

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

EXECUTIVE OFFICER SUMMARY REPORT
MEETING DATE: January 13, 2016

ITEM: 7

SUBJECT: **Mr. Frank Hamedi, Former Velcon II Property, 1761 Junction Avenue, San Jose, Santa Clara County** – Imposition of Administrative Civil Liability

CHRONOLOGY: September 2001 - Adoption of Final Site Cleanup Requirements (SCR)
February 2014 - Executive Officer designation of Frank Hamedi as primary responsible party for completion of Tasks C.2 and C.3 of the Final SCR
September 2015 - Prosecution Staff issues Administrative Civil Liability Complaint to Frank Hamedi

DISCUSSION: If adopted by the Board, the Tentative Order (Appendix A) would impose an Administrative Civil Liability (ACL) of \$65,600 against Frank Hamedi for failing to comply with Task C.2 of the Board's Final SCR Order No. 01-108 (Final SCR). Task C.2 requires the submittal of a technical report of proposed institutional constraints, including a deed restriction. The liability amount is proposed by the Board's Prosecution Team based on the alleged violation and penalty methodology described in its September 2, 2015, ACL Complaint (Complaint; included in Appendix A). The administrative procedure pertaining to this Complaint and hearing is included in Appendix B.

Mr. Hamedi and his wife, Rosemary Hamedi-Fard, purchased the property at 1761 Junction Avenue, San Jose (the Former Velcon II Property), from Velcon Filters, Inc., in 1993 and are the current property owners. The Prosecution Team alleges that Mr. Hamedi failed to submit a deed restriction as required by Task C.2 of the Final SCR until after formal enforcement was initiated. The Prosecution Team alleges that deed restrictions are an important component of the Board's Site Cleanup Program because they require notification to future property owners that there is residual contamination in soil and/or groundwater beneath the property. At the time the Prosecution Team issued the Complaint, the technical report that included the deed restriction was 513 days past due, and the Prosecution Team had incurred \$2,800 in staff costs to investigate and prepare the Complaint. The initial evidence submission of the Prosecution Team is attached (Prosecution Team Transmittal and Submission of Evidence and Policy Statements, Appendices C and D).

Mr. Hamedi responded to the Complaint by contending: 1) the requirement for a deed restriction should not apply to him since he is not a discharger at this property; 2) if questions he submitted to the Prosecution Team in July 2015 and

raised again in a confidential settlement meeting in October 2015 had been answered, he would have submitted the deed restriction as required; and 3) text he added to a draft deed restriction in April 2015 was consistent with Task C.2 of the Final SCRs and should have been accepted by Board staff as complying with Task C.2. Mr. Hamedi also contends that he is unable to pay the liability proposed in the Complaint. Mr. Hamedi's attorney submitted his arguments and evidence submission on December 8, 2015. (Hamedi Submission of Evidence and Policy Statements, Appendix E; Hamedi Submission of Exhibits, Appendix F)

The Prosecution Team rebuts Mr. Hamedi's arguments by noting that: 1) in February 2014, Mr. Hamedi was designated as the primary responsible party for completion of Task C.2; 2) the questions Mr. Hamedi requested answers to in the letters and meeting were deemed irrelevant to completion of Task C.2 by the Prosecution Team in September 2015; and 3) the text Mr. Hamedi added to the draft deed restriction was rejected because it would have limited the Board's authority and discretion in determining responsible parties under the Water Code. The Prosecution Team's full rebuttal is in a Rebuttal Submission dated December 24, 2015 (Appendix G). Mr. Hamedi did not submit a rebuttal.

The Prosecution Team's exhibits for the initial evidence submittal (Appendix D) and the rebuttal (Appendix G) are included in Appendix H.

At the hearing, the Board will have the opportunity to affirm, reject, or modify the civil liability proposed in the Complaint, or refer the matter to the Attorney General for judicial enforcement.

**RECOMMEN-
DATION:**

I will have a recommendation at the close of the hearing.

**GEOTRACKER
No.:**

T0608594026

APPENDICES:

- A. Tentative Order
- B. Revised Hearing Procedure For Administrative Civil Liability Complaint R2-2015-1012
- C. Prosecution Team – Transmittal of Evidence and Policy Statements with Witness List
- D. Prosecution Team – Submission of Evidence and Policy Statements
- E. Responsible Party Frank Hamedi – Submission of Evidence and Policy Statements
- F. Responsible Party Frank Hamedi – Submission of Exhibits
- G. Prosecution Team – Submission of Rebuttal Information
- H. Prosecution Team – Submission of Exhibits for Initial Evidence Submittal and Rebuttal

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

ORDER No. R2-2016-XXXX

ORDER SETTING ADMINISTRATIVE LIABILITY for:

**MR. FRANK HAMEDI
1761 JUNCTION AVENUE
SAN JOSE, SANTA CLARA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), finds, with respect to Mr. Frank Hamed, also known as Frank Hamed-Fard (Mr. Hamed), that:

1. Mr. Hamed and his wife, Rosemary Hamed-Fard, are the current owners of the property at 1761 Junction Avenue, San Jose (Former Velcon II Property). Mr. and Mrs. Hamed purchased the property from Velcon Filters, Inc., (Velcon) in 1993.
2. Mr. Hamed and Velcon are subject to the requirements of Regional Water Board Final Site Cleanup Requirements Order No. 01-108 (Site Cleanup Order) that regulates cleanup at the Former Velcon II Property.
3. The Site Cleanup Order named Mr. Hamed a secondarily responsible party because he is the current owner of the Former Velcon II Property. The Site Cleanup Order holds Mr. Hamed responsible with Site Cleanup Order compliance only if the Regional Water Board finds that Velcon has failed to comply with Site Cleanup Order requirements.
4. The Site Cleanup Order required Velcon to complete Tasks C.2 and C.3 of the Order in cooperation with Mr. Hamed. Task C.2 requires the submittal of a technical report of proposed institutional constraints, including a deed restriction that is acceptable to the Executive Officer of the Regional Water Board, and Task C.3 requires recording of that deed restriction.
5. In a letter dated March 17, 2011, the Executive Officer notified Mr. Hamed of the Regional Water Board's intent to name Mr. Hamed the primarily responsible party for compliance with Tasks C.2 and C.3 of the Site Cleanup Order. Velcon failed to comply with these tasks due to Mr. Hamed's reluctance to accept a deed restriction.
6. In a letter dated February 5, 2014, the Executive Officer formally notified Mr. Hamed that he is primarily responsible for complying with Tasks C.2 and C.3 of the Site Cleanup Order. The Executive Officer set deadlines for compliance pursuant to his authority under Site Cleanup Order Section D.11. For Task C.2, Mr. Hamed was required to submit an acceptable draft deed restriction to the Regional Water Board by April 8, 2014.
7. On August 14, 2014, Regional Water Board staff sent Mr. Hamed a Notice of Violation

(NOV) for failing to submit a technical report with an acceptable deed restriction. The NOV noted that the report was 128 days late and that Mr. Hamedi was subject to fines of up to \$5,000 per day pursuant to Water Code section 13350.

8. On September 2, 2015, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R2-2015-1012 (Complaint) alleging that Mr. Hamedi had failed to comply with Task C.2 of the Site Cleanup Order. The Complaint proposed an administrative civil liability of \$65,600. The Complaint was noticed for 30 days.
9. The Regional Water Board held a duly noticed public hearing on January 13, 2016, to consider relevant evidence and testimony regarding the Complaint and whether to issue an administrative civil liability order assessing the liability proposed in the Complaint, or a higher or lower amount, reject the proposed liability, or refer the matter to the Attorney General for judicial enforcement.
10. A person who violates a cleanup and abatement order issued by the Regional Water Board shall be civilly liable under Water Code section 13350.
11. The Regional Water Board may impose administrative civil liability for non-discharge violations on a daily basis. The maximum and minimum civil liability for each day of violation is \$5,000 and \$100 respectively under Water Code section 13350(e)(1).
12. In determining the amount of civil liability, the Regional Water Board has taken into consideration the following factors to be considered in Water Code section 13327: the nature, circumstance, extent, and gravity of the violation or violations; whether the discharge is susceptible to cleanup or abatement; the degree of toxicity of the discharge; and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. The Regional Water Board has taken into consideration the discussion of these factors in Exhibit A of the Complaint (attached).
13. A \$65,600 administrative civil liability is appropriate based on the considerations in Finding 12.
14. This is an action to enforce the laws and regulations administered by the Regional Water Board and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with Cal. Code Regs., tit. 14, section 15321 (a)(2).

Frank Hamed
Administrative Civil Liability Order No. R2-2016-XXXX

IT IS HEREBY ORDERED pursuant to California Water Code sections 13350 and 13323 that Mr. Hamed is civilly liable for the violation of Regional Water Board Final Site Cleanup Requirements Order No. 01-108 as set forth above and shall pay a civil liability in the amount of \$65,600. The liability shall be paid by check payable to the State Water Resources Control Board within 30 days following the adoption of this Order.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the Regional Water Board on January 13, 2016.

Bruce H. Wolfe
Executive Officer

Attachment: Administrative Civil Liability Complaint No. R2-2015-1012

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**COMPLAINT R2-2015-1012
ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF**

**MR. FRANK HAMEDI
VIOLATION OF SITE CLEANUP REQUIREMENTS
FORMER VELCON II PROPERTY, 1761 JUNCTION AVENUE
SAN JOSE, SANTA CLARA COUNTY
WDID 2 438510N01**

This Administrative Civil Liability Complaint (Complaint) alleges that Mr. Frank Hamed, also known as Frank Hamed-Fard (Mr. Hamed or Responsible Party), failed to comply with Task C.2 of San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Final Site Cleanup Requirements Order 01-108 (Order). Task C.2 requires the submittal of a technical report of proposed institutional constraints, including a deed restriction. The Regional Water Board is authorized to impose administrative civil liabilities pursuant to Water Code section 13350 for the alleged violation. This Complaint is issued under the authority of Water Code section 13323. The proposed liability is \$65,600.

The Assistant Executive Officer of the Regional Water Board hereby gives notice that:

1. Mr. Hamed allegedly violated provisions of law for which the Regional Water Board may impose administrative civil liability. This Complaint presents the factual basis for the alleged violation, legal and statutory authorities (including citations to applicable Water Code sections), and case-specific factors used to propose a \$65,600 liability for the alleged violation.
2. Unless waived, the Regional Water Board will hold a hearing on this matter on November 18, 2015, in the Elihu M. Harris Building, First Floor Auditorium, 1515 Clay Street, Oakland, 94612. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for judicial civil liability. The Responsible Party or his representative(s) will have an opportunity to be heard, and to contest the allegations in this complaint and the imposition of civil liability by the Regional Water Board. The Responsible Party will be mailed an agenda approximately ten days before the hearing date. A meeting agenda will also be available at http://www.waterboards.ca.gov/sanfranciscobay/board_info/agenda.shtml. The Responsible Party must submit all comments and written evidence concerning this Complaint to the Regional Water Board not later than 5 p.m. on October 19, 2015, so that such comments may be considered.
3. The Responsible Party can waive its right to a hearing to contest the allegations contained in this Complaint by signing and submitting the enclosed waiver and paying the civil liability in full or by taking other actions as described in the waiver form. If this matter proceeds to hearing, the Regional Water Board's Prosecution Team reserves the right to seek an increase in the administrative civil liability to recover the costs of enforcement incurred subsequent to the issuance of this Complaint through the hearing.

FACTUAL BASIS FOR THE ALLEGED VIOLATION

4. Mr. Hamedi and his wife, Rosemary Hamedi-Fard (Mr. and Mrs. Hamedi), purchased the property at 1761 Junction Avenue, San Jose, Santa Clara County (Former Velcon II Property), from Velcon Filters, Inc. (Velcon) in 1993. Mr. and Mrs. Hamedi are the current owners of Former Velcon II Property.
5. Velcon manufactured and tested aircraft filters at the Former Velcon II Property and at two adjacent properties beginning in the 1960s. Velcon was responsible for at least two spills of jet fuel during its operations in the mid-1970s that resulted in a discharge of petroleum constituents to surface water, soil, and groundwater.
6. Pursuant to Water Code section 13304, the Order names two dischargers (responsible parties), Velcon and Mr. Hamedi, to cleanup and abate the effects of the discharge of wastes or hazardous materials at the Former Velcon II Property.
7. The Order named Velcon the primarily responsible party for the cleanup of the Former Velcon II Property because Velcon owned and/or occupied the property at the time pollution occurred, and through its actions caused the soil and groundwater pollution at the property.
8. The Order named Mr. Hamedi a secondarily responsible party because he is the current owner of the Former Velcon II Property.¹ The Order holds Mr. Hamedi responsible with Order compliance only if the Regional Water Board finds that Velcon has failed to comply with Order requirements.
9. Finding 11 of the Order states that an excessive risk is present at the Former Velcon II Property pending full remediation of the property. Institutional constraints (i.e., deed restrictions) are appropriate to limit on-site exposure to acceptable levels. An acceptable deed restriction will notify future landowners of sub-surface contamination, prohibit the use of groundwater beneath the property as a source of drinking water, and prohibit residential development.
10. Task C.2 of the Order proposes institutional constraints on the Former Velcon II Property. Task C.2 requires the responsible parties to submit a technical report acceptable to the Executive Officer that documents the procedures the responsible parties will use to prevent or minimize human exposure to soil and groundwater contamination prior to meeting cleanup standards. These procedures must include the following institutional constraint:

[A] deed restriction prohibiting the use of shallow groundwater as a source of drinking water. The deed restriction shall also specify any engineering controls implemented to meet cleanup standards in [Order] section B.3 for the protection of groundwater. The deed restriction shall also include a ban on use of the site for residential development.

¹ The State Water Board has historically recognized that current landowners should be named as dischargers in cleanup orders, regardless of whether the landowner owned at the time of the initial release. (See State Water Board Order WQ 84-6 (*Logsdon*); State Water Board Order 86-2 (*Zoecon*); State Water Board Order 86-18 (*Vallco Park*).)

11. Task C.3 of the Order requires a technical report documenting the recordation of the final deed restriction within 60 days after the Executive Officer approves the draft deed restriction submitted pursuant to Task C.2.

12. Order section D.11 states:

Within 60 days after being notified by the Executive Officer that other named dischargers have failed to comply with this order; Frank Hamedi, as property owner, shall then be responsible for complying with this order for the 1761 Junction Avenue Property . . . Task deadlines [in the Order] will be automatically adjusted to add 60 days.

13. In a letter dated March 17, 2011, the Executive Officer notified Mr. Hamedi of the Regional Water Board's intent to name Mr. Hamedi the primarily responsible party for compliance with Tasks C.2 and C.3. Velcon failed to comply with these tasks due to Mr. Hamedi's reluctance to accept a deed restriction.² Only the current owner can prepare and record the required deed restriction.

14. In a letter dated February 5, 2014, the Executive Officer formally notified Mr. Hamedi that he is primarily responsible for complying with Task C.2 and C.3 of the Order for the Former Velcon II Property. The Executive Officer set deadlines for compliance pursuant to his authority under the Order, section D.11. For Task C.2, Mr. Hamedi was required to submit an acceptable draft deed restriction to the Regional Water Board by April 8, 2014.

