contained hot water washer provided by the drilling subcontractor.

DRAFT

## V. ANALYTICAL PROCEDURES

Fifty-five soil samples were transported to Analytical Technologies Inc. (ATI), a state-certified laboratory, under chain-of-custody protocol for chemical analysis. All samples were analyzed for volatile organic compounds (VOCs) by EPA Method 8240. This method was modified to include use of a capillary column. All soil samples were also analyzed for total fuel hydrocarbons (TFH) by EPA Method 8015 (modified), and for total petroleum hydrocarbons (TPH) by EPA Method 418.1. Laboratory results are summarized in Table 2; the laboratory reports are provided in Attachment C.

ATI Laboratories adheres to the standard quality assurance and quality control (QA/QC) procedures required by laboratories certified under the ELAP program. QA/QC results, presented with the laboratory report in Attachment B, indicate that analytical test data are considered reliable.

DRAFT

## VI. DISCUSSION

### A. Lithology

Soil conditions encountered beneath the site were heterogeneous and generally consisted of brown fine- to coarse-grained sand containing traces of silt and/or clay, with localized occurrences of silty sand, clayey sand, and silty clay. Typically, the sand contained subangular-to-subrounded gravel beginning at approximately 10 feet below ground surface. The encountered subsurface sediments are consistent with previously described local and regional geologic conditions and may be indicative of a braided stream channel environment.

### B. Soil Quality

#### 1. Volatile Organic Compounds

Only one soil sample contained VOCs; TCE was detected at a concentration of 0.1 milligrams per kilogram (mg/kg) in the soil sample collected from 5-feet below ground surface in boring SB-7. TCE was not detected in the soil samples collected from 10- and 15-feet below ground surface in the same boring, or in any other soil samples analyzed during this investigation. The detected concentration is essentially a trace value; the fact that TCE was not detected at deeper sampling intervals in the same boring, or in any other samples submitted for analytical testing, indicates that the occurrence is surficial, and discrete and localized in nature.

VOCs, other than the single occurrence of TCE, were not detected in any of the other borings drilled during this investigation.

#### 2. Total Fuel Hydrocarbons

TFH, as well as BTXE, were not detected in any of the soil samples submitted for analytical testing. This indicates that fuel hydrocarbons, in the form of gasoline or diesel products, are not present in the soil underlying the GCDP property at locations tested during this investigation.

#### 3. Total Petroleum Hydrocarbons

##### a) Analytical Test Results

TPH concentrations ranging between 1 and 180 mg/kg were detected in approximately half of the soil samples submitted for chemical analysis. In

*File and  
"and"*

**DRAFT**

all instances, except one, TPH concentrations were less than 90 mg/kg; except in four samples, TPH concentrations were less than 50 mg/kg. TPH detection limits are 1 mg/kg. Considering the absence of TFH and BTXE in all of the samples analyzed, the origin of the detected TPH does not appear to be attributable to gasoline or diesel fuel in the soils. Therefore, applicable remedial action levels would likely be the 1,000 mg/kg for diesel fuel suggested in California's Leaking Underground Storage Tank Field Manual (1989). All TPH concentration detected during this investigation were well below the remedial action level.

TPH was detected at 180 mg/kg in the soil sample collected from 5-feet below ground surface in Boring SB-16; the RWQCB noted limited surface staining in this area during their April 1991 inspection. However, TPH was not detected in the soil samples collected at 10- and 15-feet below ground surface in this same boring. Therefore, although the TPH appears to be related to the observed oil stain, the extent appears to be localized in the shallow soil.

Information obtained from an interview conducted previously by ENVIRON (1991), indicated that the "test cell" building may have been used by Kinner Motors for in-line aircraft engine manufacturing and testing. TPH was detected in Soil Borings SB-11 and SB-12 which were located near two previously existing sumps adjacent to the north wall of the "test cell" building. TPH concentrations of 36 mg/kg and 67 mg/kg were detected in Soil Boring SB-11 at depths of 5 and 10 feet below ground surface, respectively; TPH was not detected at the 15 foot sampling depth. In Soil Boring SB-12 TPH was detected at a concentration of 90 mg/kg in the 5 foot sample, but not at the 10 foot and 15 foot sampling depths. The detected TPH could be indicative of relatively immobile, heavier lubricating or machine oils previously used in the building. The extent appears to be localized, and limited to surficial soils.

Based on the information previously obtained and reviewed by ENVIRON (ENVIRON, 1991), additional sources of heavy fuel oils on the property are not known. Therefore, the origin of low TPH concentrations at other on-site sampling locations is unclear.

**b) Analysis of EPA Method 418.1**

Given the low concentrations of TPH at localized points at the site in conjunction with the absence of HTEX and TFH, the dominant constituents of fuel hydrocarbons, ENVIRON researched EPA Method 418.1. Although the results of EPA Method 418.1 are commonly referred to as TPH or Total

## DRAFT

Petroleum Hydrocarbons, recent studies and analyses cast doubt on the reliability of this method to detect petroleum hydrocarbons in all types of soil.

EPA Method 418.1 detects all relatively non-polar organic molecules. The carbon chain length detected using this method is generally C26 (26 carbons linked together), or larger. Therefore, EPA Method 418.1 is not specific for petroleum hydrocarbons. Mr. Tim Fitzpatrick, head chemist in ATT's San Diego laboratory, stated that soils typically contain humic and folic acids, which are likely to be detected by the EPA 418.1 method. Mr. Fitzpatrick suggested that the TPH concentrations detected in ENVIRON's soil samples could be humic and/or folic acids because TPH and BTXE were not detected in any of the soil samples. In addition, Mr. Fitzpatrick stated that the low levels of TPH (less than 10 mg/kg) detected in a number of the soil samples could be a laboratory artifact (Fitzpatrick, 1991).

Moreover, recent research (Thomey, 1989) concluded that in soil containing silt or clay fractions, use of EPA Method 418.1 produced a positive interference. In some instances, concentrations between 100 and 200 mg/kg were detected in soils known not to contain petroleum hydrocarbons. EPA Method 418.1 was developed to measure TPH using infrared spectroscopy in water and wastewater; the method extraction procedure was later modified for soil analysis. The significantly higher concentrations detected using EPA Method 418.1 for soil analysis, were attributed to the fact that clay-sized particles suspended in the soil extract absorbed infra-red light, and produced a positive reading in the absence of petroleum hydrocarbons (Thomey, 1989). In conclusion, in spite of the commonly applied terminology, EPA Method 418.1 is specific to the analysis of petroleum hydrocarbons. The significance of these findings is discussed in Section VII.

DRAFT

## VII. CONCLUSIONS

TFH was not detected in any of the soil samples submitted for analytical testing including the soil samples from Soil Borings SB-17 and SB-18, which were collected below the area previously excavated by Patterson Resources. The absence of TFH and VOCs from samples from Borings SB-17 and SB-18 indicates that the maximum depth of hydrocarbon-bearing soil as previously identified by IT Corporation (1988) is likely to be correct. This affected soil was removed by Patterson Resources in 1990; remediation of this area appears to be complete.

VOCs were detected in only one of the 55 samples submitted for analytical testing. Soil boring SB-7 contained TCE at a concentration of 0.1 mg/kg at 5-feet below ground surface; however, TCE was not detected at the 10- and 15-foot sampling depths. The detected concentration is essentially a trace value, and not indicative of a significant release or an area requiring remediation. In addition, the absence of TCE in the 10- and 15-foot sampling intervals in boring SB-7, and in all other soil samples tested during this investigation, indicates that the occurrence is surficial, and discrete and localized in nature.

TPH concentrations detected in Soil Borings SB-11, SB-12, and SB-16 could be due to the occurrence of heavy oils (such as lubricating or machine oils), which may have been used previously in the vicinity of the "test cell" building. Other sources of heavy oils at the site are not known. Therefore, the relatively low concentrations of TPH detected in soil samples elsewhere on site appears to be anomalous and not related to the occurrence of petroleum hydrocarbons for the following reasons:

- TFH and BTXE were not detected in any of the soil samples submitted for analytical testing.
- Humic and folic acids which are known to occur naturally in soils can be detected by EPA Method 418.1.
- Completed research indicates that EPA Method 418.1 detects significantly higher TPH concentrations than are actually present in soil, and may produce a positive reading in the absence of petroleum hydrocarbons.

This investigation was conducted in compliance and cooperation with the RWQCB, and in response to the RWQCB's assessment of potential source areas at the site. The data collected during this investigation clearly indicate that petroleum hydrocarbon and volatile

DRAFT

organic compounds are not present in soil underlying the facility; therefore the facility does not appear to have contributed to known regional ground water contamination in the area. It is ENVIRON's opinion that all necessary work at this site has been completed, and no further work is warranted.

**DRAFT****REFERENCES**

California State Water Resources Control Board, 1989, Leaking Underground Fuel Tank Field Manual, October 1989.

California State Water Resources Control Board, 1962, Report of Referee: the City of Los Angeles vs. the City of San Fernando, in the Superior Court of the State of California in and for the County of Los Angeles, Volumes 1 and 2.

ENVIRON Corporation, 1991, "Subsurface investigation program, 5040 San Fernando Road, Glendale, California", dated June 1991.

Fitzpatrick, Tim. 1991. Personal Communication on August 2, 1991.

International Technology Corporation, 1988, "Environmental assessment, Anderson Desk, Glendale, California", dated May 3, 1988.

Leroy Crandall and Associates, 1987, "Report of preliminary foundation investigation and environmental audit, proposed site development San Fernando Road and Harvard Street, Glendale, California, for Equity Expansion, Inc.", dated December 11, 1987.

Los Angeles Department of Water and Power, 1983, Groundwater quality management plan, San Fernando Valley Basin: Prepared for Southern California Association of Governments.

Los Angeles Department of Water and Power, 1991, personal communication with Mr. Victor Vargas on May 23, 1991.

Patterson Resources, 1990, letter to Anderson Desk, dated April, 5 1991.

Thomey, Nan, and Bratberg, David, 1989, "A comparison of methods for measuring total petroleum hydrocarbons in soil", Proceedings of the NWWA/API Conference on Petroleum Hydrocarbons, and Organic Chemicals in Ground Water, November 1989.

# **EXHIBIT 3**

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION101 CENTRE PLAZA DRIVE  
MONTEREY PARK, CA 91754-2156  
(213) 266-7500  
FAX (213) 266-7600

REC'D MAR 0 8 1997

March 5, 1997

David Nagel  
Glendale Colorado Development Partners  
15350 Sherman Way, Suite 410  
Van Nuys, CA 91406**NO FURTHER REQUIREMENTS - FORMER ANDERSON DESK, INC., 5040 SAN FERNANDO ROAD, GLENDALE, CALIFORNIA (FILE NO. 113.5103)**

Upon review of our file for the subject site, we have the following comments with respect to the Well Investigation Program:

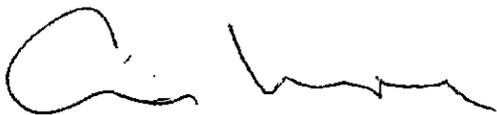
1. The subject site was been used for manufacturing wood office furniture from approximately 1975 to 1990 and is currently occupied by a retail business. Based on results of an initial inspection conducted by Board staff on April 3, 1991, assessment was required to determine if soil has been impacted by unregulated releases from on-site sources including the former chemical/waste storage area, sumps and clarifier.
2. A Board staff-directed soil gas survey was completed at the subject site which consisted of a total of 61 shallow (10' bgs) soil vapor samples collected adjacent to potential sources of liquid wastes. Laboratory analysis of these samples detected maximum concentrations of 1,375  $\mu\text{g/L}$  TCE at 10' bgs and 14  $\mu\text{g/L}$  PCE.
3. Laboratory analysis of soil matrix samples collected at the site to a maximum depth of 28' bgs detected a maximum concentration of 100  $\mu\text{g/kg}$  TCE at 5' bgs. Groundwater is estimated to be approximately 55' bgs.

Based on information submitted and our inspections, we have no further requirements for the subject site with respect to the Well Investigation Program. The shallow VOC soil contamination exceeds allowable limits. However, considering the relatively small volume of impacted soil, attenuation of impact with depth and depth to ground water, this does not represent a substantial continuing threat to ground water quality and therefore cleanup is not warranted.

The jurisdictional requirements of other agencies, such as the U.S. Environmental Protection Agency, are not affected by this Board's "no further requirements" decision. Such agencies may choose to make their own determinations regarding the site.

Mr. Nagel  
Page 2

If you have any questions, please contact Ms. Ana Veloz at (213)  
266-7590.

A handwritten signature in black ink, appearing to read "Eric Nupen". The signature is fluid and cursive, with a large initial "E" and a long, sweeping underline.

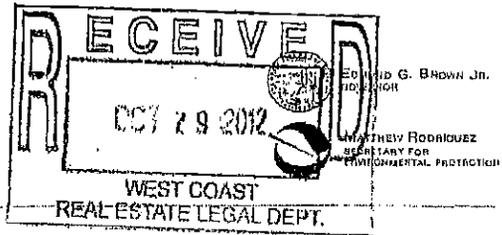
ERIC NUPEN, R.G.  
Senior Engineering Geologist

cc: Michael Osinski, U.S. EPA, Region IX  
Tom Klinger, Los Angeles County, Forester and Fire Warden  
Linda Sutton, Alschuler, Grossman & Pines

# **EXHIBIT 4**



Los Angeles Regional Water Quality Control Board



October 24, 2012

Ms. Erika Strawn
Home Depot, U.S.A.
3800 West Chapman Ave
Orange, California 90071

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7011 3500 0003 5491 0292

SUBJECT: REQUIREMENT FOR TECHNICAL REPORTS PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2012-0051

SITE: FORMER MITCHELL CAMERA FACILITY (HOME DEPOT), 5040 SAN FERNANDO ROAD, GLENDALE, CALIFORNIA (WIP FILE NO. 113.5103)

Dear Ms. Strawn:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all beneficial uses within major portions of Los Angeles and Ventura Counties, including the referenced site.

Regional Board staff reviewed the technical information and historical documents contained in the case file for the site. Information in the case file indicates that manufacturing operations at the former Mitchell Camera facility at the above referenced address involved metal finishing processes such as plating. These manufacturing processes have the potential for waste discharge to the soil and groundwater. Previous site assessments conducted at the site focused on volatile organic compounds (VOCs) and did not assess heavy metals. The potential release and/or discharge of heavy metals, particularly chromium, to the subsurface soil beneath the site needs to be further evaluated.

Enclosed is a California Water Code section 13267 Order No. R4-2012-0051 (Order), requiring you to prepare and submit a technical report (Workplan) for subsurface soil investigation for assessment of heavy metals, particularly chromium.

Should you have any questions related to this letter, please contact Mr. Larry Moore at (213) 576-6730 or lmoore@waterboards.ca.gov.

Sincerely,

Handwritten signature of Samuel Unger, PE
Samuel Unger, PE
Executive Officer

cc: Ms. Lisa Hanusiak, USEPA Region IX

MARIA MEHRMANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/losangeles

Ms. Erika Strawn  
Former Mitchell Camera Facility (Home Depot)

- 2 -

October 24, 2012

Mr. Leo Chan, City of Glendale  
Mr. Vahe Dabbaghian, Los Angeles Department of Water & Power  
Mr. Thomas Erb, Los Angeles Department of Water & Power  
Mr. Bill Mace, City of Burbank Water Supply Department  
Mr. Richard Slade, ULARA Water Master



EDUARD G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

**ORDER TO PROVIDE A TECHNICAL REPORT FOR  
SUBSURFACE SOIL INVESTIGATION**

**CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2012-0051**

**DIRECTED TO HOME DEPOT**

**FORMER MITCHELL CAMERA FACILITY (HOME DEPOT)  
5040 SAN FERNANDO ROAD  
GLENDALE, CALIFORNIA 91204  
(WIP FILE NO. 113.5103)**

The Regional Water Quality Control Board, Los Angeles Region (Regional Board) makes the following findings and issues this Order pursuant to California Water Code (CWC) section 13267.

1. Mitchell Camera Corporation (Mitchell Camera) operated a facility at 5040 San Fernando Road in Glendale (Site) from approximately 1942 through 1975. Mitchell Camera was engaged in the manufacture of motion picture cameras and accessories. Regional Board records indicate that operations at Mitchell Camera included metal finishing. In approximately 1975, Anderson Desk occupied the property and remained here through 1990. Operations at Anderson Desk included woodworking, assembly, and wood sealing. Following Anderson Desk's occupation of the Site, the Glendale Colorado Development Group acquired the property in 1990. The Site was subsequently developed by Home Depot in approximately 1993.

Regional Board records also indicate that the Site underwent several phases of subsurface investigations. However, these investigations focused on volatile organic compounds (VOCs) and did not assess heavy metals. The potential discharge of heavy metals to the soil beneath the Site, as a result of historical metal finishing operations, has not yet been assessed.

2. CWC section 13267(b)(1) states, in part: In conducting an investigation, the Regional Board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the Regional Board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the Regional Board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
3. Regional Board has evidence in the case file for the Site indicating that there is or has been a potential for discharge of waste at or from the Site. The evidence supporting this is that the Site is located in the United States Environmental Protection Agency (USEPA) San Fernando Valley Superfund Site. It is known that groundwater within the Superfund Site, including in the vicinity of

MARIA MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | [www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles)

the former Mitchell Camera facility (Home Depot) site, is contaminated with VOCs and heavy metals, particularly chromium.

Site assessments were conducted at the Site from approximately 1987 to 1991. The site assessments involved review of aerial photos, interviewing former company executives and subsurface investigations. It was reported in Environ's Subsurface Investigation Work Plan, dated June 1991, that the former Vice President and Operations manager of Mitchell Camera, Mr. Chuck Mallory, was interviewed to gather historical information on Mitchell Camera's operations. Mr. Mallory indicated that manufacturing activities at Mitchell Camera included milling, gear hobbing, deburring, painting, grinding, heat treating, plating, degreasing and lathing. Plating equipment included six above-ground 40-gallon plating tanks, and three 50-gallon acid tanks.

Multiple subsurface investigations were conducted for assessment of VOCs and petroleum hydrocarbons. No assessment of heavy metals was conducted during the site investigations.

4. This Order identifies Home Depot as the party responsible for the potential unauthorized discharge of waste from operations identified in paragraph 1 and 3, because the Home Depot owns the property on which the waste is discharged.
5. This Order requires the party named herein to prepare and submit a technical report (Workplan) to conduct a subsurface soil investigation to determine if unauthorized releases of heavy metals have impacted the soil beneath the Site.
6. The Regional Board needs this information in order to determine if an unauthorized discharge or release of waste containing heavy metals to the soil has occurred and to fully assess and clean up the waste, if discharged, for preserving water quality and protecting human health.
7. The burdens, including costs, of this report bear a reasonable relationship to the need for the report and the benefits to be obtained from the report. The information is necessary to assure complete assessment and adequate cleanup of the Superfund Site, which as described above, poses a potential threat to public health and the environment.
8. The issuance of this Order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a) (2), Chapter 3, Title 14 of the California Code of Regulations. This Order requires submittal of technical and/or monitoring reports and work plans. The proposed activities under the work plans are not yet known. It is unlikely that implementation of the work plans associated with this Order could result in anything more than minor physical changes to the environment. If the implementation may result in significant impacts on the environment, the appropriate lead agency will address the CEQA requirements prior to implementing any work plan.
9. Any person aggrieved by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)

or will be provided upon request.

**THEREFORE, IT IS HEREBY ORDERED** that Home Depot, pursuant to section 13267(b) of the California Water Code, is required to submit the following:

1. By **December 19, 2012**, submit a Workplan for an onsite investigation for assessment of heavy metals, particularly hexavalent chromium, in the subsurface soil. Information on site assessment can be found in the guidance manual entitled "*Interim Site Assessment & Cleanup Guidebook (May 1996)*," which can be found at the Regional Board website at:

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/may1996\\_voc\\_guidance.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/may1996_voc_guidance.shtml).

The Workplan shall also be developed following the applicable components of the Regional Board's "*Guidelines for Report Submittals, Section VI, Site Assessment Plans*," (March 1991, Revised June 1993). A copy of the guidelines can be found at the following URL:

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/ust/guidelines/la\\_county\\_guidelines\\_93.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/ust/guidelines/la_county_guidelines_93.pdf)

2. The Workplan must include proposed soil sampling borings to a minimum depth of 25 feet below ground surface (bgs) in such areas of concern as waste treatment facilities like sumps and clarifiers, hazardous waste storage area(s), and chemical storage area(s).
3. The Workplan shall include the detailed information of any former and existing chromium storage and hazardous waste management areas and associated practices.
4. The Workplan must contain a health and safety plan (H&SP), as per the guidelines.

The Workplan shall be submitted to:

Mr. Larry Moore  
Staff Environmental Scientist  
Remediation Section  
Los Angeles Regional Water Quality Control Board  
320 W. 4th Street, Suite 200  
Los Angeles, CA 90013  
Tel: 213-576-6730  
Fax: 213-576-6600  
E-mail: [lmoores@waterboards.ca.gov](mailto:lmoores@waterboards.ca.gov)

Pursuant to 13267(a) of the CWC, any person who fails to submit technical reports in accordance with the Order is guilty of a misdemeanor. Pursuant to section 13268(b) (1) of the CWC, failure to submit the required technical report described above by the specified due date(s) may result in the imposition of administrative civil liability by the Regional Board in an amount up to one thousand dollars (\$1,000) per day for each day the technical report is not received after the above due date. These civil liabilities may be assessed by the Regional Board for failure to comply, beginning with the date that the violations first occurred, and without further warning.

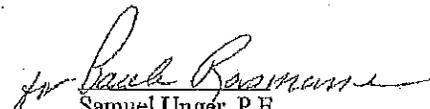
The Regional Board, under the authority given by CWC section 13267, subdivision (b)(1), requires you to include a perjury statement in all reports submitted under the 13267 Order. The perjury statement shall be signed by a senior authorized representative (not by a consultant). The perjury statement shall be in the following format:

"I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The State Board adopted regulations (Chapter 30, Division 3 of Title 23 & Division 3 of Title 27, California Code of Regulation) requiring the electronic submittal of information (ESI) for all site cleanup programs, starting January 1, 2005. Currently, all of the information on electronic submittals and GeoTracker contacts can be found at [http://www.waterboards.ca.gov/ust/electronic\\_submittal](http://www.waterboards.ca.gov/ust/electronic_submittal).

To comply with the above referenced regulation, you are required to upload all technical reports, documents, and well data to GeoTracker by the due dates specified in the Regional Board letters and orders issued to you or for the Site. However, we may request that you submit hard copies of selected documents and data to the Regional Board in addition to electronic submittal of information to GeoTracker.

SO ORDERED.

  
Samuel Unger, P.E.  
Executive Officer

# **EXHIBIT 5**

Kenneth A. Ehrlich  
Direct: (310) 785-5395  
KEhrlich@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

Ref: 62926-0126

February 13, 2013

VIA E-MAIL

Larry Moore  
Staff Environmental Scientist  
Remediation Section  
Los Angeles Regional Water Quality Control Board  
320 W. 4th Street, Suite 200  
Los Angeles, CA 90013

Re: WIP File No. 113.5103  
Former Mitchell Camera Facility  
5040 San Fernando Road, Glendale, California ("Property")

Dear Mr. Moore:

We represent Decron Management Corp. ("Decron"), owner of the above-referenced Property (the "Property") and lessor to Home Depot, the party which received your letter of October 24, 2012 (the "Letter"). Despite no indication that the Property contains a source attributable to contamination, the Letter requests additional heavy metals assessment at the Property. Home Depot has forwarded the Letter to Decron for proper handling. The Letter raises significant concerns, and appears to have no basis in light of the current Property use and previous site remediation.

Prior investigations at the Property evaluated volatile organic compounds ("VOCs") at the Property. The RWQCB issued a closure letter for the prior VOC issue, and no evidence indicated then or now that a release of heavy metals occurred into soils and groundwater beneath the Property. Moreover, the immediate vicinity surrounding the Property is replete with current and prior known sources of heavy metal contamination. For example, the former Excello Plating Company site (the "Excello Site"), located proximate to the Property, is a known site of hexavalent chromium ("Chrome 6") and other metal releases. The Excello Site likely constitutes the primary source of any Chrome 6 or other metals in the vicinity. We also have significant concerns that the existing contaminants within the Glendale South Operable Unit of the San Fernando Valley Superfund Site (the "Superfund Site") would frustrate any effort to conduct the requested testing.

Therefore, ordering Decron or Home Depot to conduct further testing would provide no benefit to the public or public safety and is improper. Accordingly, we request that RWQCB withdraw the Order, effective immediately.

**1. No Facts Justify Investigation Of Heavy Metals At The Property.**

Home Depot, a retail home improvement establishment, has occupied the Property since the early 1990s. Home Depot is not a source of contamination, as their use involves no manufacturing activities of any kind and no industrial process use of heavy metals, particularly Chrome 6. Although historic use of the Property included VOCs, releases of which have already been remediated, no historic or current evidence demonstrates or suggests releases of heavy metals, particularly Chrome 6, associated with the Property. As the RWQCB has already granted closure for the Property, and no factual basis exists for issuance of the Order for investigation of such materials, issuance of the Letter is both inappropriate and improper.

**2. The Excello Site Represents The Primary Source Of Any Metals Contamination in the Vicinity of the Property.**

The Excello Site is a known and significant source of Chrome 6 and other metals from illegal releases into soils and groundwater. *See* Consent Order, Docket HWCA 2003-0175, August 5, 2004 (the "Consent Order"). As recited in sections 3.3 and 3.4 of the Consent Order, Excello improperly disposed of hazardous wastes, including Chrome 6 and a variety of other metals, as recently as 2002. The RWQCB's August 24, 2012 justification memorandum for issuance of waste discharge requirements relates to the treatment of Chrome 6-impacted soils to depths of 45 feet below ground surface, and cited extremely high concentrations of Chrome 6 in soils (up to 18,400 mg/kg) and groundwater (190 ug/L). Thus, to the extent that any Chrome 6 is present in the soils and groundwater in the vicinity, the Excello Site—and not the Property—represents the primary source.

**3. The Superfund Site Plume Would Confound Any Test For Heavy Metals.**

Even assuming the existence of evidence to justify additional testing for heavy metals at the Property (there is none), Chrome 6—as well as a different isotope, Chrome 3—collectively represent a recognized regional groundwater contamination problem that renders site-specific testing meaningless.

The Property is located within the Superfund Site. Within the Superfund Site, the U.S. Environmental Protection Agency ("EPA") has listed chromium isotopes, among the many other hazardous substances identified, as contaminants of concern in the groundwater. *The EPA has also established an operable unit specifically dedicated to chromium isotopes, initiated a full investigation of the same in groundwater in 2011, and installed a well sampling system for that purpose in 2012. Moreover, according to the Final Remediation Investigation Work Plan (CH2MHill, 2012; the "Work Plan"), establishment of the "Chromium Operable Unit" occurred as a result of a four-year study by the RWQCB that identified "extensive hexavalent chromium*

Larry Moore  
February 13, 2013  
Page 3

contamination in ground water *throughout* the eastern SFV..." (Work Plan, § 1.2; emphasis added).

