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

13 IN THE MATTER OF LOS ANGELES
14 REGIONAL WATER QUALITY CONTROL
15 BOARD CLEANUP AND ABATEMENT
16 ORDER NO. R4-2017-0080 (FORMER PRECO
17 SITE, 6300 SLAUSON AVE., COMMERCE,
18 CA),

No.
**PETITION FOR REVIEW AND
VACATION OF ORDER; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

19 Pursuant to California Water Code (“Water Code”) Sections 13320(a) and 13321, and
20 California Code of Regulations (“CCR”) Title 23, Sections 2050 et seq., Petitioner H.K. Malt,
21 LLC (“HK Malt”) hereby petitions the State Water Resources Control Board (“State Board”) for
22 review of that certain Cleanup and Abatement Order No. R4-2017-0080 (the “CAO”), issued by
23 the Executive Officer of the Los Angeles Regional Water Quality Control Board (the “LA Board”)
24 on August 17, 2017, concerning the former Preco site, located at 6300 Slauson Avenue in
25 Commerce, California (the “Preco site”). A true and correct copy of the CAO is attached to this
26 Petition as Exhibit 1. Petitioner further requests that Cleanup and Abatement Order No. R4-2017-
27 0080 be vacated; or, in the alternative, that enforcement of the CAO be stayed, and a hearing held
28 on the CAO to receive evidence and hear argument. Water Code sections 13320 et seq.;

1 California Gov't Code sections 11400 et seq.; CCR Title 23 Sections 648 – 649.6. Petitioner is
2 aggrieved by the CAO because the CAO seeks to impose the costs of investigating and
3 remediating pollution conditions for which it has no liability under the Water Code, and as
4 otherwise discussed further below.

5
6 **Background and Overview**

7 As discussed in more detail in the CAO, HK Malt acquired the Preco site in or about
8 January 2003. Prior to that time, the site had been used by Preco, Inc. for metal manufacturing
9 operations, from the 1940s to 1989; and by Pacific Research and Manufacturing, for metal
10 stamping operations, from 1989 to 1992. No industrial operations have been conducted at the site
11 during HK Malt's period of ownership – tenant CJ Foods has operated a food products warehouse
12 and distribution center at the site during HK Malt's ownership.

13 From approximately 1991 to 2000, a former owner of the site conducted extensive
14 environmental investigations of the site, which revealed significant concentrations of petroleum
15 hydrocarbons and volatile organic compounds (VOCs) in soil and groundwater at the site. The
16 site underwent extensive removal and remediation measures between 1996 and 2000, including a
17 soil vapor extraction (SVE) system that removed 5,400 pounds of VOCs and the excavation and
18 removal of 1,821 tons of impacted soils from the site.

19 Almost immediately after HK Malt acquired the Preco site, the LA Board demanded that
20 HK Malt investigate the offsite groundwater impacts alleged to have resulted from the historic
21 releases of contaminants at the Preco site. Despite the fact that HK Malt obviously had no
22 involvement in causing the original releases of contaminants at the Preco site, and the lack of any
23 evidence that, since taking title to the site in 2003, HK Malt thereafter "permitted" any
24 "discharge" of waste from the Preco site, the LA Board has, since 2003, taken the position that
25 HK Malt is a "discharger" for purposes of the Water Code. Because HK Malt seeks the regulatory
26 "closure" of the site, HK Malt largely has complied with the LA Board's demands since 2003,
27 resulting in the expenditure of millions of dollars in groundwater investigation and related
28 expenses since that time. HK Malt continues largely to comply with the LA Board's ever-

1 increasing demands for environmental work at the site – but the LA Board has refused to define or
2 in any way limit the scope of its ever-increasing demands to HK Malt. Now, the CAO simply
3 goes too far – it seeks to impose responsibilities on HK Malt that far exceed any reasonable
4 boundaries of liability that HK Malt arguably could have under the Water Code. As such, this
5 Petition seeks to review, assess, and define the limits of those liabilities and responsibilities, in a
6 manner in which, thus far, the LA Board steadfastly has refused to do. In sum, HK Malt is willing
7 to perform further remediation of the onsite conditions at the Preco site, but HK Malt is not
8 responsible for (and, thus, refuses to perform) any further offsite investigation or remediation of
9 the commingled plume in the vicinity of the Preco site.

10 As set forth in more detail herein below,¹ HK Malt’s objections to the CAO are as follows:

11 (1) HK Malt is not a “discharger” with respect to the matters addressed in the CAO because the
12 source of contamination at the Preco Site was removed and/or had migrated off of the Preco site
13 long before HK Malt purchased the property, and there otherwise is no evidence that HK Malt has
14 “permitted” a “discharge” of waste at or from the Preco Site within the meaning of the Water
15 Code; (2) even if HK Malt were deemed to be a “discharger” under Water Code section 13304, it
16 merely would be a “secondarily” liable party because Preco, Inc. is the “primary” discharger and
17 should be held responsible for any further investigation or remediation of the site; (3) there is a
18 commingled plume in the vicinity of the Preco site, so the responsibility for any investigation or
19 remediation of that plume should be borne not only by any onsite responsible parties, but also by
20 the other nearby dischargers to that commingled plume; (4) the Preco Site poses no significant risk
21 to human health or groundwater resources and, as such, the work contemplated by the CAO is not
22 reasonable or necessary; and (5) the LA Board issued the CAO without a hearing or any
23 opportunity for Petitioner to respond, and in direct contravention of statements made by LA Board
24 staff at a meeting with Petitioner and its representatives approximately two months prior to
25 issuance of the Order. Each of these objections is addressed in detail below.

26 ¹ These first four points (i.e., all of the substantive arguments set forth herein, other than the lack of hearing
27 or opportunity for response) were discussed in detail in a November 30, 2015 letter to the LA Board,
28 attached hereto as Exhibit 2.

1
2 **1. HK Malt is not a “discharger” with respect to the matters addressed in the CAO**
3 **because the source of contamination at the Preco Site was removed and/or already had**
4 **migrated off of the site before HK Malt purchased the property, and there otherwise is no**
5 **evidence that HK Malt has “permitted” a “discharge” of waste at the Preco Site within the**
6 **meaning of the Water Code.**

7 Many millions of dollars already have been spent investigating and remediating the
8 pollution conditions at this site. Most important, as described in the CAO, the site underwent
9 extensive source removal efforts many years ago, including the removal of USTs in 1989; the
10 removal and offsite disposal of approximately 1,821 tons of TPH and PAH impacted soils in 1996
11 and 1997; and soil vapor extraction, which removed approximately 5,400 pounds of VOCs from
12 August 1998 to January 2000; and, as a result of this source removal, the Regional Board issued a
13 soil closure for the site in April 2001. CAO para. 6.A and 7, page 3. More to the point, for
14 purposes of this Petition, as a result of this remediation and source removal, there is (and, since
15 Petitioner took title to the property, has been) no ongoing “discharge” of waste at or from the site
16 for purposes of Water Code section 13304.

17 Nonetheless, in paragraph 22 of the CAO (in the Conclusions section on page 6), the CAO
18 states: “Substantial evidence indicates that the Discharger, as the current property owner,
19 permitted waste to be discharged into waters of the State and is therefore appropriately named as a
20 responsible party in this Order.” The CAO cites no evidence in support of this allegation. In fact,
21 there is no such evidence. Rather, as discussed below, this conclusion appears to be based entirely
22 on the “passive migration = discharge” theory established by certain past State Board rulings – but
23 under the circumstances of this case, that theory does not provide support for the LA Board’s
24 erroneous conclusion that the Petitioner has “permitted waste to be discharged into waters of the
25 State.”

26 Unquestionably, the State Board long has taken the position that the term “discharge” in
27 Water Code section 13304 (and related sections) includes not only an active or “initial” release of
28 pollutants but also a passive migration of waste that continues thereafter, such that the “discharge”

1 is deemed to continue as long as the wastes remain in the soil and groundwater at the site (citing
2 State Water Board Orders WQ 86-2 (*Zoecon*), WQ 89-1 (*Schmidl*), and WQ 89-9 (*Spitzer*)).
3 However, even the various State Water Board Orders that have named “innocent” current
4 landowners as dischargers under this expansive interpretation of the Water Code (i.e., the “passive
5 migration = discharge” policy or the “passive migration policy”) generally have not gone so far as
6 to impose “discharger” liability on an innocent current landowner who only acquired the site after
7 it had undergone remediation and source removal (i.e., such that there is no meaningful ongoing
8 discharge of waste at the site).

9 As discussed in detail below, unlike the situations underlying the various “passive
10 migration policy” State Board orders, there is no “passive” migration occurring at the Preco Site
11 and no meaningful ongoing or “probable” or “threatened” discharge of waste at or from that site
12 within the meanings of Water Code section 13304(a) and (c)(1). More specifically, as discussed
13 below, the three key State Board orders creating the precedent for the “passive migration policy” –
14 i.e., State Water Board Orders WQ 86-2 (*Zoecon*), WQ 89-1 (*Schmidl*), and WQ 89-9 (*Spitzer*), as
15 cited in the CAO – all dealt with situations where there was a significant ongoing discharge of
16 waste occurring at the sites in question:

17 **WQ 86-2 (*Zoecon*):** The State Board’s “passive migration policy” traces back to the
18 *Zoecon* matter, cited above (and in the CAO). In *Zoecon*, in response to the petitioner’s argument
19 that “it will take 1.000 years for the [onsite] contaminated ground water to discharge to the San
20 Francisco Bay . . .,” the State Board explained:

21 *[S]uch movement of contamination, albeit slow, is still a discharge to waters*
22 *of the state that must be regulated. In addition . . . , currently uncontaminated*
23 *ground water in the vicinity of the site within the shallow and deep aquifers could*
24 *be adversely affected if the spread of contamination remains uncontrolled.*
25 *Therefore we must conclude that there is an actual movement of waste from soils to*
26 *ground water and from contaminated to uncontaminated ground water at the site*
27 *which is sufficient to constitute a “discharge” by the petitioner for purposes of*
28 *[the] Water Code.*

1 WQ 86-2 (*Zoecon*), p. 4. There is no such evidence at the Preco Site. Specifically, the
2 “spread of contamination” at the Preco Site does not “remain uncontrolled.” Quite to the contrary,
3 the source has been removed from both soil and soil gas, so there is no ongoing “actual movement
4 of waste from soils to groundwater” at the site, and there is no evidence of movement of waste
5 “from contaminated to uncontaminated ground water at the site.” (Notably, the Attorney General
6 opinions cited in *Zoecon* – i.e., the legal bases for the original “passive migration policy” adopted
7 by the State Board – also all are based on clear evidence of ongoing discharges of waste from the
8 sites in question). Thus, the facts supporting the finding of “passive migration = discharge” in
9 *Zoecon* (and the underlying Attorney General opinions cited therein) simply are not present here.
10 There is no evidence of any meaningful ongoing passive migration from soil to ground water or
11 from contaminated ground water to uncontaminated groundwater at the Preco Site. In sum, in
12 *Zoecon*, the site had not yet undergone remediation, and the source remained in place, such that
13 there was clear evidence of actual or threatened migration of contaminants from soil to
14 groundwater or from contaminated groundwater to uncontaminated groundwater. The facts are
15 precisely the opposite at the Preco Site.

16 **WQ 89-1 (*Schmidl*):** Similarly, in *Schmidl*, substantial concentrations of pesticides were
17 found in a commercial use well on the *Schmidl* site, and the well was found to be a potential
18 “conduit for pesticide movement to deeper groundwater, thus creating or threatening a condition
19 of nuisance and pollution” (particularly since residences within a quarter mile of the site were
20 served by groundwater), and no remediation or source removal had taken place yet at the site. See
21 WQ-1 (*Schmidl*) at pp. 2-3. Thus, on the basis of those facts, the “innocent” landowner was found
22 to be a “discharger” for purposes of the Water Code. Again, such facts are not present at the Preco
23 Site – there is no evidence of any substantial ongoing passive migration from soil to ground water
24 or from contaminated ground water to uncontaminated groundwater here. As with the *Zoecon*
25 case, the critical facts present at the *Schmidl* site supporting the finding of “passive migration =
26 discharge” are precisely the opposite of those at the Preco Site.

27 **WQ 89-9 (*Spitzer*):** This also is the case with the site at issue in *Spitzer*. There, the site
28 was extensively contaminated with PCE from dry cleaning operations, and a massive migrating

1 PCE plume (including actual or threatened migration from the shallow to deep aquifer) was
2 present in soil and groundwater at the site at the time the “innocent” parties were deemed
3 “dischargers” under State Water Board Order WQ 89-9. In *Spitzer*, the State Board also explained
4 that the Attorney General opinions on which it relied for its passive migration theory “concluded
5 that discharge continues as long as pollutants are being emitted at the site.” WQ 89-9 (*Spitzer*) at
6 pg. 14 (citing 26 Ops. Atty. Gen. 88, 90 (1955); 27 Ops. Atty. Gen. 182 (1956)). Thus, like
7 *Zoecon* and *Schmidl*, the imposition of “discharger” liability on the innocent landowner was
8 premised on clear evidence of ongoing discharges of waste from soil to groundwater and/or from
9 shallow to deep groundwater. Again, to the contrary, at the Preco Site, there is no evidence that
10 “pollutants are being emitted” at or from the site – the source has been removed from soil and soil
11 vapor, and there is no evidence of any meaningful ongoing passive migration from soil to
12 groundwater or from contaminated groundwater to uncontaminated groundwater.