15. Mr. Hamedi has not submitted an acceptable deed restriction as required by Task C.2. Recent formal communication since the February 2014 notice include the following:

- a. On August 14, 2014, Regional Water Board staff sent Mr. Hamedi a Notice of Violation (NOV) for failing to submit a technical report with an acceptable deed restriction. The NOV noted that the report was 128 days late and that Mr. Hamedi was subject to fines of up to \$5,000 per day pursuant to Water Code section 13350. On August 28, 2014, Mr. Hamedi submitted a draft deed restriction.
- b. On October 3, 2014, the Executive Officer sent a letter conditionally approving the draft deed restriction submitted on August 28, 2014, and required Mr. Hamedi to record the fully-signed deed restriction by December 2, 2014. The draft deed restriction approval was subject to the following conditions:
 - i. Add a sentence to briefly describe remediation performed at the site;
 - ii. Delete the word "shallow" from shallow groundwater;

²The Executive Officer's letter dated March 17, 2011, documents Mr. Hamedi's disinclination to the deed restriction requirements. Mr. Hamedi commented on the draft Order in writing and at the Regional Water Board hearing, requesting cleanup standards for unrestricted use and removal of the deed restriction tasks. The Board considered these comments, but decided against making the changes requested. Mr. Hamedi did not petition the Board's adoption of the Order.

- iii. Refer to an attached legal description of the property; and
 - iv. Reformat the signature area to include signature blocks for all the necessary signatures.
- c. On March 27, 2015, the Executive Officer rescinded the October 3, 2014, letter and rejected the August 28, 2014, draft deed restriction because Mr. Hamedi neither amended nor recorded a deed restriction per the October 3, 2014, conditions. The letter notified Mr. Hamedi that the matter would be referred for formal enforcement if an acceptable deed restriction was not submitted by April 7, 2015. The March 2015 letter also included as an attachment a draft deed restriction that needed only a legal description of the property (Draft Deed Restriction).
- d. On April 15, 2015, Mr. Hamedi communicated to Regional Water Board staff by phone that he would agree to the Draft Deed Restriction language and sign it if two changes were made: (1) removal of the word surveillance from an inspection condition, and (2) removal of a requirement to copy TRC Companies, Inc. regarding notices about the deed restriction. Regional Water Board staff agreed to the changes on the same day by email.
- e. On June 16, 2015, Regional Water Board staff notified Mr. Hamedi that his case was referred for formal enforcement because he failed to submit an acceptable signed deed restriction despite the agreed upon changes to the Draft Deed Restriction language.
- f. On June 22, 2015, Mr. Hamedi submitted a signed, notarized deed restriction consistent with the Draft Deed Restriction language and April 2015 agreed upon changes, but added the following language:
- If the Regional Board, pursuant to its Order No. 01-108 and any amendments, modifications, or rescission of Order No. 01-108, replaced by a new Order of the Regional Board concerning the Burdened Property, has the effect of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omission of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc., and its successors and assigns as the primary discharger responsible for all further investigation and remediation of the site.*
- g. On June 25, 2015, Regional Water Board staff informed Mr. Hamedi that he had failed to provide an acceptable deed restriction and was still in violation of Task C.2 of the Order. Regional Water Board staff explained that the language he added (see 15.f above) was unacceptable because it limited the Regional Water Board's legal authority and enforcement discretion.
16. Mr. Hamedi has not submitted a technical report with an acceptable deed restriction as of the date of this Complaint.

17. Soil and groundwater at the property continue to exceed cleanup standards required by the Order. The soil cleanup standard is based on industrial use of the site and the groundwater cleanup standard is based on the maximum contaminant level for drinking water.

ALLEGED VIOLATION

18. Mr. Hamedi violated Task C.2 of Order by not submitting an acceptable technical report by April 8, 2014, as required by the Executive Officer's February 5, 2014, letter. As of the date of this Complaint, the technical report is 513 days late.

LEGAL AUTHORITY

19. Water Code section 13323 authorizes the Regional Water Board to issue a complaint to any person on whom administrative civil liability may be imposed under its statutory authority. This Complaint alleges the Responsible Party's act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability, and the proposed civil liability.
20. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to "actions" and "special proceedings" are contained in the Code of Civil Procedure and apply to judicial proceedings, not administrative proceedings. (See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Proc. 5th (2008) Actions, § 430, p. 546.)
21. There is no possibility that the activity in question may have a significant effect on the environment. (Cal. Code Regs., tit. 14 §§ 15378 and 15061, subd. (b) (3).) This enforcement action is also exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, Title 14, section 15321.
22. Notwithstanding the issuance of this Complaint, the Regional Water Board and/or the State Water Board shall retain the authority to assess additional penalties against Mr. Hamedi for other violations of the Order for which a liability has not yet been assessed or for violations that may subsequently occur.

STATUTORY LIABILITY

23. A person who violates a cleanup and abatement order issued by the Regional Water Board shall be civilly liable under Water Code section 13350.
24. The Regional Water Board may impose administrative civil liability for non-discharge violations on a daily basis. The maximum and minimum civil liability for each day of violation is \$5,000 and \$100 respectively. (See Wat. Code, § 13350, subd. (e)(1).)

PROPOSED CIVIL LIABILITY

25. **Minimum Liability:** The minimum administrative civil liability for the violation is \$51,300. This is based on Water Code section 13350(e)(1)(B) which requires a minimum of \$100 penalty per day for non-discharge violations unless the Regional Water Board makes express findings to justify a lesser amount.
26. **Maximum Liability:** The maximum administrative civil liability is \$2,565,000. This is based on the maximum allowed by Water Code section 13350(e)(1), \$5,000 for each day in which the violation occurs, for a total of 513 days.
27. **Proposed Liability:** The Assistant Executive Officer of the Regional Water Board proposes that administrative civil liability be imposed in the amount of \$65,600. The Exhibit A attachment (incorporated herein by this reference) presents a discussion of the factors considered and the values assessed to calculate the proposed liability in accordance with the Enforcement Policy and Water Code section 13327. The Proposed Liability is within the maximum liability allowed by statute.



Dyan C. Whyte
Assistant Executive Officer

September 2, 2015

Date

Attachments:

Exhibit A: Factors Considered in Determining Administrative Civil Liability

EXHIBIT A

**Alleged Violation and Factors in Determining
Administrative Civil Liability**

**MR. FRANK HAMEDÍ
VIOLATION OF SITE CLEANUP REQUIREMENTS
FORMER VELCON II PROPERTY, 1761 JUNCTION AVENUE
SAN JOSE, SANTA CLARA COUNTY
WDID 2 438510N01**

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by Water Code sections 13327 and 13385(e).

Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the violation is presented below.

ALLEGED VIOLATION

Violation of Final Site Cleanup Requirements Order 01-108

Mr. Frank Hamedí, also known as Frank Hamedí-Fard (Mr. Hamedí), allegedly violated Task C.2 of Regional Water Board Order 01-108 Final Site Cleanup Requirements (Order). Task C.2 requires the submittal of a technical report of proposed institutional constraints, including a deed restriction. Mr. Hamedí and his wife, Rosemary Hamedí-Fard, are the current owners of 1761 Junction Avenue, San Jose, Santa Clara County (Former Velcon II Property). On February 5, 2014, the Executive Officer of the Regional Water Board designated Mr. Hamedí as the primary responsible party for completing Task C.2, and established a compliance date of April 8, 2014, for the deed restriction on the Former Velcon II Property. An acceptable deed restriction has not been recorded and is 513 days late. Mr. Hamedí is subject to administrative liabilities pursuant to Water Code section 13350(a).

**ADMINISTRATIVE CIVIL LIABILITY
CALCULATION STEPS**

**STEPS 1 AND 2 – POTENTIAL FOR HARM AND ASSESSMENTS FOR DISCHARGE
VIOLATIONS**

These steps are not applicable because the violation is a non-discharge violation.

STEP 3 – PER DAY ASSESSMENT FOR NON-DISCHARGE VIOLATIONS

The Enforcement Policy specifies that for non-discharge violations, an initial liability is determined from the maximum per day liability multiplied by the number of days in violation and a per day factor using a matrix that ranges from 0.1 to 1 corresponding to an appropriate Potential for Harm and Deviation from Requirement. The Potential for Harm reflects the characteristics and/or the circumstances of the violation and its threat to beneficial uses.

Deviation from Requirement reflects the extent to which a violation deviates from the specific requirement.

Potential for Harm

The Potential for Harm is minor. A “minor” Potential for Harm applies to violations that “present a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.” The failure to submit an acceptable deed restriction presents a minor potential for harm to the health of users of the property. Although shallow groundwater at the property contains contaminants that exceed residential use standards, the property is not used for residential purposes at this time and the groundwater is not currently used as drinking water.

Deviation from Requirement

The Deviation from Requirement is major. A “major” Deviation from Requirement is one where “the requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” Task C.2 of the Order requires Mr. Hamedí to submit a draft deed restriction that is acceptable to the Executive Officer of the Regional Water Board. Mr. Hamedí has failed to submit a draft deed restriction that is acceptable to the Executive Officer and thereby has rendered this requirement ineffective.

The resulting per day factor is 0.3 based on the above Potential for Harm and Deviation from Requirement from the matrix in Table 3 of the Enforcement Policy.

Initial Liability Amount

For violations lasting more than 30 days, the Enforcement Policy allows adjustment of the per-day basis.

A multiday adjustment is appropriate because this violation did not result in an economic benefit on a daily basis. For this adjustment, the Enforcement Policy provides that an initial liability shall be assessed for the first day of the violation, plus each five-day period until the 30th day, plus each 30 days of violation thereafter. Thus, the total 513 days of violation is adjusted to 23 days for assessment purposes.

$$\text{Initial Liability: } \$5,000/\text{day} \times (0.30) \times (23 \text{ days}) = \$34,500$$

STEP 4 – ADJUSTMENTS TO INITIAL LIABILITY

The Enforcement Policy specifies that three additional factors should be considered for modification of the amount of initial liability: the violator’s culpability, efforts to clean up or cooperate with regulatory authority, and the violator’s compliance history.

Culpability

The Enforcement Policy specifies that higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is used.

The culpability multiplier is 1.3. Mr. Hamedí has disregarded the requirements set forth in Task C.2 of the Order. Mr. Hamedí was put on notice of the Order requirements at the time of its adoption. Beyond this, the Executive Officer and/or Regional Water Board staff has notified Mr. Hamedí of his obligations under the Order on at least eight occasions starting in 2011. Mr. Hamedí has repeatedly submitted signed deed restrictions that are inconsistent with the deed language approved or conditionally approved by the Executive Officer. He has failed to act as a reasonable and prudent landowner of an active cleanup site. A reasonable and prudent landowner under these circumstances would do as the other secondarily responsible parties named in the Order did: record an acceptable deed restriction in compliance with Tasks C.2 and C.3 of the Order.

Cleanup and Cooperation

The Enforcement Policy provides for an adjustment to reflect the extent to which a violator voluntarily cooperated in returning to compliance and correcting environmental damage. The adjustment is a multiplier between 0.75 and 1.5, with a higher multiplier where there is a lack of cooperation.

The cleanup and cooperation multiplier is 1.4. Mr. Hamedí has not been cooperative and has instead responded to Regional Water Board staff sporadically with draft deed restrictions in 2011, 2014, and 2015, which do not adequately restrict land and groundwater use at this property, or that inappropriately constrain future decisions of the Regional Water Board. Moreover, Mr. Hamedí misled the Regional Water Board. On April 15, 2015, Mr. Hamedí told Regional Water Board staff he would agree to submit a draft deed restriction if the Board agreed to specified changes. Despite the Board's approval to these changes, Mr. Hamedí submitted another signed deed restriction that added additional terms and demands from the Board.

History of Violations

The Enforcement Policy provides that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used.

The history multiplier is 1.0 because the Regional Water Board has no record of past violation by Mr. Hamedí.

STEP 5 – DETERMINATION OF TOTAL BASE LIABILITY

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2 for discharge violations and in Step 3 for non-discharge violations.

Total Base Liability = \$34,500 (Initial Liability) x 1.3 (Culpability Multiplier) x 1.4 (Cleanup and Cooperation Multiplier) x 1.0 (History of Violations Multiplier)

Total Base Liability = \$62,800

STEP 6 – ABILITY TO PAY AND TO CONTINUE IN BUSINESS

The Enforcement Policy provides that if there is sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward if warranted.

In this case, Regional Water Board Prosecution Staff has sufficient information to suggest Mr. Hamedí has the ability to pay the proposed liability based on the current assessed value of 1761 Junction Avenue at \$408,000.

STEP 7 – OTHER FACTORS AS JUSTICE MAY REQUIRE

Regional Water Board prosecution staff incurred \$2,800 in staff costs to investigate this case and prepare this analysis and supporting information. This consists of time spent by all members of the prosecution team based on the low end of the salary range for each classification. Costs will continue to accrue during any settlement and/or hearing. Staff costs should be considered in relation to the total administrative civil liability. Although the final amount for such costs cannot be determined until completion of the matter, such costs are usually quite substantial when additional investigation and analysis is required or if there is a hearing on matters before the Regional Water Board.

STEP 8 – ECONOMIC BENEFIT

The Enforcement Policy requires recovery of the economic benefit gained associated plus 10 percent. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation.

Staff has not identified an economic benefit from the delay in submitting the required report. Mr. Hamedí has engaged in the process to secure a deed restriction and submitted draft reports that were not accepted, incurring costs of equal or higher value than what compliance with the Order would have required.

The adjusted Total Base Liability from Step 7 is unchanged because it is more than 10 percent higher than any estimated economic benefit.

STEP 9 – MAXIMUM AND MINIMUM LIABILITY

a) *Minimum Liability*

The minimum administrative civil liability for the violation is \$51,300. This is based on Water Code section 13350(e)(1)(B) that requires \$100 per day for non-discharge violations. There were 513 days of violation.

b) *Maximum Liability*

The maximum administrative civil liability is \$2,565,000. This is based on the maximum allowed by Water Code section 13350(e)(1): \$5,000 for each day in which the violation occurs. The total days of violation is 513.

STEP 10 – FINAL LIABILITY

The final liability proposed is **\$65,600** (rounded), based on consideration of the penalty factors discussed above. It is within the minimum and maximum liabilities.

San Francisco Bay Regional Water Quality Control Board

**REVISED HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

R2-2015-1012
ISSUED TO
FRANK HAMEDI
FORMER VELCON II PROPERTY, 1761 JUNCTION AVENUE
SAN JOSE, SANTA CLARA COUNTY

HEARING SCHEDULED FOR
JANUARY 13, 2016, HEARING

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) has issued an Administrative Civil Liability Complaint (Complaint) pursuant to California Water Code section 13323 against Frank Hamedi (Responsible Party) alleging that he violated Task C.2 of San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Final Site Cleanup Requirements Order 01-108 (Order). The Complaint proposes that a civil liability in the amount of \$65,600 be imposed as authorized by Water Code section 13350.