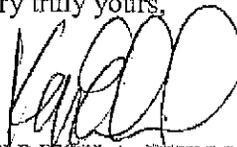
Given the above, even if chromium isotopes were detected in groundwater or in the vadose zone beneath the Property, the presence of those contaminants is perfectly consistent with the known, widespread nature of the Superfund Site's contaminant plume, especially given the nearby presence of a known responsible party for releases of the same. Such testing would, therefore, reveal nothing about the Property or its historic use, or even the extent to which historic activities may have resulted in deposition of those contaminants (though they did not). Simply put, the known regional chromium contamination would stymie any effort to characterize the Property in isolation. Further, the remedy eventually selected by the EPA for the Chromium Operable Unit would address any such contamination as may exist in association with the Superfund Site plume. Therefore, any data collected pursuant to the Order would not provide any valid basis for ordering further investigation or cleanup by Decron or Home Depot and therefore would not protect human health or the environment. As the Order would neither provide valid data regarding the Property, nor protect human health or the environment, it is improper and the RWQCB should rescind it.

#### 4. Conclusion

As described above, the RWQCB previously granted closure of the prior remediation activities at the Property, and no new information provides any factual basis for the subsequent issuance of the Order. Moreover, a known and severe local (Excello) and regional groundwater contamination plume comprising the same contaminants of concern listed in the Order would provide no meaningful information regarding the Property and would provide no valid basis for ordering either further investigation or remediation. Finally, EPA has initiated an extensive investigation of the same contaminants of concern, and that investigation will result in the development of a remedial design to address the same. As the Order is inappropriate, improper, and duplicative of existing investigatory activities, the RWQCB must rescind the Order and must refrain from seeking additional investigation from Decron or Home Depot.

Decron reserves all of its rights, and waives none. Please contact our office with any questions or concerns.

Very truly yours,



KENNETH A. EHRlich,  
a Professional Corporation of  
Jeffer Mangels Butler & Mitchell LLP

KAE:neb  
cc: Neill Brower

# **EXHIBIT 6**



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Los Angeles Regional Water Quality Control Board**

April 10, 2013

Mr. Robert W. Stevenson  
Stevenson Real Estate  
1111 North Brand Boulevard, Suite 200  
Glendale, California 91202

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7011 2970 0000 0645 3236

Mr. David J. Nagle  
DECRON Properties  
6222 Wilshire Boulevard, Suite 400  
Los Angeles, California 90048

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7012 1640 0000 6294 5045

**SUBJECT: REQUIREMENT FOR TECHNICAL REPORTS PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2013-0056**

**SITE: FORMER MITCHELL CAMERA CORPORATION, 5040 SAN FERNANDO ROAD, GLENDALE, CALIFORNIA (FILE NO. 113.5103)**

Dear Mr. Stevenson and Mr. Nagle:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all beneficial uses within major portions of the Los Angeles and Ventura Counties, including the referenced site.

The Regional Board is investigating potential sources for groundwater pollution within the United States Environmental Protection Agency (USEPA) San Fernando Valley Superfund Site (Superfund Site). It is known that groundwater within the Superfund Site, including the vicinity of the former Mitchell Camera Corporation (Mitchell Camera) facility, is contaminated with volatile organic compounds (VOCs) and heavy metals, particularly chromium.

Regional Board staff has reviewed technical information and historical documents contained in Regional Board files for the property located at 5040 San Fernando Road, in the City of Glendale, California (the Site). Regional Board files indicate that Mitchell Camera occupied the Site between approximately 1946 and 1975. Mitchell Camera operations at the Site consisted of motion picture camera manufacturing for the entertainment industry. The manufacturing processes involved the use of various chemicals such as solvents, acids, and electrolyte solutions which may impact groundwater quality if released to the subsurface environment.

MARIA MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | [www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles)

Mr. Robert W. Stevenson  
Stevenson Real Estate  
Mr. David J. Nagle  
DECRON Properties

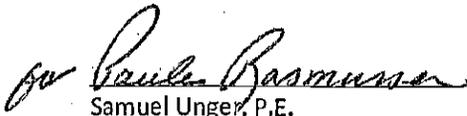
- 2 -

April 10, 2013

Enclosed is a Regional Board Order for technical report requirements pursuant to California Water Code Section 13267 Order No. R4-2013-0056 (Order). As the current property owners, Stevenson Real Estate and DECRON Properties are required to comply with the Order to prepare and submit a Subsurface Soil Investigation Workplan in order to evaluate the subsurface conditions and the potential for groundwater contamination.

Should you have any questions related to this project, please contact Ms. Luz Rabelo via telephone at (213) 576-6783 or via email at [luz.rabelo@waterboards.ca.gov](mailto:luz.rabelo@waterboards.ca.gov).

Sincerely,



Samuel Unger, P.E.  
Executive Officer

Enclosure: California Water Code Section 13267 Order No. R4-2013-0056

cc: Ms. Lisa Hanusiak, USEPA Region IX  
Mr. Leo Chan, City of Glendale  
Mr. Bill Mace, City of Burbank Water Supply Department  
Mr. Vahe Dabbaghian, Los Angeles Department of Water & Power  
Mr. Milad Taghavi, Los Angeles Department of Water & Power  
Mr. Richard Slade, ULARA Watermaster



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## Los Angeles Regional Water Quality Control Board

**ORDER TO PROVIDE A TECHNICAL REPORT FOR  
SUBSURFACE SOIL INVESTIGATION  
CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2013-0056**

**DIRECTED TO STEVENSON REAL ESTATE AND DECRON PROPERTIES**

**FORMER MITCHELL CAMERA CORPORATION  
5040 SAN FERNANDO ROAD, GLENDALE, CALIFORNIA  
(FILE NO. 113.5103)**

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) makes the following findings and issues this Order pursuant to California Water Code (CWC) section 13267.

1. The groundwater within the San Fernando Valley Groundwater Basin has been impacted by heavy metals, specifically chromium. As a result of the groundwater impacts, the Regional Board is investigating potential sources of the contamination. The current investigation, led by the United States Environmental Protection Agency (USEPA) and the Regional Board, is focused on identifying individuals and companies responsible for the chromium contamination in the region and holding them responsible for the investigation and remediation of the affected Site. The above Site is located in the investigative area.
2. The subject property located at 5040 San Fernando Road, in the City of Glendale, California (the Site) was formerly occupied by Mitchell Camera Corporation (Mitchell Camera) for approximately 29 years, between 1946 and 1975. Between 1975 and 1990, the Site was occupied by Anderson Desk who operated a desk manufacturing facility at the Site. In 1992, the Site was purchased and redeveloped by DECROn properties in conjunction with Stevenson Real Estate, who currently lease the Site to Home Depot. Mitchell Camera performed manufacturing of motion picture cameras for the entertainment industry. Regional Board files state that Mitchell Camera manufacturing activities at the Site included milling, tool/die, gear hobbing, deburring, painting, grinding, heat treating, plating, degreasing and lathing. These manufacturing processes involve the use of various chemicals such as solvents, acids, and electrolyte solutions which could impact groundwater quality, if released to the subsurface environment. Regional Board files also indicate that previous investigations were conducted at the Site which focused on volatile organic compounds (VOCs). However, there is no documentation that any subsurface soil investigation for heavy metals was performed. Therefore, the potential discharge and/or release of heavy metal compounds to the soils at the Site, as a result of Mitchell Camera operations have not been assessed.
3. CWC section 13267(b)(1) states, in part: In conducting an investigation the Regional Board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the Regional Board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and

MARIA MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | [www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles)

the benefits to be obtained from the reports. In requiring those reports, the Regional Board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

4. Regional Board staff has obtained evidence indicating that there has been a potential for discharge of waste at or from the Site. In a report titled Subsurface Investigation Program, dated June 1991, prepared by ENVIRON Corporation for the referenced Site, it was stated that an interview was conducted with Mr. Chuck Mallory, former Vice-President and operations manager of Mitchell Camera. Mr. Chuck Mallory stated that Mitchell Camera conducted plating activities at the Site. Mr. Chuck Mallory also stated that plating equipment at the Site consisted of six (6) 40-gallon plating tanks and three (3) 50-gallon acid tanks.

Mitchell Camera is among the suspected sources of waste discharge in the USEPA San Fernando Valley Superfund Site (Superfund Site) because of the operations at the Site. It is known that groundwater within the Superfund Site, including the vicinity of the Mitchell Camera facility, is contaminated with VOCs and heavy metals, particularly chromium. To date, a complete subsurface investigation of heavy metals in soil or groundwater has not been performed at the Site.

5. This Order identifies Stevenson Real Estate and DECRON Properties as the entities responsible for the potential unauthorized discharge of waste identified in paragraph two (2) and four (4) because Stevenson Real Estate and DECRON Properties own the property on which the activity that resulted in the potential discharge or waste was performed.
6. This Order requires the persons/entities named herein to prepare and submit a Subsurface Soil Investigation Workplan (Workplan) in order to evaluate the conditions at the Site and determine if any unauthorized release of heavy metal compounds, specifically chromium, has impacted the soils beneath the Site that could consequently pose a threat to groundwater. You are expected to submit a complete Workplan, as required by this Order, to the Regional Board. The Regional Board may reject the Workplan if it is deemed incomplete and/or require revisions to the Workplan under this Order.
7. The Regional Board needs this information in order to determine the subsurface soil conditions at the Site as part of the efforts to identify sources of chromium contamination in the San Fernando Valley.
8. The burdens, including costs, of these reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The information is necessary to assure adequate cleanup of the former Mitchell Camera facility, which as described above may have discharged chromium waste detected in the subsurface soil and groundwater and potentially poses significant threats to public health and the environment.
9. The issuance of this Order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This Order

requires submittal of technical and/or monitoring reports and workplans. The proposed activities under the Workplan are not yet known. It is unlikely that implementation of the Workplan associated with this Order could result in anything more than minor physical changes to the environment. If the implementation may result in significant impacts on the environment, the appropriate lead agency will address the CEQA requirements prior to implementing any Workplan.

10. Any person aggrieved by this action of the Regional Board may petition the State Water Resources Control Board (State 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 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 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 the following link:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)

or will be provided upon request.

**THEREFORE, IT IS HEREBY ORDERED** that Stevenson Real Estate and DECRON Properties, pursuant to section 13267(b) of the CWC, are required to submit the following:

1. A Supplemental Subsurface Soil Investigation Workplan (Workplan) must be submitted by May 24, 2013. Guidance documents to assist you with this task can be found on the Internet at the following links:

*"General Work Plan Requirements for a Heavy Metal Soil Investigation"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/GeneralWorkplanRequirementsforaHeavyMetalsSoilInvestigation.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/GeneralWorkplanRequirementsforaHeavyMetalsSoilInvestigation.pdf)

*"Interim Site Assessment & Cleanup Guidebook (May 1996),"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/may1996\\_voc\\_guidance.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/may1996_voc_guidance.shtml)

*"Quality Assurance Project Plan"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/Board\\_SGV-SFVCleanupProgram\\_Sept2008\\_QAPP.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/Board_SGV-SFVCleanupProgram_Sept2008_QAPP.pdf)

2. The Workplan shall include detailed information of former and existing chromium storage, hazardous waste management, and associated practices.
3. The Workplan must also include proposed soil sampling boring locations which shall extend to a minimum depth of 40 feet below ground surface in the areas of the previous plating processes

Mr. Robert W. Stevenson  
Stevenson Real Estate  
Mr. David J. Nagle  
DECRON Properties

- 4 -

April 10, 2013

and waste treatment (sumps, clarifiers, etc.), hazardous waste storage area, and chemical storage area.

4. The Workplan must contain a health and safety plan (HASP), as per the guidelines.

The above item shall be submitted to:

Ms. Luz Rabelo  
Water Resources Control Engineer  
Remediation Section  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, California 90013  
Phone: (213) 576-6783  
Email: [luz.rabelo@waterboards.ca.gov](mailto:luz.rabelo@waterboards.ca.gov)

Pursuant to 13267(a) of the CWC, any person who fails to submit reports in accordance with the Order is guilty of a misdemeanor. Pursuant to section 13268(b)(1) of the CWC, failure to submit the required Workplan described above by the specified due date(s) may result in the imposition of administrative civil liability by the Regional Board in an amount up to one thousand dollars (\$1,000) per day for each day the Workplan is not received after the above due date. These civil liabilities may be assessed by the Regional Board for failure to comply, beginning with the date that the violations first occurred, and without further warning.

The Regional Board, under the authority given by the CWC section 13267, subdivision (b)(1), requires you to include a perjury statement in all reports submitted under the 13267 Order. The perjury statement shall be signed by a senior authorized Stevenson Real Estate and DECRON Properties representative (not by a consultant). The perjury statement shall be in the following format:

"I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The State Board adopted regulations (Chapter 30, Division 3 of Title 23 & Division 3 of Title 27, California Code of Regulation) requiring the electronic submittal of information (ESI) for all site cleanup programs, starting January 1, 2005. Currently, all of the information on electronic submittals and GeoTracker contacts can be found on the Internet at the following link:

[http://www.waterboards.ca.gov/ust/electronic submittal](http://www.waterboards.ca.gov/ust/electronic%20submittal).

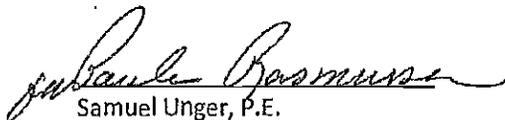
Mr. Robert W. Stevenson  
Stevenson Real Estate  
Mr. David J. Nagle  
DECRON Properties

- 5 -

April 10, 2013

To comply with the above referenced regulation, you are required to upload all technical reports, documents, and well data to GeoTracker by the due dates specified in the Regional Board letters and orders issued to you or for the Site. However, the Regional Board may request that you submit hard copies of selected documents and data in addition to electronic submittal of information to GeoTracker.

SO ORDERED.

  
Samuel Unger, P.E.  
Executive Officer

4-10-13  
Date

# **EXHIBIT 7**

Kenneth A. Ehrlich  
Direct: (310) 785-6395  
KEhrlich@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

Ref: 62926-0126

July 17, 2013

**VIA E-MAIL AND U.S. MAIL**

Sam Unger, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 W. 4th Street, Suite 200  
Los Angeles, CA 90013

Re: WIP File No. 113.5103  
Former Mitchell Camera Facility  
5040 San Fernando Road, Glendale, California ("Property")

Dear Mr. Unger:

We represent Decron Properties Corp. ("Decron"), a recipient of an improper directive under the above-referenced WIP File number and a property management company associated with the Property. As a preliminary matter, neither Decron nor Stevenson Real Estate ("Stevenson"), the other party named in connection with the Property, owns or occupies the Property. Rather, the Property owner of record is Glendale Colorado Development Partners, a California General Partnership ("GCDP"), also represented by this office. Therefore, neither Glendale nor Stevenson is properly named in the Regional Water Quality Control Board's (the "Board's") letter of October 24, 2012 and its associated order (the "Letter" and "Order," respectively) requesting additional heavy metals assessment. Nevertheless, for the purposes of this letter, Decron responds on behalf of GCDP and Stevenson. We thank you for your time and consideration in this matter and provide this letter as a detailed follow up to our discussions with Board Member Diamond.

The Order came more than 15 years after diligent remediation by the Property owner and issuance of regulatory closure by the Board, in accordance with all applicable laws and regulations. However, despite no substantiation in the Order that the Property contains a source attributable to heavy metals contamination, or that any release of metals occurred, the Letter requests additional heavy metals assessment at the Property. The Letter raises significant concerns, and appears to have no evidentiary basis in light of the current Property use and previous site remediation.

Prior investigations at the Property evaluated volatile organic compounds ("VOCs") at the Property, based on the history of uses at the Property. The RWQCB issued a "no further action letter" for the prior VOC issue on March 5, 1997 and no evidence indicated

then or now that a release of heavy metals occurred into soils and groundwater beneath the Property. Moreover, the immediate vicinity surrounding the Property is replete with current and prior known sources of heavy metal contamination. For example, the Kinner Airplane and Motor Corporation was historically located on an immediately adjacent property. The Drilube Company - Plant 1 site (the "Drilube Site"), located proximate to the Property to the north, is a known site of hexavalent Chromium ("Chrome 6") and other metal discharges to soils and groundwater. The former Excello Plating Company site (the "Excello Site"), located proximate to the Property to the south, also constitutes a known site of Chrome 6 and other metal releases. The Drilube and Excello Sites, which collectively bracket the Property, likely constitute the primary sources of any Chrome 6 or other metals in the vicinity. We also have significant concerns that the existing contaminants within the Glendale South Operable Unit of the San Fernando Valley Superfund Site (the "Superfund Site") would frustrate any effort to conduct the requested testing.

Therefore, ordering GCDP, Decron, or Stevenson to conduct further testing would provide no benefit to the public or public safety and is improper. Accordingly, we request that RWQCB withdraw the Order, effective immediately.

**1. No Facts Justify Investigation Of Heavy Metals At The Property.**

Home Depot, a retail home improvement establishment, has occupied the Property since the early 1990s. Home Depot is not a source of contamination, as their use involves no manufacturing activities of any kind and no industrial process use of heavy metals, particularly Chrome 6. Although historic use of the Property included VOCs, releases of which have already been remediated, no historic or current evidence demonstrates or suggests releases of heavy metals, particularly Chrome 6, associated with the Property. As the RWQCB has already granted closure for the Property, and no factual basis exists for issuance of the Order for investigation of such materials, issuance of the Letter is both inappropriate and improper.

**2. The Excello and Drilube Sites that Bracket the Property Represent The Primary Sources Of Any Metals Contamination in the Vicinity of the Property.**

Two known and significant sources of Chrome 6 and other metals effectively bracket the Property and represent the primary sources of those contaminants in vicinity soils and groundwater. Moreover, the presence of such high Chrome 6 concentrations in soils and groundwater at these sites, which bracket the Property, would confound any testing performed at the Property.

The Drilube Site is a known and significant source of Chrome 6 and other metals from illegal releases into soils and groundwater. See Cleanup and Abatement Order R4-2002-0068 [the "Drilube CAO"], p. 2. As recited in sections 4 and 5, known activities at that site included plating and the use of chromium, nickel, cadmium, and a variety of other metals, for approximately 40 years. According to Section 7 of the Drilube CAO, subsurface testing since 1994 indicated extraordinary levels of solvent and metals contamination of groundwater (with

Sam Unger, Executive Officer

July 17, 2013

Page 3

historic highs of *Chrome 6 at 32,000 ug/L*, and testing in or around 2002 continued to demonstrate severely high levels of Chrome 6 (up to 2,620 ug/L) in soils and groundwater at every boring on the Drilube Site. Thus, to the extent that any Chrome 6 is present in the soils and groundwater in the vicinity, the Drilube Site—and not the Property—represents a primary source.

The Excello Site is another known and significant source of Chrome 6 and other metals from illegal releases into soils and groundwater. See Consent Order, Docket HWCA 2003-0175, August 5, 2004 (the "Consent Order"). As recited in sections 3.3 and 3.4 of the Consent Order, Excello improperly disposed hazardous wastes, including Chrome 6 and a variety of other metals, as recently as 2002. The RWQCB's August 24, 2012 justification memorandum for issuance of waste discharge requirements relates to the treatment of Chrome 6-impacted soils to depths of 45 feet below ground surface, and cited extremely high concentrations of Chrome 6 in soils (up to 18,400 mg/kg) and groundwater (190 ug/L). Thus, to the extent that any Chrome 6 is present in the soils and groundwater in the vicinity, the Excello Site—and not the Property—also represents a primary source.

### 3. The Superfund Site Plume Would Confound Any Test For Heavy Metals.

Even assuming the existence of evidence to justify additional testing for heavy metals at the Property, Chrome 6—as well as a different isotope, Chrome 3—collectively represent a recognized regional groundwater contamination problem that renders site-specific testing meaningless.

The Property is located within the Superfund Site. Within the Superfund Site, the U.S. Environmental Protection Agency ("EPA") has listed chromium isotopes, among the many other hazardous substances identified, as contaminants of concern in the groundwater. *The EPA has also established an operable unit specifically dedicated to chromium isotopes*, initiated a full investigation of the same in groundwater in 2011, and installed a well sampling system for that purpose in 2012. Moreover, according to the Final Remediation Investigation Work Plan (CH2MHill, 2012; the "Work Plan"), establishment of the "Chromium Operable Unit" occurred as a result of a four-year study by the RWQCB that identified "*extensive hexavalent chromium contamination in ground water throughout the eastern SFV...*" (Work Plan, § 1.2; emphasis added).

Given the above, even if chromium isotopes were detected in groundwater or in the vadose zone beneath the Property, the presence of those contaminants is perfectly consistent with the known, widespread nature of the Superfund Site's contaminant plume, especially given the nearby presence of two known responsible parties for releases of the same on two sides of the Property. Such testing would, therefore, reveal nothing about the Property or its historic use, or even the extent to which historic activities may have resulted in deposition of those contaminants (though they did not). Simply put, the known regional chromium contamination, combined with the known and severe local chromium contamination, would stymie any effort to characterize the Property in isolation. Further, the remedy eventually selected by the EPA for the Chromium

Sam Unger, Executive Officer

July 17, 2013

Page 4

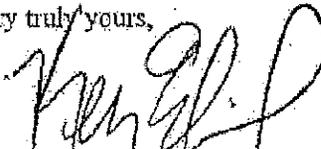
Operable Unit would address any such contamination as may exist in association with the Superfund Site plume. Therefore, any data collected pursuant to the Order would not provide any valid basis for ordering further investigation or cleanup by GCDP and therefore would not protect human health or the environment. As the Order would neither provide valid data regarding the Property, nor protect human health or the environment, it is improper and the RWQCB should rescind it.

#### 4. Conclusion

As described above, the RWQCB previously granted closure of the prior remediation activities at the Property, and no new information provides any factual basis for the subsequent issuance of the Order. Moreover, two known and severe local (Excelllo and Drilube) and regional groundwater contamination plumes comprising the same contaminants of concern listed in the Order would provide no meaningful information regarding the Property and would provide no valid basis for ordering either further investigation or remediation. Finally, EPA has initiated an extensive investigation of the same contaminants of concern, and that investigation will result in the development of a remedial design to address the same. As the Order is inappropriate, improper, and duplicative of existing investigatory activities, the RWQCB must rescind the Order and must refrain from seeking additional investigation from GCDP, Decron, Stevenson, or Home Depot.

GCDP thanks you for your attention and look forward to a productive discussion regarding a fair and prompt resolution to this matter. GCDP, Decron, and Stevenson reserve all of their rights, and waive none.

Very truly yours,



KENNETH A. EHRLICH,  
a Professional Corporation of  
Jeffer Mangels Butler & Mitchell LLP

KAE:neb

cc: Francine Diamond, Board Member  
Madelyn Glickfeld, Chairperson  
Neill E. Brewer

# **EXHIBIT 8**

**Culley, Elizabeth**

---

**From:** Brower, Neill  
**Sent:** Monday, July 22, 2013 11:07 AM  
**To:** ghu@waterboards.ca.gov  
**Cc:** Kenneth Ehrlich (KAE@JMBM.com)  
**Subject:** Former Mitchell Camera Facility: Grant Deed  
**Attachments:** Glendale Colorado Development Partners - 1990 Grant Deed.pdf

Jeff:

As you requested, we attach the 1990 grant deed for the 5040 San Fernando Road (the "Property").

Also, and more importantly, we again demand an explanation of the evidentiary basis (or lack thereof) asserted by the Board for the issuance of an order requiring heavy metals assessment on the Property, and we will call you this afternoon to follow up.

---Neill

---

**Neill E. Brower**

JMBM | Jeffer Mangels Butler & Mitchell LLP

**DIRECT:** (310) 712-6833 | **MAIN:** (310) 203-8080 | **FAX:** (310) 712-8564 | **E-MAIL:** [NBrower@jmbm.com](mailto:NBrower@jmbm.com)  
**WEB:** [www.JMBM.com](http://www.JMBM.com) | **ADDRESS:** 1900 Avenue of the Stars, 7th Floor, Los Angeles, California 90067

This e-mail message and any attachments are confidential and may be attorney-client privileged. Dissemination, distribution or copying of this message or attachments without proper authorization is strictly prohibited. If you are not the intended recipient, please notify JMBM immediately by telephone or by e-mail, and permanently delete the original, and destroy all copies, of this message and all attachments. For further information, please visit [JMBM.com](http://JMBM.com).

Circular 230 Disclosure: To assure compliance with Treasury Department rules governing tax practice, we hereby inform you that any advice contained herein (including in any attachment) (1) was not written or intended to be used, and cannot be used, by you or any taxpayer for the purpose of avoiding any penalties that may be imposed on you or any taxpayer and (2) may not be used or referred to by you or any other person in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

RECORDING REQUESTED

90 211 52

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO:

RECORDED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
31 MIN. 8 A.M. DEC 24 1990  
PAST.

NAME: GLENDALE COLORADO DEVELOPMENT PARTNERS,  
ADDRESS: C/O NAGEL CONSTRUCTION COMPANY  
CITY & STATE: 15350 Sherman Way, Suite 410 Van Nuys, CA 91406  
ZIP:

Title Order No. 9028896-68 Escrow No. 17616

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

FEE \$29 C  
A.F.N.F. 94 3

The undersigned declares that the documentary transfer tax is \$ 595.10 and is  computed on the full value of the interest or property conveyed, or is  computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale. The land, tenements or realty is located in \_\_\_\_\_ unincorporated area \_\_\_\_\_ city of Glendale and \_\_\_\_\_

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

ROBERT W. STEVENSON

hereby GRANT(S) to  
GLENDALE COLORADO DEVELOPMENT PARTNERS, a California General Partnership

the following described real property in the City of Glendale  
county of Los Angeles state of California:

PLEASE SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

Dated December 20, 1990

*Robert W. Stevenson*  
ROBERT W. STEVENSON

STATE OF CALIFORNIA,  
COUNTY OF Los Angeles } ss.  
On 12-20-90 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert W. Stevenson

\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person \_\_\_\_\_ whose name \_\_\_\_\_ is subscribed to the within instrument and acknowledged that \_\_\_\_\_ he \_\_\_\_\_ executed the same. WITNESS my hand and official seal.

Signature Lois Mc Gauley

FOR NOTARY SEAL OR STAMP  
OFFICIAL SEAL  
LOIS MC GAULEY  
Notary Public - California  
LOS ANGELES COUNTY  
My Comm Expires MAY 23, 1994  
Assessor's Parcel No. \_\_\_\_\_

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name \_\_\_\_\_ Street Address \_\_\_\_\_ City & State \_\_\_\_\_

EXHIBIT "A"

PARCEL 1:

THE EASTERLY 70 FEET OF LOT 8, BLOCK W OF THE GLENDALE VALLEY VIEW TRACT, IN THE CITY OF GLENDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9 PAGE 157 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

LOT 8 IN BLOCK "W" OF GLENDALE VALLEY VIEW TRACT, IN THE CITY OF GLENDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9 PAGE 157 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THE EASTERLY 70 FEET THEREOF.