13 In sum, there are limits even to the State Board’s expansive “passive migration”
14 interpretation of the term “discharger.” As set forth in the State Board orders discussed above, the
15 imposition of discharger liability on an “innocent” landowner must be based on substantial
16 evidence of ongoing migration of waste from soil to groundwater or contaminated to
17 uncontaminated groundwater at or in the vicinity of the site. This, of course, is entirely consistent
18 with (and, in fact, mandated by) the statutory language of Water Code section 13304, which
19 imposes discharger liability on one who causes or permits a “discharge” which causes or threatens
20 to cause water pollution. It also is worth noting that courts have held that, with respect to
21 “discharges” under the Water Code, the phrase “causes or permits” includes those who took
22 affirmative steps to cause the discharge or, at the very least, those who have actual knowledge of
23 the discharge and the ability to stop the discharge. E.g., City of Modesto Redevelopment Agency
24 v. Superior Ct., 119 Cal. App. 4th 28, reh’g denied, 2004 Cal. LESXIS 8692 (2004) (“City of
25 Modesto”); Redevelopment Agency of the City of Stockton v. BNSF Ry. Co., 643 F.3d 668, 678
26 (9th Cir. 2011) (“BNSF”). See also Resolution Trust Corp. v. Rossmoor Corp., 34 Cal. App. 4th
27 98 (1995) (“Rossmoor”) (an innocent property owner cannot be held liable for contamination to
28 adjacent property caused by its tenant unless the property owner had the knowledge and

1 opportunity to stop the migration of contamination onto the adjacent property and failed to do so).

2 It is worth noting that this argument is even more to the point with respect to offsite
3 contamination that pre-dates HK Malt’s acquisition of the property. Simply put, contaminants that
4 were released from the Preco site decades ago, and migrated off of the Preco site long before HK
5 Malt acquired the site, cannot be the responsibility of HK Malt – specifically, even under the
6 “passive migration theory” of “discharge,” HK Malt cannot (by virtue of its mere present
7 ownership of the Preco site) be deemed to have “discharged” contaminants that already had
8 migrated off of the Preco site by the time HK Malt acquired the property. The authorities
9 discussed above – Water Code section 13304, City of Modesto, BNSF, and Rossmoor, make clear
10 that if releases of contaminants occurred and the resulting offsite impacts occurred long before the
11 current owner took title to the property, the property owner cannot be deemed a “discharger” as to
12 those pre-existing offsite impacts. In the case at hand, it is clear that an offsite commingled
13 groundwater plume existed before HK Malt took title to the Preco site – as such, HK Malt cannot
14 be deemed the “discharger” of the contaminants that were discharged and migrated off of the
15 Preco site before HK Malt took title to it.

16 Even under the State Board’s expansive “passive migration = discharge” theory of liability
17 for innocent property owners, it cannot hold such a property owner responsible for offsite
18 contamination that occurred before the property owner took title to the property. There simply is
19 no way to conclude that such a property owner “discharged” wastes that already were beyond its
20 property boundaries when it took title to the property. As such, at a minimum, any of the offsite
21 investigation or remediation work sought by the CAO is beyond any reasonable reach of HK
22 Malt’s liability.

23 This is a critical point with respect to this CAO, because offsite groundwater
24 contamination clearly is the focus of the CAO – as set forth in paragraph 2.A on page 8 of the
25 CAO: “Especially, the off-site extent of the VOCs-impacted groundwater must be adequately
26 defined.” Similarly, in paragraph 8.D on page 4, the CAO states: “The Discharger named in this
27 CAO has not adequately delineated, abated, and cleaned up the VOCs in groundwater originating
28 from the site. The VOCs in groundwater have migrated off-site.” What the CAO ignores,

1 however, is that the all of the evidence indicates *that those VOCs were released into the*
2 *groundwater and migrated offsite long before HK Malt acquired the property.* As the CAO
3 makes clear, the Preco operations that caused the contamination occurred from the 1940s to 1989
4 (CAO, para. 4.A.ii, page 2); the site was vacant for over a decade (from 1992 to 2002) before HK
5 Malt acquired it (in 2003); the groundwater contamination was already well documented during
6 the period 1991 to 2000 (CAO para. C, page 3) and, obviously, had existed long before then; and,
7 as discussed earlier, the site underwent significant source removal and remediation in the late
8 1990s (CAO para. 6.A and 7, page 3). In sum, all of the evidence points toward the groundwater
9 contamination, onsite and offsite, occurring many years, and perhaps even decades prior to HK
10 Malt's acquisition of the site in 2003.

11 Here, because the current landowner did not take title to the property until after it had
12 undergone extensive remediation and source removal, such that there is no evidence of any
13 ongoing migration of waste from soil to groundwater or from contaminated to uncontaminated
14 ground water at or in the vicinity of the site, there is no current or "probable" or "threatened"
15 discharge within the meanings of Water Code section 13304(a) and (c)(1) so as to support a
16 determination that the current owner is a "discharger" under that statute. Even more clear is that
17 HK Malt cannot be deemed a "discharger" for wastes that already had migrated beyond the
18 property boundaries at the time it took title to the property. As such, the CAO is an arbitrary and
19 capricious exercise of the Regional Board's discretion under Water Code section 13304.

20
21 **2. Even if HK Malt were deemed to be a "discharger" under Water Code section**
22 **13304, it would be a "secondarily" liable party because Preco, Inc. is the "primary"**
23 **discharger and should be held responsible for any further investigation or remediation of the**
24 **site.**

25 The CAO, at page 2, paragraph 4(A)(iii), states that "Regional Board records indicate that
26 Preco no longer exists." However, a simple Google search reveals several viable "Preco" entities
27 which may be the same company that operated at the Preco Site (or a legal successor thereto),
28 including but not limited to the following:

1 **“Preco, Inc.”** located at 7663 San Fernando Rd, Burbank, CA. 91505;

2 **“Preco Electronics”** located at 10335 W Emerald St, Boise ID 83704

3 (notably, the company’s website states that it “designs, engineers and
4 manufactures patented technology, providing rugged, fully integratable , and
5 customizable solutions that actively engage heavy duty vehicle operators” and
6 that it “has been developing safety technologies since 1947” and was incorporated
7 as “Preco, Inc” in 1953);

8 **“Preco, Inc.”** headquartered at 9705 Commerce Parkway, Lenexa,
9 Kansas, 66219, which, according to its website, is “a leading manufacturer of die
10 cutting, screen printing and laser systems for materials processing” and “is the
11 result of the strategic merger between Preco Industries, Inc., a premier provider of
12 advanced die cutting and screen printing equipment, and Preco Laser Systems,
13 LLC, a proven technology leader in industrial laser systems and contract
14 manufacturing services (CMS)”; and, finally,

15 **“Preco Manufacturing Co.”** (apparently a manufacturer of industrial and
16 commercial machinery and equipment first established in 1957 and located at
17 14598 Central Ave, Chino, CA, 91710).

18 It is unclear whether the Regional Board investigated any of these entities to determine
19 whether they, indeed, are the same company that operated at the Preco Site or, perhaps, a legal
20 successor of that company. Such an investigation certainly appears warranted, given that it is the
21 well-established policy of the State Board to hold the party that caused the pollution “primarily”
22 responsible for any investigation or cleanup, and an “innocent” current owner of the property only
23 “secondarily” liable. See, e.g., State Water Board Order 86-2 (*Zocon*), State Water Board Order
24 86-18 (*Vallco Park*), and State Water Board Order 89-9 (*Spitzer*). Of course, as the actual
25 discharger of contaminants at the site (i.e., the truly culpable party whose operations caused the
26 releases of contaminants to soil and groundwater on and about the site), the above-mentioned
27 arguments limiting the scope HK Malt’s liability under the “passive migration theory” would not
28 apply to Preco.

1 Moreover, if the Regional Board refuses to investigate the above-mentioned Preco entities
2 to identify a “primarily” responsible party, and the State Board upholds the CAO, it will have the
3 effect of forcing HK Malt to bring suit (e.g., CERCLA contribution claims) against these various
4 Preco entities, in addition to pursuing its rights to challenge such arbitrary and capricious conduct
5 by the Regional Board. And, of course, again as discussed in detail earlier, the various State
6 Board Orders that have named “innocent” current landowners as dischargers (albeit “secondarily
7 liable” dischargers) have not dealt with the situation here where, as discussed above, the current
8 landowner did not take title to the property until after it had undergone extensive remediation,
9 such that there is no ongoing or “probable” or “threatened” discharge within the meaning of Water
10 Code section 13304.

11
12 **3. There is a commingled plume in the vicinity of the Preco site, so the responsibility**
13 **of any investigation or remediation of that plume should be borne not only by onsite**
14 **responsible parties, but also by the other nearby dischargers to that commingled plume.**

15 The Case Closure Report submitted for the Preco Site, on behalf of HK Malt, by CDR
16 Group, on or about May 18, 2015 (the “Case Closure Report”) provides extensive evidence and
17 discussion of the commingled groundwater plume in the vicinity of the Preco Site. Among other
18 things, as that report demonstrates, there are clearly identified upgradient sources of VOCs, and
19 recent groundwater monitoring shows that PCE and TCE concentrations are higher in the offsite
20 wells (both upgradient and downgradient) than onsite wells. Several offsite groundwater wells
21 show higher VOC concentrations than those present in the onsite wells.

22 Offsite sources were identified in several past reports, but the LA Board has not
23 acknowledged (and apparently has not further investigated) them. Below is a partial list of
24 potential offsite sources to the commingled plume:

- 25 • A Sanborn map dated 1966 shows a truck repair center near well NW6 at the
26 property located immediate south to the site.
- 27 • The 1952 South Gate 7.5 minute Topo Map shows a dump site approximately ¼-
28 mile northeast (upgradient) from the site (near the intersection of Slauson Avenue and Garfield

1 Avenue).

2 • The South Gate 1972 7.5 minute Topo Map shows Cheli Air Force Station
3 approximately one mile northwest of the site.

4 • Poly Food Packaging, located 589 feet northeast of site (upgradient) at 6443
5 Slauson Ave., handled PCE and TCE as part of their operations (EDR Radius Map Report).

6 • Several manufacturing operations (Crompton & Knowles Dye & Chemical,
7 Harshaw Chemical, Sandoz Colors & Chemicals) existed at 6277 Slauson Ave., located exactly
8 northwest of the site across from Slauson Ave. This location is adjacent and upgradient to
9 monitoring wells OW1A, OW2, and NW7 (but the LA Board has maintained these wells are
10 representative of Preco plume even though these wells are almost upgradient to the site).

11 • Rocketdyne's Slauson facility was located at 6349 Slauson Ave directly upgradient
12 of the site (across from Slauson Ave). Monitoring well OW6 (historically highest VOCs) is
13 representative of this source (and the LA Board has maintained that the contaminants found in
14 OW6 are from the Preco Site, even though that well clearly is upgradient of the Preco site).

15 • Between 1932 and 1971, Chrysler operated an 83-acre assembly factory for Dodge
16 and Plymouth at the intersection of Slauson and Eastern Avenue. Although the exact foot print of
17 the facility is unknown, monitoring wells MW8 and MW9 could represent contaminants from that
18 Chrysler site.

19 • Assuming that some spills and leaks occurred at the Preco site, past investigations
20 since 1980s have not identified an onsite vertical path from the surface to groundwater at the Preco
21 site. It is unlikely that random spills and leaks could have caused the what is now delineated as a
22 widespread contamination extending over $\frac{1}{4}$ of a mile. Most of the contamination found at the
23 Preco site was shallow and was removed by excavation and soil vapor extraction.

24 In sum, the empirical data shows that groundwater contamination at and in the immediate
25 vicinity could very well be from upgradient offsite sources (and even more information on offsite
26 sources will be presented in the Site Conceptual Model (SCM) report currently in preparation,
27 which will be submitted to the LA Board within the next 2-3 weeks). Nonetheless, the CAO
28 purports to require HK Malt to investigate and possibly remediate the commingled groundwater

1 plume (in particular, the commingled offsite groundwater contamination) without naming the
2 other documented dischargers in the area.

3 This clearly is an arbitrary and capricious exercise of authority by the Regional Board.
4 Moreover, as discussed above, even under the passive migration theory of discharger liability, HK
5 Malt cannot be deemed to have “permitted” the “discharge” of contaminants that already had
6 migrated beyond the property boundaries before HK Malt took title to the property. This is even
7 more so the case when dealing with an offsite commingled groundwater plume that came into
8 being before HK Malt acquired the property – and all of the evidence points to precisely this
9 situation in this case.

10
11 **4. The Preco Site poses no significant risk to human health or groundwater resources**
12 **and, as such, the work contemplated by the CAO is not reasonable or necessary.**

13 As documented in the Case Closure Report in 2015, the groundwater plume in the vicinity
14 of the Preco Site is very stable – since 1991 (i.e., for almost 25 years), TCE concentrations have
15 remained at approximately 200 ug/l, and PCE concentrations have remained at approximately 20
16 ug/l. Moreover, natural attenuation clearly is occurring, as concentrations of breakdown products
17 continue to increase (since 1991) at and about the site (i.e., detection of 1,1-DCA, cis 1,2-DCE and
18 1,1-DCE in onsite wells NW1, OW3, OW4, OW16 and NW5. Thus, the groundwater plume
19 presents little or no risk to groundwater resources (and this is even more so the case, given that, as
20 discussed above, there is no evidence of any meaningful ongoing discharge of waste at the site, via
21 passive migration from soil to ground water or from contaminated ground water to
22 uncontaminated groundwater, or otherwise).

23 Similarly, the conditions at the Preco Site present no substantial health risk to anyone at
24 the Preco Site. Specifically, vapor intrusion is not a concern because shallow contaminated soil
25 was removed by excavation and the soil gas plume was removed by soil vapor extraction, as
26 discussed earlier. In addition, of course, groundwater is found at approximately 100 feet bgs and
27 there is documented clean soil within the first 5 feet of the vadose zone. Clearly, current
28 conditions do not present a vapor intrusion risk. The remaining contaminant concentrations in

1 groundwater also would not cause significant human health or environmental risk via any other
2 major pathways (such as direct contact, drinking water ingestion, or plume migration).