On September 19, 2015, the Responsible Party, through its attorney Mr. Jack Chevlen (Mr. Chevlen), submitted the Complaint's waiver form and selected Option 2 to waive the 90-day hearing requirement and to request a time extension for the hearing date and/or hearing deadlines. Mr. Chevlen also requested that his name be removed as a designated party in these proceedings. On October 2, 2015, the Advisory Team granted both requests. This Revised Hearing Procedure, issued by the Advisory Team on October 29, 2015, establishes new deadlines and a new hearing date and removes Mr. Chevlen as a designated party to these proceedings. All revisions are shown in red and underlined or strikethrough text.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. At the hearing, the Regional Water Board will consider whether to issue an administrative civil liability (ACL) order assessing the liability proposed in the Complaint, or a higher or lower amount, reject the proposed liability, or refer the matter to the Attorney General for judicial enforcement. An agenda for the Regional Water Board meeting where the hearing will be held will be issued at least ten days before the meeting and posted on the Regional Water Board's web site (<http://www.waterboards.ca.gov/sanfranciscobay/>).

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been pre-approved by the Regional Water Board Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Water Board may be found at Title 23 of the California Code of Regulations (CCR), Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to the hearing.

The procedures and deadlines herein may be amended by the Advisory Team at its discretion. ~~Any objections to this Hearing Procedure must be received by Elizabeth Wells by September 14, 2015 or they will be waived.~~

Hearing Participants

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross-examine witnesses, or be subject to cross-examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Water Board, its staff or others, at the discretion of the Regional Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) The Regional Water Board Prosecution Team
- (2) Frank Hamedi, referred to as the Responsible Party
~~S. Jack Chevlen, 5902 Deerland Court, San Jose, CA 95124-6575~~

Requesting Designated Party Status

~~Persons who wish to participate in the hearing as a designated party (who have not been designated as parties above) must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on September 14, 2015 to Elizabeth Wells. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person’s interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on September 17, 2015. The parties will be notified by 5 p.m. on September 22, 2015 in writing whether the request has been granted or denied.~~

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Water Board (Prosecution Team) have been separated from those who will provide advice to the Regional Water Board (Advisory Team). Members of the Advisory Team and the Prosecution Team are:

Advisory Team:

Bruce Wolfe, Executive Officer, Bruce.Wolfe@waterboards.ca.gov, 510-622-2314

David Coupe, Senior Staff Counsel, Office of Chief Counsel,

David.Coupe@waterboards.ca.gov, 916-327-4439

Marnie Ajello, Staff Counsel, Office of Chief Counsel, Marnie.Ajello@waterboards.ca.gov

Elizabeth Wells, Staff, Elizabeth.Wells@Waterboards.ca.gov, 510-622-2440

Address: California Regional Water Board, San Francisco Bay Region, 1515 Clay Street,
Suite 1400, Oakland, CA 94612

Primary Contact: Elizabeth Wells

Prosecution Team:

Dyan C. Whyte, Assistant Executive Officer, Dyan.Whyte@waterboards.ca.gov, 510-622-2441

Lila Tang, Division Chief, Lila.Tang@waterboards.ca.gov, 510-622-2425

Brian Thompson, Section Leader, Brian.Thompson@waterboards.ca.gov, 510-622-2422

Jack Gregg, Technical Staff, Jack.Gregg@waterboards.ca.gov, 510-622-2437

Tamarin Austin, Staff Counsel, Tamarin.Austin@waterboards.ca.gov, 916-341-5171

Address: California Regional Water Board, San Francisco Bay Region, 1515 Clay Street,
Suite 1400, Oakland, CA 94612

Paul Ciccarelli, Staff Counsel, Paul.Ciccarelli@waterboards.ca.gov, 916-322-3227

Address: State Water Resources Control Board, 1001 I Street, P.O. Box 100, Sacramento, CA
95812

Primary Contact: Brian Thompson

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Water Board in other, unrelated matters, but they are not advising the Regional Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and

are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 30 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than December 24, 2015, by 12 p.m. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the designated party would like the Regional Water Board to consider. Evidence and exhibits already in the public files of the Regional Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of designated party members, title and/or role, and contact information (email addresses, addresses, and phone numbers).
4. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the qualifications of each expert witness.
5. (Responsible Party only) If the Responsible Party intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Water Board), the Responsible Party should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit one hard copy and one electronic copy of the above information not already included in or with the Complaint to Elizabeth Wells and other designated parties no later than December 4, 2015, by 5 p.m.

The remaining designated parties shall submit one hard copy and one electronic copy of the above information to Elizabeth Wells and other designated parties no later than December 14, 2015, by 5 p.m.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit one hard copy and one electronic copy to Elizabeth Wells and the other designated parties no later than December 24, 2015, by 12 p.m. Rebuttal information shall be limited to the scope of the information previously submitted

by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team to Elizabeth Wells and each designated party no later than December 4, 2015, by 5 p.m. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

For all submissions, the Advisory Team may require additional hard copies for those submittals that are either lengthy or difficult and expensive to reproduce.

In accordance with Title 23, CCR, Section 648.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Regional Water Board and will not be included in the administrative record for this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to Elizabeth Wells and all other designated parties no later than December 24, 2015, by 12 p.m. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Water Board's office. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Water Board Chair. Many of these documents are also posted on the Regional Water Board's web site. Although the web page is updated regularly, to assure access to the latest information, you may contact Brian Thompson.

Questions

Questions concerning this proceeding may be addressed to Elizabeth Wells.

IMPORTANT DEADLINES

Note: the Regional Water Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the Responsible Party waives that requirement.

These deadlines apply to all cases upon issuance of the Complaint whether or not the 90-day hearing requirement is waived.

- September 2, 2015 Prosecution Team issues the Complaint to Discharger
- September 14, 2015 Deadline for objections, if any, to this Hearing Procedure
- September 14, 2015 Deadline for requests for designated party status
- September 17, 2015 Deadline for oppositions to requests for designated party status
- September 22, 2015 Advisory Team issues decision on requests for designated party status, if any
- October 2, 2015 Discharger's deadline for waiving right to hearing
- December 4, 2015 Interested persons deadline for submission of written non-evidentiary policy statements

These deadlines apply to cases scheduled to be heard by the Regional Water Board (actual dates are subject to change if the 90-day hearing requirement is waived).

October 29, 2015

Revised Hearing Procedure issued by the Advisory Team

December 4, 2015

Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements"

December 14, 2015

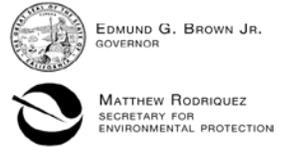
Remaining designated parties' deadline for all information required under "Submission of Evidence and Policy Statements"

December 24, 2015, by 12 p.m.

All designated parties' deadline for rebuttal information, evidentiary objections, and requests for additional time, if any

January 13, 2016

Regional Water Board Hearing



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

December 4, 2015
CS 270314 (JHG)

Elizabeth Wells, Advisory Team
San Francisco Bay Regional Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Elizabeth.Wells@waterboards.ca.gov

**BY PERSONAL SERVICE &
ELECTRONIC MAIL**

Subject: Administrative Civil Liability Complaint No. RI-2015-1012 Against Frank Hamedi (Former Velcon II Property), Santa Clara County; Prosecution Team's Submission of Evidence and Policy Statements

Dear Ms. Wells:

In accordance with the Revised Hearing Procedure for the above-referenced matter (Revised Hearing Procedure), the Prosecution Team is providing you with one hard copy and one electronic copy of the information required pursuant to Paragraphs 1 through 4 on Page 4, *Submission of Evidence and Policy Statements*, of the Revised Hearing Procedure. The deadline for the Prosecution Team to submit all information required under *Submission of Evidence and Policy Statements* is December 4, 2015.

All Evidence for the Regional Water Board's Consideration:

Enclosed with this letter, please find the Prosecution Team's Initial Evidence Submittal, which includes Exhibits 1 through 25.

Legal and Technical Arguments or Analysis:

The Prosecution Team's Legal and Technical Arguments or Analysis is enclosed herewith.

Designated Party Members:

The names of the members of the Prosecution Team, their titles and/or roles, and contact information (email addresses, addresses, and phone numbers) are provided on Page 3 of the Hearing Procedure and are repeated below:

- Dyan C. Whyte, Assistant Executive Officer, Dyan.Whyte@waterboards.ca.gov, 510-622-2441
 - Lila Tang, Division Chief, Lila.Tang@waterboards.ca.gov, 510-622-2425
 - Brian Thompson, Section Leader, Brian.Thompson@waterboards.ca.gov, 510-622-2422
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Paul Ciccarelli, Staff Counsel, Paul.Ciccarelli@waterboards.ca.gov, (916) 322-3227
Address: State Water Resources Control Board, 1001 I Street, P.O. Box 100, Sacramento, CA 95812



List of Witnesses and Subject of Each Witness's Testimony

The following witnesses will be available to testify for the Prosecution Team at the Hearing:

1. Jack H. Gregg, PhD, PG, Engineering Geologist, will be available to testify regarding applicable regulatory requirements of the Final Site Cleanup Requirements for Velcon Filters, Inc., Board Order 01-108 (Order), the purpose and common use of deed restrictions for groundwater cleanup actions, the basis in the Regional Water Board's Water Quality Enforcement Policy for the proposed liability for this matter, and the history of communications with the Discharger regarding Order compliance, and Complaint R2-2015-1012.
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If you have any questions, please contact Jack Gregg at 510-622-2437 or Jack.Gregg@Waterboards.ca.gov.

Sincerely,



Paul Ciccarelli
Staff Counsel

Enclosure: Prosecution Team's Initial Evidence Submittal
Prosecution Team's Legal and Technical Arguments or Analysis

Copy to: (by certified mail and electronic mail)

Certified Mail No. 7014 0510 0001 3749 6244

Mr. Frank Hamedi

131 Old Tully Road

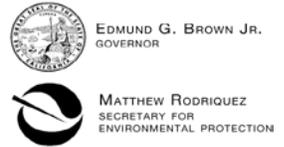
San Jose, CA 95111-1921

Email: info@envirosoiltech.com

Copy to: (by electronic mail)

Regional Water Board Prosecution Team (listed above)

S. Jack Chevlen, 5902 Deerland Court, San Jose, CA 95124-6575



EDMUND G. BROWN JR.
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As required by the Hearing Procedure, the Prosecution Team also provided one hard copy and one electronic copy of this letter, including the enclosure, to Mr. Frank Hamedi

If you have any questions, please contact Jack Gregg at 510-622-2437 or Jack.Gregg@Waterboards.ca.gov.

Sincerely,

Paul Ciccarelli
Staff Counsel

Enclosure: Prosecution Team's Initial Evidence Submittal
Prosecution Team's Legal and Technical Arguments or Analysis

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Certified Mail No. 7014 0510 0001 3749 6251

Mr. Frank Hamedi

131 Old Tully Road

San Jose, CA 95111-1921

Email: info@envirosoiltech.com

Copy to: (by electronic mail)

Regional Water Board Prosecution Team (listed above)
S. Jack Chevlen, 5902 Deerland Court, San Jose, CA 95124-6575

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**PROSECUTION TEAM'S LEGAL AND TECHNICAL
ARGUMENTS OR ANALYSIS
SUPPORTING ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT R2-2015-1012**

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1 surface water, soil, and groundwater. Mr. Frank Hamed, also known as Frank
2 Hamed-Fard ("Mr. Hamed" or "Responsible Party"), and his wife, Rosemary
3 Hamed-Fard, (collectively "Mr. and Mrs. Hamed") purchased the Former Velcon
4 II Property in 1993 and are the current property owners.

5 On September 19, 2001, the Regional Water Board issued the Order
6 pursuant to California Water Code section 13304, approving a cleanup plan for
7 the Site and setting cleanup standards appropriate for continued commercial-
8 industrial use. The Order named two dischargers ("responsible parties")
9 responsible for Site cleanup. The Order names Velcon the primarily
10 responsible party because Velcon owned and/or occupied the Site at the time
11 pollution occurred. The Order names Mr. Hamed the secondarily responsible
12 party because he is the current owner of the Site.

13 As explained in more detail below, Tasks C.2 and C.3 of the Order
14 require, among other things, a drafting and recordation of an acceptable deed
15 restriction for the Site to notify future landowners of sub-surface
16 contamination, prohibit the use of groundwater beneath the property as a
17 source of drinking water, and prohibit residential development. After the
18 Order was adopted, Mr. Hamed neither submitted nor recorded an acceptable
19 deed restriction in cooperation with Velcon and Regional Water Board staff,
20 requiring the Executive Officer to formally name Mr. Hamed the primarily
21 responsible party for Task C.2 and C.3 of the Order. Mr. Hamed, as current
22 property owner, has the legal authority to record an acceptable deed
23 restriction. For Task C.2, the Executive Officer required Mr. Hamed to
24 submit an acceptable draft deed restriction to the Regional Water Board by
25 April 8, 2014, but Mr. Hamed failed to do so.

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1 **II. LEGAL AND TECHNICAL ARGUMENTS OR ANALYSIS**

2 **a. A Deed Restriction as Required by the Order is Appropriate for**
3 **the Protection of Public Health, Safety, and the Environment**

4 The extent of soil and groundwater contamination at the Site was fully
5 characterized prior to the Regional Water Board's adoption of the Order.
6 (Order, p.3, Finding No.6.) The Site - where the underground jet fuel storage
7 tanks and fuel filter testing lab were located - was determined to be the jet
8 fuel source area. Jet fuel and halogenated volatile organic compounds
9 ("VOCs") contaminated soil and groundwater beneath the Site. (*Id.*) The Order
10 sets cleanup standards for both soil and groundwater. The Soil cleanup
11 standard is based on industrial use of the Site.¹ The groundwater cleanup
12 standard is based on the maximum contaminant level for drinking water because
13 shallow groundwater at the site is considered a potential source of drinking
14 water. (Order, p. 6, Finding No. 11.)

15 The Regional Water Board found that due to excessive risks at the
16 Former Velcon II Property, institutional constraints (i.e., deed
17 restrictions), were appropriate to limit on-site human exposure to acceptable
18 levels. (*Id.*) An acceptable deed restriction will notify future owners of
19 sub-surface contamination, prohibits the use of shallow groundwater beneath
20 the Site as a source of drinking water until cleanup standards are met², and

21 _____
22 ¹ Velcon and Mr. Hamedi submitted comments on the draft Order. Mr. Hamedi
23 objected to the deed restriction requirement in Task C.2 because the prohibition
24 against residential development would reduce the value of the Site. Velcon noted
25 that cleanup to commercial/industrial standards was agreed to by Mr. Hamedi in
26 1998 and he was aware of Velcon's proposed cleanup standards and plans submitted
27 to the Regional Water Board. (Staff Summary Report, Regional Water Board Meeting
28 (September 19, 2001), at p. 2.) The Site is currently zoned heavy industrial. Due
to the volume of contaminated soil and financial constraints of Velcon, the
Regional Water Board required a phased approach to soil remediation under Task C.2
(Order, p.6, Finding No. 10.)

² All groundwater in the San Francisco Bay Region is essentially defined as
a potential source of drinking water. It is often technically and/or economically
infeasible to attain low pollutant concentrations in groundwater to meet cleanup
standards. (Assessment Tool for Closure of Low-Threat Chlorinated Solvent Sites,
Groundwater Committee (July 31, 2009), at p. ES-1.)