PARCEL 3:

LOTS 9, 10 AND 11 IN BLOCK "W" OF GLENDALE VALLEY VIEW TRACT, IN THE CITY OF GLENDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9 PAGE 157 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 4:

A:

LOTS 13, 16, 17 AND 18 IN BLOCK "W" OF THE GLENDALE VALLEY VIEW TRACT, IN THE CITY OF GLENDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9 PAGE 157 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

90-2111252

B:

THAT PORTION OF LOT 14 OF THE RIVERDALE TRACT, IN THE CITY OF GLENDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 54 PAGE 41 OF MISCELLANEOUS RECORDS OF SAID COUNTY AND THAT PORTION OF LOT 19 IN BLOCK "W" OF THE GLENDALE VALLEY VIEW TRACT, IN SAID CITY, AS PER MAP RECORDED IN BOOK 9 PAGE 157 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF SAID LOT 14; THENCE ALONG THE NORTHERLY LINE THEREOF, SOUTH 89 DEGREES 36 MINUTES 50 SECONDS WEST 840.70 FEET TO THE NORTHEASTERLY LINE OF SAN FERNANDO ROAD, FORMERLY COUNTY ROAD, 50.00 FEET WIDE, AS SHOWN ON SAID MAP; THENCE ALONG SAID NORTHEASTERLY LINE SOUTH 23 DEGREES 03 MINUTES 25 SECONDS EAST 350.44 FEET; THENCE PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 19, BLOCK "W" OF GLENDALE VALLEY VIEW TRACT, NORTH 89 DEGREES 48 MINUTES EAST 334.20 FEET TO A LINE PARALLEL WITH THE EASTERLY LINE OF SAID LOT 14, WHICH PASSES THROUGH A POINT IN SAID NORTHERLY LINE THAT IS DISTANT SOUTH 89 DEGREES 36 MINUTES 50 SECONDS WEST, THEREON, 370.00 FEET FROM SAID NORTHEASTERLY CORNER, THENCE ALONG LAST SAID PARALLEL LINE, NORTH 0 DEGREES 08 MINUTES 05 SECONDS WEST 16.88 FEET TO A POINT THAT IS DISTANT SOUTH 0 DEGREES 08 MINUTES 05 SECONDS EAST 307.58 FEET FROM SAID NORTHEAST LINE; THENCE PARALLEL WITH SAID SOUTHERLY LINE OF LOT 19, NORTH 89 DEGREES 48 MINUTES EAST 211.79 FEET TO A LINE PARALLEL WITH SAID EASTERLY LINE, WHICH PASSES THROUGH A POINT IN SAID SOUTHERLY LINE, DISTANT NORTH 89 DEGREES 48 MINUTES EAST, THEREON, 404.60 FEET FROM THE SOUTHWESTERLY CORNER OF SAID LOT 19; THENCE ALONG LAST SAID PARALLEL LINE, SOUTH 0 DEGREES 08 MINUTES 05

20



# **EXHIBIT 9**



Jeffer Mangels  
Butler & Mitchell LLP

Neill E. Brower  
Direct: (310) 712-8833  
Fax: (310) 712-8584  
NB4@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0587 Fax  
www.jmbm.com

July 23, 2013

**VIA E-MAIL AND U.S. MAIL**

Larry Moore  
Staff Environmental Scientist  
Los Angeles Regional Water Quality  
Control Board  
320 West 4th Street, Ste. 200  
Los Angeles, CA 90013

Re: Former Mitchell Camera Operation  
5040 San Fernando Road, Glendale, California (the "Property")  
Section 13267 Order No. R4-2013-0056 (the "Order")

Dear Mr. Moore:

We represent Decron Properties Corp. ("Decron"), a recipient of an improper directive under the above-referenced WIP File number, and a property management company associated with the Property. As we discussed with Mr. Jeffrey Hu on July 22, 2013, and evidenced by a grant deed provided to the Regional Water Quality Control Board (the "RWQCB") on the same date, neither Decron nor Stevenson Real Estate ("Stevenson"), the other party wrongly named in connection with the Property, owns or occupies the Property. Rather, the Property owner of record is Glendale Colorado Development Partners, a California General Partnership ("GCDP"), also represented by this office. Therefore, neither Glendale nor Stevenson is properly named in the RWQCB's letter of October 24, 2012 and its associated order (the "Letter" and "Order," respectively) requesting additional assessment of heavy metals. For the purposes of this letter, our office responds on behalf of GCDP, Decron, and Stevenson.

Despite GCDP's position that issuance of the Order is improper, inconsistent with the regulatory closure previously issued by the Board for the Property, and unsupported by substantial evidence, GDCP submits the attached work plan by MK Environmental Consulting ("Work Plan") to comply with the Order. By submitting the Work Plan, GCDP does not admit the truth or accuracy of any statement in the Order. GCDP reserves all of its rights, defenses, and remedies in law and equity, waiving none.

Larry Moore  
July 23, 2013  
Page 2

Please contact us with any questions or concerns.

Very truly yours,



NEILL E. BROWER of  
Jeffer Mangels Butler & Mitchell LLP

NEB:neb

cc: Fran Diamond  
Kenneth A. Ehrlich, Esq.



MICHAEL L. KINWORTHY, R.E.A., C.P.E.A.

*Corporate office:*  
4409 DAISY COURT \* MOORPARK, CA 93021  
TELEPHONE: 805.530.0078 \* FAX: 805.530.0079  
MOBILE: 714.310.4181 \* EMAIL: mkinworthy@mkeci.com

July 23, 2013

***Email Transmittal***

Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, California 90013  
Attn: Larry Moore

**RE: Work Plan for Site Characterization  
Former Mitchell Camera Facility (Home Depot)  
5040 San Fernando Road, Glendale, California  
MKECI Project 13-128**

Dear Mr. Moore:

MK Environmental Consulting, Inc. (MKECI) is pleased to submit this work plan for a subsurface soil investigation on behalf of our client (Glendale Colorado Development Partners, a California General Partnership). This work plan describes proposed Phase II site characterization activities at the above referenced property to comply with the Los Angeles Regional Water Quality Control Board's (RWQCB) Order #R4-2012-0051 to provide a technical report. Figure 1 shows the Subject Property location and Figure 2 depicts the current Home Depot development and parking lot.

**INTRODUCTION**

The Subject Property has been utilized in manufacturing operations since 1942 by three different entities -- Kinner Motors, Mitchell Camera Corporation, and Anderson Desk. Reportedly, the manufacturing operations ended in 1975. Glendale Colorado Development Partners acquired the Subject Property in 1990. The Subject Property was subsequently developed by Home Depot in approximately 1993 who currently resides on the property,

Multiple subsurface investigations were conducted for the assessment of volatile organic compounds (VOCs) and petroleum hydrocarbons.

**GEOLOGY/HYDROGEOLOGY**

The Subject Property is situated near latitude 34.083769 north and longitude 118.160983 west at an elevation of approximately 475 feet above mean sea level. The topography of the Subject Property and surrounding properties slope gently to the southwest

The Subject Property is located within the San Fernando Valley of the Los Angeles metropolitan area. The Los Angeles metropolitan area lies within the Pacific Border physiographic province of the western United States. The geology of the area consists of a large alluvium basin of approximately

122,800 acres. It is bound to the north by the San Gabriel and Santa Susana Mountains, to the west by the Simi Hills, to the south by the Santa Monica Mountains, and to the east by the Verdugo Mountains.

The maximum depth of alluvium is approximately 1,000 feet. Sediments within the Subject Property vicinity are characteristically coarse-grained, alluvial fan deposits derived from the crystalline rocks of the San Gabriel Mountains. The near surface materials consist of silty sand, sand, and gravelly sand to 30 feet below ground surface (bgs).

## **DESCRIPTION OF OPERATIONS**

Site assessments were conducted at the Subject Property from approximately 1987 to 1991. The site assessments involved the review of aerial photographs, interviewing former Mitchell Camera executives, and subsurface investigations. The former tenants at the Subject Property include Kinner Motors, Mitchell Camera, and Anderson Desk according to Environ Corporation's Subsurface Investigation Work Plan, dated June 1991.

Kinner Motors reportedly manufactured aircraft engines and performed engine testing from 1942 to 1947. The potential chemicals of concern would have been aviation fuels, cutting oils, and lubricating oils.

Mitchell Camera manufactured high end cameras used primarily in the entertainment business for the filming of movies. Mitchell Camera was reportedly on the Subject Property from 1946 to 1975. It was reported in Environ's Subsurface Investigation Work Plan, that the former Vice President and Operations Manager of Mitchell Camera, Mr. Chuck Mallory, was interviewed to gather historical information on Mitchell Camera's operations. Mr. Mallory indicated that manufacturing activities may have included plating and degreasing operations among others. The alleged plating operations reportedly took place in the Degreaser Room along the northern property boundary.

Anderson Desk operated at the Subject Property from 1975 to 1990 in the manufacturing of desks. Their operations were reported to include woodworking, assembly, warehousing, and finishing. The finishing included staining the wood, applying a sealant, and applying a topcoat.

## **SCOPE OF WORK**

The proposed scope of work is as follows:

### **Pre-Field Activities**

#### Health and Safety Plan

Prior to the initiation of the field work, a site specific Health and Safety Plan (HASP) will be prepared pursuant to the regulatory requirements found in 29 CFR Part 1910.120. The HASP is included as Attachment A.

The HASP includes procedures for onsite personnel who have certification through the 40-hour HAZWOPER training as well as for those who do not. Visitors or onsite personnel who are not 40-hour HAZWOPER trained will be allowed onsite but will not be allowed within the defined "zone of

exclusion" because of OSHA regulations and insurance requirements. Any untrained personnel will be required to remain in an established upwind area a safe distance away from the work zone.

### Pre-Field Activities

Pre-field activities for the field work will include:

- Obtain subcontractors.
- Mark proposed sampling locations with white paint prior to contacting Underground Service Alert (USA).
- Notify USA a minimum of 48 hours prior to the start of the field activities.
- Perform geophysical subsurface utility clearance to ensure that underground utilities are not encountered or damaged during subsurface work.
- Check in with onsite personnel upon arrival and departure.
- Hold tailgate safety and startup meetings.

Prior to commencing field activities, MKECI will notify the RWQCB Project Manager of the date field activities are scheduled to begin.

### **FIELD INVESTIGATION**

Four (4) soil borings will be advanced in the northern area of the Subject Property at the locations where plating operations were reportedly performed and where sumps/clarifiers may have been used in conjunction with the plating operations (see Figure 3). Soil Boring-1 (SB-1) will be advanced at the location of the former Degreaser Room and SB-2 will be advanced at the former vault sump located approximately 120 feet southeast of the former Degreaser Room. SB-3 will be advanced at the former clarifier location approximately 15 feet east of the former vault sump and SB-4 will be advanced at a former sump located approximately 225 feet east of the former Degreaser Room along the northern property boundary. All of these locations reside within the present-day parking lot of the Home Depot store. The locations of the borings were selected in consultation with Alex Lapostol, a contractor for the RWQCB.

The borings will be advanced to approximately 25 feet below ground surface (bgs) with soil samples taken at 5-foot intervals. The borings will be advanced using a direct push drill rig.

Prior to sampling and between samples, all reusable sampling equipment employed during the field investigation will be decontaminated by washing in a solution of laboratory grade non-phosphate detergent and water. The equipment will then be double-rinsed in distilled water. Decontamination rinsate will be placed in containers and temporarily stored onsite. Drilling equipment will be decontaminated using a truck-mounted steam cleaner at the driller's facility.

All sample containers will be labeled with the following information:

- Sample number
- Sampling personnel
- Sample type
- Project name and number
- Parameters to be analyzed

- Any preservative added to the sample
- Facility name and sampling point
- Date and time of sample location

The sample designation will incorporate sample location and depth. Field and equipment blanks will be sent "blind" to the laboratory. They will be designated a sample number in an attempt to shield their purpose and reduce potential laboratory bias.

The samples will be transported under a chain-of-custody to a state certified laboratory for analysis. The soil samples will be analyzed for chromium via EPA Method 6010B and hexavalent chromium via EPA Method 7199.

#### **QUALITY ASSURANCE AND QUALITY CONTROL**

All laboratory analysis will be conducted with Quality Assurance/Quality Control (QA/QC) protocol consistent with the National Contingency Plan. QA/QC requirements will include, but not be limited to, trip blanks, method blanks, surrogate compounds in laboratory analysis runs, and duplicate sampling/analysis.

Field QA/QC samples will include duplicates, equipment rinse blanks, and trip blanks. Duplicate samples will be collected and analyzed at a frequency of 10%, or one duplicate sample for every ten samples to be analyzed. Duplicates will be analyzed for the same suite of analyses as the original samples.

#### **REPORT**

A report will be prepared that will describe the methodology undertaken, present the results of the investigation, and provide conclusions and recommendations. The report shall also include supporting documents including copies of chain-of-custody, laboratory analytical results, and diagrams.

All work will be performed under the direction of a registered professional. Additionally, the registered professional will review and sign all technical documents submitted to the RWQCB.

If you have any questions regarding the enclosed work plan, please call me at (805) 530-0078.

Sincerely,



Michael L. Kinworthy, R.E.A., C.P.E.A.

Managing Principal

cc: Ken Ehrlich – Jeffer Mangels Butler & Mitchell, LLP  
Neill Brower – Jeffer Mangels Butler & Mitchell, LLP  
David Nagel – Decron Properties  
Tom Schiff – Decron Properties

David Nagel – Decron Properties  
Tom Schiff – Decron Properties

Figures: Figure 1 – Site Location  
Figure 2 – Subject Property  
Figure 3 – Proposed Sampling Locations .

Attachments: A – Health and Safety Plan  
B – Field Equipment and Protocols

“I, David J. Nagel, certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”



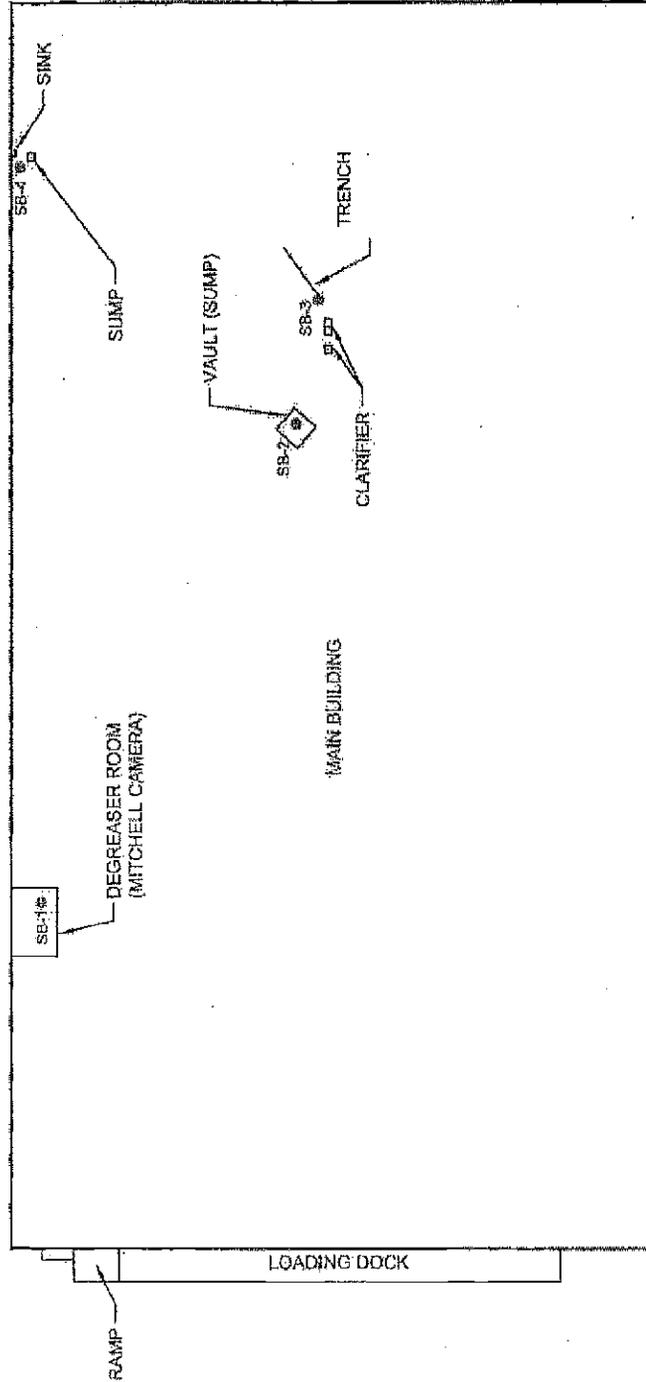
David J. Nagel  
Glendale Colorado Development Partners  
Authorized Signatory



FIGURE 2  
SOIL BORING LOCATIONS

HARVARD STREET

FORMER MITCHELL CAMERA  
5040 SAN FERNANDO ROAD  
GLENDALE, CA



SAN FERNANDO ROAD

LEGEND

SB-1# SOIL BORING LOCATION



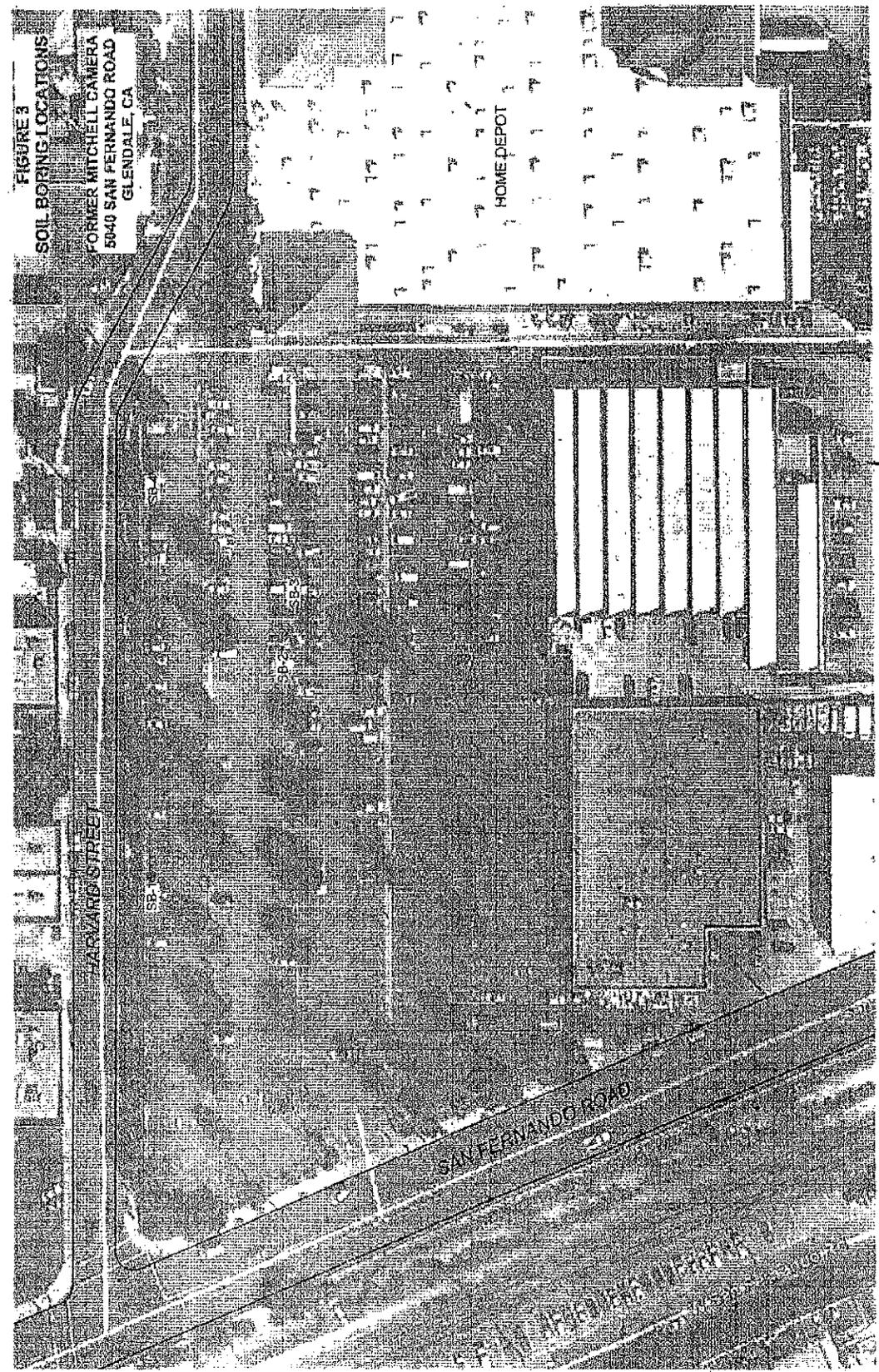
4409 Daisy Court  
Morpark, California 93021  
Phone: (805) 530-0076

Date: 07/23/13

FIGURE 3

SOIL BORING LOCATIONS

FORMER MITCHELL CAMERA  
5940 SAN FERNANDO ROAD  
GLENDALE, CA



LEGEND

SB-1# SOIL BORING LOCATION



4409 Daisy Court  
Moorpark, California 93021  
Phone (805) 530-0078

Date: 07/23/13

**ATTACHMENT A**  
**HEALTH AND SAFETY PLAN**

**SITE HEALTH AND SAFETY PLAN**

Glendale Colorado Development Partners  
5040 San Fernando Road  
Glendale, California 91204

July 2013

By  
MK ENVIRONMENTAL CONSULTING, INC.  
4409 Daisy Court  
Moorpark, California 93021

## 1.0 GENERAL INFORMATION

### 1.1 Administration Information

Site Name: Home Depot  
Site Location: 5040 San Fernando Road, Glendale, California 91204  
Project Manager: Mike Kinworthy  
Site Health and Safety Officer: Mike Kinworthy

### 1.2 Safety Equipment Required

- Hard hat
- Eye protection (safety glasses)
- Ear plugs, disposable
- Gloves, chemical resistant (when sampling)
- Safety boots/shoes
- Portable organic vapor analyzer

## 2.0 INTRODUCTION

This plan establishes requirements and provides guidelines for worker safety and hazard identification during additional Phase II site characterization activities to be conducted at the Subject Property located at 5040 San Fernando Road, Glendale, California. The purpose of this plan is to identify procedures for avoiding potential hazards from chemicals, equipment, or the environment, and for responding to serious injury or accident. Because the safety rules given in this plan cannot cover every eventuality it is expected that all workers involved will exercise good judgment in safety matters, and each of the subcontractors (if any) working on the site will follow its own company health and safety plan as well as the intent of this plan. MK Environmental Consulting, Inc. (MKECI) will inform the Subcontractor as soon as possible about environmental conditions monitored by MKECI when these conditions (such as increased vapor concentrations) may require appropriate actions. Under no circumstances will MKECI direct the Subcontractors' operation of equipment and adherence to their specific health and safety requirements. These directions must be given by the Subcontractor independent of information on environmental conditions provided by MKECI.

Untrained personnel must remain in a designated upwind area a safe distance from the work zone. The location will be determined on a case-by-case basis by the site health and safety officer, but is expected to be approximately 100 feet upwind of the work area. Should evacuation of untrained personnel become necessary due to results of air monitoring or changes in wind direction, work activities will continue uninterrupted.

### 3.0 WORK ACTIVITIES

The following main work activities will be performed by MKECI and its subcontractors:

- Concrete Coring.
- Subsurface Geophysical Survey.
- Hand auger to 5 feet deep for additional utility clearance activities at each of the borehole locations.
- Drilling and Soil Sampling.

#### 4.0 ASSESSMENT OF HAZARDS

##### 4.1 Site Hazard Overview

<u>Apparent Hazard</u>		<u>Type of Facility</u>		<u>Status of Facility</u>	
Serious	_____	Dump	_____	Active	X
Moderate	_____	Landfill	_____	Inactive	_____
Low	X	Open	X	Unknown	_____
None	_____	Enclosed	_____		
Unknown	_____	Other	_____		

<u>Waste Types</u>		<u>Waste Characteristics</u>		<u>Type/Form of Hazard</u>	
Gas	_____	Toxic	X	Dust	X
Liquid	_____	Corrosive	_____	Liquid	_____
Sludge	_____	Ignitable	_____	Fumes	_____
Solid	X	Volatile	_____	Vapors	_____
Unknown	_____	Radioactive	_____	Contact	X
Other	_____	Reactive	_____	Respiratory	_____
		Unknown	_____	Other	_____
		Other	_____	IDLH	_____

<sup>1</sup> Work activities will be conducted in a parking lot area.

<sup>2</sup> The sampling will involve soil sampling.

<sup>3</sup> The chemical of concern are chromium.

<sup>4</sup> Dust may be generated during hand augering and drilling.

<sup>5</sup> Chemical-containing soil and decon water may be contacted during work activities.

#### 4.2 Potential Chemical Hazards

Task	Materials	Potential Exposure Pathways	Acute Health Effects	Chronic Health Effects
Soil Sampling	Chromium	Ingestion, inhalation, skin and/or eye contact	Eye, skin and respiratory system	Irritation eyes, skin, lung fibrosis (histologic)

#### 4.3 Exposure Limits

Chemical name	PEL/TLV	Other Pertinent Limits	Warning Properties/ Odor Threshold
Chromium VI/TPH	TWA ceiling 100 ug/m <sup>3</sup>		Yellow-orange to dark purple (chromium trioxide) crystals, prisms
PEL = OSHA Permissible Exposure Limit; represents the maximum allowable 8-hour time weighted average (TWA) exposure concentration. TLV = ACGIH Threshold Limit Value; represents the maximum recommended 8 hour TWA exposure concentration. TWA = Time-weighted average. Concentration that should not be exceeded during a 10-hour workday during a 40-hour work-week.			

#### 4.4 Construction Hazards

Heavy machinery, moving traffic and foot traffic need to be considered during all work activities. Workers in all designated work area are required to wear, at a minimum, hard hats and steel-toed boots.

Workers may come in contact with underground utility lines or pipes, which can cause a potentially fatal electrical or fire hazard. Slips and falls are also prevalent inside trenches or from ground level into a trench. Any person in a designated work area must follow, at a minimum, the following precautions:

- Follow standard construction safety procedures,
- Follow all requirements specified in this Health and Safety Plan,
- Wear hard hats, steel toed boots and any other required protective equipment dictated by work conditions,
- Observe standard heavy equipment safety protocols,
- Maintain good housekeeping,
- Utilize appropriate engineering controls (e.g., ventilation), work practices, and PPE as needed.

## 5.0 LEVEL OF PERSONAL PROTECTION AND SAFE WORK PRACTICES

### 5.1 Protection Level

Based on the type of work to be performed and chemical hazards that may be encountered, EPA Levels C and D personal protection have been selected to be adequately protective of personnel in work areas during work activities required for this project. Personal protective equipment requirements for each level of protection are summarized below:

Task(s)	Level of Protection	Required Protective Equipment
While present in any designated work area & not directly involved in work activities.	Level D	<ul style="list-style-type: none"> <li>➤ Steel-toed work boots</li> <li>➤ Hard hat</li> <li>➤ Ear protection (during the operation of heavy equipment or during loud operations)</li> </ul>
During the operation of sampling equipment and/or handling of soil or water.	Level D	<ul style="list-style-type: none"> <li>➤ Steel-toed work boots</li> <li>➤ Hard hat</li> <li>➤ Ear protection (during the operation of heavy equipment or during loud operations)</li> <li>➤ Eye protection (safety glasses, goggles or face shield)</li> <li>➤ Gloves -- type and need determined by the on-site Health and Safety Officer</li> </ul>
When air monitoring shows that respiratory protection is required in work areas.	Level C	<ul style="list-style-type: none"> <li>➤ Steel-toed work boots</li> <li>➤ Hard hat</li> <li>➤ Ear protection (during the operation of heavy equipment or during loud operations)</li> <li>➤ Eye protection (safety glasses, goggles or face shield)</li> <li>➤ Gloves -- type and need determined by the on-site Health and Safety Officer</li> <li>➤ Full-face or half-face, air-purifying respirator with combination organic vapor-particulate filter cartridges</li> </ul>

### 5.2 Decontamination

Due to the volatile nature of the volatile organic compounds that may be encountered, level D protective clothing will be used. If the Site Health and Safety Officer has reason to believe clothes or equipment have been exposed to chemical, he/she may require thorough washing and rinsing of equipment, and possibly disposal of clothes. Soil will be brushed off of clothing and shoes and any equipment or vehicles leaving a designated work area. Additionally, typical industrial hygiene practices covered in HAZWOPER training will be followed at a minimum.

