



May 14, 2012

VIA FACSIMILE & E-MAIL
510/622-2460

Mr. Brian Thompson
Ms. Lila Tang
Chief, Wastewater Control and Enforcement Division
RWQCB – SF BAY REGION
1515 Clay Street, Suite 1400
Oakland, California 94612

RE: Comments to the Tentative Resolution to Refer to Attorney General to Enforce Violations of Cleanup and Abatement Order R2-2011-0034 and Administrative Civil Liability Order R2-2010- 0003

Dear Mr. Thompson and Ms. Tang:

This letter is submitted on behalf of Heyung Sun and Yeo Nam Sun pursuant to the Regional Board's April 9, 2012 letter inviting comments concerning Tentative Resolution No. R2-2012-0026, whereby the Regional Board may refer the Sun's non-compliance with various Regional Board orders and directives to the Attorney General for prosecution. Tentative Resolution No. R2-2012-0026 is scheduled to be considered by the Regional Board at its June 13, 2012 meeting.

Beginning in the Fourth Quarter 2011 and continuing to the present, the Suns have been working on securing insurance coverage to respond to the soil and groundwater contamination alleged attributable to Art Cleaners. The Suns have tendered their defense and indemnity of the Regional Board liability to State Farm (tender letter attached), which appears to have issued a general liability policy to them when they commenced operations as Art Cleaners in 1985. The Suns do not have an actual copy of the policy, but rather secondary evidence in the form of invoices and cancelled checks. State Farm is attempting to locate evidence of this policy, and we anticipate receiving some form definitive response regarding the existence of this policy within the next 30-45 days.

The insurance policy that we believe State Farm issued to the Suns for the 1985-1986 policy period is the only potentially applicable insurance that they could have purchased

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in that the so-called "Absolute Pollution Exclusion" was introduced into most liability policies in 1986, and the California courts have for the most part upheld the exclusion in most circumstances.

Because of the limited amount of potentially applicable insurance available to them, the Suns have been working with David Rosenthal (owner and operator from 1965 – 1975) on locating his historic insurance. We have found secondary evidence of policies issued to Mr. Rosenthal by Fireman's Fund, Industrial Indemnity, and Zurich, and have tendered the Regional Board liability to each of these insurers. Copies of the tender letters are attached. Fireman's Fund is attempting to locate the alleged policy, and we are waiting to hear from the other two insurers.

The insurance-related efforts that are underway will require at least an additional 60 -90 days to mature to the point where we can determine whether or not we will have coverage to respond to the Regional Board's site response requirements. Moreover, there is a strong possibility that the insurance policies, if they are found, will contain the same language that was at issue in the California Supreme Court's decision in Foster-Gardner Corporation v. National Union Fire Ins. Co., where the Court found that an actual "suit" commenced in a court of law is required to trigger liability insurance, and that an agency's administrative directives do not trigger the insurance—at issue in Foster-Gardner was a DTSC ISE-RAO.

Based on the foregoing, the Suns respectfully submit that progress is being made toward finding a means to fund the necessary investigation and remediation at Art Cleaners, albeit we cannot predict at this time when or if insurer-funded fieldwork can commence. And, the Foster-Gardner decision adds a further level of complication in that an actual lawsuit may be required to trigger any insurance we find. We believe the current situation justifies postponing the Attorney General referral for 90 – 120 days to see if insurance materializes; an Attorney General referral may still be necessary depending on insurance policy language, but at least the Regional Board and the Suns will know if insurance is even an option, or whether public funding options must be considered for this site.

Thank you for your consideration of the foregoing.

Very truly yours,


DAVID R. ISOLA

DRI/mdr

ISOLA

LAW GROUP, LLP

December 5, 2011

Ms. Susan Q. Hood
Vice President - Claims
STATE FARM INSURANCE
One State Farm Plaza
Bloomington, IL 61710

Manager – New Environmental Claims
STATE FARM INSURANCE
Rancho Cucamonga Operations Center
P.O. Box 22018
Bakersfield, CA

Re: Art Cleaners
400 East Santa Clara Street, San Jose, California

Policy: State Farm Business Owners Package
No. : 97-59-5489-4

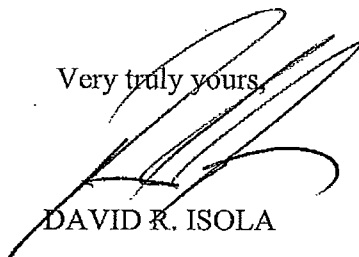
Dear State Farm Claims Representatives:

This office represents the Sun family as prior owners and operators of Art Cleaners. On behalf of the Suns and Art Cleaners, we hereby tender to State Farm the defense and indemnity of the enclosed Cleanup and Abatement Order, (No. R2-2011-0034), issued by the California Regional Water Quality Control Board – San Francisco Bay Region, requiring the investigation and remediation of soil and groundwater contamination allegedly caused by the operations of Art Cleaners.

Art Cleaners was insured under the above-referenced State Farm Business Owners Package from the early 1980s through 1990. Our search for further documentation of the policy is continuing. In the interim, we hereby request that State Farm provide us with copies of all policies issued to Art Cleaners, as well as all related documentation.

Thank you and we look forward to working with you.

Very truly yours,



DAVID R. ISOLA

DRI:
Enclosure

ISOLA

LAW GROUP, LLP

April 26, 2012

Via Certified Mail – Return Receipt Requested

Manager- New Environmental Claims
MARYLAND CASUALTY COMPANY c/o
ZURICH INSURANCE GROUP
1400 American Lane
Schaumburg, Illinois 60196

Manager- New Claims
Environmental Claims Department
FIREMAN'S FUND INSURANCE COMPANY
777 San Marin Drive
Novato, California 94998-3400

Manager- New Environmental Claims
INDUSTRIAL INDEMNITY COMPANY c/o
U.S. FIRE INSURANCE COMPANY
305 Madison Avenue
Morristown, New Jersey 07962

Re: Art Cleaners
400 East Santa Clara Street, San Jose, California

Dear Claims Representatives:

This office represents Art Cleaners in regard to claims made by the California Regional Water Quality Control Board-San Francisco Bay Region ("Regional Board") seeking to compel Art Cleaners to investigate and remediate soil and groundwater contamination allegedly caused by dry cleaning operations. We hereby tender Art Cleaners' defense and indemnity of Regional Board Cleanup Order No. R2-2011-0062 (copy enclosed) under the policies listed below, and any other liability policies issued to Art Cleaners by your respective companies and affiliates:

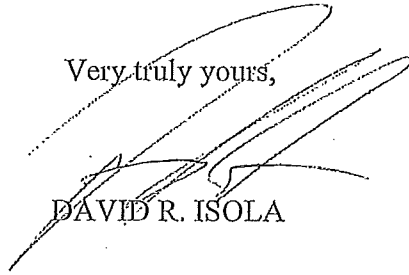
- Fireman's Fund Package Policy No.: MXP2325243
- Industrial Indemnity Policy No.: FC 642-2142 (11-25-68 – 11-25-71)
- Maryland Casualty Policy Nos.: 83-126955 and 93-515747

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Our search for further documentation of the policies is continuing. In the interim, we request that you provide us with copies of all policies issued to Art Cleaners, including related documentation.

Thank you and we look forward to working with you.

Very truly yours,

A handwritten signature in black ink, appearing to read "DAVID R. ISOLA". The signature is stylized with a large, sweeping initial "D" and "I".

DAVID R. ISOLA

DRI:mdr
Enclosure