1 prohibits use of the site for residential development. (*Id.*) Soil and
2 groundwater at the Site continue to exceed cleanup standards required by the
3 Order. Therefore, a deed restriction pursuant to Tasks C.2 and C.3 of the
4 Order is appropriate to prevent or minimize human exposure to soil and
5 groundwater pollution. Moreover, a Regional Water Board finding that the Site
6 is not suitable for unrestricted use and that a land use restriction is
7 necessary for the protection of the public health, safety, or the
8 environment, will prohibit the Regional Water Board from closing the Site
9 unless a land use restriction (i.e., deed restriction) is recorded. (See
10 Wat. Code, § 13307.1, subd. (c); Civ. Code, § 1471.)

11
12 **b. Mr. Hamedi Failed to Submit an Acceptable Deed Restriction to the**
13 **Regional Water Board by April 8, 2014**

14 Task C.2 of the Order requires the submission of a technical report
15 acceptable to the Executive Officer that documents the procedures the
16 responsible parties will use to prevent or minimize human exposure to soil
17 and groundwater contamination prior to meeting cleanup standards. These
18 procedures must include the following institutional constraint:

19 [A] deed restriction prohibiting the use of shallow
20 groundwater as a source of drinking water. The deed
21 restriction shall also specify any engineering
22 controls implemented to meet cleanup standards in
[Order] section B.3 for the protection of
groundwater. The deed restriction shall also include
a ban on use of the site for residential development.

23 The Order required compliance with Task C.2 of the Order by November 1, 2001.
24 Velcon was unable to comply with Task C.2 because Mr. Hamedi failed to
25 cooperate with the deed restriction requirement.

26 ///

27 ///

28 ///

1 i. Events Prior to the Executive Officer Naming Mr. Hamedi
2 a Primarily Responsible Party for Tasks C.2 and C.3

3 The Executive Officer notified Mr. Hamedi of the Regional Water Board's
4 intent to name Mr. Hamedi a primarily responsible party for implementation of
5 Tasks C.2 (submittal of draft deed restriction) and C.3 (implementation of an
6 approved deed restriction). (Letter from Executive Officer, Regional Water
7 Board, to Frank Hamedi (March 17, 2011), at p. 1) (hereinafter "March 2011
8 Letter".) Mr. Hamedi would be named primarily responsible for the Tasks
9 because he is the current owner of the Site. The March 2011 Letter details
10 Mr. Hamedi's continued opposition and reluctance to record a deed restriction
11 on the Site. The Regional Water Board would later provide an acceptable draft
12 deed restriction to Mr. Hamedi from which Mr. Hamedi's legal counsel proposed
13 language that the Executive Officer could not accept for concerns over
14 potential human health risks (i.e., vapor intrusion into the building at the
15 Site). (Letter from Executive Officer, Regional Water Board, to Frank Hamed
16 (September 15, 2011), at p. 1.)

17
18 ii. Events Following the Executive Officer Naming Mr. Hamedi
19 a Primarily Responsible Party for Tasks C.2 and C.3

20 Pursuant to Order section D.11, the Executive Officer named Mr. Hamed
21 a primarily responsible party for Task C.2 and C.3 of the Order. (Letter from
22 Executive Officer, Regional Water Board, to Frank Hamed (February 5, 2014)
23 (hereinafter "February 2014 Letter".) Mr. Hamed was required to submit an
24 acceptable draft deed restriction to the Regional Water Board by April 8,
25 2014. (*Id.*) From August 14, 2014, to April 7, 2015, the Executive Officer
26 reviewed, conditionally approved, and ultimately rejected multiple draft deed
27 restrictions Mr. Hamed submitted due to inconsistencies with the
28 requirements of Task C.2.

1 iv. The Regional Water Board Names Dischargers to the
2 Fullest Extent Permitted by Law

3 The additional deed restriction language Mr. Hamedì submitted on June
4 22, 2015, stated the following:

5 *If the Regional Board, pursuant to its Order No. 01-*
6 *108 and any amendments, modifications, or rescission*
7 *of Order No. 01-108, replaced by a new Order of the*
8 *Regional Board concerning the Burdened Property, has*
9 *the effect of closing the site cleanup and thereafter*
10 *a new site cleanup plan is opened due to acts or*
 omission of Velcon Filters, Inc., then in such event
 the Regional Board shall name Velcon Filters, Inc.,
 and its successors and assigns as the primary
 discharger responsible for all further investigation
 and remediation of the site.

11 The term "deed restriction" as used in Order is essentially a covenant
12 made by a land owner to restrict the use of his or her own land for the
13 protection of health, safety, or the environment from land contaminated by
14 hazardous materials. (Order, p. 13, Task C.2; See Wat. Code, § 13307.1; Civ.
15 Code, § 1471.) The purpose of Task C.2 does not relate to Mr. Hamedì's or
16 other dischargers' current liability under the Order, or liability for any
17 future cleanup and/or investigation at the Site.

18 Water Code section 13304 is a strict liability statute that authorizes
19 the Regional Water Board to issue cleanup and abatement orders to any person
20 or entity who has, among other things: caused or permitted, causes or
21 permits, or threatens to cause or permit any waste to be discharged or
22 deposited where it is, or probably will be, discharged into the waters of the
23 state and creates, or threatens to create, a condition of pollution or
24 nuisance. The Regional Water Board has specific procedures for naming
25 dischargers and investigating contaminated sites. Consistent with these
26 procedures, the Regional Water Board will name dischargers to the extent
27 permitted by law and supported by available evidence. (See Cal. Code Regs.,
28 tit. 23, § 2907; Resolution No. 92-49, § II (A) (4) (identifying the policies

1 and procedures for investigation and cleanup and abatement of discharges
2 under Water Code section 13304.) All persons named in a cleanup and abatement
3 order are given the opportunity to question their inclusion in the order and
4 to dispute the exclusions of other persons. (See Wat. Code § 13320, subd.
5 (a); 23 Cal. Code Regs., tit. 23, § 2050 et seq.) (explaining petitions for
6 review).)

7 Order Paragraph D.11 defines secondarily responsible dischargers'
8 obligations under the Order, not Amended Orders or new orders requiring Site
9 investigation and/or cleanup. The added deed restriction language describe
10 above is forward looking. The Regional Water Board cannot contract away its
11 police powers nor speculate as to who will be responsible for Site cleanup
12 under orders yet to be adopted for violations yet to occur. The Regional
13 Water Board cannot deny due process to people or entities named in future
14 orders. As such, Mr. Hamedí will be afforded the above procedures if
15 contamination is discovered on the Site after the Regional Water Board issues
16 a *No Further Action Letter*. For these reasons, the language Mr. Hamedí added
17 to the draft deed restriction submitted on June 22, 2015, is inconsistent
18 with Task C.2.

19
20 **c. The Proposed Administrative Civil Liability for the Violation of**
21 **Task C.2 is Appropriate**

22 A person who violates a cleanup and abatement order issued, reissued,
23 or amended by the Regional Water Board shall be civilly liable. (Wat. Code,
24 § 13350, subd. (a)(1).) The Regional Water Board may impose administrative
25 civil liability up to five thousand dollars (\$5,000) for each day the
26 violation occurs. (Wat. Code, § 13350, subd. (e)(1).) When a non-discharge
27 violation of a Regional Water Board order occurs, the civil liability shall
28 not be less than one hundred dollars (\$100) for each day in which the

1 violation occurs, unless the Regional Water Board makes express findings
2 setting forth the reasons for its actions based upon the specific factors
3 required to be considered pursuant to Water Code section 13327. (Wat. Code,
4 §§ 13350 subds. (e)-(f).)

5 In determining the amount of civil liability, the Regional Water Board
6 shall:

7 [T]ake into consideration the nature, circumstance,
8 extent, and gravity of the violation or violations,
9 whether the discharger is susceptible to cleanup or
10 abatement, the degree of toxicity of the discharge,
11 and, with respect to the violator, the ability to
12 pay, the effect on ability to continue in business,
any voluntary cleanup efforts undertaken, any prior
history of violations, the degree of culpability,
economic benefit or savings, if any, resulting from
the violation, and other matters as justice may
require. (Wat. Code, § 13327.)

13 On November 17, 2009, the State Water Resources Control Board
14 adopted Resolution 2009-0083 amending the Water Quality Enforcement
15 Policy ("Enforcement Policy"). The Enforcement Policy was approved by
16 the Office of Administrative Law and became effective on May 20, 2010.
17 The Enforcement Policy establishes a methodology for assessing
18 administrative civil liability that addresses the factors required by
19 Water Code sections 13327 and 13385.³

20
21 i. The Enforcement Policy Methodology Justifies the
22 Proposed Administrative Civil Liability Amount

23 The Prosecution Team utilized the Enforcement Policy methodology
24 in Exhibit A to the Complaint to assess liability against Mr. Hamedi.
25 Exhibit A to the Complaint reduces the maximum penalty amount for the

26
27 ³ For a useful summary on the Enforcement Policy, see Enforcement Policy
28 Penalty Methodology Presentation to the Regional Water Quality Control Board, San
Francisco Bay Region (Dec. 14, 2011), Board Meeting agenda item no. 8 (provided as
Prosecution Team Exhibit No. 3).

1 alleged multiple day violation to propose an Initial Liability Amount
2 of \$34,500. The Prosecution Team increased the Initial Liability Amount
3 to account for the Discharger's high degree of culpability and lack of
4 cooperation in returning to compliance with the Order, producing a
5 Total Base Liability Amount of \$62,800. The Prosecution Team then
6 increased the Total Base Liability Amount by \$2,800 in consideration of
7 investigation and enforcement costs incurred in prosecuting this
8 matter. Increasing the Total Base Liability Amount in this manner
9 serves to create a more appropriate deterrent against future violations
10 and is permissible under the Enforcement Policy. (See Enforcement
11 Policy, p. 19.)

12 The Enforcement Policy provides that the Regional Water Board may
13 adjust (i.e., reduce) the Total Base Liability Amount if the Board has
14 sufficient financial information necessary to assess the violator's
15 ability to pay the Total Base Liability Amount or to assess the effect
16 the Total Base Liability Amount will have on the violator's ability to
17 continue in business. (Enforcement Policy, p. 19.) The ability of a
18 discharger to pay an administrative civil liability is determined by
19 its revenues and assets. (*Id.*)

20 The Prosecution Team provided the *Administrative Civil Liability*
21 *Fact Sheet* ("ACL Fact Sheet") to Mr. Hamedi upon Complaint issuance and
22 it is referenced in the Hearing Procedure section "Submission of
23 Evidence and Policy Statements." The ACL Fact Sheet notifies Mr. Hamedi
24 that he must provide specific and reliable documentation to establish
25 an inability to pay. On November 20, 2015, Mr. Hamedi submitted to the
26 Prosecution Team a *Notice of Foreclosure* for his private residence. On
27 November 24, 2015, the Prosecution Team attempted to issue an
28 Administrative Subpoena for Records and Documents ("Subpoena") to Mr.

1 Hamedi via a process server. The Subpoena requires Mr. Hamedi to
2 produce financial documents that will assist the Prosecution Team to
3 more completely determine his ability to pay the proposed liability
4 amount of \$65,600 as set forth in the Complaint. Production of the
5 financial documents is required only if Mr. Hamedi is claiming
6 inability to pay as a defense.

7 To date, the process server has been unable to locate Mr. Hamedi
8 to personally serve the Subpoena. On December 4, 2015, the Prosecution
9 Team also sent copies of the Subpoena to Mr. Hamedi via overnight mail
10 and electronic mail at the addresses the Regional Water Board has on
11 file. Because The Prosecution Team does not have sufficient financial
12 information necessary to analyze Mr. Hamedi's ability to pay the Total
13 Base Liability Amount, the proposed liability as set forth in Complaint
14 is appropriate.

15
16 ii. The Proposed Administrative Civil Liability is within
17 the Maximum and Minimum Liability Amounts

18 The maximum and minimum liability amounts for the violation of
19 Task C.2 of the Order allowed by Water Code section 13350 is \$2,565,000
20 (\$5,000 x 513 days of violation) and \$51,300 (\$100 x 513 days of
21 violation) respectively. The proposed administrative civil liability
22 amount of \$65,600 is within the maximum and minimum liability amounts
23 for the alleged violations.

24
25 **III. CONCLUSION**

26 Based on the Prosecution Team's evidence submitted in accordance with
27 the Hearing Procedures specified in this enforcement action, the Complaint,
28 including all attachments, relevant testimony and additional submissions, the

1 Prosecution Team respectfully requests the Regional Water Board to impose
2 \$65,600 in discretionary administrative civil liability against Mr. Hamedi
3 for the violations set forth above and in the Complaint.
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7 Paul D. Ciccarelli
8 Staff Attorney
9 On Behalf of the Prosecution Team
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8 Attorney for Frank Hamedi

9 STATE OF CALIFORNIA
10 REGIONAL WATER QUALITY CONTROL BOARD
11 SAN FRANCISCO BAY REGION

12 IN THE MATTER OF:

13 ADMINISTRATIVE CIVIL LIABILITY
14 COMPLAINT R2-2015-1012 ISSUED TO
15 FRANK HAMEDI, VIOLATION OF SITE
16 CLEANUP REQUIREMENTS ORDER
17 01-108

18 SAN JOSE – SANTA CLARA COUNTY

Complaint No: R2-2015-1012
Hearing Date: January 13, 2016
Time: 9:00 a.m.
Location: The Auditorium
1515 Clay Street, Oakland, CA

19 **FRANK HAMEDI'S (RESPONDENT) EVIDENCE AND POLICY STATEMENTS**

20
21 Comes now Frank Hamedi ("Hamedi") and submits the following as his evidence and
22 policy statements as required by the Revised Hearing Procedure for Administrative Civil
23 Liability Complaint No. R2-2015-1012.

1 **INITIAL OBSERVATION**

2 Hamede finds it curious a prosecution team of five (5) persons plus its staff counsel,
3 Paul Ciccarella ("Prosecution Team"), are necessary to prosecute the Administrative Civil
4 Liability Complaint ("Complaint") against Hamede when the facts and the law applicable
5 thereto are not in dispute.

6 Hamede's attorney received eleven (11) e-mails at the end of the business day of
7 December 4, 2015 (some received shortly after the 5:00 PM deadline) from the San Francisco
8 Bay Water Board ("Water Board"). These eleven (11) e-mails contained three hundred fifteen
9 (315) pages of documents.

10 Again, Hamede finds it curious the prosecution team needs to submit such voluminous
11 documentation when the facts and the law applicable thereto are not in dispute.

12 The following is taken from the administrative civil liability fact sheet:

13 The Prosecution Team had the burden of proving the allegations and must present
14 competent evidence to the Water Board regarding the allegations.

15 The parties may cross examine each other's witnesses.

16 The Water Board may issue an order requiring payment of the full amount
17 recommended in the Complaint, may issue an order requiring payment of a reduced amount,
18 may order the payment of a higher amount, decide not to impose an assessment, or may refer
19 the matter to the Attorney General's office for further enforcement.

20 Except for the mandatory minimum penalties under Cal. Wat. Code section 13385 (I)
21 and (H) (neither of which apply in this matter), the Water Board is required to consider several
22 factors specified in the California Water Code, including nature, circumstances, extent, and
23 gravity of the violation or violations, whether the discharge is susceptible to cleanup or
24 abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to
25 pay, the ability to continue in business, voluntary cleanup efforts undertaken, any prior history
26

1 of violations, the degree of culpability, economic benefit or savings, if any resulting from the
2 violations, and other matters as justice may require.