## 6.0 GENERAL HEALTH AND SAFETY REQUIREMENTS

### 6.1 Site Safety Meeting

Site safety orientation and training meetings must be convened (1) daily before the field team begins work at the site, (2) when there are modifications to the site safety plan that are applicable to the field personnel, and (3) when additional staff or subcontractors begin fieldwork. Safety meetings will be held prior to work activities, attended by all personnel involved in carrying out the project, and presided over by the Site Health and Safety Officer or his/her designee. A list of attendees will be provided to the Project Health and Safety Officer.

At a minimum, the meeting agenda must include:

- A discussion of the days work activities,
- A discussion of the potential construction hazards,
- A discussion of the potential chemical hazards,
- A discussion of the required protective equipment,
- Accident reporting requirements,
- The location of the Health & Safety Plan and POSTED Hospital Route Map,
- Give the name of the designated Health and Safety officer and request questions, comments or concerns be directed to that person,
- REQUEST TO SEE OSHA 40-HOUR HAZWOPER TRAINING DOCUMENTATION FOR ALL PERSONNEL TO BE DIRECTLY INVOLVED IN WORK ACTIVITIES, and
- Attendee signatures, acknowledging receipt and understanding of the plan and agreement to comply.

### 6.2 The Site Health and Safety Officer

The Site Health and Safety Officer is responsible for carrying out the health and safety requirements detailed in this plan and has the authority to halt work or dismiss people from the site if they do not adhere to the plan.

The Site Health and Safety Officer will maintain a list of addresses and telephone numbers of emergency assistance units and insure that a list is posted and visible in each designated work area (ambulance service, police, hospitals, etc.).

### 6.3 Accident/Incident Reports

All accidents or injuries will be reported immediately to the Site Health and Safety officer, who is responsible to report to the Project Manager. The Project Manager will be responsible for ensuring that all lost time, accidents, or injuries are fully investigated and documented.

## 7.0 SAFETY AND HEALTH TRAINING

OSHA regulations under Title 29 CFR, Part 1910.120 include training requirements applicable to all employees who may be exposed to site hazards. Training requirements vary according to job assignment and potential for exposure to hazardous substances.

General site workers who engage in activities which have a high exposure potential are required to, at minimum, complete the following:

- Forty hours of off-site instruction;
- Three days of on-the-job training under the direct supervision of a trained, experienced supervisor; and
- Eight hours of annual refresher training.

Employees who work only in areas which have been monitored and fully characterized, indicating that no PPE is required and that emergencies are unlikely (for example, the site support zone), are required to, at minimum, complete the following:

- Twenty-four hours of off-site instruction;
- One day of on-the-job training under the direct supervision of a trained, experienced supervisor; and
- Eight hours of annual refresher training.

The same requirements apply to employees who make site visits occasionally to perform specific tasks (for example, groundwater monitoring or land surveying) and are unlikely to experience exposure in excess of applicable limits. If, at some time after initial training, employees such as these are to be transferred into a job involving a higher exposure potential, they must complete an additional 16 hours of off-site training and two days of on-site training in order to upgrade to full certification.

Supervisors are required to, at a minimum, complete the following:

- The same (or equivalent) training as required for the employees they supervise;
- Eight additional hours of specialized off-site supervisory training; and
- Eight hours of annual refresher training.

The new worker is naturally prone to accidents and can be a serious threat, both to himself/herself and to co-workers. Proper training that follows the following guidelines will help to reduce the potential of these dangers.

1. Inform the new worker of all work activities,
2. Give the new worker specific work instructions,
3. Show the new worker how to conduct the required work.
4. Watch closely as he/she does the work.
5. Correct any unsafe work practices.
6. Warn him/her of dangers.
7. Don't allow him/her to work alone until you are sure the new worker is capable of doing so.

The proper training of a new worker is particularly important since lack of proper training can be disastrous. A new worker cannot be expected to be familiar with all the hazards involved in doing a job. Therefore, he/she cannot be expected to look out for unknown hazards. The new worker may be so concerned with trying to master an unfamiliar job that surrounding hazards are not noticed.

## 8.0 EMERGENCY RESPONSE PLAN

### 8.1 Communication Procedures

Emergency procedures listed in this plan are designed to give the field team instructions in handling medical emergencies, fires and explosions, and excessive emissions during the operational activities. These emergency procedures will be carefully reviewed with the field team during the health and safety training session. Personnel in the Exclusion Zone should remain within sight of the Site Safety Officer. Repeated horn blasts will be the emergency signal to indicate that all personnel should leave the Exclusion Zone. The following standard hand signals will be used when vocal communication is not possible.

Hands gripping throat.....	Out of air, can't breath
Grip partner's wrist or both hands around waist.....	Leave area immediately
Hands on top of head.....	Need assistance
Thumbs up.....	OK, I am all right, I understand
Thumbs down.....	No, negative

### 8.2 First Aid

Move victim to fresh air and call emergency medical care. If victim is not breathing, give artificial respiration. If breathing is difficult, give oxygen. In case of contact with material, immediately wash skin with soap and water. Remove and isolate contaminated clothing and shoes at the site.

### 8.3 Hospital

Glendale Memorial Hospital (818) 502-1900 is located at 1420 South Central Avenue, Glendale, CA approximately 1 mile southeast of the site. Directions to the hospital from the site are:

1. South on San Fernando Road
2. Left (east) on Los Feliz Boulevard.
3. Right (south) on S. Central Avenue

Directions to the hospital and a list of emergency contacts will be available in a readily accessible place on-site. First-aid equipment and fire extinguishers will be available on-site at the command station and will be discussed during the safety meeting prior to the start of work. In the event workers are exposed to contaminated soil or water, the following first-aid procedures, but not necessarily in the following order, may be necessary.

1. Immediately remove from Exclusion Zone.
2. Wash extremities.
3. Give artificial respiration, if needed.
4. Get medical help as necessary.

### 8.4 Emergency Phone Numbers

Police .....	911
Fire .....	911
Hospital (Glendale Memorial Hospital)	(818) 502-1900

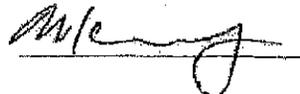
MKECI  
Dig Alert

(805) 530-0078  
(800) 227-2600

#### 8.5 Fire and Explosion Hazards

Fires on-site are of concern during remediation work due to the possibility of encountering flammable liquids. At least one multi-purpose fire extinguisher (A,B,C) will be available on-site at all times. If a fire occurs, the local fire agency will be contacted immediately.

9.0 ACKNOWLEDGMENT OF POTENTIAL CHEMICAL HAZARDS AND APPROVAL /  
DISTRIBUTION OF HEALTH AND SAFETY PLAN

Position	Name	Signature
Project Manager Tel: (805) 530-0078 Cell: (714) 310-4181	Mike Kinworthy	
Site Health and Safety Officer Tel: (805) 530-0078 Cell: (714) 310-4181	Mike Kinworthy	

Each onsite worker shall, at a minimum, be 40-hour trained per 29 CFR 1910.120, including annual refreshers. MKECI's Health and Safety monitoring and communication to the Subcontractors will be limited to the following information:

- vapor concentrations in breathing space
- dermal protection

## SITE ENTRY CHECKLIST

1. Worker knows the names of the on-site safety and health personnel.
2. Worker knows the site hazards. (Reviewed reference materials)
3. Personal protective equipment (PPE) selected is appropriate for specific job task.
  - < User is familiar with equipment and has successfully completed training.
  - < User can recognize symptoms of heat strain related to work in PPE and knows preventive measures to avoid heat injury.
4. Chemical protective clothing selected is appropriate for hazards present and specific job task of user.
5. Personal protective clothing has been checked for contamination, signs of chemical degradation, tears, pinholes, or other defects, and replaced if faulty or cleaned if not decontaminated.
6. Respirators inspected for use.
  - < Facepiece inspected for damage and to check fit.
  - < Respirator decontaminated and disinfected since previous use.
  - < Fresh cartridges or canister installed for APRs.
  - < Air tanks full, and all system components checked for proper function for SCBA.
  - < Airlines and escape air bottles inspected for SARs.
  - < User has been successfully fit-tested with the appropriate respirator facepiece.
7. Worker knows safe work practices procedures for this project.
  - < Confined space entry
  - < Trenching and excavation
  - < Drilling activities
  - < Use of heavy equipment
  - < Bulking of drummed wastes
  - < Handling of containers
8. Worker is familiar with all communication systems used on-site.
9. Worker is familiar with use of the buddy system on-site.
10. Worker is familiar with site layout, site zoning system, zone boundaries, and the zone barrier or boundary and marking system use.
11. Worker knows what additional engineering controls are being used and why.
  - < Dikes
  - < Berms (earthen walls to segregate incompatible materials)
  - < Ditches and excavations
12. Medical examinations have been conducted in compliance with medical surveillance requirements (29 CFR 1910.120).
13. Bodily symptoms which will alert worker to overexposure of chemicals, oxygen-deficiency, and other site hazards are known.
14. Familiar with decontamination procedures.
  - < Decontamination station locations for equipment and personnel are known.

- < Contaminated equipment disposal locations are known.
15. The latest revision of the site emergency response plan has been reviewed during on-site training.
- < Site Emergency Response personnel, and notification procedures are known.
  - < Worker is familiar with their specific role in a response.
  - < Worker is aware of potential emergencies.
  - < Worker can recognize a developing emergency (i.e., bulging drums, bubbling liquids, or heat generation) and knows appropriate preventive measures.
  - < Emergency exit locations known.
  - < Evacuation signals, and emergency alert signals are known.
  - < Emergency decontamination procedures, if different from normal procedures, are known.
  - < Site-specific procedures for responding in the event of injury to a worker, including decontamination and first aid, are known.
16. Spill containment procedures are known.
- < Worker knows what equipment is available on-site.
  - < Worker knows location, the large quantities of materials on-site, and variety of containers.
17. Worker is familiar with safe trenching and excavation procedures, if applicable, on-site.
18. Worker is familiar with hazard monitoring procedures (including calibration and maintenance procedures for field equipment) which workers are required to use on-site.
19. Worker knows location of command post, and is familiar with the site safety plan.



## ATTACHMENT B: HEAT STRESS PROCEDURES

The following information is provided to help minimize the negative effects associated with heat stress. There are four levels of heat stress:

1. Heat Rash
2. Heat Cramps
3. Heat Exhaustion
4. Heat Stroke

### 1. HEAT RASH

Results from continuous exposure to heat or humid air. The sweat ducts become plugged and inflamed due to the swelling of the keratin layer of skin.

#### A. Signs

Tiny red vesicles visible on the affected skin area

#### B. Treatment

Mild drying of the skin

### 2. HEAT CRAMPS

Occurs following prolonged exposure to heat with profuse perspiration and inadequate replacement of salt.

The individual satisfies thirst by drinking water without replacing lost electrolytes, causing a salt/water imbalance within the muscle tissue which results in uncontrolled spasms.

#### A. Signs

Spasms and pains in the muscles of the abdomen and extremities

#### B. Treatment

Intake of salted liquids orally or intravenously

### 3. HEAT EXHAUSTION

Occurs under sustained exertion in heat with dehydration from insufficient water and/or salt intake.

The muscles, brain and skin require increased blood flow due to the heat stress condition. The cardiovascular system does not meet the needs of the body and places the patient into a mild shock.

#### A. Signs

Extreme weakness, fatigue, dizziness, nausea, headache; normal or subnormal body temperature; clammy, moist, and pale skin.

#### B. Treatment

Immediately move to a cooler environment, administer salted fluids and allow the person to rest in a supine position; seek medical assistance.

#### 4. HEAT STROKE

Occurs after excessive physical exertion in heat with dehydration from insufficient water and/or salt intake.

The body's heat regulatory process fails, resulting in a shutdown of the sweating process and elimination of one of the body's primary cooling mechanisms. The individual's core temperature rises, resulting in destruction of cells, especially those of the brain and central nervous system.

#### A. Signs

Dizziness, nausea, severe headache, hot and dry skin, delirium, collapse, and coma.

#### B. Treatment

Immediately move to a cooler environment; immerse in chilled water and massage or wrap in a wet sheet and fan vigorously.

#### WATER AND SALT INTAKE

Workers in a hot environment can lose as much as 3 gallons of fluids and electrolytes in sweat, and therefore must be able to readily compensate for this loss.

Fluids should be replaced every 20 minutes and in amounts greater than are necessary to satisfy normal thirst. Water should be kept cool throughout the operation; a temperature of 50° - 60°F is recommended.

Lost salt can be compensated by using a 0.1% saline solution as drinking water (one gram salt per liter of water, or one level tablespoon per 15 quarts of water).

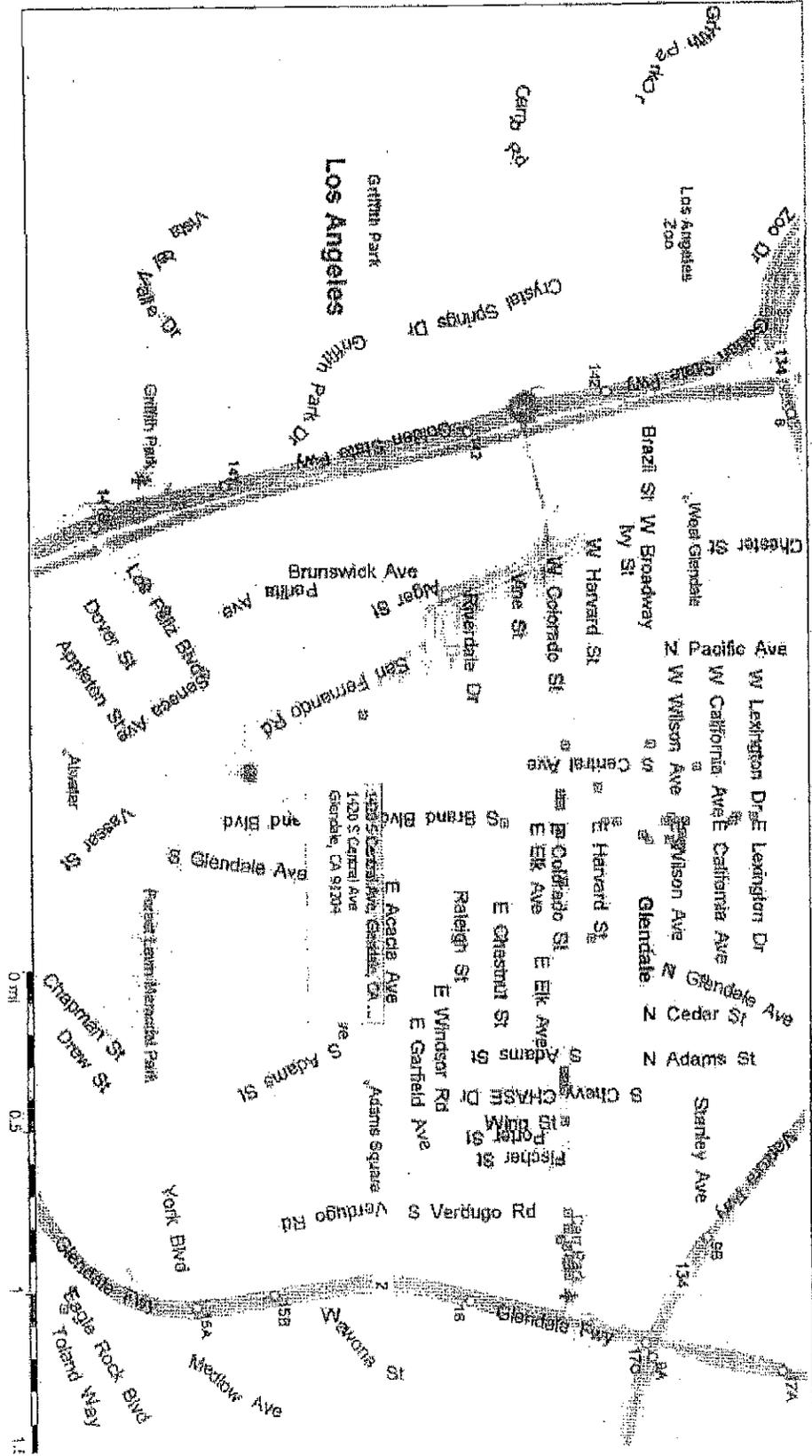
#### PREVENTION

Certain precautions can be taken to reduce heat exposure and/or minimize its effects.

1. Schedule the more strenuous physical activities during the beginning and the end of the day when temperatures may be lower.
2. Do not perform work at midday. If possible, schedule work in split shifts.
3. An appropriate sun-screen lotion should be applied to a worker's exposed skin areas.
4. Potable water should be available in sprayer containers so that workers can cool down skin surfaces.
5. Provide workers with a cooled rest area. If possible, have an air-conditioned van available where workers can sit during breaks and lunch. If a vehicle is not possible, then a canopy area with table and chairs should be provided.

ATTACHMENT C: SITE LOCATION MAP/HOSPITAL ROUTE

California, United States, North America



Copyright © and (P) 1998-2012 Microsoft Corporation and/or its suppliers. All rights reserved. <http://www.microsoft.com/maps>  
 Content may be subject to change without notice. © 2012 Microsoft. All rights reserved. The data for areas of Canada includes information taken from the Government of Canada, the Government of Ontario, the Government of Quebec, the Government of British Columbia, the Government of Alberta, the Government of Saskatchewan, the Government of Manitoba, the Government of New Brunswick, the Government of Nova Scotia, the Government of Prince Edward Island, the Government of Newfoundland and Labrador, the Government of Yukon, the Government of Northwest Territories, and the Government of Nunavut. © 2012 Microsoft. All rights reserved. This data is provided as is. Microsoft makes no warranty, expressed or implied, for the accuracy, reliability, or completeness of the information. Microsoft reserves the right to change the information at any time without notice, and is not responsible for any errors or omissions in the information. © 2012 Microsoft. All rights reserved.

**ATTACHMENT B**  
**FIELD EQUIPMENT AND PROTOCOLS**

**MK ENVIRONMENTAL CONSULTING, INC.**

**STANDARD PROTOCOL  
FOR  
SOIL SAMPLING USING DIRECT PUSH**

Undisturbed soil samples are collected using a modified piston drive sampler. The soil sampling device is deployed, by a Direct Push rig at all locations. The Direct Push unit is a rig with a hydraulic system that is used to push hollow steel rods with a sampling device at the end of the rods through the subsurface. The Direct Push rig pushes the sampling device to the targeted depth for sample retrieval.

Once the soil sampling device is positioned at the appropriate depth, the tip of the device is retracted inside the soil sampling probe and the probe is advanced 2.0 feet to allow soil to enter the sampling device. The sampling device is lined with four 6-inch long and 1.25-inch diameter brass tube. Upon retrieval of the soil sampling device, the brass tube at the lower end of the sampler is covered with Teflon tape and plastic end caps, labeled identifying the date the sample is collected and an identification designation, and placed in a cooler to be shipped to a certified analytical laboratory.

The material in the remaining brass tubes are placed in a ziplock bag to conduct headspace testing on the material after sufficient volatilization had occurred (approximately 5 minutes). The probe of a Hnu photoionization detector (PID) calibrated to isobutylene is placed inside the bag to monitor for volatile organic vapors. Following headspace measurements the sample is visually inspected by the site hydrogeologist and classified using the Unified Soil Classification System. The soil is inspected for color, texture, grain size distribution, moisture content, odor, and any other distinguishing characteristics. Lithologic data, PID readings and other pertinent data are recorded on a boring log.

Prior to sampling, all reusable sampling equipment is decontaminated by washing in a solution of non-phosphate soap and water. The equipment is then double rinsed in distilled water. The sample push rods are steam cleaned on-site between each sample location. The rinsate water is placed in Department of Transportation approved 55 gallon drums and centralized to an on-site location.

All soil sample locations are backfilled with bentonite chips and hydrated and then capped with asphalt patch or concrete to grade.

# **EXHIBIT 10**



EDMUND G. BROWN, JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Los Angeles Regional Water Quality Control Board**

August 19, 2013

Mr. David J. Nagle  
DECRON Properties  
6222 Wilshire Boulevard, Suite 400  
Los Angeles, California 90048

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7012 1640 0000 6228 3109

Mr. Robert W. Stevenson  
Stevenson Real Estate  
1111 North Brand Boulevard, Suite 200  
Glendale, California 91202

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7012 3460 0001 6365 7977

**SUBJECT: RESPONSE TO COMMENTS – PURSUANT TO CALIFORNIA WATER CODE SECTION 13267  
ORDER NO. R4-2013-0056**

**SITE: FORMER MITCHELL CAMERA CORPORATION, 5040 SAN FERNANDO ROAD, GLENDALE,  
CALIFORNIA (FILE NO. 113.5103)**

Dear Messrs. Nagle and Stevenson:

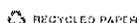
The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) staff have reviewed the letter dated July 17, 2013 (Letter)(enclosed), submitted on your behalf by Mr. Kenneth A. Ehrlich of Jeffer Mangels Butler & Mitchell, LLP for the property located at 5040 San Fernando Road, in the City of Glendale, California (Site). The Letter is in response to the Regional Board’s California Water Code (CWC) section 13267 Order No. R4-2013-0056 (Order)(enclosed), issued on April 10, 2013 to DECRON Properties Corporation (DECRON) and Stevenson Real Estate (Stevenson) requiring the submittal of a Subsurface Soil Investigation Workplan (Workplan).

A CWC section 13267 Order No. R4-2012-0051 dated October 24, 2012 (enclosed) was originally issued to Home Depot, the current Site occupant. In a letter dated February 13, 2013 (enclosed), submitted by Mr. Ehrlich on behalf of DECRON for the referenced Site, it states that DECRON is the owner of the property and lessor to Home Depot. Following receipt of the letter dated February 13, 2013, the Regional Board submitted a public inquiry form to the Los Angeles County Assessor’s Office. According to the response from the Los Angeles County Assessor’s Office, Stevenson is the property owner of record. Therefore, as a result of the information provided to the Regional Board, the Order was issued to DECRON and Stevenson.

The Letter states that neither DECRON nor Stevenson owns or occupies the property and that the property owner of record is Glendale Colorado Development Partners (GCDP), a California General Partnership. The Letter also states that previous investigations conducted at the Site focused on volatile

MARIA MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | [www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles)



Mr. Robert W. Stevenson  
Stevenson Real Estate  
Mr. David J. Nagle  
DECRON Properties

- 2 -

August 19, 2013

organic compounds (VOCs) and that no evidence indicates a release of heavy metals. The Letter also states that there are multiple current and prior known sources of heavy metal contamination within the vicinity of the Site and requests that the Order be withdrawn effective immediately.

On July 24, 2013, Mr. Neill E. Brower of Jeffer Mangels Butler & Mitchell LLP submitted the required Workplan to the Regional Board via email. On August 8, 2013, in a conference call between Mr. Ehrlich, Mr. Arthur Heath of the Regional Board and Ms. Luz Rabelo of the Regional Board, Mr. Ehrlich confirmed that GCDP is a partnership of DECRON and Stevenson.

The Regional Board has reviewed the available information and the Letter and thanks you for your comments. The Regional Board has considered the comments in the Letter and has determined that the information available supports the conclusion that the entities named in the Order are suspected of causing a discharge and are properly named. The Regional Board would like to inform you that the Kinner Airplane and Motor Corporation, the Drilube Company - Plant 1, and the former Excello Plating Company, named in the Letter as known sources of heavy metal contamination within the vicinity of the Site, are currently being investigated. The Regional Board will be proceeding with the approval of the submitted Workplan.

Should you have any questions related to this project, please contact Ms. Luz Rabelo via telephone at (213) 576-6783 or via email at [luz.rabelo@waterboards.ca.gov](mailto:luz.rabelo@waterboards.ca.gov).

Sincerely,

Samuel Unger

Samuel Unger, P.E.  
Executive Officer

- Robert W. Stevenson

- N. E. Brower,  
a Calif LP

Enclosures: Letter dated February 13, 2013  
Letter dated July 17, 2013  
California Water Code Section 13267 Order No. R4-2012-0051  
California Water Code Section 13267 Order No. R4-2013-0056

cc: Ms. Lisa Hanusiak, USEPA Region IX  
Mr. Leo Chan, City of Glendale  
Mr. Bill Mace, City of Burbank Water Supply Department  
Mr. Vahe Dabbaghian, Los Angeles Department of Water & Power  
Mr. Milad Taghavi, Los Angeles Department of Water & Power  
Mr. Richard Slade, ULARA Watermaster  
Mr. Kenneth A. Ehrlich, Jeffer Mangels Butler & Mitchell, LLP  
Mr. Neil E. Brower, Jeffer Mangels Butler & Mitchell, LLP  
Ms. Francine Diamond, Board Member  
Ms. Madelyn Glickfeld, Board Member

Kenneth A. Ehrlich  
Direct: (310) 785-5396  
KEhrlich@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

Ref: 62926-0126

February 13, 2013

VIA E-MAIL

Larry Moore  
Staff Environmental Scientist  
Remediation Section  
Los Angeles Regional Water Quality Control Board  
320 W. 4th Street, Suite 200  
Los Angeles, CA 90013

Re: WIP File No. 113.5103  
Former Mitchell Camera Facility  
5040 San Fernando Road, Glendale, California ("Property")

Dear Mr. Moore:

We represent Decron Management Corp. ("Decron"), owner of the above-referenced Property (the "Property") and lessor to Home Depot, the party which received your letter of October 24, 2012 (the "Letter"). Despite no indication that the Property contains a source attributable to contamination, the Letter requests additional heavy metals assessment at the Property. Home Depot has forwarded the Letter to Decron for proper handling. The Letter raises significant concerns, and appears to have no basis in light of the current Property use and previous site remediation.

Prior investigations at the Property evaluated volatile organic compounds ("VOCs") at the Property. The RWQCB issued a closure letter for the prior VOC issue, and no evidence indicated then or now that a release of heavy metals occurred into soils and groundwater beneath the Property. Moreover, the immediate vicinity surrounding the Property is replete with current and prior known sources of heavy metal contamination. For example, the former Excello Plating Company site (the "Excello Site"), located proximate to the Property, is a known site of hexavalent chromium ("Chrome 6") and other metal releases. The Excello Site likely constitutes the primary source of any Chrome 6 or other metals in the vicinity. We also have significant concerns that the existing contaminants within the Glendale South Operable Unit of the San Fernando Valley Superfund Site (the "Superfund Site") would frustrate any effort to conduct the requested testing.

Therefore, ordering Decron or Home Depot to conduct further testing would provide no benefit to the public or public safety and is improper. Accordingly, we request that RWQCB withdraw the Order, effective immediately.

**1. No Facts Justify Investigation Of Heavy Metals At The Property.**

Home Depot, a retail home improvement establishment, has occupied the Property since the early 1990s. Home Depot is not a source of contamination, as their use involves no manufacturing activities of any kind and no industrial process use of heavy metals, particularly Chrome 6. Although historic use of the Property included VOCs, releases of which have already been remediated, no historic or current evidence demonstrates or suggests releases of heavy metals, particularly Chrome 6, associated with the Property. As the RWQCB has already granted closure for the Property, and no factual basis exists for issuance of the Order for investigation of such materials, issuance of the Letter is both inappropriate and improper.