3 It also is worth noting that, notwithstanding HK Malt's position that it is not a "discharger"
4 for purposes of the Water Code, as part of its ongoing efforts to resolve this matter amicably and
5 bring about regulatory closure for this site, over the past several years HK Malt has acquiesced in
6 the LA Board's continuing demands for further groundwater investigations at and about the Preco
7 site, and currently is preparing a Remedial Action Plan (RAP) to treat contaminated groundwater
8 at and in the immediate vicinity of the site. The lateral extent of Preco's groundwater plume is
9 well illustrated in the recent semi-annual groundwater monitoring report submitted by HK Malt.
10 The shallow wells at the Preco site are currently dry but these wells will be subjected to soil vapor
11 extraction (SVE) to remove source mass that could be present in the previously saturated zone.
12 Additionally, since the VOCs in groundwater are low, the dissolved phase plume also will be
13 remediated using SVE. The second semi-annual groundwater sampling is being completed at this
14 time, and the results will be used to prepare both the SCM and the RAP.

15
16 **5. The LA Board issued the CAO without a hearing or any opportunity for Petitioner**
17 **to respond, and in direct contravention of statements made by LA Board staff at a meeting**
18 **with Petitioner and its representatives approximately 30 days prior to issuance of the Order.**

19 On or about June 6, 2017, Petitioner and its representatives met with LA Board staff to
20 discuss the Preco Site. At that meeting, it was agreed that Petitioner would take certain steps
21 relating to ongoing groundwater monitoring and investigations at the Preco Site, but that the LA
22 Board would not issue a CAO or take any other enforcement action. In reliance upon those
23 discussions and agreements, Petitioner moved forward with the groundwater monitoring and
24 investigation measures discussed at the meeting, but the LA Board nonetheless issued the CAO in
25 direct contradiction to the discussions held and agreements made at the June 6, 2017 meeting.²

26 _____
27 ² At the June 6, 2017, meeting with LA Board, both Mr. Luis Changkuon and Ms. Su Han were asked about
28 the adequacy of the plume delineation investigation that already had been completed by HK Malt, but both
Continued on Next Page refused to provide a response. Dr. Arthur Heath indicated that a CAO would not be issued, since H.K. Malt

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CONCLUSION

In sum, HK Malt should not be included as a responsible party in any further offsite investigation or remediation of the commingled plume because it is not a “discharger,” within the meaning of the relevant portions of the Water Code, for any of the contamination addressed in the CAO, and certainly is not a “discharger” with respect to contaminants which were released and already had migrated off of the Preco site before it took title thereto. Thus, Petitioner H.K. Malt hereby requests that Cleanup and Abatement Order No. R4-2017-0080 be vacated; or, in the alternative, that enforcement of the CAO be stayed, and a hearing held on the CAO to receive evidence and hear argument. Water Code sections 13320 et seq.; California Gov’t Code sections 11400 et seq.; CCR Title 23 Sections 648 – 649.6 and 2050.6(b). Petitioner also hereby requests that the LA Board prepare the administrative record on which the Board issued the CAO (or with respect to any modified order it may issue hereafter).

As indicated below, a copy of this Petition has been sent to the Los Angeles Regional Water Quality Control Board.

Dated: September 13, 2017

RING BENDER LLP
GREGORY D. TRIMARCHE

By: 
Gregory D. Trimarche
Attorney for Petitioners
H.K. Malt, LLC

_____ was complying and executing the workplans. However, contrary to what was said in the meeting, the CAO was issued.

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SERVICE LIST

State Water Resources Control Board
Office of Chief Counsel
Adrianna M. Crowl
P.O. Box 100
Sacramento, CA 95812-0100
(waterqualitypetitions@waterboards.ca.gov)

Samuel Unger
Executive Officer
Los Angeles Regional Water Quality Control Board
320 W 4th St #200
Los Angeles, CA 90013

EXHIBIT A



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

August 17, 2017

Mr. Allen Park
H.K. Malt, LLC
440 S. Vermont Avenue, #301
Los Angeles, California 90020

Certified Mail
Return Receipt Requested
Claim No. 7015 0640 0006 6057 4517

SUBJECT: CLEANUP AND ABATEMENT ORDER NO. R4-2017-0080

**SITE/CASE: FORMER PRECO SITE, 6300 SLAUSON AVENUE, COMMERCE, CALIFORNIA
(SCP NO. 0194, SITE ID NO. 1847500)**

Dear Mr. Park:

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 waters quality and their beneficial uses within major portions of Los Angeles County and Ventura County. The above-referenced site is situated within the jurisdiction of the Regional Board.

Enclosed please find Cleanup and Abatement Order (CAO) No. R4-2017-0080, directing H.K. Malt, LLC (Discharger) to monitor, cleanup and abate the effect of wastes, including volatile organic compounds and 1,4-dioxane that have been discharged to soil and groundwater at the referenced site. This CAO is issued under section 13304 of the California Water Code (CWC). Should the Discharger fail to comply with any provision of this CAO, you may be subject to further enforcement action, including injunction and civil monetary remedies, pursuant to applicable CWC sections, including but not limited to sections 13304, 13308, and 13350.

A draft of this CAO was provided to you on November 6, 2015, inviting comments. Comments were provided on November 30, 2015 by Ring Bender LLLP on behalf of H.K. Malt, LLC. The attached document, titled "Responsiveness Summary – Draft Cleanup and Abatement Order R4-2015-XXXX" summarizes the comments received and the Regional Board responses to those comments

If you have questions regarding this CAO, please contact Mr. Luis Changkuon at (213) 576-6667 or luis.changkuon@waterboards.ca.gov, or Ms. Su Han at (213) 576-6735 or su.han@waterboards.ca.gov.

Sincerely,


Samuel Unger, PE
Executive Officer

IRMA MUÑOZ, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

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

♻️ RECYCLED PAPER

Enclosures: 1. Cleanup and Abatement Order No. R4-2017-0080
2. Responsiveness Summary – Draft Cleanup and Abatement Order R4-2015-XXXX

cc: Dinesh Rao, CDR Group
Joseph Legaspi/Tammy Hierlihy, Central Basin Municipal Water District
Daniel Armendariz, California Water Service Company
Brian Partington, Water Replenishment District of Southern California
Jeff O'Keefe, State Water Resources Control Board, Division of Drinking Water
Don Indermill, Department of Toxic Substances Control
Flammer Mill and Warehouse Co, LLC
Silver Friend and Raffle Ptnshp, c/o Greg Silver
Lit Commerce Distribution Center LLC
Ricardo Moreno/Mari Valenzuela/Cheri McElroy/Kalysha Murphey, Southern California Edison
Sandi Harris, 6349 ESA, LLC

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

CLEANUP AND ABATEMENT ORDER NO. R4-2017-0080
REQUIRING

H.K. Malt, LLC

TO ASSESS, CLEANUP, AND ABATE
WASTE DISCHARGED TO WATERS OF THE STATE
PURSUANT TO CALIFORNIA WATER CODE SECTION 13304

AT 6300 SLAUSON AVENUE
COMMERCE, CALIFORNIA 90040

SCP NO. 0194, SITE ID NO. 1847500

This Cleanup and Abatement Order No. R4-2017-0080 (Order) is issued to H.K. Malt, LLC based on provisions of California Water Code (CWC) sections 13304 and 13267, which authorize the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) to issue a Cleanup and Abatement Order and require the submittal of technical and monitoring reports.

The Regional Board finds that:

BACKGROUND

1. This Order requires the responsible party to investigate and cleanup the site located in the City of Commerce, consisting of a property located at 6300 Slauson Avenue (Assessor Parcel Number 6332-018-003). Attachment A, Figure 1, attached hereto and incorporated herein by reference, depicts the location of the site. Additionally, Figure 2 (Site Vicinity Map, Attachment A), also attached hereto and incorporated herein, depicts the site and surrounding area. The land setting in the vicinity of the site is commercial and industrial.
2. **Discharger:** H.K. Malt, LLC is a Responsible Party due to its ownership of the site since 2003.
3. **Groundwater Basin:** The site is located in the Central Basin within the Los Angeles Coastal Basin. The subsurface consists of silt and sand interbedded with silty sand. The first saturated zone is the Exposition Aquifer (subdivided into the Upper and Lower Exposition Aquifers) and it is composed of sand, silt, and clay and located approximately 95 feet below ground surface (bgs) to 165 feet bgs. Groundwater monitoring wells installed in this saturated zone have been screened between approximately 95 feet bgs to 115 feet bgs, and 150 feet bgs to 160 feet bgs. The next saturated zone is the Gage Aquifer, consisting primarily of sand interbedded with silty sand and gravel. The Gage Aquifer was identified at the site from approximately 190 feet bgs to the total investigation depth of 200 feet bgs. Groundwater monitoring wells installed in the Gage Aquifer have been screened between approximately 190 feet bgs to 200 feet bgs.

Groundwater elevations have been consistently decreasing at the site and the immediate off-site vicinity from the 1990s to the present. Groundwater levels in some monitoring wells in the Upper Exposition Aquifer had decreased up to approximately 16 feet to depths below well screen intervals. Groundwater

levels in the monitoring wells screened in the Lower Exposition Aquifer and in the Gage Aquifer had decreased up to approximately 31 feet in the past 4 years.

SITE HISTORY

4. Site Description and Activities:

A. Site Occupancy History

- i. The Regional Board has no information on the site occupancy prior to the 1940s.
- ii. From the 1940s to 1989, the site was occupied by Preco to manufacture metal parts for railroad cars, agricultural equipment, and truck bodies. Preco's manufacturing operations consisted of metal cleaning, fabricating and machining, welding, assembly, and laboratory testing for quality assurance/quality control purposes. Regional Board records indicate that Preco no longer exists.
- iii. From 1989 to 1992, the site was occupied by Pacific Research and Manufacturing, in metal stamping operations. Regional Board records indicate that this company no longer exists.
- iv. From 1992 to 2002, the site was vacant. In 1996, all site buildings were demolished.
- v. In 2002, the site was redeveloped with a warehouse building and adjacent paved parking.
- vi. Since 2002, the site has been leased by CJ Foods, which operates a food products warehouse and distribution center.

B. Site Ownership History

- i. The Regional Board has no information on the site ownership prior to 1991.
- ii. From an unknown year (but at least since 1991) to 2001, Crow Los Angeles #2 Limited Partnership (Crow LA) owned the site. Regional Board records indicate that this company no longer exists.
- iii. From 2001 to 2003, Xebec Commerce LLC (Xebec) owned the site.
- iv. Since 2003, H.K. Malt, LLC has been the owner of the site.

5. **Chemical Usage and Storage:** During Preco's occupancy and operations at the site, the following chemical use and storage features were present: chemical storage area, drum storage areas, paint spray area and spray booth room, metal parts cleaning area, two above ground tanks, two gasoline underground storage tanks (USTs), one diesel UST, and four industrial clarifiers (Figure 3, Attachment A).

EVIDENCE OF WASTE DISCHARGE AND BASIS FOR SECTION 13304 ORDER

6. Waste Discharges:

A. Soil Vapor

In 1997, Crow LA conducted a two-month soil vapor extraction (SVE) pilot test at the site. Soil vapor samples were collected from SVE wells during the test, and analyzed for volatile organic compounds (VOCs). Trichloroethene (TCE), tetrachloroethene (PCE), and 1,1-dichloroethene (1,1-DCE), and cis-1,2-dichloroethene (cis-1,2-DCE) were detected in the samples at concentrations up to 8,061 micrograms per liter ($\mu\text{g/L}$), 1,017 $\mu\text{g/L}$, 674 $\mu\text{g/L}$, and 95 $\mu\text{g/L}$, respectively.

Following the pilot test, Crow LA operated a full-scale SVE system at the site from 1998 to 2000. It was reported that the SVE system removed approximately 5,400 pounds of VOCs from the subsurface.

B. Soil Matrix

From approximately 1991 to 2000, Crow LA drilled 56 on-site soil borings to a maximum depth of approximately 80 feet bgs. In 2001, Xebec drilled two off-site soil borings to a maximum depth of approximately 100 feet bgs. From 2005 to 2012, HK Malt drilled 12 off-site soil borings to a maximum depth of approximately 200 feet bgs. Soil samples were collected from the borings at various depths, to a maximum depth of approximately 200 feet bgs, and analyzed for VOCs. TCE, PCE, 1,1-DCE, and cis-1,2-DCE were detected in soil samples from the on-site borings at concentrations up to 2,700 micrograms per kilogram ($\mu\text{g}/\text{kg}$), 1,300 $\mu\text{g}/\text{kg}$, 32 $\mu\text{g}/\text{kg}$, and 320 $\mu\text{g}/\text{kg}$, respectively.

C. Groundwater

From 1991 to 2000, Crow LA installed five on-site and two off-site single-screened groundwater monitoring wells. In 2001, Xebec installed one on-site and one off-site single-screened well. From 2003 to 2013, HK Malt installed nine single-screened and five multidepth off-site wells. TCE, PCE, 1,1-DCE, cis-1,2-DCE, and 1,4-dioxane (dioxane) were detected in groundwater samples at concentrations up to 2,400 $\mu\text{g}/\text{L}$, 240 $\mu\text{g}/\text{L}$, 79 $\mu\text{g}/\text{L}$, 300 $\mu\text{g}/\text{L}$, and 66 $\mu\text{g}/\text{L}$, respectively.

7. Source Elimination and Remediation Status

In 1989, two gasoline USTs and one diesel UST were removed by Preco under a permit issued by the Los Angeles County Department of Public Works (LACDPW). In 1992, four industrial clarifiers were removed by Crow LA under a permit issued by the LACDPW.

In 1996 and 1997, approximately 1,821 tons of soil impacted with total petroleum hydrocarbon (TPH) and polynuclear aromatic hydrocarbons (PAH) was excavated by Crow LA from the western and southwestern area of the site. Excavated soil was transported to a permitted facility for treatment. Following excavation, confirmation soil samples were collected and analyzed for TPH and PAH. Based on the sampling results, no further excavation was required.

From approximately August 1998 to January 2000, Crow LA operated a SVE system on the western portion of the site to remediate VOCs-impacted soil above the groundwater table (approximately 85 feet bgs) at that time. Approximately 5,400 pounds of VOCs were removed by the SVE system. Based on the results of the SVE system operation and confirmation soil sampling, the Regional Board granted the site soil closure on April 18, 2001, provided that groundwater monitoring and remediation would continue at the site and site vicinity.