3 If the discharger intends to present arguments about its ability to pay, it must provide
4 reliable documentation to establish that ability or inability.

5 The administrative civil liability fact sheet lists numerous categories of documents
6 which can demonstrate an ability or inability to pay an assessed civil penalty.

7 The administrative civil liability fact sheet then goes on to state this list is provided for
8 information only. The discharger remains responsible for providing all relevant and reliable
9 information regarding its financial situation, which may include items in the above list, but
10 could include other documents not on the list. Please note that all evidence regarding this case,
11 including financial information, we will be made public...

12 **(1) Competent Evidence Hamedi would like the Water Board to Consider:**

- 13 (A) Order No. 01-108 dated September 19, 2001 ("Order") issued by the
14 Water Board (a copy submitted by the Prosecution Team);
- 15 (B) Letter dated July 2, 2015 from Atty. Jack Chevlen to Jack H. Gregg,
16 Ph.D (Bates Stamp 000001-000004);
- 17 (C) Letter dated July 23, 2015 from Atty. Jack Chevlen to Jack H. Gregg,
18 Ph.D (Bates Stamp 000005-000010);
- 19 (D) Letter dated November 10, 2015 from Dyan Whyte to Hamedi (Bates
20 Stamp 000017);
- 21 (E) Questions and Answers State Water Resources Control Board Resolution
22 No. 92-49 (Bates Stamp 000018-000024);
- 23 (F) State Water Resource Control Board Resolution No. 92-49 (as Amended
24 on April 21, 1994 and October 2, 1996) (Bates Stamp 000025-000042);
- 25 (G) E-mail dated November 20, 2015 from Atty. Paul Ciccarelli to Atty. Jack
26 Chevlen (Bates Stamp 000043-000044);

- 1 (H) Letter dated November 24, 2015 from Atty. Jack Chevlen to Brian
2 Thompson (Bates Stamp 000045);
- 3 (I) Notice of Trustee's Sale (Bates Stamp 000046-000048);
- 4 (J) Deed of Trust with Assignment of Rents recorded 4/13/2004 creating a
5 lien of \$600,000 against 1759 Junction Avenue, San Jose, CA (APN
6 237-09-145) (Bates Stamp 000049-000052);
- 7 (K) Letter dated October 29, 2015 from the State Water Resources Control
8 Board to George Chavez, Director of Public Works, City of Beverly
9 Hills (Bates Stamp 000053-000054); and
- 10 (L) Administrative Civil Liability Complaint in the matter of Urban Water
11 Conservation by the City of Beverly Hills (Bates Stamp 000055-000058.

12 **(2) Legal and technical arguments and analysis.**

13 Statement of Non-Disputed Facts

- 14 (A) Velcon Filters, Inc. ("Velcon"), the prior owner of 1761 Junction
15 Avenue, San Jose, California (the "Property"), commencing in 1960
16 caused jet fuel to discharge petroleum constituents on the surface water,
17 soil and groundwater on the Property;
- 18 (B) Hamedi has never been an owner, officer, director, employee nor
19 shareholder of Velcon;
- 20 (C) Hamedi purchased the property from Velcon in 1993;
- 21 (D) Hamedi has not caused any toxic discharge of any hazardous materials
22 on and/or into the Property;
- 23 (E) No person suffered any damages nor has any person's property been
24 injured during the period of time Hamedi has owned the Property as a
25 result of any act or omission of Hamedi;
- 26

- 1 (F) The Property has water supplied to it through a closed pipe system by the
2 San Jose Water Company;
- 3 (G) During the period of time Hamedy has owned the Property no one has
4 used the groundwater on the Property as a source of drinking water;
- 5 (H) The building on the Property is used solely for commercial purposes. No
6 one resides on the Property;
- 7 (I) Hamedy has taken no actions to use the Property or to use or attempt to
8 use the Property for residential development;
- 9 (J) At all times from and after 1993 when Hamedy purchased the Property he
10 has voluntarily restricted the development, use and the conveyance of the
11 Property in each and every manner as set forth in Article III, Section
12 3.01, subparagraph (a) through (k) of the Covenant and Environmental
13 Restriction on Property (also referred to herein as "Deed Restriction")
14 Hamedy signed on November 13, 2015;
- 15 (K) On April 15, 2014 Hamedy had a telephone conference conversation with
16 Mr. David Barr of the Water Board. Mr. Barr was the person with whom
17 Hamedy was in written and verbal communication regarding the
18 language of the Covenant and Environmental Restriction on Property
19 required to be signed by Hamedy as required by the Order.

20 During this telephone conversation Hamedy asked Mr. Barr who
21 would be primarily responsible for the cleanup of the site in the event
22 there was a closure of the site and then the site was reopened.

23 Mr. Barr advised Hamedy that Hamedy would be responsible for
24 the site cleanup under those circumstances and Velcon would not be
25 responsible.
26

1 (L) As a result of this conversation of April 15, 2014 Hamedi added the
2 following language to the Covenant and Environmental Restriction on
3 Property at Article III, subparagraph (g):

4 ...If the Regional Board, pursuant to its Order No. 01-108
5 and any amendments, modifications, or rescission of Order
6 No. 01-108, replaced by a new Order of the Regional Board
7 concerning the Burdened Property, has the effect of closing
8 the site cleanup and thereafter a new site cleanup plan is
9 opened due to acts or omissions of Velcon Filters, Inc., then
in such event the Regional Board shall name Velcon Filters,
Inc. and its successors and assigns as the primary discharger
responsible for all further investigation and remediation of
the site...

10 (M) On June 22, 2015 Hamedi signed the Covenant and Environmental
11 Restriction on Property, which included the above quoted wording had
12 his signature notarized and mailed the signed, notarized Covenant and
13 Environmental Restriction on Property to the Water Board;

14 (N) Dr. Jack Gregg of the Water Board contacted Hamedi's Attorney
15 advising the added language quoted above was unacceptable.

16 (O) On July 2, 2015 Hamedi's Attorney wrote to Dr. Gregg requesting
17 answers to the following questions (Bates Stamp 000001-000004):

18 Currently it is my understanding Velcon Filters, Inc., is
19 fully complying with Order No. 01-108.

20 Please advise me if Velcon Filters, Inc. is not currently
21 fully complying with Order No. 01-108...

22 The purpose of this added language is to make clear if the
23 cleanup site is closed and thereafter further contamination
24 is discovered which was caused by some act or omission of
25 Velcon Filters, Inc. that your agency would again look to
26 Velcon Filters, Inc. as the named discharger.

This added language does not change the intent nor
findings of Order No. 01-108.

Rather, it further clarifies your agency will look to the party
who actually caused the contamination in the first instance

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and not substitute a secondarily responsible discharger in place of the primary discharger who has done nothing to cause hazardous contamination on the property but rather is named as secondarily responsible party in Order No. 01-108 solely as a result of purchasing the property from Velcon Filters, Inc.

The language added in paragraph 3.1(g) in the Covenant and Environmental Restriction on Property does not undermine the Water Board's legal authority.

With all due respect how does the added language undermined the Water Board's legal authority?...

Finally, please advise as to how, subsequent to your receipt of the signed and notarized Covenant and Environmental Restriction on Property, is my client out of compliance with respect to Order No. 01-108.

I found nothing in Order No. 01-108 prohibiting the added language set forth in paragraph 3.1(g) in the Covenant and Environmental Restriction on Property.

Rather than threatening enforcement action it is requested you specifically identify how the language added in paragraph 3.1(g) is contrary to the language and intent of Order No. 01-108.

(P) On July 23, 2015 Hamedi's Attorney again wrote to Dr. Gregg stating and requesting the following (Bates Stamp 000005-000010):

My assumption is the "technical report" required by Task 3 is different than the deed restriction referred to in Task 2 and this "technical report" has been submitted and approved by the Executive Officer.

Please advise my office if my understanding of the above is incorrect...

In the Order Velcon Filters, Inc. is named as the discharger. Why should Velcon Filters, Inc. not be named as a discharger if for whatever reason any acts or omissions on its part caused the spill of hazardous materials regardless of when the discovery of the release of hazardous materials is made?

The added language in no way limits or diminishes the Water Board's authority and discretion in determining responsible parties under the Water Code.

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It is requested you advise my office as how the added language inserted in the Covenant and Environmental Restriction on Property limits the Water Board's authority and discretion in determining responsible parties under the Water Code.

If Velcon Filters, Inc. did or did not do an act causing the contamination of the property then why would the Water Board in an exercise of its discretion not determine Velcon Filters, Inc. was a responsible party?...

- (Q) Prior to the Administrative Civil Liability Complaint ("Complaint") being signed on September 2, 2015 neither Hamedi nor his Attorney received any answers to the questions posed in the letters of July 2, 2015 and July 23, 2015.
- (R) After the Complaint was signed on September 2, 2015 Hamedi requested an informal meeting to clarify outstanding issues. This meeting was held on October 30, 2015 at the office of the Water Board in Oakland, California. Present at this meeting was Hamedi and his Attorney, Brian Thompson, Atty. Paul Ciccarelli, Dr. Jack Gregg, Dyan Whyte and Lila Tang all representing the Water Board.
- (S) At this meeting the questions raised in the letters of July 2 and July 23, 2015 were finally answered. Had these questions been answered when posed it would have eliminated the need for the Water Board to sign its Complaint on September 21, 2015.
- (T) At the October 30, 2015 informal meeting Hamedi learned for the first time:
 - (i) David Barr did not have the authority to make the representations during the April 15, 2014 telephone conversation and the representations David Barr made were not correct (item K above);
 - (ii) The Water Board agreed to send Hamedi a written statement of its policies regarding naming responsible dischargers;

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(iii) Velcon fulfilled and was fulfilling all of its obligations required on its part to be performed pursuant to the Order;

(iv) The only obligation required on the part of the Order for Hamedi to perform was to sign and record the Deed Restriction without the added wording (see paragraph L above). Hamedi agreed at the meeting of October 30, 2015 to sign the Deed Restriction without the added wording;

(v) Hamedi agreed to sign the Deed Restriction drafted by the Water Board without the language requested to be added based upon the representation the Water Board would send Hamedi a written statement of its policies regarding naming responsible dischargers;

(U) On November 10, 2015 Dyan Whyte, Assistant Executive Officer of the Water Board sent Hamedi the Water Board's procedure for assigning responsible party status and investigating contaminated sites. This letter states in part "...If contamination is discovered at the site after a no further action letter has been issued, the Water Board will follow the same procedures it used when the case was initially investigated, namely those identified in Resolution 92-49..." (Bates Stamp 000017)

(V) On or about November 13, 2015 Hamedi signed and delivered to the Water Board the required Covenant and Environmental Restriction on Property as he represented he would sign at the October 30, 2015 informal meeting with the representatives of the Water Board.

(W) On November 20, 2015 Hamedi and his Attorney received written instructions regarding the Deed Restriction. The steps set forth in this e-mail of November 20, 2015 regarding the Deed Restriction are:

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Mr. Hamedi must arrange for a public notary to notarize the Executive Officer's signature...

Mr. Hamedi must provide a prepaid envelope, such as FedEx, or may use a courier to ensure the timely and correctly addressed return of the deed restriction after the Executive Officer has signed...

Mr. Hamedi receives the signed deed restriction and is required to record it with the appropriate county as soon as possible... (Bates Stamp 000043)

Hamedi made arrangements with Red Tomatoes Bay Area Mobile Notary to have the signature of the Executive Officer who is to sign the Deed Restriction notarized.

On November 24, 2015 pursuant to the instructions regarding the Deed Restriction set forth in the November 20, 2015 e-mail Hamedi's Attorney sent a letter to Brian Thompson, Section Leader of the Prosecution Team which stated:

Accompanying this letter is a large self-addressed stamped envelope as requested in the e-mail sent by Atty. Paul Ciccarelli to my office on November 20, 2015 regarding the above referenced matter.

After the appropriate executive officer has signed the Deed Restriction previously delivered to your Water Board it is then requested you mail back to my office in the self-addressed stamped envelope provided the Deed Restriction appropriately signed by your executive officer.

Upon receipt of the same I will have it recorded and provide your office with a .pdf version of the recorded Deed Restriction. (Bates Stamp 000045)

(X) The Prosecution Team's Legal and Technical Arguments and Analysis received by Hamedi's Attorney at the end of the business day on December 4, 2015 makes an incredible statement at Page 6, line 24 – 27:

...On November 20, 2015, Mr. Hamedi submitted an acceptable signed and notarized deed restriction to the Regional Water Board in compliance with Task C.2. Mr. Hamedi, however, has not recorded the deed restriction as required by Task C.3...

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The only reason Hamedì has not recorded the Deed Restriction is the self-addressed stamped envelope enclosed in Hamedì's Attorney's letter of November 24, 2015 has not been received by Hamedì's Attorney as of December 4, 2015.

The Deed Restriction signed by the Executive Officer was mailed to Atty. Chevlen's office with a cover letter dated December 1, 2015. This letter with the accompanying Deed Restriction was received at the end of the business day on December 7, 2015. The Deed Restriction was then mailed to the Recorder, Santa Clara County for recordation on December 8, 2015.

(Y) Exhibit "A" to the Complaint at Page A4 of 5 states the current assessed value of the property is \$408,000 as somehow relevant to the financial worthiness of Hamedì's ability to pay a proposed civil penalty of \$65,600.

The Prosecution Team apparently gathered the information of the value of the property from public records.

The public records recorded at the Santa Clara County Recorder's Office regarding Hamedì's financial worthiness also indicates:

- (i) Hamedì's family residence located at 1093 Petroni Way, San Jose, California is currently set to be sold at a Trustee's Sale on December 15, 2015 if Hamedì is unable to pay the unpaid balance and other charges of \$1,026,989.17 to the holder of the first mortgage on Hamedì's family residence. (Bates Stamp 000046-000048)
- (ii) Hamedì financed the purchase of the Property by borrowing money.

1 In 2004 Hamedi refinanced the Property and took out a
2 loan of \$600,000. This loan of \$600,000 is secured by a recorded
3 Deed of Trust with Assignment of Rents as additional security,
4 said document recorded with the Santa Clara County Recorder's
5 Office on April 13, 2004. (Bates Stamp 000049-000052)

6 Hamedi has been paying the monthly interest on this
7 \$600,000 loan. He has not paid down the principal balance of
8 \$600,000.

9 (Z) Additional public records the Advisory Team is requested to consider is
10 an Administrative Civil Liability Complaint in the matter of Urban
11 Water Conservation by Beverly Hills. This Administrative Civil Liability
12 Complaint was issued by the State of California, California
13 Environmental Protection Agency State Water Resource Control Board.
14 This Administrative Civil Liability Complaint is dated October 29, 2015
15 against the City of Beverly Hills and seeks \$61,000 as a civil penalty as a
16 result of the City of Beverly Hills being behind an estimated
17 174,609,422 gallons of water in meeting its applicable conservation
18 standard. (Bates Stamp 000053-000057)

19 **(3) Hamedi's Technical and Legal Arguments**

20 There is no factual dispute Hamedi did not timely sign the Deed Restriction required by
21 the Order. Water Code §13350 provides, in part:

22 **13350.**

23 (a) A person who (1) violates a cease and desist order or cleanup and
24 abatement order hereafter issued, reissued, or amended by a regional board
25 or the state board, or (2) in violation of a waste discharge requirement,
26 waiver condition, certification, or other order or prohibition issued,
reissued, or amended by a regional board or the state board, discharges
waste, or causes or permits waste to be deposited where it is discharged,
into the waters of the state, or (3) causes or permits any oil or any residuary
product of petroleum to be deposited in or on any of the waters of the state.