**2. The Excello Site Represents The Primary Source Of Any Metals Contamination in the Vicinity of the Property.**

The Excello Site is a known and significant source of Chrome 6 and other metals from illegal releases into soils and groundwater. *See* Consent Order, Docket HWCA 2003-0175, August 5, 2004 (the "Consent Order"). As recited in sections 3.3 and 3.4 of the Consent Order, Excello improperly disposed of hazardous wastes, including Chrome 6 and a variety of other metals, as recently as 2002. The RWQCB's August 24, 2012 justification memorandum for issuance of waste discharge requirements relates to the treatment of Chrome 6-impacted soils to depths of 45 feet below ground surface, and cited extremely high concentrations of Chrome 6 in soils (up to 18,400 mg/kg) and groundwater (190 ug/L). Thus, to the extent that any Chrome 6 is present in the soils and groundwater in the vicinity, the Excello Site—and not the Property—represents the primary source.

**3. The Superfund Site Plume Would Confound Any Test For Heavy Metals.**

Even assuming the existence of evidence to justify additional testing for heavy metals at the Property (there is none), Chrome 6—as well as a different isotope, Chrome 3—collectively represent a recognized regional groundwater contamination problem that renders site-specific testing meaningless.

The Property is located within the Superfund Site. Within the Superfund Site, the U.S. Environmental Protection Agency ("EPA") has listed chromium isotopes, among the many other hazardous substances identified, as contaminants of concern in the groundwater. *The EPA has also established an operable unit specifically dedicated to chromium isotopes, initiated a full investigation of the same in groundwater in 2011, and installed a well sampling system for that purpose in 2012. Moreover, according to the Final Remediation Investigation Work Plan (CH2MHill, 2012; the "Work Plan"), establishment of the "Chromium Operable Unit" occurred as a result of a four-year study by the RWQCB that identified "extensive hexavalent chromium*

Larry Moore  
February 13, 2013  
Page 3

contamination in ground water *throughout* the eastern SFV..." (Work Plan, § 1.2; emphasis added).

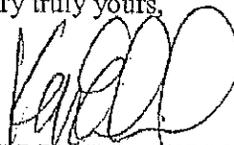
Given the above, even if chromium isotopes were detected in groundwater or in the vadose zone beneath the Property, the presence of those contaminants is perfectly consistent with the known, widespread nature of the Superfund Site's contaminant plume, especially given the nearby presence of a known responsible party for releases of the same. Such testing would, therefore, reveal nothing about the Property or its historic use, or even the extent to which historic activities may have resulted in deposition of those contaminants (though they did not). Simply put, the known regional chromium contamination would stymie any effort to characterize the Property in isolation. Further, the remedy eventually selected by the EPA for the Chromium Operable Unit would address any such contamination as may exist in association with the Superfund Site plume. Therefore, any data collected pursuant to the Order would not provide any valid basis for ordering further investigation or cleanup by Decron or Home Depot and therefore would not protect human health or the environment. As the Order would neither provide valid data regarding the Property, nor protect human health or the environment, it is improper and the RWQCB should rescind it.

#### 4. Conclusion

As described above, the RWQCB previously granted closure of the prior remediation activities at the Property, and no new information provides any factual basis for the subsequent issuance of the Order. Moreover, a known and severe local (Excello) and regional groundwater contamination plume comprising the same contaminants of concern listed in the Order would provide no meaningful information regarding the Property and would provide no valid basis for ordering either further investigation or remediation. Finally, EPA has initiated an extensive investigation of the same contaminants of concern, and that investigation will result in the development of a remedial design to address the same. As the Order is inappropriate, improper, and duplicative of existing investigatory activities, the RWQCB must rescind the Order and must refrain from seeking additional investigation from Decron or Home Depot.

Decron reserves all of its rights, and waives none. Please contact our office with any questions or concerns.

Very truly yours,



KENNETH A. EHRLICH,  
a Professional Corporation of  
Jeffer Mangels Butler & Mitchell LLP

KAE:neb

cc: Neill Brower

Kenneth A. Ehrlich  
Direct: (310) 785-6395  
KEhrlich@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

Ref: 62926-0126

July 17, 2013

**VIA E-MAIL AND U.S. MAIL**

Sam Unger, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 W. 4th Street, Suite 200  
Los Angeles, CA 90013

Re: WIP File No. 113.5103  
Former Mitchell Camera Facility  
5040 San Fernando Road, Glendale, California ("Property")

Dear Mr. Unger:

We represent Decron Properties Corp. ("Decron"), a recipient of an improper directive under the above-referenced WIP File number and a property management company associated with the Property. As a preliminary matter, neither Decron nor Stevenson Real Estate ("Stevenson"), the other party named in connection with the Property, owns or occupies the Property. Rather, the Property owner of record is Glendale Colorado Development Partners, a California General Partnership ("GCDP"), also represented by this office. Therefore, neither Glendale nor Stevenson is properly named in the Regional Water Quality Control Board's (the "Board's") letter of October 24, 2012 and its associated order (the "Letter" and "Order," respectively) requesting additional heavy metals assessment. Nevertheless, for the purposes of this letter, Decron responds on behalf of GCDP and Stevenson. We thank you for your time and consideration in this matter and provide this letter as a detailed follow up to our discussions with Board Member Diamond.

The Order came more than 15 years after diligent remediation by the Property owner and issuance of regulatory closure by the Board, in accordance with all applicable laws and regulations. However, despite no substantiation in the Order that the Property contains a source attributable to heavy metals contamination, or that any release of metals occurred, the Letter requests additional heavy metals assessment at the Property. The Letter raises significant concerns, and appears to have no evidentiary basis in light of the current Property use and previous site remediation.

Prior investigations at the Property evaluated volatile organic compounds ("VOCs") at the Property, based on the history of uses at the Property. The RWQCB issued a "no further action letter" for the prior VOC issue on March 5, 1997 and no evidence indicated

then or now that a release of heavy metals occurred into soils and groundwater beneath the Property. Moreover, the immediate vicinity surrounding the Property is replete with current and prior known sources of heavy metal contamination. For example, the Kinner Airplane and Motor Corporation was historically located on an immediately adjacent property. The Drilube Company - Plant 1 site (the "Drilube Site"), located proximate to the Property to the north, is a known site of hexavalent Chromium ("Chrome 6") and other metal discharges to soils and groundwater. The former Excello Plating Company site (the "Excello Site"), located proximate to the Property to the south, also constitutes a known site of Chrome 6 and other metal releases. The Drilube and Excello Sites, which collectively bracket the Property, likely constitute the primary sources of any Chrome 6 or other metals in the vicinity. We also have significant concerns that the existing contaminants within the Glendale South Operable Unit of the San Fernando Valley Superfund Site (the "Superfund Site") would frustrate any effort to conduct the requested testing.

Therefore, ordering GCDP, Decron, or Stevenson to conduct further testing would provide no benefit to the public or public safety and is improper. Accordingly, we request that RWQCB withdraw the Order, effective immediately.

**1. No Facts Justify Investigation Of Heavy Metals At The Property.**

Home Depot, a retail home improvement establishment, has occupied the Property since the early 1990s. Home Depot is not a source of contamination, as their use involves no manufacturing activities of any kind and no industrial process use of heavy metals, particularly Chrome 6. Although historic use of the Property included VOCs, releases of which have already been remediated, no historic or current evidence demonstrates or suggests releases of heavy metals, particularly Chrome 6, associated with the Property. As the RWQCB has already granted closure for the Property, and no factual basis exists for issuance of the Order for investigation of such materials, issuance of the Letter is both inappropriate and improper.

**2. The Excello and Drilube Sites that Bracket the Property Represent The Primary Sources Of Any Metals Contamination in the Vicinity of the Property.**

Two known and significant sources of Chrome 6 and other metals effectively bracket the Property and represent the primary sources of those contaminants in vicinity soils and groundwater. Moreover, the presence of such high Chrome 6 concentrations in soils and groundwater at these sites, which bracket the Property, would confound any testing performed at the Property.

The Drilube Site is a known and significant source of Chrome 6 and other metals from illegal releases into soils and groundwater. See Cleanup and Abatement Order R4-2002-0068 [the "Drilube CAO"], p. 2. As recited in sections 4 and 5, known activities at that site included plating and the use of chromium, nickel, cadmium, and a variety of other metals, for approximately 40 years. According to Section 7 of the Drilube CAO, subsurface testing since 1994 indicated extraordinary levels of solvent and metals contamination of groundwater (with

historic highs of *Chrome 6 at 32,000 ug/L*, and testing in or around 2002 continued to demonstrate severely high levels of Chrome 6 (up to 2,620 ug/L) in soils and groundwater at every boring on the Drilube Site. Thus, to the extent that any Chrome 6 is present in the soils and groundwater in the vicinity, the Drilube Site—and not the Property—represents a primary source.

The Excello Site is another known and significant source of Chrome 6 and other metals from illegal releases into soils and groundwater. See Consent Order, Docket HWCA 2003-0175, August 5, 2004 (the "Consent Order"). As recited in sections 3.3 and 3.4 of the Consent Order, Excello improperly disposed hazardous wastes, including Chrome 6 and a variety of other metals, as recently as 2002. The RWQCB's August 24, 2012 justification memorandum for issuance of waste discharge requirements relates to the treatment of Chrome 6-impacted soils to depths of 45 feet below ground surface, and cited extremely high concentrations of Chrome 6 in soils (up to 18,400 mg/kg) and groundwater (190 ug/L). Thus, to the extent that any Chrome 6 is present in the soils and groundwater in the vicinity, the Excello Site—and not the Property—also represents a primary source.

### 3. The Superfund Site Plume Would Confound Any Test For Heavy Metals.

Even assuming the existence of evidence to justify additional testing for heavy metals at the Property, Chrome 6—as well as a different isotope, Chrome 3—collectively represent a recognized regional groundwater contamination problem that renders site-specific testing meaningless.

The Property is located within the Superfund Site. Within the Superfund Site, the U.S. Environmental Protection Agency ("EPA") has listed chromium isotopes, among the many other hazardous substances identified, as contaminants of concern in the groundwater. *The EPA has also established an operable unit specifically dedicated to chromium isotopes*, initiated a full investigation of the same in groundwater in 2011, and installed a well sampling system for that purpose in 2012. Moreover, according to the Final Remediation Investigation Work Plan (CH2MHill, 2012; the "Work Plan"), establishment of the "Chromium Operable Unit" occurred as a result of a four-year study *by the RWQCB that identified "extensive hexavalent chromium contamination in ground water throughout the eastern SFV..."* (Work Plan, § 1.2; emphasis added).

Given the above, even if chromium isotopes were detected in groundwater or in the vadose zone beneath the Property, the presence of those contaminants is perfectly consistent with the known, widespread nature of the Superfund Site's contaminant plume, especially given the nearby presence of two known responsible parties for releases of the same on two sides of the Property. Such testing would, therefore, reveal nothing about the Property or its historic use, or even the extent to which historic activities may have resulted in deposition of those contaminants (though they did not). Simply put, the known regional chromium contamination, combined with the known and severe local chromium contamination, would stymie any effort to characterize the Property in isolation. Further, the remedy eventually selected by the EPA for the Chromium

Sam Unger, Executive Officer  
July 17, 2013  
Page 4

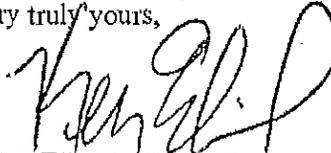
Operable Unit would address any such contamination as may exist in association with the Superfund Site plume. Therefore, any data collected pursuant to the Order would not provide any valid basis for ordering further investigation or cleanup by GCDP and therefore would not protect human health or the environment. As the Order would neither provide valid data regarding the Property, nor protect human health or the environment, it is improper and the RWQCB should rescind it.

#### 4. Conclusion

As described above, the RWQCB previously granted closure of the prior remediation activities at the Property, and no new information provides any factual basis for the subsequent issuance of the Order. Moreover, two known and severe local (Excello and Drilube) and regional groundwater contamination plumes comprising the same contaminants of concern listed in the Order would provide no meaningful information regarding the Property and would provide no valid basis for ordering either further investigation or remediation. Finally, EPA has initiated an extensive investigation of the same contaminants of concern, and that investigation will result in the development of a remedial design to address the same. As the Order is inappropriate, improper, and duplicative of existing investigatory activities, the RWQCB must rescind the Order and must refrain from seeking additional investigation from GCDP, Decron, Stevenson, or Home Depot.

GCDP thanks you for your attention and look forward to a productive discussion regarding a fair and prompt resolution to this matter. GCDP, Decron, and Stevenson reserve all of their rights, and waive none.

Very truly yours,



KENNETH A. BHRlich,  
a Professional Corporation of  
Jeffer Mangels Butler & Mitchell LLP

KAE:neb

cc: Francine Diamond, Board Member  
Madelyn Glickfeld, Chairperson  
Neill E. Brower



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

October 24, 2012

Ms. Erika Strawn  
Home Depot, U.S.A.  
3800 West Chapman Ave  
Orange, California 90071

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7011 3500 0003 5491 0292

**SUBJECT: REQUIREMENT FOR TECHNICAL REPORTS PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2012-0051**

**SITE: FORMER MITCHELL CAMERA FACILITY (HOME DEPOT), 5040 SAN FERNANDO ROAD, GLENDALE, CALIFORNIA (WIP FILE NO. 113.5103)**

Dear Ms. Strawn:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all beneficial uses within major portions of Los Angeles and Ventura Counties, including the referenced site.

Regional Board staff reviewed the technical information and historical documents contained in the case file for the site. Information in the case file indicates that manufacturing operations at the former Mitchell Camera facility at the above referenced address involved metal finishing processes such as plating. These manufacturing processes have the potential for waste discharge to the soil and groundwater. Previous site assessments conducted at the site focused on volatile organic compounds (VOCs) and did not assess heavy metals. The potential release and/or discharge of heavy metals, particularly chromium, to the subsurface soil beneath the site needs to be further evaluated.

Enclosed is a California Water Code section 13267 Order No. R4-2012-0051 (Order), requiring you to prepare and submit a technical report (Workplan) for subsurface soil investigation for assessment of heavy metals, particularly chromium.

Should you have any questions related to this letter, please contact Mr. Larry Moore at (213) 576-6730 or [lmoore@waterboards.ca.gov](mailto:lmoore@waterboards.ca.gov).

Sincerely,

  
Samuel Unger, PE  
Executive Officer

cc: Ms. Lisa Hanusiak, USEPA Region IX

MAHIA MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | [www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles)

Ms. Erika Strawn  
Former Mitchell Camera Facility (Home Depot)

- 2 -

October 24, 2012

Mr. Leo Chan, City of Glendale  
Mr. Vahe Dabbaghian, Los Angeles Department of Water & Power  
Mr. Thomas Erb, Los Angeles Department of Water & Power  
Mr. Bill Mace, City of Burbank Water Supply Department  
Mr. Richard Slade, ULARA Water Master



EDMUND G. BROWN, JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

**ORDER TO PROVIDE A TECHNICAL REPORT FOR  
SUBSURFACE SOIL INVESTIGATION**

**CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2012-0051**

**DIRECTED TO HOME DEPOT**

**FORMER MITCHELL CAMERA FACILITY (HOME DEPOT)  
5040 SAN FERNANDO ROAD  
GLENDALE, CALIFORNIA 91204  
(WIP FILE NO. 113.5103)**

The Regional Water Quality Control Board, Los Angeles Region (Regional Board) makes the following findings and issues this Order pursuant to California Water Code (CWC) section 13267.

1. Mitchell Camera Corporation (Mitchell Camera) operated a facility at 5040 San Fernando Road in Glendale (Site) from approximately 1942 through 1975. Mitchell Camera was engaged in the manufacture of motion picture cameras and accessories. Regional Board records indicate that operations at Mitchell Camera included metal finishing. In approximately 1975, Anderson Desk occupied the property and remained here through 1990. Operations at Anderson Desk included woodworking, assembly, and wood sealing. Following Anderson Desk's occupation of the Site, the Glendale Colorado Development Group acquired the property in 1990. The Site was subsequently developed by Home Depot in approximately 1993.

Regional Board records also indicate that the Site underwent several phases of subsurface investigations. However, these investigations focused on volatile organic compounds (VOCs) and did not assess heavy metals. The potential discharge of heavy metals to the soil beneath the Site, as a result of historical metal finishing operations, has not yet been assessed.

2. CWC section 13267(b)(1) states, in part: In conducting an investigation, the Regional Board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the Regional Board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the Regional Board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
3. Regional Board has evidence in the case file for the Site indicating that there is or has been a potential for discharge of waste at or from the Site. The evidence supporting this is that the Site is located in the United States Environmental Protection Agency (USEPA) San Fernando Valley Superfund Site. It is known that groundwater within the Superfund Site, including in the vicinity of

MARIA MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | [www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles)

the former Mitchell Camera facility (Home Depot) site, is contaminated with VOCs and heavy metals, particularly chromium.

Site assessments were conducted at the Site from approximately 1987 to 1991. The site assessments involved review of aerial photos, interviewing former company executives and subsurface investigations. It was reported in Environ's Subsurface Investigation Work Plan, dated June 1991, that the former Vice President and Operations manager of Mitchell Camera, Mr. Chuck Mallory, was interviewed to gather historical information on Mitchell Camera's operations. Mr. Mallory indicated that manufacturing activities at Mitchell Camera included milling, gear hobbing, deburring, painting, grinding, heat treating, plating, degreasing and lathing. Plating equipment included six above-ground 40-gallon plating tanks, and three 50-gallon acid tanks.

Multiple subsurface investigations were conducted for assessment of VOCs and petroleum hydrocarbons. No assessment of heavy metals was conducted during the site investigations.

4. This Order identifies Home Depot as the party responsible for the potential unauthorized discharge of waste from operations identified in paragraph 1 and 3, because the Home Depot owns the property on which the waste is discharged.
5. This Order requires the party named herein to prepare and submit a technical report (Workplan) to conduct a subsurface soil investigation to determine if unauthorized releases of heavy metals have impacted the soil beneath the Site.
6. The Regional Board needs this information in order to determine if an unauthorized discharge or release of waste containing heavy metals to the soil has occurred and to fully assess and clean up the waste, if discharged, for preserving water quality and protecting human health.
7. The burdens, including costs, of this report bear a reasonable relationship to the need for the report and the benefits to be obtained from the report. The information is necessary to assure complete assessment and adequate cleanup of the Superfund Site, which as described above, poses a potential threat to public health and the environment.
8. The issuance of this Order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a) (2), Chapter 3, Title 14 of the California Code of Regulations. This Order requires submittal of technical and/or monitoring reports and work plans. The proposed activities under the work plans are not yet known. It is unlikely that implementation of the work plans associated with this Order could result in anything more than minor physical changes to the environment. If the implementation may result in significant impacts on the environment, the appropriate lead agency will address the CEQA requirements prior to implementing any work plan.
9. Any person aggrieved by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)

or will be provided upon request.

**THEREFORE, IT IS HEREBY ORDERED** that Home Depot, pursuant to section 13267(b) of the California Water Code, is required to submit the following:

1. By December 19, 2012, submit a Workplan for an onsite investigation for assessment of heavy metals, particularly hexavalent chromium, in the subsurface soil. Information on site assessment can be found in the guidance manual entitled "*Interim Site Assessment & Cleanup Guidebook (May 1996)*," which can be found at the Regional Board website at:

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/may1996\\_voc\\_guidance.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/may1996_voc_guidance.shtml).

The Workplan shall also be developed following the applicable components of the Regional Board's "*Guidelines for Report Submittals, Section VI, Site Assessment Plans*," (March 1991, Revised June 1993). A copy of the guidelines can be found at the following URL:

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/ust/guidelines/la\\_county\\_guidelines\\_93.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/ust/guidelines/la_county_guidelines_93.pdf)

2. The Workplan must include proposed soil sampling borings to a minimum depth of 25 feet below ground surface (bgs) in such areas of concern as waste treatment facilities like sumps and clarifiers, hazardous waste storage area(s), and chemical storage area(s).
3. The Workplan shall include the detailed information of any former and existing chromium storage and hazardous waste management areas and associated practices.
4. The Workplan must contain a health and safety plan (H&SP), as per the guidelines.

The Workplan shall be submitted to:

Mr. Larry Moore  
Staff Environmental Scientist  
Remediation Section  
Los Angeles Regional Water Quality Control Board  
320 W. 4th Street, Suite 200  
Los Angeles, CA 90013  
Tel. 213-576-6730  
Fax: 213-576-6600  
E-mail: [lmoore@waterboards.ca.gov](mailto:lmoore@waterboards.ca.gov)

Pursuant to 13267(a) of the CWC, any person who fails to submit technical reports in accordance with the Order is guilty of a misdemeanor. Pursuant to section 13268(b) (1) of the CWC, failure to submit the required technical report described above by the specified due date(s) may result in the imposition of administrative civil liability by the Regional Board in an amount up to one thousand dollars (\$1,000) per day for each day the technical report is not received after the above due date. These civil liabilities may be assessed by the Regional Board for failure to comply, beginning with the date that the violations first occurred, and without further warning.

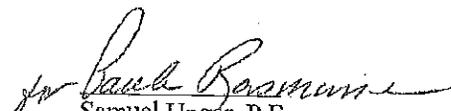
The Regional Board, under the authority given by CWC section 13267, subdivision (b)(1), requires you to include a perjury statement in all reports submitted under the 13267 Order. The perjury statement shall be signed by a senior authorized representative (not by a consultant). The perjury statement shall be in the following format:

"I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The State Board adopted regulations (Chapter 30, Division 3 of Title 23 & Division 3 of Title 27, California Code of Regulation) requiring the electronic submittal of information (ESI) for all site cleanup programs, starting January 1, 2005. Currently, all of the information on electronic submittals and GeoTracker contacts can be found at [http://www.waterboards.ca.gov/ust/electronic\\_submittal](http://www.waterboards.ca.gov/ust/electronic_submittal).

To comply with the above referenced regulation, you are required to upload all technical reports, documents, and well data to GeoTracker by the due dates specified in the Regional Board letters and orders issued to you or for the Site. However, we may request that you submit hard copies of selected documents and data to the Regional Board in addition to electronic submittal of information to GeoTracker.

SO ORDERED.

  
Samuel Unger, P.E.  
Executive Officer



Los Angeles Regional Water Quality Control Board

April 10, 2013

Mr. Robert W. Stevenson  
Stevenson Real Estate  
1111 North Brand Boulevard, Suite 200  
Glendale, California 91202

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7011 2970 0000 0645 3236

Mr. David J. Nagle  
DECRON Properties  
6222 Wilshire Boulevard, Suite 400  
Los Angeles, California 90048

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7012 1640 0000 6294 5045

**SUBJECT: REQUIREMENT FOR TECHNICAL REPORTS PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2013-0056**

**SITE: FORMER MITCHELL CAMERA CORPORATION, 5040 SAN FERNANDO ROAD, GLENDALE, CALIFORNIA (FILE NO. 113.5103)**

Dear Mr. Stevenson and Mr. Nagle:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all beneficial uses within major portions of the Los Angeles and Ventura Counties, including the referenced site.

The Regional Board is investigating potential sources for groundwater pollution within the United States Environmental Protection Agency (USEPA) San Fernando Valley Superfund Site (Superfund Site). It is known that groundwater within the Superfund Site, including the vicinity of the former Mitchell Camera Corporation (Mitchell Camera) facility, is contaminated with volatile organic compounds (VOCs) and heavy metals, particularly chromium.

Regional Board staff has reviewed technical information and historical documents contained in Regional Board files for the property located at 5040 San Fernando Road, in the City of Glendale, California (the Site). Regional Board files indicate that Mitchell Camera occupied the Site between approximately 1946 and 1975. Mitchell Camera operations at the Site consisted of motion picture camera manufacturing for the entertainment industry. The manufacturing processes involved the use of various chemicals such as solvents, acids, and electrolyte solutions which may impact groundwater quality if released to the subsurface environment.

MARIA MEDRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/losangeles

Mr. Robert W. Stevenson  
Stevenson Real Estate  
Mr. David J. Nagle  
DECRON Properties

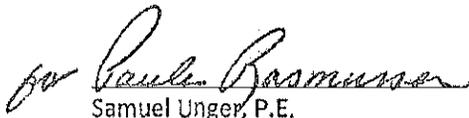
- 2 -

April 10, 2013

Enclosed is a Regional Board Order for technical report requirements pursuant to California Water Code Section 13267 Order No. R4-2013-0056 (Order). As the current property owners, Stevenson Real Estate and DECRON Properties are required to comply with the Order to prepare and submit a Subsurface Soil Investigation Workplan in order to evaluate the subsurface conditions and the potential for groundwater contamination.

Should you have any questions related to this project, please contact Ms. Luz Rabelo via telephone at (213) 576-6783 or via email at [luz.rabelo@waterboards.ca.gov](mailto:luz.rabelo@waterboards.ca.gov).

Sincerely,



Samuel Unger, P.E.  
Executive Officer

Enclosure: California Water Code Section 13267 Order No. R4-2013-0056

cc: Ms. Lisa Hanusiak, USEPA Region IX  
Mr. Leo Chan, City of Glendale  
Mr. Bill Mace, City of Burbank Water Supply Department  
Mr. Vahe Dabbaghian, Los Angeles Department of Water & Power  
Mr. Milad Taghavi, Los Angeles Department of Water & Power  
Mr. Richard Slade, ULARA Watermaster



Los Angeles Regional Water Quality Control Board

ORDER TO PROVIDE A TECHNICAL REPORT FOR  
SUBSURFACE SOIL INVESTIGATION  
CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2013-0056

DIRECTED TO STEVENSON REAL ESTATE AND DECRON PROPERTIES

FORMER MITCHELL CAMERA CORPORATION  
5040 SAN FERNANDO ROAD, GLENDALE, CALIFORNIA  
(FILE NO. 113.5103)

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) makes the following findings and issues this Order pursuant to California Water Code (CWC) section 13267.

1. The groundwater within the San Fernando Valley Groundwater Basin has been impacted by heavy metals, specifically chromium. As a result of the groundwater impacts, the Regional Board is investigating potential sources of the contamination. The current investigation, led by the United States Environmental Protection Agency (USEPA) and the Regional Board, is focused on identifying individuals and companies responsible for the chromium contamination in the region and holding them responsible for the investigation and remediation of the affected Site. The above Site is located in the investigative area.
2. The subject property located at 5040 San Fernando Road, in the City of Glendale, California (the Site) was formerly occupied by Mitchell Camera Corporation (Mitchell Camera) for approximately 29 years, between 1946 and 1975. Between 1975 and 1990, the Site was occupied by Anderson Desk who operated a desk manufacturing facility at the Site. In 1992, the Site was purchased and redeveloped by DECRON properties in conjunction with Stevenson Real Estate, who currently lease the Site to Home Depot. Mitchell Camera performed manufacturing of motion picture cameras for the entertainment industry. Regional Board files state that Mitchell Camera manufacturing activities at the Site included milling, tool/die, gear hobbing, deburring, painting, grinding, heat treating, plating, degreasing and lathing. These manufacturing processes involve the use of various chemicals such as solvents, acids, and electrolyte solutions which could impact groundwater quality, if released to the subsurface environment. Regional Board files also indicate that previous investigations were conducted at the Site which focused on volatile organic compounds (VOCs). However, there is no documentation that any subsurface soil investigation for heavy metals was performed. Therefore, the potential discharge and/or release of heavy metal compounds to the soils at the Site, as a result of Mitchell Camera operations have not been assessed.
3. CWC section 13267(b)(1) states, in part: In conducting an investigation the Regional Board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the Regional Board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and

MARIA MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | [www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles)

the benefits to be obtained from the reports. In requiring those reports, the Regional Board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

4. Regional Board staff has obtained evidence indicating that there has been a potential for discharge of waste at or from the Site. In a report titled Subsurface Investigation Program, dated June 1991, prepared by ENVIRON Corporation for the referenced Site, it was stated that an interview was conducted with Mr. Chuck Mallory, former Vice-President and operations manager of Mitchell Camera. Mr. Chuck Mallory stated that Mitchell Camera conducted plating activities at the Site. Mr. Chuck Mallory also stated that plating equipment at the Site consisted of six (6) 40-gallon plating tanks and three (3) 50-gallon acid tanks.