8. Summary of Findings from Site Investigations

The Regional Board has reviewed and evaluated the technical reports and records pertaining to the discharge, detection, and distribution of wastes at the site and in the site vicinity.

- A. During historical operations at the site, VOCs were stored, used, and discharged to the environment.
- B. VOCs have been detected in soil and groundwater beneath the site and vicinity.

- C. TCE, PCE, 1,1-DCE, cis-1,2-DCE, and dioxane, were detected in groundwater at concentrations up to 2,400 µg/L, 240 µg/L, 79 µg/L, 300 µg/L, and 66 µg/L, respectively.
- D. The Discharger named in this CAO has not adequately delineated, abated, and cleaned up the VOCs in groundwater originating from the site. The VOCs in groundwater have migrated off-site.
9. **Regulatory Status:** On September 23, 2003, the Regional Board issued a CWC section 13267 Order (Order) requiring H.K. Malt LLC, to adequately define the extent of groundwater contamination at the site and in the site vicinity.

On August 14, 2015, the Regional Board issued a Notice of Violation (NOV) to H.K. Malt, LLC for failure to submit a further groundwater investigation work plan required in the March 17, 2015 amendment to the Order.

On May 23, 2017, the Regional Board issued a NOV to H.K. Malt, LLC for failure to comply with groundwater monitoring requirements, pursuant to the Order.

10. **Impairment of Drinking Water Wells:** The Regional Board has the authority to require the Discharger and other dischargers to pay for or provide uninterrupted replacement water service to each affected public water supplier or private well owner in accordance with CWC section 13304.
11. **Sources of Information:** The sources for the evidence summarized above include but are not limited to: reports and other documentation in the Regional Board files, telephone calls, and e-mail communications with responsible parties, their attorneys and consultants, and site visits.

AUTHORITY - LEGAL REQUIREMENTS

12. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”

13. Section 13304(c)(1) of the California Water Code provides that:

“... the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. . . .”

14. Section 13267(b)(1) of the California Water Code provides that:

“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.”

15. Public Participation: The Regional Board may require the Discharger to submit information or take actions to meet the requirements of CWC sections 13307.1, 13307.5, and 13307.6.

16. The Regional Board adopted the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan), which identifies beneficial uses of surface and groundwater within the Los Angeles Region and establishes numerical and narrative water quality objectives to protect those uses. The site overlies groundwater within the Central Groundwater Basin. The beneficial uses of the groundwater beneath the site are municipal (MUN), industrial (IND), industrial process supply (PROC), and agricultural supply (AGR). Numerical water quality objectives that apply to the groundwater at the site include the state maximum contaminant levels. The Basin Plan also establishes narrative water quality objectives for several parameters such as bacteria, chemical constituents and radioactivity, mineral quality, nitrate/nitrite, taste and odor. Undesirable tastes and odors in groundwater are an aesthetic nuisance and can indicate the presence of other pollutants. Groundwater shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors, cause nuisance or adversely affect beneficial uses. TCE, PCE, 1,1-DCE, cis-1,2-DCE, and dioxane, and other waste constituents discharged at the site constitute “waste” as defined in CWC section 13050(d).

The California Maximum Contaminant Levels (MCLs) in drinking water for TCE, PCE, 1,1-DCE, and cis-1,2-DCE are 5 µg/L, 5 µg/L, 6 µg/L, and 6 µg/L, respectively. The Notification List for dioxane is 1 µg/L. The concentrations of TCE, PCE, 1,1-DCE, cis-1,2-DCE, and dioxane, and other waste constituents in groundwater at and in the vicinity of the site exceed the water quality objectives for the wastes. The exceedance of applicable water quality objectives constitutes pollution as defined in California Water Code section 13050(1)(1). The wastes detected in soil and groundwater at the site have caused pollution, including contamination, and nuisance.

17. The State Water Resources Control Board (hereafter State Water Board) has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*. This Policy sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy with Respect to Maintaining High Quality of Waters in California*. Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, California Code of Regulations (CCR) Section 2550.4. Any alternative cleanup level to background must (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in

water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board.

DISCHARGER LIABILITY

18. As described in Findings of this Order, H.K. Malt, LLC is subject to an order pursuant to CWC section 13304 because it currently owns the property on which ongoing discharges of waste are occurring. The State Water Board has interpreted CWC section 13304 to apply to current owners.¹ The Discharger has caused or permitted waste to be discharged or deposited where it has discharged to waters of the State and has created, and continues to threaten to create, a condition of pollution or nuisance.
19. Due to the activities described in this Order, the Discharger has caused or permitted wastes including VOCs, to be discharged or deposited where the wastes are, or probably will be discharged into the waters of the State, which creates a condition of pollution or nuisance. Wastes, including VOCs, have been discharged where it causes or threatens to cause pollution or nuisance, including possible threats to human health and the environment at the site and in the vicinity. The Discharger, as the current property owner, is responsible for complying with this Order.
20. This Order requires investigation, cleanup, and monitoring of the site as required by applicable provisions of the California Water Code, the Basin Plan, Resolution 92-49, and other applicable plans, policies, and regulations.
21. As described in Findings in this Order, the Discharger is subject to an order pursuant to California Water Code section 13267 to submit technical reports because existing data and information about the site indicate that waste has been discharged, is discharging, or is suspected of discharging at the site, which is owned by the Discharger. The technical reports required by this Order are necessary to assure compliance with section 13304 of the California Water Code, including adequate monitoring and cleanup of the site and impacted site vicinity to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.

CONCLUSIONS

22. The Regional Board is declining to name additional potentially responsible parties (PRPs) for the site in this Order at this time. Substantial evidence indicates that the Discharger, as the current property owner, permitted waste to be discharged into waters of the State and is therefore appropriately named as responsible party in this Order. The Regional Board may amend this Order or issue a separate order or orders in the future as a result of further investigation and as more information becomes available.
23. Issuance of this Order is being taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with CCR, title 14, sections 15061(b)(3), 15306, 15307, 15308, and 15321. This

¹ Under precedential Orders issued by the State Water Board, H.K. Malt, LLC is liable for the cleanup of wastes at the Site regardless of its involvement in the activities that initially caused the pollution. The discharge of chemicals did not cease when Preco, or other previous operators, vacated the premises. The State Water Board has interpreted the term "discharge" to include not only an active initial release, but also a passive migration of waste. The discharge continues as long as the wastes remain in the soil and groundwater at the Site. (See State Water Board Orders WQ 86-2 (Zoecon Corporation), WQ 89-1 (Schmidl), and WQ 89-8 (Spitzer).)

Order generally requires the Discharger to submit plans for approval prior to implementation of cleanup activities at the site. Mere submittal of plans is exempt from CEQA, as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Discharger's proposed remedial activities and possible associated environmental impacts. If the Regional Board determines that implementation of any plan required by this Order will have a significant effect on the environment, the Regional Board will conduct the necessary and appropriate environmental review prior to the Executive Officer's approval of the applicable plan.

24. It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This Order promotes that policy by requiring Discharger to clean up the groundwater to meet drinking water standards.
25. Pursuant to California Water Code section 13304, the Regional Board may seek reimbursement for all reasonable costs to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action.
26. Any person aggrieved by this action of the Regional Board may petition the State Water Board to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality, or will be provided upon request.

REQUIRED ACTIONS

THEREFORE, IT IS HEREBY ORDERED, pursuant to sections 13304 and 13267 of the California Water Code that the Discharger shall cleanup the waste and abate the effects of waste forthwith discharging at and from the site located at 6300 Slauson Avenue, Commerce, California. "Forthwith" means as soon as reasonably possible, but in any event no later than the compliance dates specified below, which may be revised by the Executive Officer without revising this Order. More specifically, the Discharger shall:

1. **Develop and Submit an Updated Site Conceptual Model:** Site conceptual models were submitted to the Regional Board in 2008 and 2012. An updated site conceptual model (SCM) shall be constructed based upon actual data collected in the past few years from the site and off-site vicinity. The updated SCM should include a written presentation with graphic illustrations (including cross-section and plan-view) of discharge scenario, geology and hydrogeology, waste fate and transport in soil vapor, soil matrix and groundwater, distribution of wastes, exposure pathways, sensitive receptors and other relevant information. The SCM shall be periodically updated and submitted upon request by the Regional Board as new information becomes available.

If interpretation of the SCM or its update suggests that assessment, characterization and delineation of waste constituents is incomplete, the Discharger shall prepare and submit a work plan(s) to conduct additional investigations. The work plan(s) shall propose to conduct assessment and characterization of VOCs, and other potential waste constituents in soil matrix and/or soil vapor (specified in Item

3.A.iii), and groundwater and to fully delineate the vertical and lateral extent of wastes in deeper soil (including soil matrix and soil vapor) and groundwater on-site and off-site.

2. Develop and Submit Site Assessment Work Plans and Reports to Assess, Characterize, and Delineate the Extent of Wastes in Groundwater and Soil:

- A. Assess and characterize and adequately delineate the vertical and lateral extent of wastes on-site and off-site in groundwater, including VOCs, dioxane, and any other waste constituents discharged from the site. Especially, the off-site extent of the VOCs-impacted groundwater must be adequately defined. If needed, adequately define the extent of VOCs in deep soil and soil vapor (specified in Item 3.A.iii).
- B. Install additional groundwater monitoring wells off-site to further delineate the lateral and vertical extent of the VOCs and dioxane plume originating from the site.
- C. Include a time schedule for implementation of the proposed scope of work within each Site Assessment Work Plan required pursuant to this Order.
- D. Upon Executive Officer approval of the Site Assessment Work Plans, you shall implement the Site Assessment Work Plans in accordance with the approved time schedule.
- E. Completion of the site assessment and plume delineation may require multiple work plans and reports.
- F. All groundwater, deep soil, and soil vapor assessment/investigation reports shall include summary tables and iso-concentration maps [including cross-section(s) with soil lithology and plan-view] at least for primary waste constituents when there are sufficient data points for the investigation area(s).

3. Conduct Cleanup or Abatement Action: Implement a cleanup and/or abatement program for the cleanup of wastes in groundwater, deep soil and soil vapor, and the abatement of the effects of the discharges of waste on beneficial uses of water. Specifically, the Discharger shall:

- A. Develop a comprehensive Remedial Action Plan (RAP) or phased-approach RAPs for cleanup or abatement of wastes in deep soil and soil vapor, and groundwater originating from the site, and submit it/them for Regional Board review and approval. The RAP(s) shall include, at a minimum:
 - i. Preliminary cleanup goals for groundwater in compliance with State Water Board Resolution 92-49 (*"Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304"*). Resolution 92-49, Section III.G. requires cleanup to background, unless that is not reasonable. Alternative cleanup levels to background must comply with CCR, Title 23, section 2550.4, and be consistent with maximum benefit to the people of the state, protect beneficial uses, and result in compliance with the Basin Plan. Alternative cleanup levels for groundwater shall not exceed numerical and narrative water quality objectives in the Basin Plan, including California's Maximum Contaminant Levels and Notification Levels for drinking water as established by the State Water Board, Drinking Water Program.

- ii. Discussion of the alternative remedial technology(ies) proposed for cleanup of groundwater.
 - iii. Decreasing groundwater elevations at the site created dry well conditions in some monitoring wells located within the VOCs groundwater plume, and exposed soil that was previously saturated with VOCs-impacted groundwater. The exposed unsaturated soil above the current water table is located between approximately 85 to 105 feet bgs, which was not remediated by the former SVE system. Remedial technology(ies) for cleanup of deep soil and soil vapor should be evaluated and proposed in the RAP(s).
 - iv. Description of the selection criteria for choosing the proposed method over other potential remedial options. Discuss the technical merit, suitability of the selected method under the given site conditions and waste constituents present, economic and temporal feasibility, and immediate and/or future beneficial results.
 - v. Estimation of cumulative mass of wastes to be removed with the selected method(s). Include all calculations and methodology used to obtain this estimate.
 - vi. A detailed monitoring and reporting program with interim milestones. The interim milestones shall be used in part, to trigger implementation of alternative, more aggressive remedial options.
 - vii. A proposed time schedule for completion of each proposed remedial or abatement action.
 - viii. Revisions to, or additional RAPs may be needed if the implemented remedial measure does not completely achieve all site cleanup goals.
- B. Upon Regional Board approval of the RAPs, the Discharger shall implement the RAPs in accordance with the approved time schedule.
- C. The Discharger shall submit quarterly remediation progress reports to this Regional Board as set forth in the Monitoring and Reporting Program (Attachment C). The quarterly remediation progress reports shall document all performance data associated with the operating systems and compare the performance data with interim remedial milestones.
- D. Upon completion of implementation of the RAPs or reaching the limits of approved remedial actions, submit Remedial Action Confirmation Work Plans/Reports or a Remediation Completion Report according to the schedule specified by the Executive Officer.
4. **Conduct Groundwater Monitoring:** Continue the plume-wide groundwater monitoring program as described in Attachment C. If new wells are installed, they shall be incorporated into the program.
5. **Time Schedule:** The Discharger shall submit all required work plans and reports and complete work within the time schedule listed in Attachment B and Attachment C attached hereto and incorporated herein by reference, which may be revised by the Executive Officer without amendment of this Order.
6. The Regional Board's authorized representative(s) shall be allowed:
- A. Entry upon premises where a regulated facility or activity is located, conducted, or where records are stored, under the conditions of this Order;

- B. Access to copy any records that are stored under the conditions of this Order;
 - C. Access to inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
 - D. 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.
7. **Contractor/Consultant Qualification:** As required by the California Business and Professions Code Sections 6735, 7835, and 7835.1, all reports shall be prepared by, or under the supervision of, a California registered professional engineer or geologist and signed by the registered professional, based on the type of report or document submitted. All technical reports submitted by the Discharger shall include a statement signed by the authorized representative certifying under penalty of law that the representative has examined and is familiar with the report and that to his knowledge, the report is true, complete, and accurate. All technical documents shall be signed by and stamped with the seal of the above-mentioned qualified professionals that reflects a license expiration date.
8. 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 or 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 these waste treatment and disposal facilities, and it leaves unaffected any further restrictions on those facilities, which may be contained in other statutes or required by other agencies.
9. The Discharger shall submit a 30-day advance notice to the Regional Board of any planned changes in name, ownership, or control of the site and shall provide a 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 a 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.
10. Abandonment of any groundwater well(s) installed for investigation and remediation of the groundwater plume originating from the site must be approved by the Executive Officer at least 30 days in advance. Any groundwater wells removed must be replaced within a reasonable time, at a location approved by the Executive Officer. With written justification, the Executive Officer may approve the abandonment of groundwater wells without replacement. When a well is removed, all work shall be completed in accordance with California Department of Water Resources Bulletin 74-90, "California Well Standards," Monitoring Well Standards Chapter, Part III, Sections 16-19.
11. In the event compliance cannot be achieved within the terms of this Order, the Discharger has the opportunity to request, in writing, an extension of the time specified. The extension request shall include an explanation why the specified date could not or will not be met and justification for the requested period of extension. Any extension request shall be submitted as soon as the situation is recognized and no later than the compliance date. Extension requests not approved in writing with reference to this Order are denied.