1 except in accordance with waste discharge requirements or other actions or
provisions of this division, shall be liable civilly, and remedies may be
proposed, in accordance with subdivision (d) or (e).

2 (b) (1) A person who, without regard to intent or negligence, causes or
permits a hazardous substance to be discharged in or on any of the waters of
3 the state, except in accordance with waste discharge requirements or other
provisions of this division, shall be strictly liable civilly in accordance with
4 subdivision (d) or (e).

5 (2) For purposes of this subdivision, the term "discharge" includes only
those discharges for which Section 13260 directs that a report of waste
discharge shall be filed with the regional board.

6 (3) For purposes of this subdivision, the term "discharge" does not include
an emission excluded from the applicability of Section 311 of the Clean
7 Water Act (33 U.S.C. Sec. 1321) pursuant to Environmental Protection
Agency regulations interpreting Section 311(a)(2) of the Clean Water Act
8 (33 U.S.C. Sec. 1321(a)(2)).

9 (c) A person shall not be liable under subdivision (b) if the discharge is
caused solely by any one or combination of the following:

10 (1) An act of war.

11 (2) An unanticipated grave natural disaster or other natural phenomenon of
an exceptional, inevitable, and irresistible character, the effects of which
could not have been prevented or avoided by the exercise of due care or
foresight.

12 (3) Negligence on the part of the state, the United States, or any department
or agency thereof. However, this paragraph shall not be interpreted to
13 provide the state, the United States, or any department or agency thereof a
defense to liability for any discharge caused by its own negligence.

14 (4) An intentional act of a third party, the effects of which could not have
been prevented or avoided by the exercise of due care or foresight.

15 (5) Any other circumstance or event that causes the discharge despite the
exercise of every reasonable precaution to prevent or mitigate the discharge.

16 (d) The court may impose civil liability either on a daily basis or on a per
gallon basis, but not on both.

17 (1) The civil liability on a daily basis shall not exceed fifteen thousand
dollars (\$15,000) for each day the violation occurs.

18 (2) The civil liability on a per gallon basis shall not exceed twenty dollars
(\$20) for each gallon of waste discharged.

19 (e) The state board or a regional board may impose civil liability
administratively pursuant to Article 2.5 (commencing with Section 13323)
20 of Chapter 5 either on a daily basis or on a per gallon basis, but not on both.

21 (1) The civil liability on a daily basis shall not exceed five thousand dollars
(\$5,000) for each day the violation occurs.

22 (A) When there is a discharge, and a cleanup and abatement order is issued,
except as provided in subdivision (f), the civil liability shall not be less than
23 five hundred dollars (\$500) for each day in which the discharge occurs and
for each day the cleanup and abatement order is violated.

24 (B) When there is no discharge, but an order issued by the regional board is
violated, except as provided in subdivision (f), the civil liability shall not be
25 less than one hundred dollars (\$100) for each day in which the violation
occurs.

26 (2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10)
for each gallon of waste discharged.

1 (f) A regional board shall not administratively impose civil liability in
2 accordance with paragraph (1) of subdivision (e) in an amount less than the
3 minimum amount specified, unless the regional board makes express
4 findings setting forth the reasons for its action based upon the specific
5 factors required to be considered pursuant to Section 13327.

6 (g) The Attorney General, upon request of a regional board or the state
7 board, shall petition the superior court to impose, assess, and recover the
8 sums. Except in the case of a violation of a cease and desist order, a
9 regional board or the state board shall make the request only after a hearing,
10 with due notice of the hearing given to all affected persons. In determining
11 the amount to be imposed, assessed, or recovered, the court shall be subject
12 to Section 13351.

13 (h) Article 3 (commencing with Section 13330) and Article 6 (commencing
14 with Section 13360) apply to proceedings to impose, assess, and recover an
15 amount pursuant to this article.

16 (i) A person who incurs any liability established under this section shall be
17 entitled to contribution for that liability from a third party, in an action in
18 the superior court and upon proof that the discharge was caused in whole or
19 in part by an act or omission of the third party, to the extent that the
20 discharge is caused by the act or omission of the third party, in accordance
21 with the principles of comparative fault.

22 (j) Remedies under this section are in addition to, and do not supersede or
23 limit, any and all other remedies, civil or criminal, except that no liability
24 shall be recoverable under subdivision (b) for any discharge for which
25 liability is recovered under Section 13385.

26 (k) Notwithstanding any other law, all funds generated by the imposition of
liabilities pursuant to this section shall be deposited into the Waste
Discharge Permit Fund. These moneys shall be separately accounted for,
and shall be available for expenditure, upon appropriation by the
Legislature, for the following purposes:

(1) To the state board to assist regional boards, and other public agencies
with authority to clean up waste or abate the effects of the waste, in
cleaning up or abating the effects of the waste on waters of the state, or for
the purposes authorized in Section 13443, or to assist in implementing
Chapter 7.3 (commencing with Section 13560).

(2) Up to five hundred thousand dollars (\$500,000) per fiscal year, to assist
the Department of Fish and Wildlife to address the impacts of marijuana
cultivation on the natural resources of the state.

(l) This section shall remain in effect only until July 1, 2017, and as of that
date is repealed, unless a later enacted statute, that is enacted before July 1,
2017, deletes or extends that date.

*(Amended by Stats. 2014, Ch. 35, Sec. 185. Effective June 20, 2014.
Repealed as of January 1, 2017, by its own provisions. See later operative
version added by Stats. 2014, Ch. 35.)*

23 The facts are not in dispute. Hamedi did not cause a discharge. The Merriam-Webster
24 dictionary defines a discharge to pour forth fluid or other contents. At most he did not timely
25 sign the required Deed Restriction. He did, however, fully comply with the Order after being
26 advised the representation made to him by Mr. Barr were both inaccurate and made by Mr. Barr

1 beyond his authority with the Water Board and after Hamedì received the answers to his
2 questions posed in his Attorney's letters to Dr. Gregg of July 2, 2015 and July 23, 2015.

3 Factually, the Deed Restriction containing additional verbiage quoted above which was
4 signed by Hamedì did contain all of the required restrictions of Task 2 and 3 of the Order.

5 As it turns out Resolution 92-49, referred to in the Water Board's letter of November 10,
6 2015 is consistent with the added language the Water Board objected to which was requested by
7 Hamedì. (Bates Stamp 000029)

8 Resolution 92-49 states "...II. A. The Regional Water Board shall:...3. Require the
9 discharger to extend the investigation, and cleanup and abatement, to any location affected by
10 the discharge or threatened discharge; 4. Where necessary to protect water quality, name other
11 persons as dischargers, to the extent permitted by law..." (Bates Stamp 000030)

12 A publication was issued titled Questions and Answers – State Water Board Resource
13 Control Board Resolution No. 92-49.

14 The purpose of this memorandum was to provide information to the Regional Water
15 Quality Control Board and State Water Resource Control Board staff concerning the
16 implementation of Resolution No. 92 – 49. (Bates Stamp 000018)

17 This memorandum states "...Persons subject to Resolution No. 92-49 include present or
18 past owners or operators and any other person who 'caused or permitted...' discharges of
19 waste..." (Bates Stamp 000020)

20 The verbiage added by Hamedì to the Deed Restriction [see paragraph 2(L) above] is
21 consistent with the Water Board's statements contained in its November 10, 2015 letter to
22 Hamedì and Resolution 92 – 49.

23 The Order states the technical report (Deed Restriction) must be "acceptable" to the
24 executive officer.

25 The Deed Restriction required the signatures of both Hamedì and the Executive Officer.
26

1 If one analyzes Order No. 01-108 as a form of a contractual obligation that one party is
2 to perform for the benefit of another party or person then in such event there would exist an
3 implied covenant of good faith and fair dealing.

4 Section 205 of the Restatement Second of Contracts provides: "Every contract imposes
5 upon each party a duty of good faith and fair dealing in its performance and its enforcement."

6 "There is an implied covenant of good faith and fair dealing in every contract that
7 neither party will do anything which will injure the right of the other to receive the benefits of
8 the agreement." *Comunale v. Traders & General Ins.Co.* (1958) 50 Cal.2d 654.

9 "Every contract imposes upon each party a duty of good faith and fair dealing in its
10 performance and its enforcement. The covenant of good faith finds particular application in
11 situations where one party is invested with a discretionary power affecting the rights of another.
12 Such power must be exercised in good faith." (Emphasis added) *Carma Developers (Cal.), Inc.*
13 *v. Marathon Development California, Inc.* (1992) 2 Cal 4th 342.

14 In *Younger v. Superior Court of Alameda County* (1976) 16 Cal 3rd 30 the California
15 Supreme Court discussed Water Code §13350(a).

16 Although the *Younger* (supra) case was decided before Water Code §13350 was
17 amended the Supreme Court's analysis and reasoning are instructive with respect to the
18 undisputed facts recited above.

19 The *Younger* (supra) Court discussed whether in interpreting both Water Code
20 §13350(a)(3) and Harbor and Navigation Code §151 was it appropriate for a faultless spiller of
21 oil to be subjected to a greater civil penalty than an intentionally spiller of oil.

22 The California Supreme Court in *Younger* (supra) came to the conclusion a faultless
23 spiller of oil should not be subject to the same civil penalties as those to be assessed against an
24 intentional or negligent spiller of oil.

1 The current Water Code §13350(a) makes no distinction between a person who
2 discharges waste into the waters of the State and a person who did not discharge waste into the
3 waters of the State but rather having only violated an Order of the Regional Water Board.

4 In determining the amount of civil liability, the regional board, and the state
5 board upon review of any order pursuant to Section 13320, shall take into
6 consideration the nature, circumstance, extent, and gravity of the violation
7 or violations, whether the discharge is susceptible to cleanup or abatement,
8 the degree of toxicity of the discharge, and, with respect to the violator, the
9 ability to pay, the effect on ability to continue in business, any voluntary
10 cleanup efforts undertaken, any prior history of violations, the degree of
11 culpability, economic benefit or savings, if any, resulting from the violation,
12 and other matters as justice may require. Water Code §13327

13 In this matter the Water Board seeks a civil penalty from Hamedi in the amount of
14 \$65,600 for his failure to not timely sign a Deed Restriction (even though Hamedi did sign the
15 Deed Restriction after receiving the answers to his questions).

16 By way of contrast the Water Board is seeking from the City of Beverly Hills a civil
17 penalty of \$61,000 for being behind 174,609,442 gallons of water in meeting its conservation
18 standard.

19 An Olympic swimming pool measures 50m long, 25m wide and a minimum of 2m deep.
20 One needs 660,430 gallons of water to fill an Olympic swimming pool.

21 The total amount of water the City of Beverly Hills failed to meet in its conservation
22 standard would fill 264 Olympic size swimming pools and yet the civil penalty being requested
23 against the City of Beverly Hills is \$4,600 less than the civil penalty being sought from Hamedi
24 for his failure to timely sign the Deed Restriction and where no person or property suffered any
25 injuries or damages as a result of the delay in Hamedi signing the Deed Restriction.

26 The Prosecution Team would probably argue the statute imposing liability on Hamedi is
different than the statute imposing liability on the City of Beverly Hills.

However, it matters not to the person signing a check to pay a civil penalty as to what
specific statute or regulation the civil penalty is been assessed. What matters is the amount of
the check drawn against the maker's checking account.

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CONCLUSION

- (1) Hamededi received incorrect information from Mr. David Barr.
- (2) Hamededi requested answers to questions from Dr. Gregg. He did not receive any answers to his questions.
- (3) The additional language Hamededi wanted inserted in the Deed Restriction was (i) not prohibited by Order No. 01-108; and (ii) was consistent with Resolution 92-49 and its Memorandum of Explanation.
- (4) It was only after the Administrative Complaint was issued and at the request of Hamededi that an informal meeting was able to take place on October 30, 2015 at the office of the Water Board and it was at this meeting Hamededi finally received the answers to his questions.
- (5) Hamededi then signed the requested Deed Restriction.
- (6) The public recorded records indicate Hamededi is in dire financial straights with his home scheduled for a Trustee's Foreclosure Sale in December, 2015.
- (7) No person or their property has suffered as a result of Hamededi's failure to sign the Deed Restriction prior to the time he signed the Deed Restriction.
- (8) Given all of the non-disputed facts it would be a gross abuse of discretion to assess a civil penalty of \$65,600 against Hamededi.
- (9) If a civil penalty assessment is appropriate it is suggested it should be a minimum amount given all of the facts and circumstances of this matter.

(4) **The name of the Designated Party and his contact information:**

Frank Hamededi
131 Tully Road
San Jose, CA 95111
Telephone: (408) 297-1500
E-mail: info@envirosoiltech.com

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(5) **Name of each Witness**

(A) Frank Hamed. He will provide evidence regarding the undisputed facts set forth above.

(B) Dr. Jack Gregg. He will give evidence he received the letters dated July 2, 2015 and July 23, 2015 and failed to answer the questions posed in both of these letters.

Dated: December 8, 2015


S. Jack Cheven,
Attorney for Frank Hamed

1 S. Jack Chevlen, Esq. (SBN 60792)
2 Law Offices of S. Jack Chevlen
3 5902 Deerland Court
4 San Jose, CA 95124-6575
5 Telephone: 408/369-8000
6 Facsimile: 408/369-8200
7 E-mail: JackChevlen@ChevlenLaw.com

8 Attorney for Frank Hamedi

9 STATE OF CALIFORNIA
10 REGIONAL WATER QUALITY CONTROL BOARD
11 SAN FRANCISCO BAY REGION

12 IN THE MATTER OF:

13 ADMINISTRATIVE CIVIL LIABILITY
14 COMPLAINT R2-2015-1012 ISSUED TO
15 FRANK HAMEDI, VIOLATION OF SITE
16 CLEANUP REQUIREMENTS ORDER
17 01-108

18 SAN JOSE – SANTA CLARA COUNTY

Complaint No: R2-2015-1012
Hearing Date: January 13, 2016
Time: 9:00 a.m.
Location: The Auditorium
1515 Clay Street, Oakland, CA

19 **FRANK HAMEDI'S EXHIBITS FOR**
20 **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R2-2015-1012.**
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Law Offices of
S. JACK CHEVLEN

5902 Deerland Court
San Jose, California 95124-6575
Telephone (408) 369-8000
Facsimile (408) 369-8200
E-mail: JackChevlen@ChevlenLaw.com

7/3/15
E-mailed
J.C.

July 2, 2015

VIA E-MAIL Jack.Gregg@Waterboards.ca.gov
& FIRST CLASS USPS MAIL

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Water Board Order No. 01-108;
1761 Junction Ave., San Jose, CA
My Client: Frank Hamed
My file no: 3470

Dear Dr. Gregg:

The purpose of at this letter is to follow up with respect to our telephone conversation of June 30, 2015.