Mitchell Camera is among the suspected sources of waste discharge in the USEPA San Fernando Valley Superfund Site (Superfund Site) because of the operations at the Site. It is known that groundwater within the Superfund Site, including the vicinity of the Mitchell Camera facility, is contaminated with VOCs and heavy metals, particularly chromium. To date, a complete subsurface investigation of heavy metals in soil or groundwater has not been performed at the Site.

5. This Order identifies Stevenson Real Estate and DECRON Properties as the entities responsible for the potential unauthorized discharge of waste identified in paragraph two (2) and four (4) because Stevenson Real Estate and DECRON Properties own the property on which the activity that resulted in the potential discharge or waste was performed.
6. This Order requires the persons/entities named herein to prepare and submit a Subsurface Soil Investigation Workplan (Workplan) in order to evaluate the conditions at the Site and determine if any unauthorized release of heavy metal compounds, specifically chromium, has impacted the soils beneath the Site that could consequently pose a threat to groundwater. You are expected to submit a complete Workplan, as required by this Order, to the Regional Board. The Regional Board may reject the Workplan if it is deemed incomplete and/or require revisions to the Workplan under this Order.
7. The Regional Board needs this information in order to determine the subsurface soil conditions at the Site as part of the efforts to identify sources of chromium contamination in the San Fernando Valley.
8. The burdens, including costs, of these reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The information is necessary to assure adequate cleanup of the former Mitchell Camera facility, which as described above may have discharged chromium waste detected in the subsurface soil and groundwater and potentially poses significant threats to public health and the environment.
9. The issuance of this Order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This Order

requires submittal of technical and/or monitoring reports and workplans. The proposed activities under the Workplan are not yet known. It is unlikely that implementation of the Workplan associated with this Order could result in anything more than minor physical changes to the environment. If the implementation may result in significant impacts on the environment, the appropriate lead agency will address the CEQA requirements prior to implementing any Workplan.

10. Any person aggrieved by this action of the Regional Board may petition the State Water Resources Control Board (State 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 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 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 the following link:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)

or will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED that Stevenson Real Estate and DECRON Properties, pursuant to section 13267(b) of the CWC, are required to submit the following:

1. A Supplemental Subsurface Soil Investigation Workplan (Workplan) must be submitted by May 24, 2013. Guidance documents to assist you with this task can be found on the Internet at the following links:

*"General Work Plan Requirements for a Heavy Metal Soil Investigation"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/General\\_Workplan\\_Requirements\\_for\\_a\\_Heavy\\_Metals\\_Soil\\_Investigation.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/General_Workplan_Requirements_for_a_Heavy_Metals_Soil_Investigation.pdf)

*"Interim Site Assessment & Cleanup Guidebook (May1996),"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/may1996\\_voc\\_guidance.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/may1996_voc_guidance.shtml)

*"Quality Assurance Project Plan"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/Board\\_SGV-SFVCleanupProgram\\_Sept2008\\_QAPP.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/Board_SGV-SFVCleanupProgram_Sept2008_QAPP.pdf)

2. The Workplan shall include detailed information of former and existing chromium storage, hazardous waste management, and associated practices.
3. The Workplan must also include proposed soil sampling boring locations which shall extend to a minimum depth of 40 feet below ground surface in the areas of the previous plating processes

Mr. Robert W. Stevenson  
Stevenson Real Estate  
Mr. David J. Nagle  
DECRON Properties

- 4 -

April 10, 2013

- and waste treatment (sumps, clarifiers, etc.), hazardous waste storage area, and chemical storage area.
4. The Workplan must contain a health and safety plan (HASP), as per the guidelines.

The above item shall be submitted to:

Ms. Luz Rabelo  
Water Resources Control Engineer  
Remediation Section  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, California 90013  
Phone: (213) 576-6783  
Email: [luz.rabelo@waterboards.ca.gov](mailto:luz.rabelo@waterboards.ca.gov)

Pursuant to 13267(a) of the CWC, any person who fails to submit reports in accordance with the Order is guilty of a misdemeanor. Pursuant to section 13268(b)(1) of the CWC, failure to submit the required Workplan described above by the specified due date(s) may result in the imposition of administrative civil liability by the Regional Board in an amount up to one thousand dollars (\$1,000) per day for each day the Workplan is not received after the above due date. These civil liabilities may be assessed by the Regional Board for failure to comply, beginning with the date that the violations first occurred, and without further warning.

The Regional Board, under the authority given by the CWC section 13267, subdivision (b)(1), requires you to include a perjury statement in all reports submitted under the 13267 Order. The perjury statement shall be signed by a senior authorized Stevenson Real Estate and DECRON Properties representative (not by a consultant). The perjury statement shall be in the following format:

"I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The State Board adopted regulations (Chapter 30, Division 3 of Title 23 & Division 3 of Title 27, California Code of Regulation) requiring the electronic submittal of information (ESI) for all site cleanup programs, starting January 1, 2005. Currently, all of the information on electronic submittals and GeoTracker contacts can be found on the Internet at the following link:

[http://www.waterboards.ca.gov/ust/electronic\\_submittal](http://www.waterboards.ca.gov/ust/electronic_submittal)

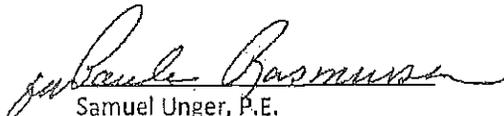
Mr. Robert W. Stevenson  
Stevenson Real Estate  
Mr. David J. Nagle  
DECRON Properties

- 5 -

April 10, 2013

To comply with the above referenced regulation, you are required to upload all technical reports, documents, and well data to GeoTracker by the due dates specified in the Regional Board letters and orders issued to you or for the Site. However, the Regional Board may request that you submit hard copies of selected documents and data in addition to electronic submittal of information to GeoTracker.

SO ORDERED.

  
Samuel Unger, P.E.  
Executive Officer

4-10-13  
Date

# **EXHIBIT 11**



Jeffer Mangels  
Butler & Mitchell LLP

---

Neill E. Brower  
Direct: (310) 712-6833  
Fax: (310) 712-8564  
NB4@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

September 4, 2013

**VIA E-MAIL AND U.S. MAIL**

Luz Rabelo  
Water Resource Control Engineer  
Los Angeles Regional Water Quality  
Control Board  
320 West 4th Street, Ste. 200  
Los Angeles, CA 90013

Re: Former Mitchell Camera Operation  
5040 San Fernando Road, Glendale, California (the "Property")  
Section 13267 Order No. R4-2013-0056 (the "Order")

Dear Ms. Rabelo:

We represent Glendale Colorado Development Partners, a California General Partnership ("GCDP"), fee title holder of the Property referenced above for approximately 25 years. We also respond on behalf of Decron Properties Corp. ("Decron") and Stevenson Real Estate ("Stevenson"), recipients of improper directives under the above-referenced WIP File number. This letter responds to the Regional Water Quality Control Board's ("RWQCB") letter of August 19, 2013 and also specifies the impropriety of naming Decron or Stevenson as PRPs in this matter.

In its August 19, 2013 letter, the RWQCB asserts, without reference to any supporting facts or legal authority, that Decron and Stevenson constitute potentially responsible parties ("PRPs") for heavy metals contamination that may or may not exist in soils and groundwater beneath the Property. In fact, *the RWQCB's position entirely contradicts established law: neither Decron nor Stevenson owns the Property, and neither constitutes an "operator" for the purposes of determining potential liability for any environmental condition at the Property.* As no basis exists for imputing liability on either party, Decron and Stevenson demand that the RWQCB immediately rescind as to them all orders and directives pertaining to the Property.

As the RWQCB's August 19, 2013 letter lacks any legal reasoning underlying the RWQCB's naming of Decron and Stevenson as PRPs, we outline the applicable law and facts below. The only possible conclusion from the appropriate analysis is that neither Decron nor Stevenson can constitute PRPs in this matter.

**1. Only GCDP Owns the Property, Not Stevenson or Decron.**

The RWQCB's August 19 letter references an inquiry to the Los Angeles County Assessor. However, the letter does not state whether the assessor provided ownership information or merely contact information contained in its records. Moreover, such an inquiry does not form the basis for any imputation of liability, particularly where a grant deed confirming long-standing ownership is available. As we discussed with Mr. Jeffrey Hu on July 22, 2013, and evidenced by a grant deed provided to the RWQCB on the same date, ***neither Decron nor Stevenson owns or occupies the Property. The 1991 (most recent) grant deed evidences GCDP's ownership of the Property since that time.*** The grant deed conclusively establishes the legal ownership of the Property, irrespective of any contrary information provided by the assessor (and again, nothing establishes that the information provided by the assessor contradicts the grant deed). As neither Decron nor Stevenson owns the Property, and GCDP has owned the Property for over 20 years, only GCDP could even potentially constitute an owner for the purpose of any determination of owner liability under applicable laws.

**2. Neither Decron Bor Stevenson Constitutes an "Operator" of a Facility at the Property.**

Operator liability only arises where a person or entity plays "an active role in running the facility, typically involving hands-on, day-to-day participation in the facility's management." *U.S. v. Wash. State Dept of Transp. ("WSDOT")*, 2010 WL 5071277, at p. 5 (W.D. Wash. 2010), citing *Long Beach Unified School District v. Dorothy B. Godwin California Living Trust ("Long Beach")*, 32 F.3d 1364, 1367 (9th Cir.1994). ***General corporate authority or supervisory authority is not enough to render a shareholder, officer, or director liable. See, e.g., United States v. Bestfoods***, 524 U.S. 51 (1998) (discussing liability under CERCLA). Rather, "operator" liability requires that a party "manage, direct, or conduct operations ***specifically related to . . . leakage or disposal of hazardous waste, or decisions about compliance with environmental regulations.***" *Bestfoods*, 524 U.S. at 66-67 (emphasis added); *see also WSDOT, supra*, (U.S. Army Corps of Engineers held duty to manage canal works, but never actually exercised day-to-day control over that waterway and was therefore not liable for contamination); *Airmotek Industries, Inc. v. Freedman*, 790 F Supp 383 (D.C. Conn. 1992) (director, officer, and shareholder of chrome-plating plant who had never taken an active role in decisions regarding hazardous waste or materials was not liable for contamination); *Nutrasweet Co. v. X-L Engineering*, 933 F. Supp. 1409 (N.D. Ill 1996) (supermajority shareholder and president with general corporate authority or supervisory capacity lacked "active participation in, or exercise of specific control of, the activities in question" and was therefore not liable for contamination caused by employees), citing *CBS, Inc. v. Henkin*, 803 F. Supp. 1426 (N.D. Ind. 1992) (holding that 90 percent stock ownership does not, absent more, establish liability).

Here, neither Decron nor Stevenson (nor even GCDP) made decisions regarding any chemical or mechanical processes, and did not manage or direct operations "specifically related to" the alleged activities that could have resulted in heavy metals contamination at or around the Property. No activities undertaken by Decron or Stevenson (nor, for that matter,

GCDP) could possibly have created the potential for the possible heavy metals contamination alleged by the RWQCB. Instead, Mitchell Camera, an entity wholly unrelated to Decron, Stevenson, and GCDP—and which ceased operations at the Property many decades ago—actually held direct responsibility for all aspects of the operations related to the acquisition, use, storage, and disposal of any chemicals that may have occurred on the Property.

Neither Decron nor Stevenson (nor GCDP) had any experience in or involvement with the day-to-day operations of the Mitchell Camera facility, and made no decisions regarding the handling or disposal of hazardous materials-- to the extent that such materials were ever present. Given the total lack of conduct a) which could lead to environmental liability under state or federal law, or b) specifically related to the activities alleged by the RWQCB to have potentially occurred on the Property, Decron and Stevenson cannot and do not qualify as "operators" under for the purposes of CERCLA, the HSAA, the Porter-Cologne Water Quality Control Act or other applicable law. GCDP also does not constitute an operator under applicable law, and the RWQCB cannot legally establish direct or derivative liability on that basis.

### **3. No Facts Establish Derivative Liability for Decron or Stevenson.**

Contrary to the allegations of the RWQCB's August 19, 2013 letter, our office did not confirm to Dr. Heath that Stevenson and/or Decron are or were "partners" in GCDP. Such a representation was never made. However, even if either party was a "partner" in GCDP, mere membership does not and cannot, without more, give rise to liability for either party through GCDP. Indeed, California law recognizes that a partnership is an entity distinct from its partners. Cal. Corp. Code § 16201. A judgment or decision against a partnership is not a judgment against a partner. Cal. Corp. Code § 16307(c). Moreover, the rule that a partnership's assets are primarily liable for partnership debts is well settled at law. *See, e.g., M.C. Hawley & Co. v. Campbell*, 62 Cal. 442 (1882); *Stein v. Andron*, 55 Cal. App. 2d 510 (1942). The United States Supreme Court has also upheld this view. *U.S. v. Galletti*, 541 U.S. 114 (2004) (ruling that, under California law, partners are only secondarily liable for judgments against a partnership, and only if partnership assets are insufficient).

Just as other parties who have obtained judgments against a partnership cannot simply look to the partners to satisfy that judgment, the RWQCB cannot, without any evidence of partners' conduct directly relating to heavy metals contamination at the Property, look beyond the partnership for any environmental assessment work. Moreover, as described above, none of the three parties—GCDP, Decron, or Stevenson—even had the theoretical ability to direct or supervise the activities alleged by the RWQCB to have occurred at the Property. Thus, no evidence exists or could exist to demonstrate any involvement by Decron or Stevenson in alleged activities relating to the use of heavy metals at the Property.

Similarly, no facts in this matter indicate any entity-related irregularity, bad faith, or abuse (such as fraud) by either party. Therefore, Decron and Stevenson did not use and could not possibly have used GCDP to shield themselves from the consequences of alleged heavy metal polluting activities undertaken by any of the three parties. Simply, *no facts support any*

*contention that any aspect of GCDP is or was structured to avoid environmental liability.* Consequently, no basis exists for disregarding GCDP and assigning derivative liability to Decron or Stevenson.

**4. The RWQCB Must Remove Stevenson and Decron from any and all Orders Pertaining to Alleged Contamination at the Property.**

As described above, no basis exists for the imputation of direct or derivative liability on Decron or Stevenson for the activities alleged by the RWQCB to have occurred at the Property and the directives pertaining to those alleged activities. No basis exists to name Decron or Stevenson as PRPs for the site. As a result, the RWQCB's determination regarding Decron's and Stevenson's liability contravenes applicable law. Therefore, both parties demand that the RWQCB immediately comply with the law and remove them from any and all directives regarding the Property. Decron and Stevenson reserve all of their rights, and waive none.

Very truly yours,



NEILL E. BROWER of  
Jeffer Mangels Butler & Mitchell LLP

NEB:neb

cc: Samuel Unger, P.E., Executive Officer, RWQCB  
Paula Rasmussen, Esq., RWQCB  
Dr. Arthur Heath, RWQCB  
Kenneth A. Ehrlich, Esq.

# **EXHIBIT 12**



**Los Angeles Regional Water Quality Control Board**

October 9, 2013

Mr. David J. Nagle  
Glendale Colorado Development Partners  
c/o Nagel Construction Company  
15350 Sherman Way, Suite 410  
Van Nuys, California 91406

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**7012 3460 0000 2166 1146**

**SUBJECT: REVISIONS TO REQUIREMENTS FOR TECHNICAL REPORTS PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2013-0056**

**SITE: FORMER MITCHELL CAMERA CORPORATION FACILITY, 5040 SAN FERNANDO ROAD, GLENDALE, CALIFORNIA (FILE NO. 113.5103)**

Dear Mr. Nagle:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all beneficial uses within major portions of the Los Angeles and Ventura Counties, including the referenced site.

The Regional Board is investigating potential sources for groundwater pollution within the United States Environmental Protection Agency (USEPA) San Fernando Valley Superfund Site (Superfund Site). It is known that groundwater within the Superfund Site, including the vicinity of the former Mitchell Camera Corporation (Mitchell Camera) facility, is contaminated with volatile organic compounds (VOCs) and heavy metals, particularly chromium.

Regional Board staff has reviewed technical information and historical documents contained in Regional Board files for the property located at 5040 San Fernando Road, in the City of Glendale, California (the Site). Regional Board files indicate that Mitchell Camera occupied the Site between approximately 1946 and 1975. Mitchell Camera operations at the Site consisted of motion picture camera manufacturing for the entertainment industry. The manufacturing processes involved the use of various chemicals such as solvents, acids, and electrolyte solutions which may impact groundwater quality if released to the subsurface environment.

On April 10, 2013, the Regional Board issued a California Water Code (CWC) Section 13267 Order No. R4-2013-0056 (Order) to Stevenson Real Estate and DECROX Properties. The Order required the property owners, Stevenson Real Estate and DECROX Properties, to prepare and submit a Subsurface Soil Investigation Workplan (Workplan). On July 17, 2013, the Regional Board received a letter from Mr. Kenneth A. Ehrlich of Jeffer Mangels Butler & Mitchell (JMB&M) stating that neither Stevenson Real

MARLA MENDOZA, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

930 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/lar/wqcb

October 9, 2013

Estate nor DECRO Properties currently own the Site. JMB&M also provided a Grant Deed which stated that the current Site owner was Glendale Colorado Development Partners (GCDP). On July 23, 2013, JMB&M submitted the required Workplan to the Regional Board, on behalf of GCDP.

Based on the recently provided information, the Regional Board revises the Order to remove the previously named responsible parties, Stevenson Real Estate and DECRO Properties, and include the current property owner GCDP. The Regional Board will proceed with approving the submitted Workplan. GCDP is required to implement the submitted Workplan and proceed with conducting the subsurface soil investigation at the Site upon receiving approval from the Regional Board.

The above revisions constitute an amendment to the requirements of the CWC section 13267 Order originally dated April 10, 2013. All other aspects of the Order originally dated April 10, 2013, and amendments thereto, remain in full force and effect. The required technical reports are necessary to investigate the characteristics of and extent of the discharges of waste at the Site and to evaluate cleanup alternatives. Therefore, the burden, including costs, of the report bears a reasonable relationship to the need for the reports and benefits to be obtained. Pursuant to section 13268 of the California Water Code, failure to submit the required technical report by the specified due date may result in civil liability administratively imposed by the Regional Board in an amount up to one thousand dollars (\$1000) for each day the technical report is not received.

Should you have any questions related to this project, please contact Ms. Luz Rabelo via telephone at (213) 576-6783 or via email at [luz.rabelo@waterboards.ca.gov](mailto:luz.rabelo@waterboards.ca.gov).

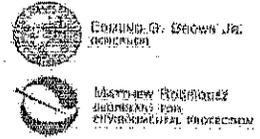
Sincerely,



Samuel Unger, P.E.  
Executive Officer

cc: Ms. Lisa Hanusiak, USEPA Region IX  
Mr. Leo Chan, City of Glendale  
Mr. Bill Mace, City of Burbank Water Supply Department  
Mr. Vahé Dabbaghian, Los Angeles Department of Water & Power  
Mr. Milad Taghavi, Los Angeles Department of Water & Power  
Mr. Richard Slade, ULARA Watermaster  
Mr. Neill E. Brower, Jeff Mangels Butler & Mitchell LLP  
Mr. Ken A. Eurlich, Jeff Mangels Butler & Mitchell LLP  
Mr. Robert W. Stevenson, Stevenson Real Estate

# **EXHIBIT 13**



**Los Angeles Regional Water Quality Control Board**

October 9, 2013

Mr. David J. Nagle  
Glendale Colorado Development Partners  
c/o Nagel Construction Company  
15350 Sherman Way, Suite 410  
Van Nuys, California 91406

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7012 1640 0000 6228 3147

**SUBJECT: APPROVAL OF THE SUBSURFACE SOIL INVESTIGATION WORKPLAN PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2013-0056**

**SITE: FORMER MITCHELL CAMERA CORPORATION, 5040 SAN FERNANDO ROAD, GLENDALE, CALIFORNIA (FILE NO. 113.5103)**

Dear Mr. Nagle:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) has reviewed the Work Plan for Site Characterization (Workplan) dated July 23, 2013, submitted by Jeffer Mangels Butler & Mitchell, LLP and MK Environmental Consulting, Inc., on your behalf for the referenced site. The Workplan was submitted as required in the Regional Board's California Water Code (CWC) Section 13267 Order No. R4-2013-0056 dated April 10, 2013.

**WORKPLAN SUMMARY**

The Workplan proposes the following scope of work:

1. Advancement of one (1) soil boring at the location of the former Degreaser Room, one (1) soil boring at the location of the former clarifier, one (1) soil boring at the former vault sump located southeast of the former Degreaser Room, and one (1) soil boring at the former vault sump located east of the former Degreaser Room on the northern property boundary.
2. The proposed soil borings will be advanced to a total depth of approximately 25 feet below ground surface (bgs) and soil samples will be collected at 5-foot intervals.
3. Soil samples collected will be submitted to a state certified laboratory for analysis. Soil samples will be analyzed for total chromium by United States Environmental Protection Agency (USEPA) Method 6010B and for hexavalent chromium by USEPA Method 7199;
4. A report will be prepared documenting the results of the investigation.

## COMMENTS AND REQUIREMENTS

The Workplan is approved with the following comments and requirements:

1. The Regional Board shall be notified a minimum of seven (7) days prior to the start of field activities.
2. A Subsurface Soil Investigation Report (Report) shall be prepared documenting the results of the investigation, field observations, laboratory data, conclusions and recommendations. The Report shall be submitted to the Regional Board by January 15, 2014.

As presented in State Water Resources Control Board Resolution 92-49, professionals should be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. Moreover, the final report submitted to this Regional Board must be reviewed, signed and stamped by a California Professional Geologist, or a California Professional Civil Engineer with at least five years of hydrogeological experience. Furthermore, the California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. Therefore, all future work must be performed by or under the direction of a registered geologist or registered civil engineer. A statement is required in the final report that the registered professional in responsible charge actually supervised or personally conducted all the work associated with the Workplan and final report.

The above requirements for submittal of the technical report constitute an amendment to the requirements of the CWC section 13267 Order originally dated April 10, 2013. All other aspects of the Order originally dated April 10, 2013, and amendments thereto, remain in full force and effect. The required technical reports are necessary to investigate the characteristics of and extent of the discharges of waste at the Site and to evaluate cleanup alternatives. Therefore, the burden, including costs, of the report bears a reasonable relationship to the need for the reports and benefits to be obtained. Pursuant to section 13268 of the California Water Code, failure to submit the required technical report by the specified due date may result in civil liability administratively imposed by the Regional Board in an amount up to one thousand dollars (\$1000) for each day the technical report is not received.

The State Board adopted regulations (Chapter 30, Division 3 of Title 23 & Division 3 of Title 27, California Code of Regulation) requiring the electronic submittal of information (ESI) for all site cleanup programs, starting January 1, 2005. Currently, all of the information on electronic submittals and GeoTracker contacts can be found on the Internet at the following link:

[http://www.waterboards.ca.gov/ust/electronic\\_submittal](http://www.waterboards.ca.gov/ust/electronic_submittal).

To comply with the above referenced regulation, you are required to upload all technical reports, documents, and well data to GeoTracker by the due dates specified in the Regional Board letters and orders issued to you or for the Site. However, the Regional Board may request that you submit hard copies of selected documents and data in addition to electronic submittal of information to GeoTracker.

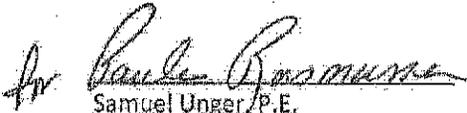
Mr. David J. Nagle  
Glendale Colorado Development Partners

- 3 -

October 9, 2013

Should you have any questions related to this project, please contact Ms. Luz Rabelo via telephone at (213) 576-6783 or via email at [luz.rabelo@waterboards.ca.gov](mailto:luz.rabelo@waterboards.ca.gov).

Sincerely,

  
Samuel Unger, P.E.  
Executive Officer

cc: Ms. Lisa Hanusiak, USEPA Region IX  
Mr. Leo Chan, City of Glendale  
Mr. Bill Mace, City of Burbank Water Supply Department  
Mr. Vahe Dabbaghian, Los Angeles Department of Water & Power  
Mr. Milad Taghavi, Los Angeles Department of Water & Power  
Mr. Richard Slade, ULARA Watermaster  
Mr. Kenneth A. Ehrlich, Jeffer Mangels Butler and Mitchell, LLP  
Mr. Neill E. Brower, Jeffer Mangels Butler and Mitchell, LLP  
Mr. Mike Kinworthy, MK Environmental Consulting, Inc.

# **EXHIBIT 14**

**STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD**

In the Matter of the Petition of	)	
	)	
<b>HR TEXTRON, INC.</b>	)	<b>ORDER NO. WQ 94-2</b>
	)	
For Review of Cleanup and Abatement	)	
Order No. 89-104 of the California	)	
Regional Water Quality Control	)	
Board, Los Angeles Region.	)	
Our File No. A-824.	)	
<hr/>		

BY THE BOARD:

On April 23, 1990 the California Regional Water Quality Control Board, Los Angeles Region (RWQCB), after a hearing upheld the issuance of Cleanup and Abatement Order No. 89-104 by the RWQCB's Executive Officer. Order No. 89-104 required HR Textron, Inc. (petitioner or Textron) to, among other things, submit a site characterization workplan, including a ground water investigation plan to determine the extent of potential ground water contamination from underground tanks at its facility in Pacoima, California. On May 16, 1990, Textron filed a timely petition for review of RWQCB's order. On March 6, 1991, the State Water Resources Control Board (SWRCB) held a workshop concerning the petition but deferred a decision pending possible resolution between the parties. The parties were not able to resolve the dispute. Therefore, on October 28, 1992 Textron filed a new petition, which it supplemented on January 6, 1993, for review of the RWQCB's order. On January 14, 1994, the SWRCB, on its own motion, pursuant to California Water

Code Section 13320, granted review of Cleanup and Abatement Order No. 89-104. See SWRCB No. WQ 94-1.

#### I. BACKGROUND

Textron operates a facility located in the City of Pacoima, California, on property it has leased since 1966. The company manufactures components used in the aerospace industry. Textron stores and uses chlorinated and unchlorinated solvents (volatile organic compounds or VOCs), cutting oils, and other chemicals. Beginning in 1966, Textron stored waste solvents, cutting oils, freon, and petroleum hydrocarbons in two 1,000 gallon underground tanks on the property. In 1984, it was discovered that the tank system was leaking and that an unknown quantity of VOCs, oil and grease, and petroleum hydrocarbons (measured as total petroleum hydrocarbons or TPH) had been discharged from the tank system by at least one leaking tank. The tanks, inlet sump, and associated piping were removed in 1985.

In 1984, after discovery of the discharge, the RWQCB staff requested that Textron submit a workplan for soil investigation. Textron has submitted several soil investigation workplans and has conducted soil sampling in and around the tank excavation. The RWQCB staff approved the soil investigation workplans, but has repeatedly requested that Textron implement a ground water monitoring program.