12. Reference herein to determinations and considerations to be made by the Regional Board regarding the terms of the Order shall be made by the Executive Officer. Decisions and directives made by the Executive Officer in regards to this Order shall be as if made by the Regional Board.
13. 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.
14. The Discharger shall continue any remediation or monitoring activities until such time as the Regional Board determines that sufficient cleanup has been accomplished and this Order has been satisfied.
15. The Discharger shall reimburse the Regional Board for reasonable costs associated with oversight of the investigation and cleanup of the wastes in soil and groundwater emanating from the site, and provide the Regional Board with the name or names and contact information for the person to be provided billing statements from the State Water Board.
16. The Discharger shall submit information and take actions addressing public participation requirements of California Water Code sections 13307.1, 13307.5, and 13307.6, when directed by the Executive Officer.
17. The Regional Board, under the authority given by California Water Code section 13267(b)(1), requires the Discharger to include a perjury statement in all reports submitted under this 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.”

18. The State Water Board adopted regulations requiring the electronic submittals of information over the internet using the State Water Board GeoTracker data management system. The Discharger is required to comply with the regulations by uploading all groundwater monitoring/remediation well data, laboratory analytical data, and all reports and correspondence prepared to date and in the future on to the GeoTracker data management system by the due dates specified in the Regional Board letter and this Order issued to the Discharger. However, the Discharger may be required to submit hard copies of selected documents, data, and maps to the Regional Board in addition to electronic submittal of information to GeoTracker. The text of the regulations can be found on the Internet at: http://www.waterboards.ca.gov/ust/electronic_submittal/.
19. 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 sections 13268, 13304, 13308, and/or 13350 of the California Water Code, and/or referral to the Attorney General of the State of California.

20. None of the obligations imposed by this Order on the Discharger are 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: Samuel Unger
Samuel Unger, P.E.
Executive Officer

Date: Aug. 17, 2017

ATTACHMENT A (MAPS)

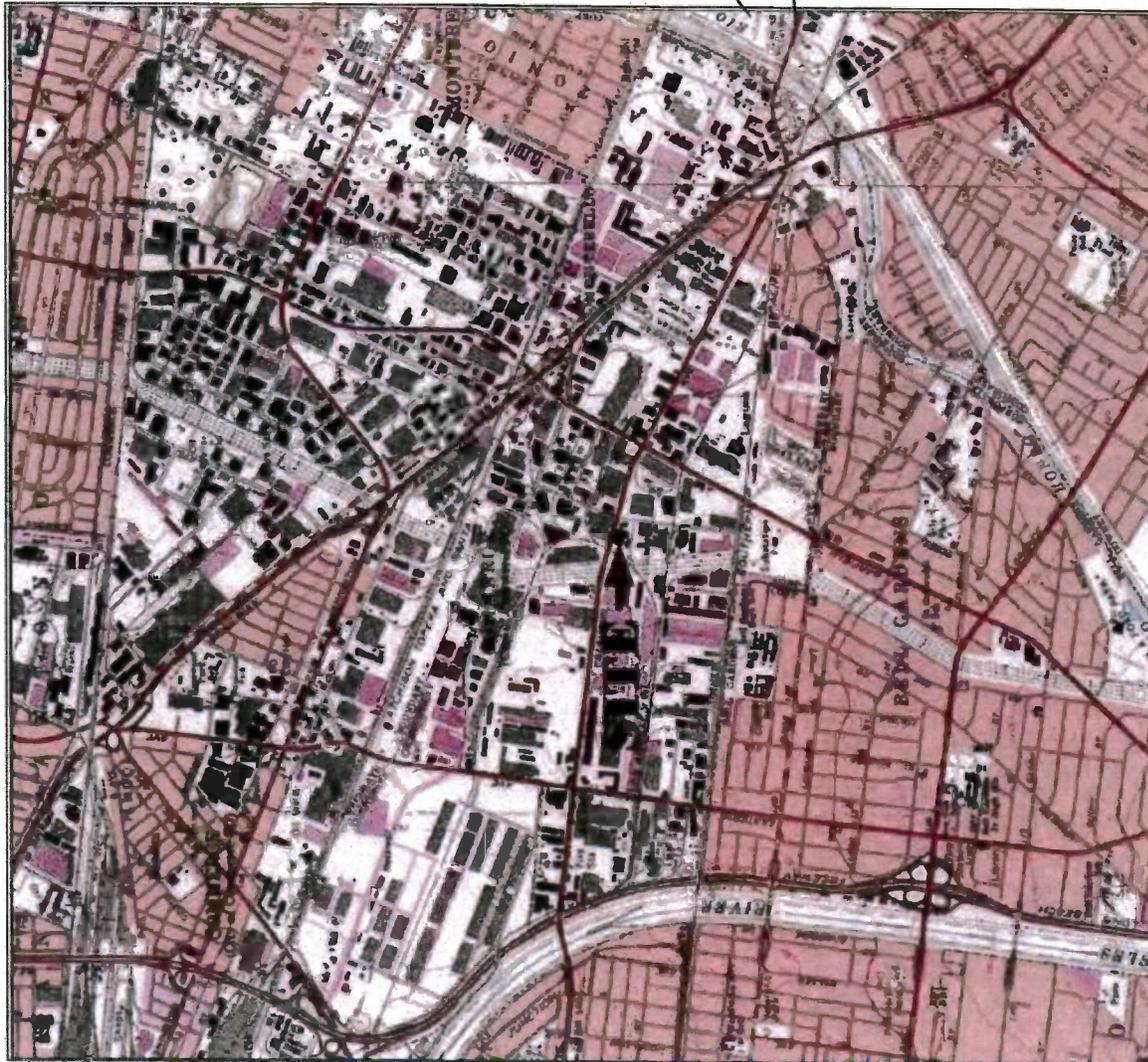
FIGURE 1: SITE LOCAL AREA MAP

Legend

USGS Topographic Map
Bell Gardens, CA
7.5 minute Quadrangle



Scale (miles)



Los Angeles River

Slauson Avenue

Rio Hondo Groundwater Recharge Spreading Grounds

Slauson Avenue

TN ★ MN
13 1/2'

Map created with TOPO!©2001 National Geographic
(www.nationalgeographic.com/topo)

FIGURE 1

REGIONAL SETTING
- NOVEMBER 2014
Former PRECO Site
6300 E. Slauson Ave
COMMERCE, CA

ROKEN ENGINEERING SERVICES

**Former Preco Site
SCP No. 0194**

Order No. R4-2017-0080

FIGURE 2: SITE VICINITY MAP

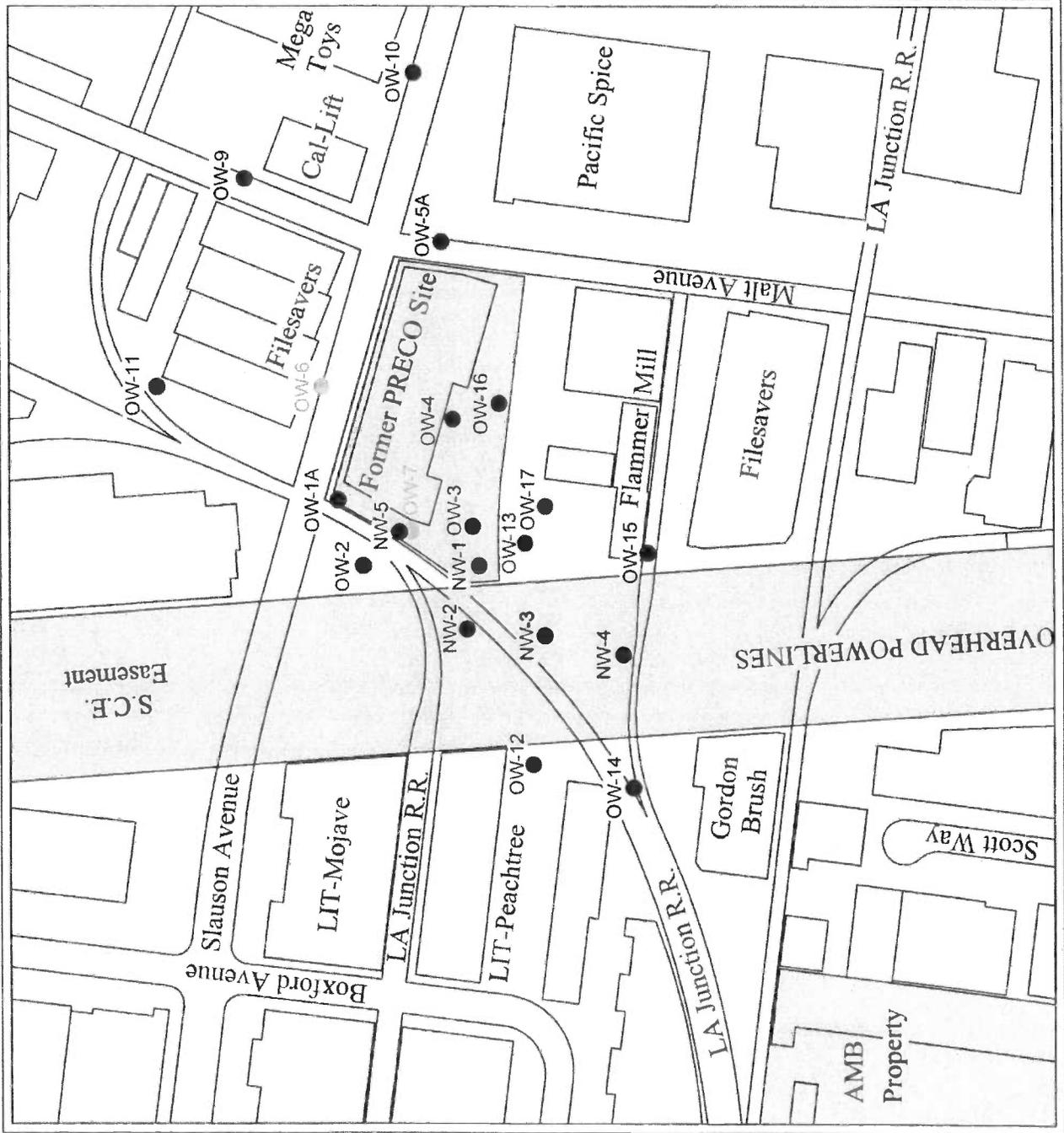
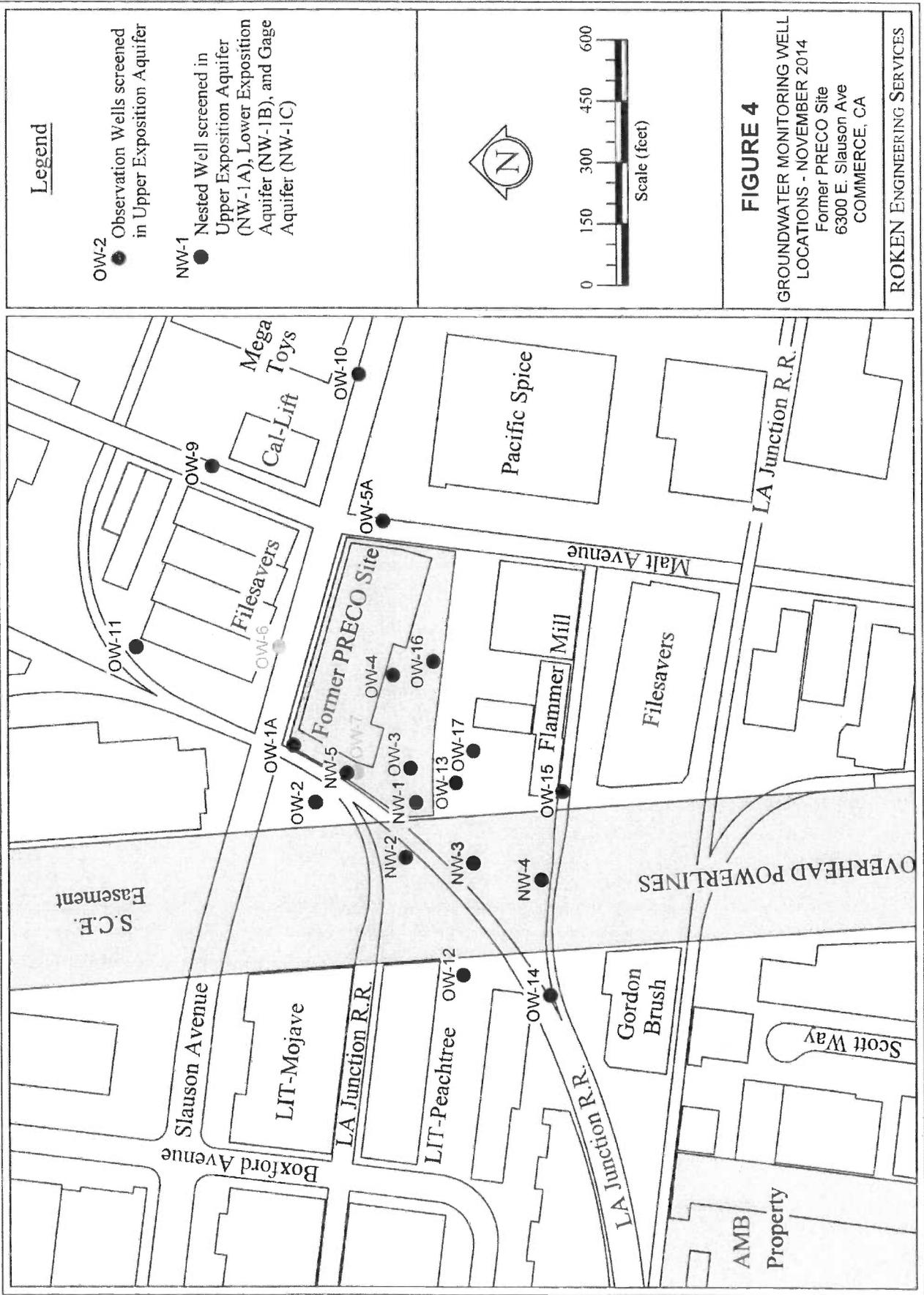