Your e-mail to Mr. Hamed of June 16, 2015 states, in part:

...Your time for negotiating language and submittal of the deed restriction with staff members in our Toxics Cleanup Program has passed. You are now facing enforcement of the Order requirement, and we will give you one last opportunity to submit the deed restriction with the language that was agreed upon with staff in the Toxics Cleanup Program.

Your e-mail to Mr. Hamed dated June 25, 2015 states, in part:

As I stated in an e-mail on June 16, 2015, you need to submit a signed, notarized deed restriction with the language that was agreed upon with staff in the Toxics Cleanup Program. You continue to be out of compliance with Region Water Board Order No. 01-108 and you need to send us the signed document as soon as possible to avoid enforcement action by my unit... We are not going to negotiate and, in particular, agree to any language that undermines our legal authority.

This is your last notice to submit a signed and notarized deed restriction, with the language that was agreed upon with staff in the Toxics Cleanup Program. It must be submitted to the Water Board office by Friday, July 3rd, 2015, if you wish to avoid enforcement proceedings.

000001

I have taken the opportunity of reviewing and re-reviewing Order No. 01-108.

Order No. 01-108 at paragraph 3, page 2 names Velcon Filters, Inc. a discharger because it owned and/or occupied the property at the time pollution occurred and through its actions is responsible for causing the soil and ground water pollution at this site. Frank Hamedí is named as a secondarily responsible discharger because he is the current owner of the property.

Order No. 01-108 at paragraph 11, page 6 states:

Due to excessive risk that will be present at the site pending full remediation, institutional constraints are appropriate to limit on-site exposure to acceptable levels. Institutional constraints include a deed restriction that notifies future owners of subsurface contamination and prohibits the use of shallow groundwater beneath the site as a source of drinking water until cleanup standards are met. The deed restriction also prohibits use of the site for residential development.

Order No. 01-108 at page 9 states:

IT IS HEREBY ORDERED, pursuant to Section 13304 of the California Water Code, that the dischargers (or their agents, successors, or assigns) shall cleanup and abate the effects described in the above findings as follows:...

(C)(2). Proposed Institutional Constraints...Such procedures shall include a deed restriction prohibiting the use of shallow groundwater as a source of drinking water. The deed restriction shall also specify any engineering controls implemented to meet cleanup standards contained in Section B.3 for the protection of groundwater. The deed restriction shall also include a ban on use of the site for residential development.

The compliance date for recording a deed restriction was November 1, 2001.

I do not know why it has taken so long for a deed restriction to be drafted (by your agency) nor what caused the delay in having Mr. Hamedí sign and deliver to you the required Covenant and Environmental Restriction on Property.

Currently it is my understanding Velcon Filters, Inc., is fully complying with Order No. 01-108.

Please advise me if Velcon Filters, Inc. is not currently fully complying with Order No. 01-108.

A few days ago Frank Hamedí delivered a signed and notarized Covenant and Environmental Restriction on Property as required by Order No. 01-108.

Paragraph 3.1 of the Covenant and Environmental Restriction on Property, subparagraphs (a) through (k) sets forth the restrictions on the property required by Order No. 01-108.

The only new language inserted in the Covenant and Environmental Restriction on Property by Mr. Hamedi is contained at the paragraph 3.1(g). This added language states:

...If the Regional Board, pursuant to its Order No. 01-108 and any amendments, modifications, or rescision of Order No. 01-108, replaced by a new Order of the Regional Board concerning the Burdened Property, has the effect of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omissions of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc. and its successors and assigns as the primary discharger responsible for all further investigation and remediation of the site.

The purpose of this added language is to make clear if the cleanup site is closed and thereafter further contamination is discovered which was caused by some act or omission of Velcon Filters, Inc. that your agency would again look to Velcon Filters, Inc. as the named discharger.

This added language does not change the intent nor findings of Order No. 01-108.

Rather, it further clarifies your agency will look to the party who actually caused the contamination in the first instance and not substitute a secondarily responsible discharger in place of the primary discharger who has done nothing to cause hazardous contamination on the property but rather is named as secondarily responsible party in Order No. 01-108 solely as a result of purchasing the property from Velcon Filters, Inc.

The language added in paragraph 3.1(g) in the Covenant and Environmental Restriction on Property does not undermine the Water Board's legal authority.

With all due respect how does the added language undermined the Water Board's legal authority?

Furthermore, what was the date my client agreed to as the last date for "negotiating" the language of the Covenant and Environmental Restriction on Property?

Finally, please advise as to how, subsequent to your receipt of the signed and notarized Covenant and Environmental Restriction on Property, is my client out of compliance with respect to Order No. 01-108.

I found nothing in Order No. 01-108 prohibiting the added language set forth in paragraph 3.1(g) in the Covenant and Environmental Restriction on Property.

Rather than threatening enforcement action it is requested you specifically identify how the language added in paragraph 3.1(g) is contrary to the language and intent of Order No. 01-108.

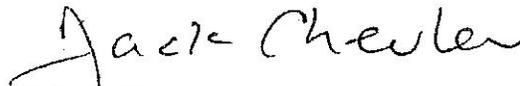
The applicable regulation of the State Water Resources Control Board San Francisco Bay states one of the reasons the Water Board commences enforcement action is to "ensure compliance with Water Board Regulations and Orders."

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board

July 2, 2015
Page 4

Again, how is the Covenant and Environmental Restriction on Property signed by Mr. Hamedy not in compliance with the Water Board's Regulations and Orders?

Very truly yours,


S. Jack Chevlen

SJC:db
Cc via e-mail only: Frank Hamedy

000000

Law Offices of
S. JACK CHEVLEN

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San Jose, California 95124-6575
Telephone (408) 369-8000
Facsimile (408) 369-8200
E-mail: JackChevlen@ChevlenLaw.com

7/23/15
E-mailed
J.C.

July 23, 2015

VIA E-MAIL Jack.Gregg@Waterboards.ca.gov
& FIRST CLASS USPS MAIL

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Water Board Order No. 01-108;
1761 Junction Ave., San Jose, CA
My Client: Frank Hamedi
My file no: 3470

Dear Dr. Gregg:

My office is in receipt of your e-mail dated July 20, 2015.

The second paragraph of your e-mail states in part "On February 5, 2014, the Executive Officer of the Water Board informed Mr. Hamedi that the Water Board had formally elevated Mr. Hamedi to a primary responsible party for Order No. 01-108 Tasks 2 and 3 (letter attached)..."

Unfortunately, the "letter attached" did not accompany your letter on July 20, 2015.

Please e-mail me the "letter attached."

Your July 20, 2015 e-mail also states "...Pursuant to Water Code section 13350, the Water Board is authorized to impose administrative civil liability against a person who violates a Cleanup and Abatement Order..."

To the extent Mr. Hamedi violated or did not fully perform Tasks 2 and 3 of the California Regional Water Quality Control Board, San Francisco Bay Region, Order No. 01-108 (hereinafter "Order"), which Mr. Hamedi contends he has fully performed, Water Code section 13350 and the case law citing this code section clearly demonstrates Water Code section 13350 is not applicable to Mr. Hamedi with respect to Task 2 and 3 of the Order.

(a) A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges

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waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

(b) (1) A person who, without regard to intent or negligence, causes or permits a hazardous substance to be discharged in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, shall be strictly liable civilly in accordance with subdivision (d) or (e).

(2) For purposes of this subdivision, the term “discharge” includes only those discharges for which Section 13260 directs that a report of waste discharge shall be filed with the regional board.

(3) For purposes of this subdivision, the term “discharge” does not include an emission excluded from the applicability of Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to Environmental Protection Agency regulations interpreting Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

(c) A person shall not be liable under subdivision (b) if the discharge is caused solely by any one or combination of the following:

(1) An act of war.

(2) An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(3) Negligence on the part of the state, the United States, or any department or agency thereof. However, this paragraph shall not be interpreted to provide the state, the United States, or any department or agency thereof a defense to liability for any discharge caused by its own negligence.

(4) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(5) Any other circumstance or event that causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.

(d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed fifteen thousand dollars (\$15,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed twenty dollars (\$20) for each gallon of waste discharged.

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged.

(f) A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

(g) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover the sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make the request only after a hearing, with due notice of the hearing given to all affected persons. In determining the amount to be imposed, assessed, or recovered, the court shall be subject to Section 13351.

(h) Article 3 (commencing with Section 13330) and Article 6 (commencing with Section 13360) apply to proceedings to impose, assess, and recover an amount pursuant to this article.

(i) A person who incurs any liability established under this section shall be entitled to contribution for that liability from a third party, in an action in the superior court and upon proof that the discharge was caused in whole or in part by an act or omission of the third party, to the extent that the discharge is caused by the act or omission of the third party, in accordance with the principles of comparative fault.

(j) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, except that no liability shall be recoverable under subdivision (b) for any discharge for which liability is recovered under Section 13385.

(k) Notwithstanding any other law, all funds generated by the imposition of liabilities pursuant to this section shall be deposited into the Waste

Discharge Permit Fund. These moneys shall be separately accounted for, and shall be available for expenditure, upon appropriation by the Legislature, for the following purposes:

(1) To the state board to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443, or to assist in implementing Chapter 7.3 (commencing with Section 13560).

(2) Up to five hundred thousand dollars (\$500,000) per fiscal year, to assist the Department of Fish and Wildlife to address the impacts of marijuana cultivation on the natural resources of the state.

(l) This section shall remain in effect only until July 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2017, deletes or extends that date. Water Code section 13350 (Emphasis added)

The holding in the case of Younger v. Superior Court of Alameda County (1976) 16 Cal 3rd 30 is instructive as it relates to Mr. Hamedi.

In Younger (supra) the California Supreme Court held the imposition of strict liability under Water Code section 13350 is only applicable to those persons who intentionally or negligently cause oil spills subject to statutory penalties.

Indeed the statutory language of this Water Code section uses the word "discharge" throughout of the statute.

The findings of the Order are clear and unambiguous.

The named discharger in the Order is Velcon Filters, Inc. because it owned and/or occupied the property at the time the pollution of the property occurred and through its actions it is responsible for causing the soil and groundwater pollution at the site.

Frank Hamedi is named as secondarily responsible discharger solely because he is the current owner of 1761 Junction Avenue.

Frank Hamedi did not cause or permit any hazardous substances to be discharged on the property. At the time of the discharge of the hazardous substances he did not own the property.

Task 2 of the Order states:

Submit a technical report acceptable to the Executive Officer documenting procedures to be used by the dischargers to prevent or minimize human exposure to soil and groundwater contamination prior to meeting cleanup standards. Such procedures shall include a deed restriction prohibiting the use of shallow groundwater as a source of drinking water. The deed restriction shall also specify any engineering controls implemented to meet cleanup standards contained in Section B.3 for the protection of groundwater. The deed restriction shall also include a ban on use of the site for residential development.

My understanding is Velcon Filters, Inc. submitted the report required in Task 2.

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The deed restriction signed by Mr. Hamedy and delivered to your office includes all of the restrictions required in Task 2.

Task 3 of the Order states:

Submit a technical report acceptable to the Executive Officer documenting that the proposed institutional constraints have been implemented in cooperation with current property owner (Frank Hamedy and Triad Tool).

My assumption is the "technical report" required by Task 3 is different than the deed restriction referred to in Task 2 and this "technical report" has been submitted and approved by the Executive Officer.

Please advise my office if my understanding of the above is incorrect.

The reason my office added the words to the Covenant and Environmental Restriction on Property to which you object is a result of telephone conversation Mr. Hamedy had on April 15, 2015 with Mr. David Barr.

During this telephone conversation Mr. Hamedy asked Mr. Barr who would be primarily responsible for the cleanup of the site in the event there was a closure of the site and then the site was reopened.

Mr. Barr advised Mr. Hamedy that Mr. Hamedy would be responsible for the site cleanup under those circumstances and Velcon Filters, Inc. would not be responsible.

This is unacceptable to Mr. Hamedy and it was for this reason I drafted the additional verbiage which your department objects to.

The additional verbiage which your department objects to was narrowly drafted to define the potential responsibility of Velcon Filters, Inc. in the event "... of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omissions of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc. and its successors and assigns as the primary discharger..."

In the Order Velcon Filters, Inc. is named as the discharger. Why should Velcon Filters, Inc. not be named as a discharger if for whatever reason any acts or omissions on its part caused the spill of hazardous materials regardless of when the discovery of the release of hazardous materials is made?

The added language in no way limits or diminishes the Water Board's authority and discretion in determining responsible parties under the Water Code.

It is requested you advise my office as how the added language inserted in the Covenant and Environmental Restriction on Property limits the Water Board's authority and discretion in determining responsible parties under the Water Code.

If Velcon Filters, Inc. did or did not do an act causing the contamination of the property then why would the Water Board in an exercise of its discretion not determine Velcon Filters, Inc. was a responsible party?

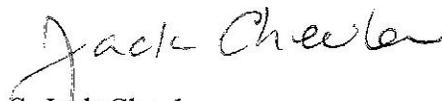
Finally, my client would have no problem signing a Covenant and Environmental Restriction on Property without the added language my office inserted in this document if your department would issue a side letter to my client stating if the Regional Board pursuant to its

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Order No. 01-108 and any amendments, modifications, or rescission of Order No. 01-108 replaced by a new order of the Regional Water Board concerning the Burdened Property, has the effect of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omissions of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc. and its successors and assigns as the primary discharger responsible for all further investigation and remediation of the site.

Such a side letter would alleviate my client of his concerns and at the same time alleviate your department's objection to the language inserted in a recorded Covenant and Environmental Restriction on Property.

Very truly yours,


S. Jack Chevlen

SJC:db

Cc via e-mail only: Frank Hamedi

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San Francisco Bay Regional Water Quality Control Board

November 10, 2015

Frank Hamedi
131 Old Tully Road
San Jose, CA 95111-1921
Sent via email to info@envirosoiltech.com

Dear Mr. Hamedi

This letter is in response to your request for clarification regarding the Water Board's procedures for assigning responsible party status and investigating contaminated sites. More specifically, you asked about whether these procedures would be any different if a site is reopened after it has been closed, and who would be named a discharger.

The Regional Water Board follows the policies and procedures set forth in State Water Board Resolution No. 92-49 for investigating and requiring cleanup and abatement of discharges under Water Code Section 13304. If contamination is discovered at a site after a No Further Action Letter has been issued, the Water Board will follow the same procedures it used when the case was initially investigated, namely those identified in Resolution 92-49. Consistent with Resolution No. 92-49 and State Water Board precedential Order 86-2, dischargers would be named to the extent permitted by law and supported by available evidence.