The RWQCB staff specifically approved the May 1987 soil investigation workplan on the condition that three proposed borings be continued to ground water and converted to monitoring wells. Textron submitted a workplan to drill one boring to ground water.

Textron attempted to install this well, but terminated the hole at 110-foot depth, prior to reaching ground water, because the method used to drill the boring could not go through gravel and cobbles it encountered at that depth. Textron commenced implementation of a soil remediation plan, but has not installed any ground water monitoring wells.

On December 18, 1989 the RWQCB's Executive Officer issued Cleanup and Abatement Order No. 89-104, pursuant to Section 13304 of the California Water Code, requiring Textron to submit a site characterization workplan, including a ground water investigation proposal. The RWQCB held hearings on March 26, 1990 and April 23, 1990 and unanimously upheld the order. Textron filed a timely petition for review of the cleanup and abatement order. On March 6, 1991 the SWRCB conducted a workshop to consider the petition. At the conclusion of the workshop, the SWRCB deferred a decision on the petition and directed the parties to attempt to negotiate a compromise to their dispute.

Prior to the SWRCB workshop, Textron filed a petition in the Los Angeles Superior Court seeking a preliminary injunction of Order No. 89-104. On June 13, 1990 the Superior Court granted Textron's request for a preliminary injunction, enjoining the enforcement of the ground water monitoring requirement.<sup>1</sup>

---

<sup>1</sup> HR Textron, Inc. v. Regional Water Quality Control Board for the Los Angeles

---

*Región, Order on Application for Preliminary Injunction, Los Angeles Superior Court  
(BC 001 733, June 13, 1990).*

Since the March 6, 1991 workshop, the RWQCB staff, Textron representatives, and other interested persons, have discussed compromise proposals but have not reached agreement. On June 16, 1992 the SWRCB Office of Chief Counsel advised Textron that its petition of May 16, 1990 was dismissed without prejudice and stated that a new petition could be filed in the event of a dispute between the parties. On October 7, 1992 the RWQCB gave notice that the dispute was not settled. Subsequently, on November 2, 1992, Textron filed a new petition, which it supplemented on January 6, 1993. Textron does not dispute its responsibility to remediate discharges from the underground tank system, but it disputes the need for conducting a ground water investigation. Textron intends to complete the remediation of the contaminated soil and conduct verification sampling.

Textron has conducted site investigation activities since 1984 when the tanks, which had been in the ground for more than 20 years, were found to have leaked unknown quantities of waste during an unknown period of time. The geology of the site is comprised mostly of medium to coarse grained sand. At approximately 20 feet below the excavation is a layer of finer grained material (upper silty-clay layer) and at approximately 50 feet below ground surface is another layer of finer grained material (lower silty-clay layer). During the site investigation, 18 borings were drilled within a 25 feet radius in and around the area of the tank excavation and more than 220 soil samples from the site have been analyzed for TPH, oil and grease, and VOCs.

The results of the investigation show that the discharges from the tanks created a vertical cylinder of high levels of contamination, approximately 25 feet in diameter, reaching a depth of 46 to 52 feet below ground surface (for simplicity referred to in this Order as the "plume"). Soil samples taken from

the borings in the area of the excavation indicate that the plume is composed of mostly oil and grease and other petroleum hydrocarbons. The highest concentrations were found in borings drilled in the center of the tank excavation (up to 23,000 parts per million (ppm) TPH) and between 20 and 40 feet below ground surface. Assorted VOCs, including 1,1,1-Trichloroethane (1,1,1-TCA), occurred in concentrations up to 180 ppm in the plume.<sup>2</sup> Borings were drilled through the plume to depths of 70, 90, and 110 feet. Low levels of TPH were detected in samples taken below the lower silty-clay layer (6 ppm at 54 feet and up to 20 ppm in other samples). No VOCs were detected in samples taken below the lower silty-clay layer from borings drilled through the plume.

Most of the borings encircle the central borings at a radius of about 25 feet, with one boring 40 feet from the plume. Low levels of TPH were found throughout a number of these borings. VOCs at less than one ppm were also found in some samples. One sample at 101.5 feet below grade in one boring outside the plume contained acetone at 2.4 ppm. Soil samples from another boring indicated the presence of methylene chloride in concentrations ranging from 0.10 to 0.15 ppm and 1,1,1-TCA in concentrations ranging from 0.10 to 0.70 ppm. Textron attempted to verify the results from these borings by drilling and sampling two adjacent borings (less than two feet away). In these borings VOCs at less than 50 ppb were sporadically detected in a few samples down to 68 feet below grade. One sample at 50 feet below grade had 200 ppb 1,1,1-TCA.

---

<sup>2</sup> For a more detailed discussion, see State Water Resources Control Board "Technical Analysis of the Petition to Review Cleanup and Abatement Order No. 89-104 of the California Regional Water Quality Control Board, Los Angeles Region. File No. A-824" (September 30, 1993).

The RWQCB and Textron agree that depth to ground water at the site is approximately 150 feet and probably greater. The highest water table recorded at or near the site is 95 feet below grade in 1944.

## II. CONTENTIONS AND FINDINGS<sup>3</sup>

1. Contention: The petitioner contends that the portion of RWQCB Cleanup and Abatement Order No. 89-104 requiring a plan to investigate ground water contamination is not supported by substantial evidence in the record because there is no evidence of a probability of contamination of ground water from the underground tanks.

Finding: The RWQCB's order to conduct a ground water investigation was issued pursuant to Water Code Section 13304. Section 13304 states, in relevant part:

"Any person . . . who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the RWQCB clean up such waste or abate the effect thereof or, in the case of threatened pollution or nuisance, take other necessary remedial action."

An initial jurisdictional question is whether the waste that leaked from the underground tank system "probably will be discharged into the waters of the state" and, therefore, that the RWQCB has authority to issue a cleanup and abatement order to investigate and clean up the site. There is no dispute that waste leaked from the tanks. The evidence indicates that the waste oil and constituents have

---

<sup>3</sup> Other contentions raised by petitioner and not discussed in this order are denied for failure to raise substantial issues as authorized by Title 23, California Code of Regulations, Section 2052(a) (1). See People v. Barry, 194 Cal.App.3d 158, 239 Cal.Rptr. 349 (1987).

penetrated through soil beneath the tank, including through the upper silty-clay layer at approximately 20 feet below the ground surface. Thus, if not remediated, the waste probably will be discharged to ground water. Therefore, the RWQCB had authority pursuant to Section 13304 to require Textron to remediate the discharge.

Textron does not dispute that it must remediate the discharge and is in the process of implementing remedial action.<sup>4</sup>

The dispute, however, concerns whether the petitioner should be required to conduct a ground water investigation to determine whether waste from the underground tanks discharged to ground water. The petitioner contends that extensive site investigation has been conducted of the extent of the contamination from the tanks. The investigation indicates that contamination extended downward in a roughly cylindrical plume below the tanks to a depth of approximately 52 feet below ground surface, i.e., to the lower silty-clay layer, but that contamination has not migrated below the lower silty-clay layer. Textron attributes the presence of TPH outside the plume to background concentrations or cross-contamination. Textron attributes the presence of methylene chloride outside the plume to laboratory error. Further, the ground water at the site is more than 100 feet below the lower silty-clay layer. The petitioner disagrees with the RWQCB's direction that Textron use soil-gas analysis to determine whether waste has migrated from the underground tanks to ground water. In the petitioner's

---

<sup>4</sup> The RWQCB and Textron also disagree about the timing of and methods for remediation. The RWQCB contends that the Textron's remediation efforts, including vapor extraction, may in effect "erase" the track of VOC contamination below the lower silty-clay layer. In other words, it will not be possible to determine the extent of contamination. Textron has proceeded to remediate the site despite the RWQCB's concerns.

view, soil-gas analysis has a valid application as a fast and potentially cost effective preliminary indicator of possible contamination of soil. However, soil-gas analysis is subject to "false positive" results where later soil sampling reveals no contamination. The presence of the nearby landfills would likely lead to false positive results. The sole reliance on soil-gas analysis is not appropriate and should not be used as an indicator of migration to ground water.

Since the investigation shows that it is unlikely that waste from the tanks has migrated to ground water, it is not "cost-effective" to require ground water monitoring. The petitioner intends to develop appropriate verification sampling after completion of the remedial action.

The RWQCB contends that because of the very permeable materials at the site and the likely long duration of the leak, the waste may have migrated beyond the area of the tank excavation and may have reached ground water. The RWQCB considers the low levels of TPH below the lower silty-clay layer and the presence of VOCs in borings near the tank site to indicate a pollution track from the tanks down to 120 feet where the last sample was taken. The RWQCB also cites a "fingerprint" analysis conducted by the petitioner which indicated that TPH below the lower silty-clay layer came from the same source as the TPH above the layer. The RWQCB also contends that VOC analyses of samples taken below the lower silty-clay layer, which found no detectable levels, are not valid due to poor sample recovery during drilling and repacking of samples. The RWQCB disagrees with the petitioner with regard to laboratory error. Given the complexities of the movement of contaminants in soil, especially VOCs, the lack of information concerning the leak itself, and the geology of the site, the RWQCB believes that it is necessary to monitor the ground water to confirm whether or not the waste

has migrated. The RWQCB has also proposed in negotiations between the parties that Textron conduct soil-gas analysis prior to ground water monitoring. In the RWQCB's judgment, the presence of detectable levels of VOCs in the soil-gas analyses would indicate that VOCs have likely migrated to ground water and would require ground water monitoring.

Other interested persons provided comments that support the RWQCB's position.<sup>5</sup>

Upon review of the entire record before the SWRCB, we conclude that it was inappropriate to require a ground water investigation related to the discharge from the underground tanks at this site. Textron has conducted extensive investigations and provided several technical and monitoring reports that indicate that it is unlikely that waste from the underground tanks has migrated to ground water.

With regard to TPH, high concentrations of TPH (greater than 150 ppm) were found only within and below the tank excavation, i.e., in the plume. Samples taken from within the excavation indicated that TPH levels dropped from very high to barely detectable levels in a space of one to two feet at the base of the lower silty-clay layer. Low levels of TPH were found below the lower silty-clay layer and in virtually all of the soil borings located outside the excavation and in samples taken at many different depths (12 feet to 120 feet). This generally

---

<sup>5</sup> *The ground water underlying the site is a primary source of drinking water in the San Fernando Valley. The Upper Los Angeles River Watermaster, who is responsible for the distribution of water in the Valley, presented evidence at the RWQCB's hearing that supported its directive to investigate ground water. The U.S. Environmental Protection Agency and the Watermaster provided comments to the SWRCB which reiterate the RWQCB's concerns.*

uniform distribution of low levels of TPH is not characteristic of pollution from a leaking underground tank. It is also unlikely that the TPH migrated horizontally as far as 40 feet from the site in the shallow soils. Given the widespread distribution of TPH, and the information that the low levels of TPH at the base of the lower silty-clay layer, it appears unlikely that the tanks are the source of the low level TPH contamination throughout the site.

With regard to VOCs, VOCs in concentrations greater than one ppm were found only in samples from borings located within the plume, with one exception. Of these borings, no detectable levels of VOCs were found below the lower silty-clay layer. The RWQCB's contention concerning poor sample recovery is not supported by the evidence. It appears that the petitioner used standard engineering practice for VOC analysis of the soil matrix. The petitioner drilled additional borings and took additional samples where there was a question about the sampling technique. The distribution of VOCs in samples taken from borings outside the area of the plume do not support the conclusion that VOCs have migrated laterally from the plume. Samples from four borings located outside the plume area contained detectable levels of VOCs. Some samples contained detectable levels of methylene chloride at less than one ppm and one sample contained acetone at 2.4 ppm. Neither of those substances was found in the plume area and both are used in the analytical process in the laboratory and, therefore, probably were the result of laboratory error. Samples from three borings were split and sent to two different laboratories. In several samples, one laboratory detected low levels of 1,1,1-TCA, but the other laboratory, with the lower detection limit, did not detect 1,1,1-TCA. In only one split sample did both laboratories detect 1,1,1-TCA. Given the sporadic distribution of VOCs, the likely laboratory error,

the inconsistent results from the two laboratories, and that no VOCs were detected below the lower silty-clay layer, it seems unlikely that VOCs have migrated from the plume to the ground water.

The petitioner intends to complete the remediation and perform confirmation monitoring. Nothing in this Order should be construed to prevent the RWQCB from regulating the remediation or requiring appropriate confirmation monitoring. Given the complexities of predicting the movement of contaminants in soil based only on soil sampling techniques, the RWQCB is not precluded from requiring appropriate monitoring, including monitoring of ground water, if new information is made available to support such monitoring. Further, although the SWRCB agrees with petitioner that it is not likely that waste has migrated from the underground tanks to ground water, this conclusion does not preclude the RWQCB from requiring appropriate investigation to determine the source and impact of other sources of contamination at the facility.

With regard to soil-gas analysis, we believe that soil-gas analysis is an appropriate investigatory technique for determining the presence of contaminants in soil. At this site, however, other site-specific factors discussed above support the conclusion that further investigation of the extent of contamination from the underground tanks is not necessary at this time.

The RWQCB is authorized to require appropriate technical reports, such as a ground water investigation and associated report. The burden of such reports, however, must "bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports". The determination of the need for a technical report is based on site-specific information. At this site, the petitioner conducted an extensive site investigation. Since the evidence supports

the conclusion that it is unlikely that waste from the tanks has discharged to ground water, it is not reasonable to require ground water monitoring.

III. SUMMARY AND CONCLUSION

The SWRCB concludes that because the record does not support a conclusion that the discharge of waste from the tanks has likely migrated to ground water, it was inappropriate for the RWQCB to require a ground water investigation.

This conclusion is based on site-specific information and is not intended to have precedential effect on investigation activities, such as the use of soil-gas analysis, at other sites.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

IV. ORDER

IT IS HEREBY ORDERED that the portion of Cleanup and Abatement Order No. 89-104 requiring preparation and implementation of a site characterization workplan, i.e., a ground water investigation, related to the underground tanks is rescinded.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 17, 1994.

AYE:           John Caffrey  
                Marc Del Piero  
                James M. Stubchaer  
                John W. Brown

NO:            Mary Jane Forster

ABSENT: None

ABSTAIN:     None

/s/Maureen Marché  
Administrative Assistant to the Board

# **EXHIBIT 15**



in existence since at least 1960 and consists of a two-tank gasoline station and a mini-mart. The facility is adjacent to a ground water recharge pond. Approximately 20 homes on individual water supply wells are in close proximity to the market.

A water contamination problem in the area first became apparent in June 1984, when the Tulare County Health Department received complaints from nearby residents of taste and odor problems. In August 1984, the Health Department notified two residents not to use their water for consumption. Two of three wells selected for analysis were found to contain benzene at concentrations of 16 and 18 parts per billion, well above the State Department of Health Services action levels for drinking water of 0.7 parts per billion. Benzene is water soluble and found in gasoline. Groundwater in this area is at approximately 40 feet and the soils are a fine sandy loam. The two private wells sampled appear to be at 100 to 150 feet below the surface. The record discloses no possible sources of the pollution other than the gas station and none of the parties are contesting this issue.

The basic issue presented in these appeals is one of responsibility for the cleanup. Testimony before the Regional Board indicates that C. P. Phelps, a distributor of gasoline product, has been providing gasoline and service to the gasoline station since approximately 1960 when the facility was called Stewart's Market. At that time Phelps was a Norwalk distributor, a brand of Signal Oil and Gas Company. Exxon acquired the Signal properties in 1967. Phelps supplied Exxon product to the Village Market from 1968 to 1983.

The current landowners are John and Mary Lynch. They acquired the property in July 1981 from Norman Larry and Gail Eileen Houston, who had owned it since April 1979. Three weeks after John and Mary Lynch bought the

property, they noticed that the top portion of the underground gasoline tanks were leaking. John Lynch testified that to deal with this problem, he did not keep the tanks full. In November 1983, John and Mary Lynch replaced the tanks. The new tanks have been tested and do not leak.

The Regional Board adopted a cleanup and abatement order on March 22, 1985, pursuant to Water Code Section 13304. The order names as dischargers John and Mary Lynch, Exxon Company U.S.A. and C. P. Phelps, Inc. The order requires the dischargers implement various remedial actions according to a time schedule. These actions include providing an alternate supply of drinking water to users of known polluted wells, assessment of the extent of the toxic contamination and a comprehensive cleanup program of contaminated soils, ground water and leaked fuel.

## II. CONTENTIONS AND FINDINGS

The basic issue that Exxon and Phelps are contesting is responsibility and ownership of the old underground tanks which leaked. Both parties feel they should be removed from responsibility because they never owned the tanks.

The two underground tanks in question had been at the Village Market for an undetermined period of time. There is some evidence to suggest that these tanks had been in place since the 1940's. It is very unclear as to who owned these tanks. As discussed above, the gasoline supplier and distributor changed several times from 1960 to 1981. Additionally, a number of different parties owned the property from 1960 to 1981.

Copies of two Grant Deeds in the record from previous parties to the Houstons in 1979 and from the Houstons to John and Mary Lynch in 1981 convey generally the lot in question and are silent concerning anything else. There is no evidence in the record which conclusively shows who does own the tanks.

Order No. 85-066 contains a finding that "[t]here is evidence of ownership of the leaking fuel tanks by Exxon Company, USA and by C. P. Phelps, Inc., the distributor of the fuel." The Regional Board relied on several different bases to conclude that the tanks were the personal property of Exxon and Phelps and to thereby name Exxon and Phelps in the order. These have all been challenged by petitioners. We will address each theory in turn.

1. Contention: Tulare County property tax records do not establish that Exxon owned the tanks.

Finding: From 1968 to 1984 Exxon paid personal property taxes to Tulare County for certain property at the Village Market. The record contains copies of the personal property tax records from 1968 to 1984 as submitted by Exxon. Exxon explained its standard practice for payment of personal property taxes in Tulare County. Exxon submits to the County two copies of a form for service station business and property statements, one of which is returned to Exxon by the County with the assessed values. The first such statement in the record before us is from Humble Oil and Refining, Exxon's predecessor in interest, listing the following property at the site: two used pumps, one used air compressor, office furniture and equipment, a credit card imprinter and miscellaneous tools and equipment. Essentially the same listing was provided on the property statements for 1969, 1970, 1971, 1972, and 1973.

However, in 1974 the word "tanks" is listed as an improvement. Exxon argues that Exxon listed only property other than tanks and that the word "tanks" was included by the assessor on the copy returned to Exxon. In 1975 and 1976 the property statement reads merely "equipment only"; on the 1977 statement the words "pump, compressor, tanks and sign" appear. Exxon again

argues this was because the tax assessor added this to the statement returned to Exxon.<sup>1</sup> This argument was not refuted or challenged.

Exxon does admit that it tendered a property statement in 1978 describing as its property pump, compressor, tanks and sign. Exxon alleges that this was an error, as its clerk had copied the "erroneous" tank listing that the County Assessor had added to the previous years' statement.

Since 1979 the only personal property Exxon has listed for this property is a sign and credit card imprinter. There is some discrepancy with the assessor's statement, which also lists pumps and a compressor. Exxon has further submitted an affidavit from its real estate and engineering manager stating that to the best of his knowledge Exxon has never had an ownership or leasehold interest in the tanks. A computer listing of the Village Market equipment from 1974 submitted to us by Exxon shows only a pole, pump, compressor and miscellaneous equipment being owned by Exxon. (It is not clear whether a tank could be considered miscellaneous equipment, but in any event, there is no support in the record for that proposition.)

The Regional Board also relied upon a letter from the California Service Station Association indicating it is general practice within the industry that when an oil company owns the pumps, signs and credit card imprinter, it also has ownership of the underground tanks. Exxon refuted this letter at the hearing, stating that it has never been Exxon's practice.<sup>2</sup>

---

<sup>1</sup> Exxon argues they did not contest the two "erroneous" returns for cost-efficiency reasons. We note the total tax due from Exxon on this property in 1974 was \$19.06, and in 1977, \$22.62.

<sup>2</sup> We note that a letter of this sort is clearly hearsay under our rules of procedure. While admissible, it is not sufficient in and of itself to support a finding.

The question thus becomes whether it is reasonable to base a finding of ownership of the tanks on the disputed tax records. As Exxon contends, payment of taxes itself does not establish ownership of property, citing Trabue Pittman Corp. v. County of Los Angeles, (1946) 29 Cal.2d 385, 175 P.2d 512. As we discuss infra, absent any additional information, we find that the Regional Board action is inappropriate.

2. Contention: Ownership interest in the tanks runs with the land.

Finding: Exxon argues that the tanks were fixtures, part of the realty, and therefore belonged to the successive owners of the Village Market. The Regional Board argues that the tanks were not "fixtures" and thus should not be considered real property. California Civil Code Section 660, in defining when a thing is deemed to be affixed to the land, uses such terms as "attached", "imbedded" and "permanently resting". Civil Code Section 1013 further provides:

"[W]hen a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as otherwise provided in this chapter, belongs to the owner of the land unless he chooses to require the former to remove it or the former elects to exercise the right of removal provided for in Section 1013.5 of this chapter."

Both of these statutes have been extensively interpreted by case law. According to Witkin, Summary of California Law, "Personal Property", p. 1663, under modern theories, the manner of the annexation is not the sole nor most important test. There are three main factors: (1) physical annexation; (2) adaptation to use with real property; and most significantly, (3) intention to annex to realty.

The Regional Board and Exxon both cite cases to support their respective interpretations. The cases provide various examples of what may or

may not be considered fixtures. Barcroft and Sons v. Cullen (1933) 217 C. 708, 20 P.2d, cited by Exxon, holds that a steel service comfort station with combined plumbing and wiring is a fixture, but does not speak to tanks. Neither the holdings in People v. Church (1943) 57 Cal.App.2d, 136 P.2d 139 nor Standard Oil v. State Board of Equalization (1965) 232 Cal.App.2d. 91, 42 Cal.Rptr. 543, cited by the Regional Board, deal with gasoline tanks. Church indicates that certain types of equipment at a service station are personal property, noting that these items may be removed without destroying anything. Standard Oil also found that gasoline station equipment to be personal property for purposes of taxes.

We also note that Murr v. Cohn (1927) 87 Cal.App. 478, 262 P. 768 found a gasoline tank to be a trade fixture and removable by the tenant who installed it, as the removal would not hurt the property. An important aspect of all of these cases, however, is the intent of the parties to affix the item to realty.

The record before us provides little help in determining whether the tank in question should be regarded as personal or real property. The record does not indicate when or by whom the tank was installed, nor what the arrangement was between the parties, if any. Assuming arguendo that the tank was installed originally by the property owner, the tank would probably remain realty today. On the other hand, if the tank were installed by a tenant of the owner, or by a predecessor in interest to Exxon, the tank could be regarded as remained personal property, or it could have become affixed to the land. Exxon contends that there is no agreement in the record, pursuant to Civil Code

Section 1013 which demonstrates that Exxon had the right to remove the tanks.<sup>3</sup> Exxon further argues that it did not have or exercise the right to possess and control the tanks before installation or during use. Exxon pertinently notes that John and Mary Lynch removed the tanks without notifying Exxon or obtaining consent or financial contribution from Exxon.

There is insufficient evidence in the record to determine when, how, by whom and under what circumstances the tanks were installed. Accordingly, we can make no determination as to the personal or real property character of the tanks.

3. Contention: Both Phelps and Exxon disagree with the Regional Board's interpretation of Health and Safety Code §25281(r) that under the law there is no distinction between the pumps and the tanks.

Finding: Chapter 6.7 of the Health and Safety Code, entitled "Underground Storage of Hazardous Substances" became effective January 1, 1984. This chapter requires registration and regulation of underground tanks. Section 25281(r) defines "underground storage tank" as meaning "...any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances and which is substantially or totally beneath the surface of the ground...."

The Regional Board argues that the law regulating discharges from underground tanks appears to consider pumps and tanks as one, noting that Section 25281(r) includes pipes. Since pumps contain pipes connected to the

---

<sup>3</sup> We do note that the record contains a letter from a party who owned the land in 1960 indicating her belief that she never owned the tank but that the gasoline company did. Once again, we note that this is hearsay and as such, does not provide a basis for a finding.

underground tanks, the Regional Board argues that under the law there is no distinction between the pumps and the tanks. Therefore, since Exxon has acknowledged ownership of the pumps, that it should also be considered owner of the tanks.

We disagree. We feel it is stretching the definition of "tanks" to include "pumps". We note that the Legislature could easily have explicitly included pumps within the definition of tanks, but chose not to do so. Elsewhere in the statute the term "pumps" is used (see, e.g. Section 25292(b)(4)(c)). Furthermore, Chapter 6.7 was adopted after the tank in question was removed. Additionally, the statute does not purport to establish responsibility in cases such as that before us.

There is some material in the record indicating that both C. P. Phelps and Exxon may have had ownership and responsibility for the pumps at various times. However, there is no indication that it was the pumps which leaked and caused the harmful discharge. The record supports only the charge of faulty tanks. Absent any contention that the pumps leaked, we find there is no basis to name the owners of the pumps.

### III. REVIEW AND CONCLUSIONS

In reviewing the contentions above, we believe that the record will support only that Exxon declared ownership and paid a small amount of property tax on the tanks in question for at least one year, and possibly two other years. These declarations and payments become the only basis upon which Exxon could properly be named. Exxon has raised a credible defense to these payments being indicative of ownership.

The question thus becomes what standard of review we should apply when reviewing a Regional Board action. Should we uphold a Regional Board action if

there is any possible basis for the action, or should we exercise our independent judgment as to whether the action was reasonable? Generally speaking, the courts use one of two standards in reviewing an action of administrative agency: The substantial evidence test or the independent judgment rule. The former involves an examination of the record to establish the existence or nonexistence of substantial evidence to support the action taken. The latter permits the reviewing court to take a fresh look at the facts to see if the weight of the evidence supports the decision. Under the substantial evidence test, if a court disagrees with the conclusion but finds that there does exist a substantial body of evidence to support the decision, no reversal will take place. With the independent judgment rule, the court would not defer to the agency if the court disagreed with the conclusion.

The State Board is not subject to the exact standards which bind a court. Water Code Section 13320, which provides for State Board review of Regional Board action sets forth a standard of review which is different from ordinary judicial review in two important ways. First, under Section 13320(b) the State Board shall consider both the Regional Board record and "any other relevant evidence" which it wishes in reviewing the order. Second, if the State Board decides the Regional Board action is "inappropriate or improper", the State Board has several options, including remanding or reversing the Regional Board or taking the appropriate action itself. The scope of review thus appears to be closer to that of independent review.

However, any findings made by an administrative agency in support of an action must be based on substantial evidence in the record. (See, e.g. Topanga Association for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d. 506, 113 Cal.Rptr. 836.) Thus, while we can independently review the

Regional Board record, in order to uphold a Regional Board action, we must be able to find that finding of ownership was founded upon substantial evidence.

In our review of the record in the case before us, we find it is not appropriate to name Exxon or Phelps without some additional factual basis. While the disputed payment of taxes for three years provides some evidence of liability, we do not feel it to be sufficient or substantial given the lack of other information in the record and given Exxon's unrefuted explanation that the payments had been erroneously made. For example, the record is devoid of any information as to who paid taxes on the tanks for years other than 1974, 1977, and 1978. Further, there is no information concerning any contracts between any landowners and Exxon, or any predecessors in interest.