FIGURE 3: SITE MAP (Former Preco Operations)

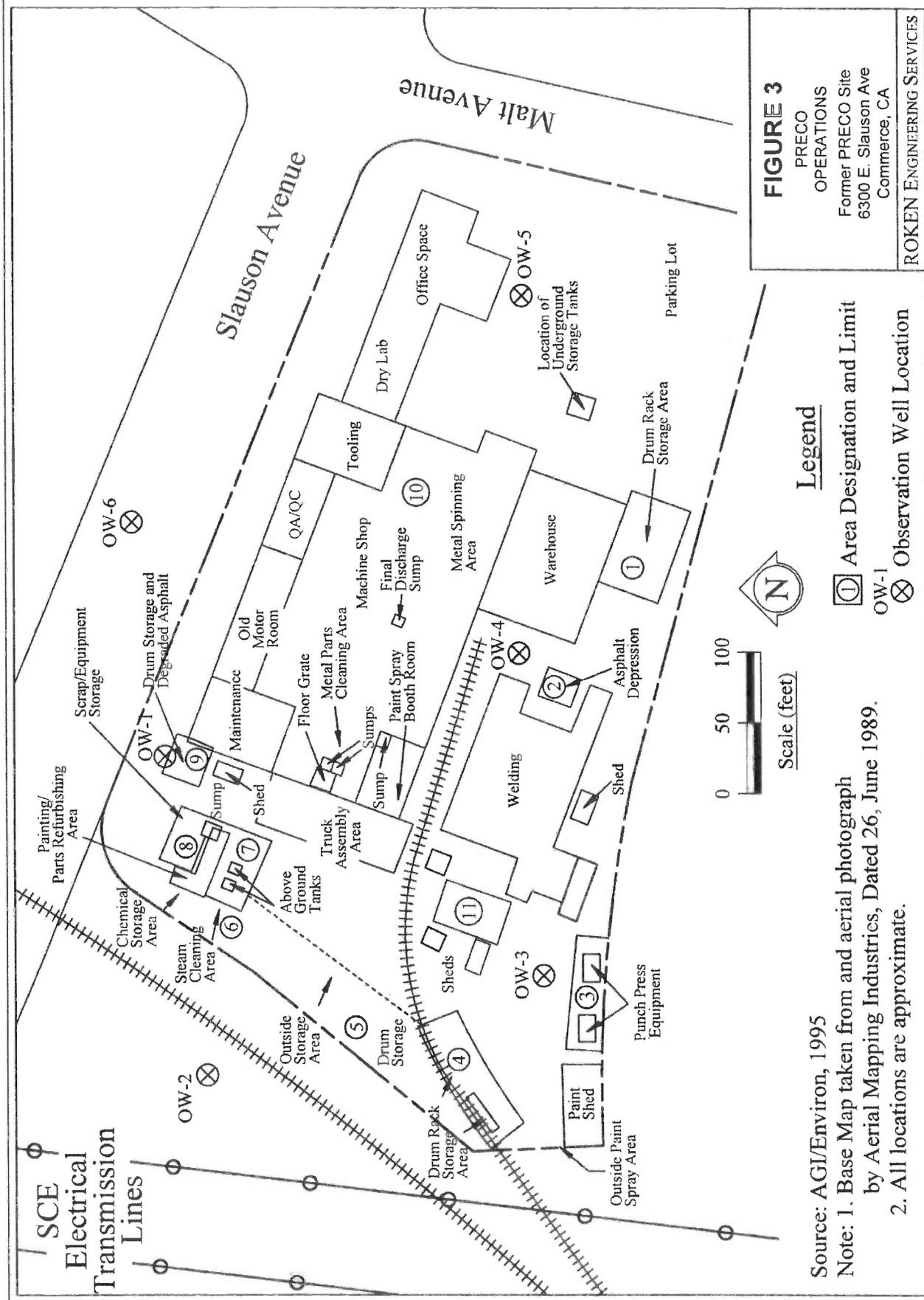


FIGURE 3
 PRECO
 OPERATIONS
 Former PRECO Site
 6300 E. Slauson Ave
 Commerce, CA
 ROKEN ENGINEERING SERVICES

Legend
 ① Area Designation and Limit
 OW-1 Observation Well Location

Source: AGI/Environ, 1995
 Note: 1. Base Map taken from aerial photograph
 by Aerial Mapping Industries, Dated 26, June 1989.
 2. All locations are approximate.

ATTACHMENT B: TIME SCHEDULE

DIRECTIVE		DUE DATE
1.	Develop an Updated Site Conceptual Model:	
1a	<p>Prepare and submit an updated version of a Site Conceptual Model, to provide updated information on the illustration of waste discharge scenario, geology and hydrogeology, waste constituent fate and transport in soil, soil vapor, and groundwater, distribution of waste constituents, exposure pathways, sensitive receptors, and other relevant information.</p> <p><i>[Note that the Regional Board may require revisions to the Site Conceptual Model as necessary to complete the Model.]</i></p>	<p>November 30, 2017</p> <p>Within 60 days of receiving directives from Regional Board</p>
2.	Complete Assessment and Delineation of Waste Discharge:	
2a	<p>Prepare and submit a Site Assessment Work Plan including a schedule for fully assessing and completing delineation of the horizontal and vertical extent of wastes, including VOCs and other waste constituents in deep soil and soil vapor, and groundwater on-site and off-site.</p> <p>Implement the Site Assessment Work Plan according to the approved schedule.</p> <p>Upon completion of implementation of the approved Site Assessment Work Plan, submit a Site Assessment Report.</p>	<p>According to the schedule approved or specified by the Executive Officer</p> <p>According to the schedule approved or specified by the Executive Officer</p> <p>According to the schedule approved or specified by the Executive Officer</p>
2b	Multiple Site Assessment Work Plans and Reports may be required to complete assessment of and fully delineate waste discharge.	According to the schedules approved or specified by the Executive Officer
3.	Conduct Remedial Action:	
3a	Submit a Remedial Action Plan (RAP) for the cleanup of wastes in groundwater, and deep soil and soil vapor. The RAP shall include a time schedule for implementation.	December 29, 2017
3b	Implement the RAP	According to the schedule approved or specified by the Executive Officer
3c	Upon completion of implementation of the Plan and Final RAP(s) or reaching the limits of approved remedial actions, submit Remedial Action Confirmation Work Plans/Reports, or a Remediation Completion Report.	According to the schedule approved or specified by the Executive Officer

DIRECTIVE		DUE DATE
3d	Multiple Plans and RAP(s), and Confirmation Work Plans/Reports and Remediation Completion Reports may be required to implement multiple remedial measures to achieve all site cleanup goals.	According to the schedule approved or specified by the Executive Officer
4.	Public Participation Requirements:	
4a	Submit public participation information for review and approval. The first set of the required information includes a baseline community assessment, interested persons contact list, and a draft fact sheet.	November 15, 2017
4b	Submit and update a Public Participation Plan, or other information as needed.	According to the schedule approved or specified by the Executive Officer

ATTACHMENT C

MONITORING AND REPORTING PROGRAM FOR CLEANUP AND ABATEMENT ORDER NO. R4-2017-0080

This Monitoring and Reporting Program is part of Cleanup and Abatement Order No. R4-2017-0080 (CAO). Failure to comply with this program constitutes noncompliance with the CAO and California Water Code, which can result in the imposition of civil monetary liability. All sampling and analyses shall be by United States Environmental Protection Agency approved methods. The test methods chosen for detection of the constituents of concern shall be subject to review and concurrence by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board).

Laboratory analytical reports to be included in technical reports shall contain a complete list of chemical constituents, which are tested for and reported on by the testing laboratory. In addition, the reports shall include both the method detection limit and the practical quantification limit for the testing methods. All samples shall be analyzed allowable holding time. All quality assurance/quality control (QA/QC) samples must be run on the same dates when samples were actually analyzed. Proper chain of custody procedures must be followed and a copy of the completed chain of custody form shall be submitted with the report. All analyses must be performed by a State Water Resources Control Board, Drinking Water Program accredited laboratory.

The Regional Board's *September 2008 Quality Assurance Project Plan*, updated February 2015, can be used as a reference and guidance for project activities involving sample collection, handling, analysis, and data reporting. The guidance is available on the Regional Board's web site at:

http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/DocAndInfo/RWQCB_QAPP_2015_FINAL_03-05-15.pdf

GROUNDWATER MONITORING

The Discharger shall collect groundwater samples from groundwater monitoring wells installed for the purpose of site investigation, cleanup and monitoring. Any monitoring wells installed in the future shall be added to the groundwater monitoring program and sampled semiannually. The groundwater surface elevation (in feet above mean sea level [MSL]) in all monitoring wells shall be measured and used to determine the gradient and direction of groundwater flow.

The following shall constitute the monitoring program for groundwater.

Constituent	EPA Method
Volatile Organic Compounds (full scan)	EPA 8260B
1,4-dioxane	EPA 8270C
Temperature	Field*
pH	Field*
Electrical Conductivity	Field*
Dissolved oxygen	Field*
Oxidation-Reduction Potential (ORP)	Field*
Turbidity	Field*

*Field - To be measured in the field.

REMEDATION SYSTEMS

Following the start of the approved remedial actions, reports on remediation systems shall contain the following information regarding the site remediation systems:

1. Maps showing location of all remediation wells and groundwater monitoring wells;
2. Status of each remediation system including amount of time operating and down time for maintenance and/or repair;
3. The report shall include tables summarizing the operating and performance parameters for the remediation systems; and
4. System inspection sheets shall document field activities conducted during each site visit and shall be included in the quarterly reports.

MONITORING FREQUENCIES

Specifications in this monitoring program are subject to periodic revisions. Monitoring requirements may be modified or revised by the Executive Officer based on review of monitoring data submitted pursuant to this Order. Monitoring frequencies may be adjusted or parameters and locations removed or added by the Executive Officer if site conditions indicate that the changes are necessary.

REPORTING REQUIREMENTS

1. The Discharger shall report all monitoring data and information as specified herein. Reports that do not comply with the required format will be REJECTED and the Dischargers shall be deemed to be in noncompliance with the Monitoring and Reporting Program.
2. Semiannual groundwater monitoring reports shall be submitted to the Regional Board according to the schedule below.

<u>Monitoring Period</u>	<u>Report Due</u>
April - June	July 15
October - December	January 15

Groundwater monitoring reports shall include a contour map showing groundwater elevations at the site and the groundwater flow direction. The semiannual groundwater monitoring reports shall include tables summarizing the historical depth-to-water, groundwater elevations, and historical analytical results for each monitoring well. The results of any monitoring done more frequently than required at the locations specified in the Monitoring and Reporting Program shall be reported to the Regional Board. Field monitoring well sampling sheets shall be completed for each monitoring well sampled and included in the report.

3. Quarterly remediation progress reports shall be submitted to the Regional Board according to the schedule below.

<u>Monitoring Period</u>	<u>Report Due</u>
January - March	April 30
April - June	July 31
July - September	October 31
October - December	January 31

Remediation progress reports shall include an estimate of the cumulative mass of contaminant removed from the subsurface, system operating time, the effectiveness of the remediation system, any field notes pertaining to the operation and maintenance of the system and, if applicable, the reasons for and duration of all interruptions in the operation of any remediation system and actions planned or taken to correct and prevent interruptions.

4. In reporting the monitoring data, the Discharger shall arrange the data in tabular form so that the date, the constituents, and the concentrations are readily discernible. The data shall be summarized to demonstrate compliance with the requirements. All data shall be submitted in electronic form in a form acceptable to the Regional Board.
5. All monitoring or remediation progress reports shall include waste constituent iso-concentration maps in plan and cross-section view with soil lithology data. Maps shall be provided for all groundwater zones.

RESPONSIVENESS SUMMARY – DRAFT CLEANUP AND ABATEMENT ORDER R4-2015-XXXX
Comment due date: December 7, 2015

No.	Author	Comment Date	Comment	Los Angeles Regional Water Quality Control Board (Regional Board) Response to Comment
1	Ring Bender LLC (Ring Bender)	11/30/15	<p>HK Malt is not a “discharger” with respect to the matters addressed in the draft CAO because the source of contamination was removed before HK Malt purchased the property, and there is no ongoing “discharge” within the meaning of the Water Code.</p>	<p>The Draft CAO identifies H.K. Malt, LLC (HK Malt) as a discharger based on current ownership of the Former Preco site (Site). Under precedential Orders issued by the State Water Resources Control Board (State Water Board), HK Malt, as the current owner, is liable for the cleanup of wastes at the Site regardless of its involvement in the activities that initially caused the pollution. The discharge of chemicals did not cease when the Former Preco vacated the premises. The State Water Board has interpreted the term “discharge” to include not only an active initial release, but also a passive migration of waste. The discharge continues as long as the wastes remain in the soil and groundwater at the Site. (See State Water Board Orders WQ 86-2 (Zoescon Corporation), WQ 89-1 (Schmidl), and WQ 89-8 (Spitzer).) Under California law, courts have historically held, and modern courts maintain, that possessors of land may be liable for a nuisance on that land even if the possessor did not create the nuisance. (See <i>Leslie Salt Co. v. San Francisco Bay Conservation and Dev. Comm’n</i> (1984) 153 Cal.App.3d 605, 619–620).</p> <p>Even though the Site was granted No Further Action for soil only, wastes (chlorinated solvents, mainly tetrachloroethene[PCE], trichloroethene [TCE]; and 1,4-dioxane [dioxane]) discharged at the Site continue to impact groundwater beneath the Site and vicinity. The wastes still present in the groundwater water continue to migrate and degrade or pollute groundwater in the site vicinity. As the named discharger, HK Malt has been conducting groundwater investigations under the California Water Code section 13267 order dated September 23, 2003.</p>
2	Ring Bender	11/30/15	<p>Even if HK Malt were deemed to be a “discharger” under Water Code section 13304, it would be a “secondary” liable party because Preco, Inc. is the “primary” discharger and</p>	<p>Prior to issuing the Draft CAO, Regional Board staff researched the status of the Former Preco and any possible successors, and was not able to find any related</p>

RESPONSIVENESS SUMMARY – DRAFT CLEANUP AND ABATEMENT ORDER R4-2015-XXXX
Comment due date: December 7, 2015

No.	Author	Comment Date	Comment	Los Angeles Regional Water Quality Control Board (Regional Board) Response to Comment
			<p>should be held responsible for any further investigation or remediation of the site.</p> <p>The draft CAO states that the Regional Board records indicate that Preco no longer exists. However, a simple Google search reveals several viable "Preco" entities, which may be the same company that operated at the Preco Site:</p> <p>Preco, Inc., located at 7663 San Fernando Rd., Burbank, CA 91505</p> <p>Preco Electronics located at 10335 W. Emerald St, Boise ID 83704</p> <p>Preco, Inc. headquartered at 9705 Commerce Parkway, Lenexa, Kansas 66219</p> <p>Preco Manufacturing Co. located at 14598 Central Ave, Chino, CA 91710</p>	<p>information. The Former Preco no longer exists, and there are no existing successors. From the 1940s to 1989, the Former Preco was involved in the manufacturing of metal parts for railroad cars, agricultural equipment, and truck bodies.</p> <p>The four referenced companies were not involved in the same activities as, or shown any relationships with the Former Preco at the Site, and information found on the internet is summarized below:</p> <ul style="list-style-type: none"> • Preco, Inc., located at 7663 San Fernando Road in Burbank, is a broadcast electronics distributor specializing in video monitoring and display systems. • Preco Electronics located at 10335 W. Emerald Street in Boise has been involved in electronic alarm systems for trucks. • Preco, Inc. located at 9705 Commerce Parkway in Lenexa, began operations in 1956 as Gramlin Tool and Die Company (Gramlin), which supplied dies and fixtures to the gasket industry. In 1976, Gramlin changed its name to Preco Industries, Inc., and was involved in hydraulic die cutting press manufacturing. In 1978, Preco Industries, Inc. was acquired by Preco Laser Systems, LLC, and was involved in laser system designs. • Preco Manufacturing Co, located at 14598 Central Avenue in Chino was founded in 1978 as a manufacturer of precision components for the aerospace industry. <p>Based on the above information, none of the four referenced companies will be included as a discharger in the CAO.</p>

RESPONSIVENESS SUMMARY – DRAFT CLEANUP AND ABATEMENT ORDER R4-2015-XXXX
Comment due date: December 7, 2015

No.	Author	Comment Date	Comment	Los Angeles Regional Water Quality Control Board (Regional Board) Response to Comment
3	Ring Bender	11/30/15	<p>There is a commingled plume in the vicinity of the Preco site, so the responsibility of any investigation or remediation of that plume should be borne not only by onsite responsible parties, but also by the other nearby dischargers to that commingle plume.</p> <p>There are clearly identified upgradient sources of VOCs, and the most recent groundwater monitoring shows PCE and TCE concentrations are higher in the offsite wells (both upgradient and downgradient) than onsite wells.</p>	<p>Historical operations at the Site caused discharges of volatile organic compounds (VOCs) into the soil and groundwater beneath the Site. Initial investigations at the Site conducted in 1991 indicated TCE and PCE concentrations in soil up to 2,700 micrograms per kilogram ($\mu\text{g}/\text{kg}$) and 570 $\mu\text{g}/\text{kg}$, respectively, thus indicating the presence of on-site sources. In addition to the site soil impacts, wastes discharged at the Site also impacted the groundwater beneath the Site and immediate vicinity. Initial groundwater investigations conducted in 1991 reported TCE and PCE in groundwater samples collected from onsite wells at concentrations of 1,700 micrograms per liter ($\mu\text{g}/\text{L}$) and 6.0 $\mu\text{g}/\text{L}$, respectively. These data indicates that there is a groundwater contaminant plume beneath the Site and immediate vicinity, caused by the on-site waste discharges. Therefore, HK Malt is responsible to investigate and clean up the wastes, i.e., the VOCs, in groundwater originating from the Site.</p> <p>There are no sufficient soil and groundwater data indicating the presence of a significant upgradient source of VOCs. The Newcrow site is located approximately 800 feet downgradient from the Site, with its own sources of discharges of waste. Investigation, monitoring, and remediation are being conducted at the Newcrow site under oversight of the California Department of Toxic Substances Control (DTSC).</p>
4	Ring Bender	11/30/15	<p>The Preco Site poses no significant risk to human health or groundwater resources and, as such, the work contemplated by the draft CAO is not reasonable or necessary.</p>	<p>Concentrations of PCE and TCE in groundwater beneath the Site and immediate vicinity exceed the water quality objectives set forth in the 1994, <i>Water Quality Control Plan, Los Angeles Region</i> (Basin Plan) by 1 to 2 orders of magnitude, respectively. To comply with the Regional Board's policies, the groundwater must be restored to background levels, or to alternative levels that are protective of the existing designated beneficial uses of groundwater resource. One of the designated beneficial</p>

RESPONSIVENESS SUMMARY – DRAFT CLEANUP AND ABATEMENT ORDER R4-2015-XXXX
Comment due date: December 7, 2015

No.	Author	Comment Date	Comment	Los Angeles Regional Water Quality Control Board (Regional Board) Response to Comment
5	Ring Bender	11/30/15	<p>As documented in the Case Closure Report, the groundwater plume in the vicinity of the Preco Site is very stable – since 1991 (i.e., for almost 25 years), TCE concentrations have remained at approximately 200 µg/L, and PCE concentrations have remained at approximately 20 µg/L. Moreover, natural attenuation clearly is occurring, as concentrations of breakdown products continue to increase (since 1991) at and about the site (i.e., detection of 1,1-DCA, cis-1,2-DCE, and 1,1-DCE in onsite wells MW1, OW3, OW4, OW16 and NW5). And, of course, the groundwater plume has been extensively investigated and reported via 29 monitoring wells and 17 CPT borings at and about the Preco Site (i.e., the lateral and vertical extent of the groundwater plume has been fully delineated). Perhaps most important, a fate and transport model study concluded that it is unlikely that the groundwater plume would impact the closest downgradient well located approximately 2,000 feet from the site. Thus, the groundwater plume presents little or no risk to groundwater resources (and this is even more so the case, given that, as discussed above, there is no evidence of any meaningful ongoing discharge of waste at the site, via passive migration from soil to groundwater or from contaminated groundwater to uncontaminated groundwater, or otherwise).</p>	<p>uses for the groundwater beneath the site and vicinity is municipal and domestic supply.</p>
6	Ring Bender	11/30/15	<p>The remaining contaminant concentrations in groundwater also would not cause significant human health or environmental risk via any other major pathways (such as direct contact, drinking water ingestion, or plume migration). Moreover, based on soil concentrations and soil characteristics in the previously saturated zone, there is insufficient mass to warrant any attempted remediation in any of the now-dry wells.</p>	<p>TCE and PCE concentrations in groundwater at the Former Preco site and immediate vicinity have been detected at concentrations up to 2,400 micrograms per liter (µg/L) and 240 µg/L, respectively. TCE concentration in on-site wells OW-3, OW-4, and NW-5 have not been stable, but rather have been increasing.</p> <p>To date, the processes (and lines of evidence) that are contributing to natural attenuation of the VOCs in groundwater beneath the Site and vicinity have not been clearly understood and well documented.</p>
			<p>The Basin Plan has established water quality objectives and designated beneficial uses of all regional surface and ground waters. The existing beneficial uses of groundwater in the Central Basin, where the Site is located, are municipal and domestic supply (MUN), agricultural supply (AGR), industrial process supply (PROC), and industrial service supply (IND). To meet water quality objectives described in the Basin Plan, groundwater shall not contain chemical constituents in amounts that adversely affect any</p>	

RESPONSIVENESS SUMMARY – DRAFT CLEANUP AND ABATEMENT ORDER R4-2015-XXXX
Comment due date: December 7, 2015

No.	Author	Comment Date	Comment	Los Angeles Regional Water Quality Control Board (Regional Board) Response to Comment
7	Ring Bender	11/30/15	<p>It also is worth noting that this case meets the criteria for closure under the Land Use Covenant (LUC) policy: site remediation has been completed to the maximum extent practical; residential cleanup levels cannot be met; residual contamination is not a threat to human health and environment; and existing contamination is acceptable for commercial land use.</p>	<p>designated beneficial use. Results of the most recent groundwater monitoring events indicate that waste concentrations are exceeding their respective California Maximum Contaminant Level (MCL) of 5 µg/L for PCE and TCE, and the Notification Level (NL) of 1 µg/L for dioxane. These contaminant levels are impacting the existing beneficial uses of groundwater in the Site area.</p> <p>There has not been any active groundwater remediation conducted at the Site, and cleanup goals have not been approved; therefore, the Site does not meet closure criteria.</p> <p>State Water Resources Control Board Resolution No. 92-49, <i>Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304</i>, requires wastes (VOCs and dioxane in groundwater) to be cleanup to background concentrations, or if that is not reasonable, to the most stringent levels that are economically and technologically feasible and at least meet the water quality objectives. It is up to the responsible party to demonstrate the appropriate methodology for attaining the water quality objectives which may include active cleanup or abatement activities.</p>
8	Ring Bender	11/30/15	<p>In sum, further investigation or remediation of environmental conditions at the Preco Site is not warranted, but to the extent that any such work is required, Preco Inc. (and not HK Malt) should be required to perform such work, and other dischargers in the vicinity also should not be included as a responsible party in any such investigation or remediation activities because it is not a "discharger" within the meaning of the relevant portions of the Water Code.</p>	<p>Further groundwater investigation to adequately delineate the extent of the groundwater plume originating from the Site is required (See response to Comment No. 5).</p> <p>Groundwater cleanup or abatement actions appear to be necessary to restore the water quality for the designated beneficial uses (See responses to Comments Nos. 3, 4, and 5).</p>

EXHIBIT B



Orange County
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November 30, 2015

Via Email and Overnight Courier

Paula Rasmussen
Assistant Executive Officer
Los Angeles Regional Water Quality Control Board
320 W 4th St #200
Los Angeles, CA 90013

Re: Draft CAO No. R4-2015-XXXX (Former Preco Site, 6300 Slauson Ave., Commerce, CA)

Dear Ms. Rasmussen:

On behalf of H.K. Malt, LLC ("HK Malt"), this letter responds to yours of November 6, 2015, concerning the above-referenced site (the "Preco Site") and the draft Cleanup and Abatement Order (the "Draft CAO") related thereto that accompanied your letter. More specifically, as provided in your November 6 letter, please find herein HK Malt's written comments and objections to the draft CAO. We look forward to discussing these matters further with you at the meeting scheduled for December 3, 2015, at the office of the Los Angeles Regional Water Quality Control Board ("Regional Board").

As set forth in more detail herein below, HK Malt's comments and objections generally are as follows: (1) HK Malt is not a "discharger" with respect to the matters addressed in the draft CAO because the source of contamination was removed before HK Malt purchased the property, and there is no ongoing "discharge" of waste within the meaning of the Water Code; (2) even if HK Malt were deemed to be a "discharger" under Water Code section 13304, it would merely be a "secondarily" liable party because Preco, Inc. is the "primary" discharger and should be held responsible for any further investigation or remediation of the site; (3) there is a commingled

plume in the vicinity of the Preco site, so the responsibility for any investigation or remediation of that plume should be borne not only by onsite responsible parties, but also by the other nearby dischargers to that commingled plume; and (4) the Preco Site poses no significant risk to human health or groundwater resources and, as such, the work contemplated by the draft CAO is not reasonable or necessary. Each of these comments is addressed in detail below.

1. HK Malt is not a “discharger” with respect to the matters addressed in the draft CAO because the source of contamination was removed before HK Malt purchased the property, and there is no ongoing “discharge” within the meaning of the Water Code.

As the Regional Board obviously is aware, many millions of dollars have been spent already investigating and remediating the pollution conditions at this site. Most important, as described in the draft CAO, the site underwent extensive source removal efforts many years ago, including the removal of USTs in 1989; the removal and offsite disposal of approximately 1,821 tons of TPH and PAH impacted soils in 1996 and 1997; and soil vapor extraction, which removed approximately 5,400 pounds of VOCs from August 1998 to January 2000; and, as a result of this source removal, the Regional Board issued a soil closure for the site in April 2001. Moreover, as discussed in detail below, as a result of this remediation and source removal, there is no longer any ongoing “discharge” of waste at or from the site for purposes of Water Code section 13304.