We recognize the difficult position in which this places the Regional Board. In this case the Regional Board was searching to find responsible parties who could effectuate the cleanup. Fewer parties named in the order may well mean no one is able to clean up a demonstrated water quality problem. We also recognize that the Regional Board does not have infinite resources available to it to extensively search through various county files in a quest for additional information. We note Exxon itself may have more dispositive information, which may be subpoenaed by the Regional Board. However, in order to name parties such as Exxon and Phelps, we believe there should be more evidence than we have before us currently. Generally speaking it is appropriate and responsible for a Regional Board to name all parties for which there is reasonable evidence of responsibility, even in cases of disputed responsibility. However, there must be a reasonable basis on which to name each party. There must be substantial evidence to support a finding of

responsibility for each party named. This means credible and reasonable evidence which indicates the named party has responsibility.

We note that in other cases we have not hesitated to uphold the Regional Board when it has named multiple parties responsible where there is substantial support in the record. (See, e.g. Board Order WQ 84-6, In the Matter of the Petition of Harold and Joyce Logsdon for a Stay and Review of Cleanup and Abatement Order of the California Regional Water Quality Control Board, Central Valley Region.) The record in this case simply does not contain the requisite evidence to support the naming of Exxon and Phelps in the cleanup order.

#### IV. SUMMARY

1. The Tulare County property tax records are not sufficient by themselves to support naming Exxon as the owner of the tanks.
2. There is insufficient information in the record to make any finding as to whether the tanks in question should be regarded as personal or real property and as to who the true owner is.
3. The Health and Safety Code definition of "underground storage tank" is inapplicable in this case and does not extend liability to the owners or maintainers of pumps.
4. While the State Board's scope of review of Regional Board action is similar to the independent review standard of a court, the findings made by the Regional Board must be supported by substantial evidence in the record.
5. There is not substantial evidence in the record upon which to base a finding that Exxon and Phelps should be named in Cleanup and Abatement Order No. 85-066.

V. ORDER

The Cleanup and Abatement Order No. 85-066 is hereby amended to delete Exxon Company, U.S.A. and C. P. Phelps, Inc.

VI. CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 22, 1985.

Aye: Raymond V. Stone  
Darlene E. Ruiz  
Edwin H. Finster

No: None

Absent: None

Abstain: Eliseo M. Samaniego

*for* *Walt Pettit*  
\_\_\_\_\_  
Michael A. Campos  
Executive Director

# **EXHIBIT 16**

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Excello Plating Co., Inc.  
4057 Goodwin Ave.  
Los Angeles, CA 90039  
CAD 009 545 153

and

Glen Harleman

Respondents.

Docket HWCA 2003-0175

CONSENT ORDER

Health and Safety Code  
Section 25187

The State Department of Toxic Substances Control (Department), and Excello Plating Co., Inc. and Glen Harleman (Respondents) enter into this Consent Order and agree as follows:

1. Respondents generate, handle, treat, store and/or dispose of hazardous waste at the following site: 4057 Goodwin Avenue, Los Angeles, Ca. 90039 (Site).
2. The Department inspected the Site on August 21, 22, 23, and 26, 2002.
3. The Department alleges the following violations:
  - 3.1. The Respondents violated Health and Safety Code section 25201, subdivision (a), in that on or about August 21, 2002, Respondents treated waste cyanide solutions, a hazardous waste, without a permit or other grant of authorization from the Department.
  - 3.2. The Respondents violated Health and Safety Code section 25201, subdivision (a), in that on or about August 21,

2002, Respondents stored waste chromic acid, a hazardous waste, in a 1000-gallon tank for one year, and waste from Respondents' chrome anodize process, a hazardous waste, in a 250-gallon tank for 10 months, without a permit or other grant of authorization from the Department.

3.3. Respondents violated California Code of Regulations, title 22, section 66262.34, subdivision (a)(1)(A), and section 66265.196, in that on or about August 21, 2002, Respondents failed to remove from service a tank that was not in good condition and leaking. The tank was storing waste chromic acid, a hazardous waste.

3.4. Respondents violated Health and Safety Code section 25189.2, subdivision (c), in that on or about August 21, 2002, Respondents disposed of hazardous waste at an unauthorized point. Used beads contaminated with chromium VI, and brass polishing wastes contaminated with copper, nickel, zinc, and lead, were disposed of in the municipal trash bin. Additionally, spent perchloroethylene was disposed of into the floor sump. Contents from the sump were disposed to the Publicly Owned Treatment Works (POTW), a point not authorized for hazardous waste disposal.

3.5. Respondents violated California Code of Regulations, title 22, section 66262.11, in that on or about August 21, 2002, Respondents failed to properly determine if its wastes were hazardous wastes. Respondents failed to properly determine if used beads and polishing waste were hazardous wastes.

3.6. Respondents violated California Code of Regulations, title 22, section 66262.23, in that on or about August 21, 2002, Respondents failed to use a manifest for hazardous wastes (brass polishing waste and used glass beads) transported off-site.

3.7. Respondents violated Health and Safety Code, section 25163, in that the Respondents transferred custody of a hazardous waste to a transporter (municipal trash company) that does not hold a valid registration issued by the Department.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondents waive any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondents admit the violations described above.

SCHEDULE FOR COMPLIANCE

10. Respondents shall comply with the following:

10.1.1. Effective immediately, Respondents shall cease treating hazardous waste, including waste cyanide solutions, without a permit or other grant of authorization from the Department.

10.1.2. Effective immediately, Respondents shall not store hazardous waste in excess of the 90 days allowed for the generators without a permit or other grant of authorization from the Department.

10.1.3. Effective immediately, if Respondents store hazardous wastes in tanks, Respondents shall only store them in tanks that are in good condition and fit for use.

10.1.4. Effective immediately, Respondents shall cease disposing of hazardous waste at a point not authorized by the Department. Respondents shall manage contaminated used beads and contaminated brass polishing waste as hazardous wastes and ship off-site to an authorized facility.

10.1.5. Effective immediately, Respondents shall use a manifest when transporting hazardous waste off-site.

10.1.6. Effective immediately, Respondents shall use a manifest for hazardous waste to be transported off-site.

10.2. Submittals: All submittals from Respondents pursuant to this Consent Order shall be sent simultaneously to:

Robert Kou, Unit Chief  
Statewide Compliance Division  
Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, California 91201

and

Debra Schwartz, Staff Counsel  
Office of Legal Counsel and Investigations  
Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, California 91201

and

Thomas G. Heller, Deputy Attorney General

California Department of Justice  
Office of the Attorney General  
300 Spring Street, Room 1702  
Los Angeles, California 90013

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondents in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondents shall be construed to relieve Respondents of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondents with recommended changes and a date by which Respondents must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondents shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to

the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondents to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondents, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondents may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondents in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondents shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling

and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, Data, and Document Availability:

Respondents shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondents or on Respondents' behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondents shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondents pursuant to this Consent Order. Respondents shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondents for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondents shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondents shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by

Respondents or their agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondents pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests: If Respondents are unable to perform any activity or submit any document within the time required under this Consent Order, the Respondents may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

#### PAYMENTS

11. Within 60 days of the effective date of this Consent Order, Respondents shall pay the Department a total of \$60,000 as a penalty, as follows: \$30,000 within 30 days of the effective date, and the balance with 60 days of the effective date. Respondents' checks shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

A photocopy of the checks shall be sent to:

Robert Kou, Unit Chief  
Statewide Compliance Division  
Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, California 91201

and

Debra Schwartz, Staff Counsel  
Office of Legal Counsel and Investigations  
Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, California 91201

and

Thomas G. Heller, Deputy Attorney General  
California Department of Justice  
Office of the Attorney General  
300 Spring Street, Room 1702  
Los Angeles, California 90013

If Respondents fail to make payment as provided above, Respondents agree to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

#### OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondents to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondents and their officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

///

12.6. Compliance with Waste Discharge Requirements:

Respondents shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

Dated: <u>07/26/04</u>	<u>Original signed by Glen Harleman</u>
Printed name:	<u>Original Signed by Glen Harleman</u>
	Representative for Excello Plating Co., Inc. Respondent
Dated: <u>07/26/04</u>	<u>Original Signed by Glen Harleman</u>
	Glen Harleman Respondent
Dated: <u>08/05/04</u>	<u>Original Signed by Florence Gharibian</u>
	Florence Gharibian, Branch Chief Southern California Branch Statewide Compliance Division Department of Toxic Substances Control

# **EXHIBIT 17**

STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES  
REGION

Cleanup & Abatement Order No. R4-2002-0068  
Requiring

DRILUBE COMPANY  
To  
Assess, Cleanup and Abate the Effects of Contaminants  
Discharged to Soil and Groundwater

(FILE NO. 113.0165)

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

**BACKGROUND**

1. **San Fernando Valley Groundwater Basin:** The alluvial basin underlying the San Fernando Valley (the San Fernando Basin) is an important source of groundwater, providing drinking water to over 1 million residents in the Los Angeles Region. As set forth in the *Water Quality Control Plan for the Los Angeles Region (Basin Plan)*, adopted on June 13, 1994, the Regional Board has designated beneficial uses for groundwater in the San Fernando Basin (among which include municipal and domestic drinking water supplies), and has established water quality objectives for the protection of beneficial uses.
2. **Water Quality in the San Fernando Basin:** Volatile organic compounds (VOCs) were first discovered in a San Fernando Basin well in 1979. Since then, all City of Burbank wells pumping groundwater for drinking water purposes have been impaired by VOC contamination. In 1986, the US Environmental Protection Agency (USEPA) placed four areas of groundwater contamination and adjacent areas where contamination has (or may have) migrated as one large site called the San Fernando Valley Superfund Site on the National Priorities List<sup>1</sup>, pursuant to section 105 of CERCLA, 42 USC §9605. USEPA has divided the San Fernando Valley Superfund Site into five operable units (OUs). Each OU represents an interim containment remedy currently in progress in the eastern San Fernando Valley. Drilube Company is located within the Glendale South Operable Unit (GSOU). Information that has recently become available to the Regional Board demonstrates that some of the groundwater supply wells in the San Fernando Basin have been impacted by heavy metals, such as chromium. Chromium concentrations exceed current safe drinking water standards at some locations in the San Fernando Valley and chromium threatens the drinking water resources of the Basin. The Maximum Contaminant Level (MCL) for total chromium in California drinking water is 50 parts per billion (ppb). As a result, the Regional Board is currently investigating potential sources of chromium contamination.
3. **Discharger Responsibilities:** Drilube Company (hereinafter called Discharger) has been named a potentially responsible party by USEPA for discharging contaminants to the GSOU from its site described below. The results of subsurface investigations have detected soil and

---

<sup>1</sup> List of contaminated sites that poses a threat to human health and/or the environment, and are prioritized by USEPA and the public in terms of their relative risk to human health and/or the environment.

groundwater contaminated with chlorinated solvents, petroleum hydrocarbons, PCBs, and heavy metals including chromium. The primary pollutants under investigation within the GSOU are chlorinated organic solvents.

4. **Location:** The Discharger's facilities are located at 711 Broadway and 718 Wilson Avenue, Glendale, California (Plate 1- the Site). Plating operations are performed in the building located at 711 Broadway and in the building located at 718 Wilson Avenue. As detailed in the findings below, the Discharger's activities at the Site has caused the release of wastes to the subsurface resulting in soil contamination and impairment of the beneficial uses of groundwater resources within the GSOU.

#### SITE HISTORY

5. **Site Activities:** The real property at the Site is owned by Devine Industries, based in Japan. While the Discharger has only operated in the southern building (Plant 1) for 12 years, the northern building (Plant 2) has been operational for approximately 40 years (See Plates 1 through 5 for facility layout). The business is currently owned by the Fairfax Family Trust, which has been responsible for operations over the last fourteen years. Prior to about 1986, the Discharger's original facility (now Plant 2) was owned and operated by other members of the Fairfax family.

The Discharger's principal industrial activities involve metal plating and anodizing (painting/dyeing) of parts and equipment used by the U.S Department of Defense for various aerospace applications.

6. **Chemical Usage:** The Discharger has reportedly used volatile organic compounds (VOCs) at the Site, namely: perchloroethylene (PCE) and trichloroethylene (TCE). Numerous heavy metal alloys (e.g. chromium, nickel, cadmium, silver, copper, tin, manganese, zinc, etc.) and metal-containing paints and dyes are used and stored onsite to support site operations. Furthermore, acids, bases, and stripping/degreasing agents are commonly used throughout the Discharger's process lines. Sodium hydroxide, sulfuric and hydrochloric acids, and cyanide are a few of the additional chemicals associated with these processes.

#### EVIDENCE OF CONTAMINATION AND BASIS FOR 13304 ORDER

7. **Waste Releases:** Under the direction of Regional Board staff, the Discharger conducted site investigations during the early 1990s to 1993, which documented the discharge of wastes to soil and groundwater beneath the Site.

Periodic groundwater monitoring and reporting have been conducted at the site since 1994. Maximum historical groundwater concentrations of trichloroethene (TCE), tetrachloroethene (PCE) and hexavalent chromium (Cr VI) were detected at 11,000 µg/L (micrograms per liter), 1,960 µg/L and 32,000 µg/L, respectively. During recent semi-annual groundwater monitoring, TCE, PCE, and Cr VI were detected in all five on-site monitoring wells (MW1-MW5). Maximum concentrations of TCE, PCE and Cr VI were detected at 1,480 µg/L, 262 µg/L, and 2,620 µg/L in MW3, located directly outside (east) of the Plant 1 plating operations and adjacent to the 4-stage clarifier/sewer outfall. Elevated concentrations of TCE, PCE and

Cr VI were also detected at 112 µg/L, 180 µg/L, and 2,540 µg/L, respectively, in MW1 located downgradient from Plant 2 process areas (See Plates 2). Based on information obtained during site assessments conducted to date, the Discharger's past activities have contributed to VOC (solvents) contamination in soil and groundwater beneath the site. The soil beneath the site is primarily sand and silty sand with interbedded clayey silt. The depth to groundwater is approximately 60 feet below ground surface (bgs). The USEPA has named the Discharger as a primarily responsible party (PRP) in the GSOU and the Site is currently an active VOC case in the Well Investigation Program at the Regional Board. Analytical data collected regarding chromium and heavy metal contamination verified their presence in both soil and groundwater beneath the Site.

8. **Emerging Chemicals:** According to Regional Board records, the Discharger has not tested for the emerging chemical, 1,4-dioxane, a chemical often used as a stabilizer for TCE, PCE and 1,1,1-trichloroethane (TCA).
9. **Regulatory Status:** The Discharger has been instructed by Regional Board staff to complete the site assessment and remedial cleanup. Site investigations directed by the Regional Board, were done pursuant to section 13267 of the California Water Code. The purpose of this Order is to ensure that the Discharger completes site assessment, periodic monitoring and undertakes cleanup of contaminants in the soil that threaten to impair or further impair groundwater. This soil assessment and cleanup effort is being coordinated with USEPA efforts to remediate groundwater in the GSOU.

USEPA has named several responsible parties liable for remedial action costs in the GSOU. At the present time, USEPA has reached an agreement whereby responsible parties in the GSOU will share costs and implement the interim remedial action plan. The Discharger has been named a potentially responsible party for VOC cleanup of groundwater in the GSOU.

10. **Sources of Information:** The sources for the evidence summarized above include but are not limited to: "Chemical Storage and Use Questionnaire, dated August 23, 1990"; various technical reports submitted by the Discharger or its representatives to the Regional Board staff from 1989 through 1995; site inspections, meetings, written letters and telephone communications between Regional Board staff and the Discharger and/or its representatives from 1989 through 2001.

### CONCLUSION

11. **Pollution of Waters of the State:** The unauthorized discharge of wastes by the Discharger within the GSOU was not permitted and is in violation of water quality objectives established in the *Basin Plan*. The past activities of the Discharger have contaminated the underlying soils and polluted groundwater within the GSOU.
12. **Regional Board Authority:** Section 13304 of the California Water Code states, in part, that:

"Any person..., who has caused or permitted ..., any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the Regional Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action."

The purpose of this Order is to ensure that the Discharger mitigates soil and groundwater pollution by completing on-site/off-site assessment, conducting periodic monitoring and undertaking cleanup of contaminants in soil and groundwater that threaten to impair or further impair groundwater resources.

13. **Status of Site Assessment:** The Discharger has completed some assessment of contamination on-site beneath its facilities.

To complete subsurface assessments and begin appropriate cleanup, the Discharger must undertake the actions specified below, at a minimum:

- a. For VOCs in the saturated and unsaturated zones: Complete the assessment of the lateral and vertical extent of the contaminants.
- b. For emerging chemical (s) and heavy metals in the unsaturated and saturated zones: Complete the assessment, including any off-site contamination migration in the saturated zone.

14. **Cleanup Goals:** Pending the completion of adequate assessment and monitoring of the lateral and vertical extent of soil contamination and risk of migration to groundwater, the following information shall be considered when establishing preliminary cleanup goals.

- a. Develop a remedial action plan as necessary to cleanup soil and groundwater contamination using, at a minimum, the criteria stated below in items b, c, and d.
- b. VOCs in the Unsaturated Zone: Cleanup levels set forth in *the Regional Board's Interim Site Assessment and Cleanup Guidebook, May 1996*, which considers contaminant concentrations, depth to the water table, the nature of the chemicals, soil conditions and texture, and attenuation trends.
- c. Emerging Chemicals and Heavy Metals: Cleanup concentrations shall not exceed Action Levels and Maximum Contaminant Levels (MCLs) for drinking water as established by the State Department of Health Services for contaminants in the saturated zone. For emerging chemicals in the unsaturated zone, the Discharger will need to investigate the extent to which contaminants may attenuate through the soil in order to determine soil cleanup levels that will not impact the underlying groundwater resources, above Action Levels or MCLs.
- d. VOCs in the Saturated Zone: Action Levels and MCLs for drinking water, as established by the State Department of Health Services.

Pending completion of contaminant assessments, Regional Board staff may consider revised cleanup goals in accordance with the following State Policies.

"Antidegradation Policy" (State Board Resolution No 68-16) which requires attainment of background levels of water quality, or the highest level of water quality that is reasonable in the event that background levels cannot be restored. Cleanup levels other than background must be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of water, and not result in exceedance of water quality objectives in the *Basin Plan*.

“Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304” (State Board Resolution No. 92-49) which sets forth criteria to consider for those cases of pollution wherein restoration of water quality to background levels may not be reasonable.

15. **Impairment of Drinking Water Wells:** As noted above (Finding No. 2), some of the drinking water wells in San Fernando Valley have been impacted by chromium. For example, the Glendale Treatment Plant (Plant) extraction wells have been impacted by chromium and VOCs. However, the Plant is only capable of treating the VOCs in groundwater. Water purveyors particularly in the GSOU area, and their customers may have to bear a significant portion of the costs of cleaning up this contaminated groundwater and/or procuring alternative supplies of drinking water.
16. Pursuant to section 13304 of the California Water Code, regional boards may seek reimbursement for all reasonable costs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action.
17. This action is being taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321.

**IT IS HEREBY ORDERED**, pursuant to section 13304 of the California Water Code, that the Discharger, DRILUBE COMPANY, shall cleanup and abate contaminated soil and groundwater emanating from the Discharger's Site at 711 Broadway and 718 Wilson Avenue, Glendale, California, in accordance with the following requirements:

1. **VOCs in the Unsaturated and Saturated Zones:** The Discharger shall prepare a workplan and upon approval from the Regional Board Executive Officer (Executive Officer), complete the assessment of VOCs in the unsaturated zone by conducting a multi-depth soil gas survey to adequately determine the lateral and vertical extent of the contaminants and current VOC levels in soil.
2. **Emerging Chemicals and Heavy Metals in the Unsaturated and Saturated Zones:** The Discharger shall prepare a workplan and upon approval from the Executive Officer, extend the investigation to include on-site assessment of the extent of contaminant migration and the presence of emerging chemicals and heavy metals, including, 1,4-dioxane, chromium and hexavalent chromium in soil and groundwater. In addition, the workplan shall include an off-site groundwater investigation of all the aforementioned chemicals.
3. **Assessment Technical Reports\Remedial Action Plans:** Upon completion of the assessment reports (i.e., Requirements 1 and 2 above), the Discharger shall prepare a technical report that summarizes the results. In the event that the results fail to confirm that:
  - a. VOCs and emerging chemicals in the unsaturated zone are naturally attenuating to MCLs at the water table, the Discharger shall develop and implement a workplan subject to the Executive Officer's approval for cleanup of soil contaminants; and
  - b. Emerging chemicals in the saturated zone off-site are not continuing to migrate, the Discharger shall develop and implement a workplan subject to the Executive Officer's approval for containment, control and cleanup of groundwater pollution.

- c. **Groundwater Monitoring:** The Discharger shall monitor the groundwater for chemicals of concern, at a minimum including chromium and hexavalent chromium and the emerging chemical 1,4, dioxane on a quarterly basis (see Attachment B). Future groundwater monitoring frequency may be adjusted if a plan is proposed by the Discharger and subsequently approved by the Executive Officer. The Executive Officer may approve a change in the monitoring frequency if it is shown that other frequencies are adequate to monitor changes of contaminant concentrations, groundwater gradients, and the progress of any soil and groundwater remediation.

Abandonment of any groundwater wells installed during the required investigation and remediation for this project must be reported to and approved by the Executive Officer in advance. Any groundwater well removed must be replaced within three months at a location approved by the Executive Officer. With 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 all applicable well abandonment requirements.

4. **Impairment of Drinking Water Wells:** The Regional Board reserves the right to require the Discharger and other dischargers to develop and implement a plan that will mitigate impaired resources of groundwater and/or compensate purveyors for past and current costs of replacing impaired water supplies. Such a directive would not duplicate requirements in the USEPA's consent decree.
5. **Contractor/Consultant Qualification:** A California registered civil engineer, registered geologist or registered certified specialty geologist 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.
6. **Cost Recovery:** The Discharger shall reimburse the Regional Board all reasonable costs incurred by the Regional Board to investigate the Discharger's unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial actions.
7. **Time Schedule:** The Discharger shall submit all required work plans and reports in accordance with the time schedule in Attachment B.
8. 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.
9. This Order is not intended to permit or allow the Discharger to cease any work required by any other order issued by the Regional Board, nor shall it be used as a reason to stop or redirect any investigation, monitoring, cleanup or remediation programs ordered by the Regional Board or any other agency. Furthermore, this Order does not exempt the Discharger from compliance with any other laws, regulations, or ordinances which may be

applicable, nor does it legalize the 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.

10. The Discharger shall submit 30-day advance notice to the Regional Board of any planned changes in name, ownership, or control of the Site; and shall provide 30-day advance notice of any planned physical changes to the Site that may affect compliance with this Order. In the event of a change in ownership or operator, the Discharger also shall provide 30-day advance notice, by letter, to the succeeding owner/operator of the existence of this Order, and shall submit a copy of this advance notice to the Regional Board.
11. The Regional Board, through its Executive Officer, may revise this Order as additional information becomes available. Upon request by the Discharger, and for good cause shown, the Executive Officer may defer, delete or extend the date of compliance for any action required of the Discharger under this Order. The authority of the Regional Board, as contained in the California Water Code, to order investigation and cleanup in addition to that described herein is in no way limited by this Order.
12. Pursuant to California Water Code section 13320 the Discharger 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 P.O. Box 100, 1001 I Street, Sacramento, California, 95814, within 30 days of the date of this Order.
13. Failure to comply with the terms or conditions of this Order may result in imposition of civil liabilities, imposed either administratively by the Regional Board or judicially by the Superior Court in accordance with section 13350 et seq. of the California Water Code, and/or referral to the Attorney General of the State of California for such action as he/she may deem appropriate.
14. None of the obligations imposed by this Order on the Discharger is intended to constitute a debt, damage claim, penalty or other civil action which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of California intended to protect the public health, safety, welfare and environment.

Ordered by:

Dennis A. Dickerson, Executive Officer

Date: March 29, 2002

Attachment A (map)

## Attachment B: Time Schedule

Requirement		Completion/Due Date
<b>1.</b>	<b>Assessment of VOCs, Emerging Chemicals and Heavy Metals in the Vadose and Saturated Zones</b>  Submit a Workplan to complete site assessment  Complete assessment  Submit technical reports	June 7, 2002  To be determined  To be determined
<b>2.</b>	<b>Groundwater Monitoring</b>  Submit quarterly monitoring reports:  January -- March April -- June July -- September October - December	Reports due by the following dates:  April 15 July 15 October 15 January 15
<b>3.</b>	<b>Remedial Action Plan</b>  Soil  Groundwater	To be determined  To be determined

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, CITY AND COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1900 Avenue of the Stars, 7<sup>th</sup> Floor, Los Angeles, California 90067.

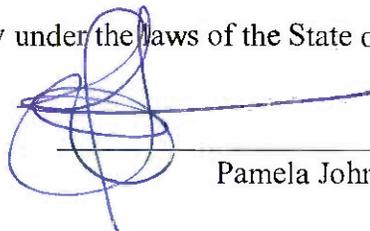
On November 8, 2013 I served the document(s) described as **GLENDALE COLORADO DEVELOPMENT PARTNER'S ("GCDP") PETITION FOR REVIEW, REQUEST FOR HEARING, AND REQUEST FOR STAY; DECLARATION OF REBECCA COUCH BARNHARDT FILED CONCURRENTLY HEREWITH** in this action addressed as follows:

**SEE ATTACHED LIST**

- (BY MAIL) I am "readily familiar" with the business' practice for collection and processing correspondence for mailing. Under that practice true and correct copies of the aforementioned document(s) was deposited, in a sealed envelope with postage thereon fully prepaid, with the U.S. Postal Service on that same day to be mailed via first class mail at Los Angeles, California 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.
- (BY FAX) Pursuant to Rule 2.306, the parties have agreed to service by fax, and a written confirmation of that agreement has been made. On \_\_\_\_\_, I transmitted, pursuant to Rule 2.306, the above-described document by facsimile machine, to the above-listed fax number(s). The transmission originated from facsimile phone number (310) 203-0567 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached.
- (BY ELECTRONIC SERVICE) On \_\_\_\_\_, I transmitted the aforementioned document(s) directly, through an agent, or through a designated electronic filing service provider to the aforementioned electronic notification address(es). The transmission originated from my electronic notification address, which is \_\_\_\_\_, and was reported as complete and without error. Pursuant to Rule 2.260(f)(4), I will maintain a printed form of this document bearing my original signature and will make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 2.257(a).
- (BY PERSONAL SERVICE) I placed the aforementioned document(s) in a sealed envelope and I delivered such envelope by hand to the offices of the addressee.
- (BY OVERNIGHT DELIVERY) I placed the aforementioned document(s) in a sealed envelope with postage thereon fully prepaid and I caused said envelope to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

Executed on November 8, 2013 at Los Angeles, California.

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



Pamela Johnson

SERVICE LIST

Ms. Luz Rabelo  
Water Resources Control Engineer  
Los Angeles Regional Water Quality  
Control Board  
320 West 4th Street, Ste. 200  
Los Angeles, CA 90013  
[Luz.Rabelo@waterboards.ca.gov](mailto:Luz.Rabelo@waterboards.ca.gov)

FAX: (213) 576-6640

State Water Resources Control Board  
Office of Chief Counsel  
Jeannette L. Bashaw, Legal Analyst  
P.O. Box 100  
Sacramento, CA 95812-0100  
[jbashaw@waterboards.ca.gov](mailto:jbashaw@waterboards.ca.gov)

FAX: (916) 341-5199