As the Regional Board points out in the draft CAO, the State Water Resources Control Board (“State Board”) long has taken the position that the term “discharge” in Water Code section 13304 (and related sections) includes not only an active or “initial” release of pollutants but also a passive migration of waste that continues thereafter, such that the “discharge” is deemed to continue as long as the wastes remain in the soil and groundwater at the site (citing State Water Board Orders WQ 86-2 (*Zoecon*), WQ 89-1 (*Schmidl*), and WQ 89-9 (*Spitzer*)). However, even the various State Water Board Orders that have named “innocent” current landowners as dischargers under this expansive interpretation of the Water Code (i.e., the “passive migration = discharge” policy or the “passive migration policy”) generally have not gone so far as to impose “discharger” liability on an innocent current landowner who only acquired the site after it had undergone remediation and source removal (i.e., such that there is no meaningful ongoing discharge of waste at the site).

As discussed in detail below, unlike the situations underlying the various “passive migration policy” State Board orders, there is no “passive” migration occurring at the Preco Site and no meaningful ongoing or “probable” or “threatened” discharge of waste at or from that site within the meanings of Water Code section 13304(a) and (c)(1). More specifically, as discussed below, the three key State Board orders creating the precedent for the “passive migration policy” – i.e., State Water Board Orders WQ 86-2 (*Zoecon*), WQ 89-1 (*Schmidl*), and WQ 89-9 (*Spitzer*), as cited in the CAO – all dealt with situations where there was a significant ongoing discharge of waste occurring at the sites in question.

WQ 86-2 (Zoecon): The State Board’s “passive migration policy” traces back to the *Zoecon* matter, cited above (and in the draft CAO). In *Zoecon*, in response to the petitioner’s argument that “it will take 1,000 years for the [onsite] contaminated ground water to discharge to the San Francisco Bay . . .,” the State Board explained:

[S]uch movement of contamination, albeit slow, is still a discharge to waters of the state that must be regulated. In addition . . ., currently uncontaminated ground water in the vicinity of the site within the shallow and deep aquifers could be adversely affected if the spread of contamination remains uncontrolled. Therefore we must conclude that there is an actual movement of waste from soils to ground water and from contaminated to uncontaminated ground water at the site which is sufficient to constitute a “discharge” by the petitioner for purposes of [the] Water Code.

WQ 86-2 (*Zoecon*), p. 4. There is no such evidence at the Preco Site. Specifically, the “spread of contamination” at the Preco Site does not “remain uncontrolled.” Quite to the contrary, the source has been removed from both soil and soil gas, so there is no ongoing “actual movement of waste from soils to groundwater” at the site, and there is no evidence of movement of waste “from contaminated to uncontaminated ground water at the site.” (Notably, the Attorney General opinions cited in *Zoecon* – i.e., the legal bases for the original “passive migration policy” adopted by the State Board – also all are based on clear evidence of ongoing discharges of waste from the sites in question). Thus, the facts supporting the finding of “passive migration = discharge” in *Zoecon* (and the underlying Attorney General opinions cited therein) simply are not present here. There is no evidence of any meaningful ongoing passive migration from soil to ground water or from contaminated ground water to uncontaminated groundwater at the Preco Site. In sum, in *Zoecon*, the site had not yet undergone remediation, and the source remained in place, such that there was clear evidence of actual or threatened migration of contaminants from soil to groundwater or from contaminated groundwater to uncontaminated groundwater. The facts are precisely the opposite at the Preco Site.

WQ 89-1 (Schmidl): Similarly, in *Schmidl*, substantial concentrations of pesticides were found in a commercial use well on the Schmidl site, and the well was found to be a potential “conduit for pesticide movement to deeper groundwater, thus creating or threatening a condition of nuisance and pollution” (particularly since residences within a quarter mile of the site were served by groundwater), and no remediation or source removal had taken place yet at the site. See WQ-1 (*Schmidl*) at pp. 2-3. Thus, on the basis of those facts, the “innocent” landowner was found to be a “discharger” for purposes of the Water Code. Again, such facts are not present at the Preco Site – there is no evidence of any substantial ongoing passive migration from soil to ground water or from contaminated ground water to uncontaminated groundwater here. As with the *Zoecon* case, the critical facts present at the Schmidl site supporting the finding of “passive migration = discharge” are precisely the opposite of those at the Preco Site.

WQ 89-9 (*Spitzer*): This also is the case with the site at issue in *Spitzer*. There, the site was extensively contaminated with PCE from dry cleaning operations, and a massive migrating PCE plume (including actual or threatened migration from the shallow to deep aquifer) was present in soil and groundwater at the site at the time the “innocent” parties were deemed “dischargers” under State Water Board Order WQ 89-9. In *Spitzer*, the State Board also explained that the Attorney General opinions on which it relied for its passive migration theory “concluded that discharge continues as long as pollutants are being emitted at the site.” WQ 89-9 (*Spitzer*) at pg. 14 (citing 26 Ops. Atty. Gen. 88, 90 (1955); 27 Ops. Atty. Gen. 182 (1956)). Thus, like *Zoecon* and *Schmidl*, the imposition of “discharger” liability on the innocent landowner was premised on clear evidence of ongoing discharges of waste from soil to groundwater and/or from shallow to deep groundwater. Again, to the contrary, at the Preco Site, there is no evidence that “pollutants are being emitted” at or from the site – the source has been removed from soil and soil vapor, and there is no evidence of any meaningful ongoing passive migration from soil to ground water or from contaminated ground water to uncontaminated groundwater.

In sum, there are limits even to the State Board’s expansive “passive migration” interpretation of the term “discharger.” As set forth in the State Board orders discussed above, the imposition of discharger liability on an “innocent” landowner must be based on substantial evidence of ongoing migration of waste from soil to groundwater or contaminated to uncontaminated groundwater at or in the vicinity of the site. This, of course, is entirely consistent with (and, in fact, mandated by) the statutory language of Water Code section 13304, which imposes discharger liability on one who causes or permits a “discharge” which causes or threatens to cause water pollution. Here, because the current landowner did not take title to the property until after it had undergone extensive remediation and source removal, such that there is no evidence of any ongoing migration of waste from soil to groundwater or from contaminated to uncontaminated ground water at or in the vicinity of the site, there is no current or “probable” or “threatened” discharge within the meanings of Water Code section 13304(a) and (c)(1) so as to support a determination that the current owner is a “discharger” under that statute. As such, the draft CAO would be an arbitrary and capricious exercise of the Regional Board’s discretion under Water Code section 13304.

2. Even if HK Malt were deemed to be a “discharger” under Water Code section 13304, it would be a “secondarily” liable party because Preco, Inc. is the “primary” discharger and should be held responsible for any further investigation or remediation of the site.

The draft CAO, at page 2, paragraph 4(A)(II), states that “Regional Board records indicate that Preco no longer exists.” However, a simple Google search reveals several viable “Preco” entities which may be the same company that operated at the Preco Site (or a legal successor thereto), including but not limited to the following:

“Preco, Inc.” located at 7663 San Fernando Rd, Burbank, CA. 91505;

“**Preco Electronics**” located at 10335 W Emerald St, Boise ID 83704 (notably, the company’s website states that it “designs, engineers and manufactures patented technology, providing rugged, fully integratable , and customizable solutions that actively engage heavy duty vehicle operators” and that it “has been developing safety technologies since 1947” and was incorporated as “Preco, Inc” in 1953);

“**Preco, Inc.**” headquartered at 9705 Commerce Parkway, Lenexa, Kansas, 66219, which, according to its website, is “a leading manufacturer of die cutting, screen printing and laser systems for materials processing” and “is the result of the strategic merger between Preco Industries, Inc., a premier provider of advanced die cutting and screen printing equipment, and Preco Laser Systems, LLC, a proven technology leader in industrial laser systems and contract manufacturing services (CMS)”; and, finally,

“**Preco Manufacturing Co.**” (apparently a manufacturer of industrial and commercial machinery and equipment first established in 1957 and located at 14598 Central Ave, Chino, CA, 91710).

It is unclear whether the Regional Board investigated any of these entities to determine whether they, indeed, are the same company that operated at the Preco Site or, perhaps, a legal successor of that company. Such an investigation certainly appears warranted, given that it is the well-established policy of the State Board to hold the party that caused the pollution “primarily” responsible for any investigation or cleanup, and an “innocent” current owner of the property only “secondarily” liable. *See, e.g.,* State Water Board Order 86-2 (*Zocon*), State Water Board Order 86-18 (*Vallco Park*), and State Water Board Order 89-9 (*Spitzer*).

Moreover, if the Regional Board refuses to investigate the above-mentioned Preco entities to identify a “primarily” responsible party, and instead issues the CAO as drafted, it will have the effect of forcing HK Malt to bring suit (e.g., CERCLA contribution claims) against these various Preco entities, in addition to pursuing its rights to challenge such arbitrary and capricious conduct by the Regional Board.

(And, of course, again as discussed in detail earlier, the various State Board Orders that have named “innocent” current landowners as dischargers (albeit “secondarily liable” dischargers) have not dealt with the situation here where, as discussed above, the current landowner did not take title to the property until after it had undergone extensive remediation, such that there is no ongoing or “probable” or “threatened” discharge within the meaning of Water Code section 13304.)

3. There is a commingled plume in the vicinity of the Preco site, so the responsibility of any investigation or remediation of that plume should be borne not only by onsite responsible parties, but also by the other nearby dischargers to that commingled plume.

As you know, the Case Closure Report submitted for the Preco Site, on behalf of HK Malt, by CDR Group, on or about May 18, 2015 (the "Case Closure Report") provides extensive evidence and discussion of the commingled groundwater plume in the vicinity of the Preco Site. Among other things, as that report demonstrates, there are clearly identified upgradient sources of VOCs, and the most recent groundwater monitoring shows that PCE and TCE concentrations are higher in the offsite wells (both upgradient and downgradient) than onsite wells. As has been extensively documented, in the Case Closure Report and many other reports, the Preco Site was (and is) surrounded by a great many chemical manufacturing and industrial operations (i.e., facilities that handle, store and generate VOCs and other hazardous chemicals), including even a former Class II landfill located upgradient of the site.

Nonetheless, the draft CAO purports to require HK Malt to investigate and possibly remediate the commingled groundwater plume without naming the other documented dischargers in the area. This clearly would be an arbitrary and capricious exercise of authority by the Regional Board. Thus, again, if the Regional Board issues the CAO as drafted, without naming the neighboring dischargers as responsible parties, it may force HK Malt to bring suit (e.g., CERCLA contribution claims) against these various neighboring dischargers, in addition to pursuing its rights to challenge such arbitrary and capricious conduct by the Regional Board.

4. The Preco Site poses no significant risk to human health or groundwater resources and, as such, the work contemplated by the draft CAO is not reasonable or necessary.

As documented in the Case Closure Report, the groundwater plume in the vicinity of the Preco Site is very stable – since 1991 (i.e., for almost 25 years), TCE concentrations have remained at approximately 200 ug/l, and PCE concentrations have remained at approximately 20 ug/l. Moreover, natural attenuation clearly is occurring, as concentrations of breakdown products continue to increase (since 1991) at and about the site (i.e., detection of 1,1-DCA, cis 1,2-DCE and 1,1-DCE in onsite wells NW1, OW3, OW4, OW16 and NW5). And, of course, the groundwater plume has been extensively investigated and reported via 29 monitoring wells and 17 CPT borings at and about the Preco Site (i.e., the lateral and vertical extent of the groundwater plume has been fully defined). Perhaps most important, a fate and transport model study concluded that it is unlikely that the groundwater plume would impact the closest down-gradient well located approximately 2,000 feet from the site. Thus, the groundwater plume presents little or no risk to groundwater resources (and this is even more so the case, given that, as discussed above, there is no evidence of any meaningful ongoing discharge of waste at the site, via passive migration from soil to ground water or from contaminated ground water to uncontaminated groundwater, or otherwise).

Paula Rasmussen
November 30, 2015
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Similarly, the conditions at the Preco Site present no substantial health risk to anyone at the Preco Site. Specifically, vapor intrusion is not a concern because shallow contaminated soil was removed by excavation and the soil gas plume was removed by soil vapor extraction, as discussed earlier. In addition, of course, groundwater is found at approximately 100 feet bgs and there is documented clean soil within the first 5 feet of the vadose zone. Clearly, current conditions do not present a vapor intrusion risk.

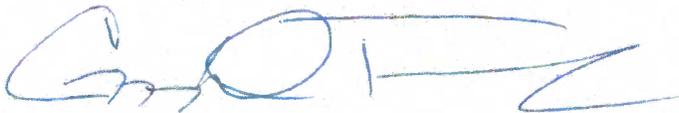
The remaining contaminant concentrations in groundwater also would not cause significant human health or environmental risk via any other major pathways (such as direct contact, drinking water ingestion, or plume migration). Moreover, based on soil concentrations and soil characteristics in the previously saturated zone, there is insufficient mass to warrant any attempted remediation in any of the now-dry wells. (It also is worth noting that this case meets the criteria for closure under the Land Use Covenant (LUC) policy: site remediation has been completed to the maximum extent practical; residential cleanup levels cannot be met; residual contamination is not a threat to human health and environment; and existing contamination is acceptable for commercial land use.)

* * *

In sum, further investigation or remediation of environmental conditions at the Preco Site is not warranted, but to the extent that any such work is required, Preco, Inc. (and not HK Malt) should be required to perform such work, and other dischargers in the vicinity also should participate in any investigation or remediation of the commingled plume. HK Malt should not be included as a responsible party in any such investigation or remediation activities because it is not a "discharger" within the meaning of the relevant portions of the Water Code.

Again, we look forward to discussing these matters with you further at the December 3 meeting at the Regional Board office.

Sincerely,



Gregory D. Trimarche

cc: Luis Changkuon, LARWQCB
John F. Lehr, Jr., Xebec Commerce LLC
Allan Park, HK Malt
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