Sincerely,

[Handwritten signature of Dyan Whyte]

Dyan Whyte
Assistant Executive Officer

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QUESTIONS AND ANSWERS

STATE WATER RESOURCES CONTROL BOARD

RESOLUTION NO. 92-49

I. PURPOSE

The purpose of this Memorandum is to provide information to Regional Water Quality Control Board (RWQCB) and State Water Resources Control Board (SWRCB) staff concerning the implementation of SWRCB Resolution No. 92-49 (Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304). In 1994, the SWRCB adopted Resolution No. 92-49 under California Water Code (CWC) Section 13307. Resolution No. 92-49 establishes procedural and substantive requirements that apply to cleanups of waste. This Memorandum provides answers to frequently asked questions concerning the implementation of Resolution No. 92-49. This Memorandum also provides answers to questions concerning the application of Resolution No. 92-49 at cleanup sites subject to federal law, particularly the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

II. DESCRIPTION OF SWRCB RESOLUTION NO. 92-49

SWRCB Resolution No. 92-49 is a state policy that establishes policies and procedures for investigation and cleanup and abatement of discharges under CWC Section 13304. See Resolution No. 92-49 (Attachment 1). The Resolution establishes the basis for determining cleanup levels of waters of the State and soils that impact waters of the State. Dischargers are required to clean up and abate the effects of discharges "in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored, . . ." Alternative cleanup levels less stringent than background must, among other things, not unreasonably affect present and anticipated beneficial uses of waters of the State. The Resolution also includes procedures to investigate the nature and horizontal and vertical extent of a discharge and procedures to determine appropriate cleanup and abatement measures. Resolution No. 92-49 is consistent with CWC Sections 13000 and 13304.

SWRCB Resolution No. 92-49 is applied by the RWQCBs and the SWRCB primarily by issuing cleanup and abatement orders under CWC Section 13304 and

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monitoring and investigation orders under CWC Section 13267. The Resolution was adopted following all procedures required by state law and is legally binding on dischargers and other state agencies. (CWC Section 13146 and Government Code Section 11353.)

III. SWRCB RESOLUTION NO. 92-49 QUESTIONS AND ANSWERS

1. **Q. How does Resolution No. 92-49 apply to the determination of in situ cleanup levels of contaminated ground water?**

A. Resolution No. 92-49 establishes the policy that dischargers are required to cleanup and abate the effects of discharges in a manner that promotes attainment of either background water quality or the best water quality which is reasonable if background levels of water quality cannot be restored. In determining any cleanup level that is less stringent than background all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible are considered. In addition, Title 23 California Code of Regulations (CCR) Section 2550.4 applies in determining cleanup levels less stringent than background. Cleanup levels less stringent than background must attain the following requirements in Paragraph III.G. of the Resolution:

- "1. Be consistent with maximum benefit to the people of the state;
2. Not unreasonably affect present and anticipated beneficial uses of such water; and
3. Not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State and Regional Water Boards."

To comply with this Resolution, the cleanup level of polluted ground water would range between background and the applicable water quality objective specified in water quality control plans.

2. **Q. Does Resolution No. 92-49 apply to cleanup of soils?**

A. Yes. Resolution No. 92-49 requires dischargers to clean up and abate the effects of discharges of waste to waters of the state and discharges of waste that threaten waters of the state, which may include discharges to soil. As

described in Question and Answer No. 1, dischargers are required to clean up and abate the effects of the discharge in a manner that promotes attainment of either background water quality or the best water quality which is reasonable if background levels of water quality cannot be restored. For soils, the effects of waste in the soil on water quality must be addressed. The soil cleanup level would range between the level that would achieve background in the affected water and the alternative level that would comply with Title 23 CCR Section 2550.4 and the three factors listed in Paragraph III.G. of the Resolution, i.e., the level that would achieve the applicable water quality objectives specified in water quality control plans.

3. **Q. How does Resolution No. 68-16 apply to cleanup of ground water and soils under Resolution No. 92-49?**

A. Resolution No. 92-49 requires actions for cleanup and abatement to conform to Resolution No. 68-16. Resolution No. 68-16 would apply if discharges to high quality waters of the State were occurring or would result from the cleanup. See Questions and Answers, State Water Resources Control Board Resolution No. 68-16.

4. **Q. Under what circumstances does Resolution No. 92-49 apply to cleanup actions?**

A. Resolution No. 92-49 applies to cleanup and abatement actions under CWC Section 13304. Section 13304 authorizes the RWQCB to order cleanup or abatement where a person has discharged or discharges waste into waters of the state in violation of waste discharge requirements or other orders or prohibitions issued by an RWQCB or the SWRCB. CWC Section 13304 also authorizes the RWQCBs to require "any person who has discharged or discharges waste" 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 . . ."

to cleanup or abate such discharge.

Persons subject to Resolution No. 92-49 include present or past owners or operators and any other person who "caused or permitted . . ." discharges of waste. See SWRCB Order Nos. WQ 85-7, WQ 86-2, WQ 86-16, WQ 87-1, WQ 89-13, WQ 90-2, WQ 90-3.

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5. **Q. Does Resolution No. 92-49 require cleanup to zero or background?**

A. No. Resolution No. 92-49 requires cleanup to occur in a manner that promotes attainment of either background water quality or that level that is reasonable if background levels of water quality cannot be restored.

6. **Q. What does the term "be consistent with maximum benefit to the people of the state" mean as used in Section III.G. of Resolution No. 92-49?**

A. Resolution No. 92-49 requires alternative cleanup levels less stringent than background to, among other factors, "be consistent with maximum benefit to the people of the state" and requires consideration of •all demands being made and to be made on the waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. As with Resolution No. 68-16, this determination is made on a case-by-case basis and is based on considerations of reasonableness under the circumstances at the site. Factors to be considered include (1) past, present, and probable beneficial uses of the water (specified in Water Quality Control Plans); (2) economic and social costs, tangible and intangible, of the proposed discharge compared to the benefits, (3) environmental aspects of the proposed discharge; and (4) the implementation of feasible alternative treatment or control methods. See SWRCB Order No. WQ 92-09.

7. **Q. What do the phrases "not unreasonably affect present and anticipated beneficial uses of such water" and "not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State and Regional Water Boards" mean as used in Section III.G. of Resolution No. 92-49?**

A. The CWC requires the SWRCB and RWQCBs to specify the beneficial uses of each water body in Water Quality Control Plans. Such beneficial uses include past, present, and probable future uses and include domestic, municipal, agricultural and industrial supply, power generation, recreation, aesthetic enjoyment, navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves. (CWC Section 13050(f).) Waters are designated for particular beneficial uses if they are suitable for that use even if they are not currently being used. Such probable uses must also be protected to ensure future usability of the water. See e.g., CWC Sections 13000 and 13241.

The CWC generally requires the SWRCB and RWQCBs to establish water

quality objectives in water quality control plans to ensure the reasonable protection of beneficial uses. Compliance with Resolution No. 92-49 would ordinarily require compliance with the water quality objectives in order to ensure the reasonable protection of beneficial uses.

The SWRCB and the RWQCBs have the authority under the CWC to adopt policies, including water quality control plans, for the protection of waters of the State. Such policies establish beneficial uses (e.g., SWRCB Resolution No. 88-63, "Sources of Drinking Water Policy"), water quality objectives (e.g., California Ocean Plan, RWQCB Water Quality Control Plans), antidegradation policy (e.g., Resolution No. 68-16), and other requirements for protection of waters of the State. To comply with Resolution No. 92-49, a cleanup and abatement action must comply with these other plans and policies of the SWRCB or the RWQCBs where applicable to the situation.

Cleanup levels should result in the protection of the designated beneficial uses and compliance with the relevant water quality objectives, implementation plans, and discharge prohibitions.

8. **Q. How is background determined as required by Resolution No. 92-49?**

A. Resolution No. 92-49 requires compliance with Title 23 CCR Section 2550.4 in determining cleanup levels less stringent than background. Section 2550.4 refers to Section 2550.7(e) which provides the methodology for determining background levels for ground water, surface water, and the unsaturated zone.

9. **Q. How does Title 23 California Code of Regulations, Division 3, Chapter 15 ("Chapter 15") apply to cleanup and abatement actions under Resolution No. 92-49?**

A. Chapter 15 applies primarily in three types of circumstances:

1. If cleanup and abatement involves corrective action at a waste management unit regulated by waste discharge requirements, all applicable requirements of Chapter 15 apply. For example, if the waste management unit is an "existing" waste management unit to be closed, Article 5 (Water Quality Monitoring and Response Programs for Waste Management Units) and Article 8 (Closure and Post-Closure Maintenance) would apply to the unit. See Title 23 CCR Section 2510(d) and Resolution No. 92-49 Section III.F. If the waste management unit is a "closed, abandoned, or inactive" waste

management unit, Article 5 would be applicable and Article 8 would be considered in determining appropriate closure methods. See Title 23 CCR Section 2510(g) and Resolution No. 92-49 Section III.F.

2. If cleanup and abatement of discharges of waste resulting from unintentional or unauthorized releases of waste involves the removal of the waste from the immediate place of release for treatment, storage, or disposal of waste to land, the new discharge must comply with Chapter 15. Article 2 specifies the method for classifying the waste to determine appropriate management. See Title 23 CCR Section 2511(d) and Resolution No. 92-49 Section III.F.
3. If cleanup and abatement of discharges resulting from unintentional or unauthorized releases involves actions other than removal, such as containment or in-situ treatment, the applicable provisions of Chapter 15 apply to the extent feasible. See Title 23 CCR Section 2511(d) and Resolution No. 92-49 Section III.F.

Application of Resolution No. 92-49 at sites subject to CERCLA.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is the federal law that establishes requirements for the cleanup of sites containing hazardous substances. It establishes cleanup standards that are in part based on state cleanup requirements. Specifically, CERCLA Section 121(d)(2) requires remedial actions at CERCLA sites listed on the National Priorities List (NPL) to at least attain federal and more stringent state "applicable or relevant and appropriate" requirements (ARARs) upon completion of the remedial action. The 1990 National Contingency Plan (NCP), which are the federal regulations that implement CERCLA, requires compliance with ARARs during remedial actions as well as at completion, and mandates attainment of ARARs during removal actions to the extent practicable. See NCP, 40 CFR Section 300.435(b)(2) and 300.415(i). CERCLA establishes criteria necessary for a state requirement to be considered an ARAR and therefore be applicable to a cleanup at a site listed on the NPL. The following questions and answers discuss Resolution No. 92-49 as an ARAR.

10. **Q. Is Resolution No. 92-49 a potential ARAR at CERCLA sites?**
 - A. Yes. CERCLA Section 121 requires remedial actions to attain state requirements that qualify as ARARs. State ARARs must be promulgated (legally enforceable and of general applicability) and more stringent than federal ARARs. Resolution No. 92-49 meets CERCLA's requirements since it is legally enforceable and of general applicability. It is legally enforceable

because it was adopted in conformance with the procedural requirements of state law. The SWRCB adopted Resolution No. 92-49 under CWC Section 13140 and 13307. Resolution No. 92-49 was adopted properly following notice and several public hearings and was approved by the Office of Administrative Law in accordance with applicable state law. Upon adoption by the SWRCB and approval by the Office of Administrative Law, the Resolution became legally enforceable under the CWC. Resolution No. 92-49 is of general applicability. It applies to all discharges of waste to waters of the state or that threaten waters of the state.

ARARs include only those requirements that are substantive, not procedural. The substantive, but not the procedural requirements of Resolution No. 92-49 are potential ARARs at CERCLA sites. Sections III.F. and III.G. of Resolution No. 92-49 contain substantive requirements.

11. **Q. How is Resolution No. 92-49 incorporated into cleanups at CERCLA sites?**

- A. Resolution No. 92-49 is usually implemented when the RWQCB issues a cleanup and abatement order or monitoring order. At sites subject to CERCLA, the substantive requirements of Resolution No. 92-49 should be incorporated into the decision document (either a Record of Decision or Removal Action Memorandum) for the site. CERCLA and the federal National Contingency Plan (40 CFR Part 300) establishes an iterative process for identifying substantive requirements as early as possible in the remedial investigation/feasibility study and remedy selection process.

Home → Water Issues → Programs → Land Disposal

Land Disposal Program

RESOLUTION NO. 92-49

[Amendment \(PDF\) Available to Download](#)

STATE WATER RESOURCES CONTROL BOARD

RESOLUTION NO. 92-49

(As Amended on April 21, 1994 and October 2, 1996)

POLICIES AND PROCEDURES FOR INVESTIGATION AND CLEANUP AND ABATEMENT OF DISCHARGES UNDER WATER CODE SECTION 13304

WHEREAS:

1. California Water Code (**WC**) Section 13001 provides that it is the intent of the Legislature that the State Water Resources Control Board (**State Water Board**) and each Regional Water Quality Control Board (**Regional Water Board**) shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The State and Regional Water Boards shall conform to and implement the policies of the Porter-Cologne Water Quality Control Act (Division 7, commencing with WC Section 13000) and shall coordinate their respective activities so as to achieve a unified and effective water quality control program in the state;
2. WC Section 13140 provides that the State Water Board shall formulate and adopt State Policy for Water Quality Control;
3. WC Section 13240 provides that Water Quality Control Plans shall conform to any State Policy for Water Quality Control;
4. WC Section 13304 requires that any person who has discharged or discharges waste into waters of the state in violation of any waste discharge requirement or other order or prohibition issued by a Regional Water Board or the State Water 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 may be required to clean up the discharge and abate the effects thereof. This section authorizes Regional Water Boards to require complete cleanup of all waste discharged and restoration of affected water to background conditions (i.e., the water quality that existed before the discharge). The term waste discharge requirements includes those which implement the National Pollutant Discharge Elimination System;
5. WC Section 13307 provides that the State Water Board shall establish policies and procedures that its representatives and the representatives of the Regional Water Boards shall follow for the oversight of investigations and cleanup and abatement activities resulting from discharges of hazardous substances, including:
 - a. The procedures the State Water Board and the Regional Water Boards will follow in making decisions as to when a person may be required to

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- undertake an investigation to determine if an unauthorized hazardous substance discharge has occurred;
- b. Policies for carrying out a phased, step-by-step investigation to determine the nature and extent of possible soil and ground water contamination or pollution at a site;
- c. Procedures for identifying and utilizing the most cost-effective methods for detecting contamination or pollution and cleaning up or abating the effects of contamination or pollution;
- d. Policies for determining reasonable schedules for investigation and cleanup, abatement, or other remedial action at a site. The policies shall recognize the danger to public health and the waters of the state posed by an unauthorized discharge and the need to mitigate those dangers while at the same time taking into account, to the extent possible, the resources, both financial and technical, available to the person responsible for the discharge;
6. "Waters of the state" include both ground water and surface water;
7. Regardless of the type of discharge, procedures and policies applicable to investigations, and cleanup and abatement activities are similar. It is in the best interest of the people of the state for the State Water Board to provide consistent guidance for Regional Water Boards to apply to investigation, and cleanup and abatement;
8. WC Section 13260 requires any person discharging or proposing to discharge waste that could affect waters of the state, or proposing to change the character, location, or volume of a discharge to file a report with and receive requirements from the Regional Water Board;
9. WC Section 13267 provides that the Regional Water Board may require dischargers, past dischargers, or suspected dischargers to furnish those technical or monitoring reports as the Regional Water Board may specify, provided that the burden, including costs, of these reports, shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports;
10. WC Section 13300 states that the Regional Water Board may require a discharger to submit a time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements prescribed by the Regional Water Board or the State Water Board;
11. California Health and Safety Code (**HSC**) Section 25356.1 requires the Department of Toxic Substances Control (**DTSC**) or, if appropriate, the Regional Water Board to prepare or approve remedial action plans for sites where hazardous substances were released to the environment if the sites have been listed pursuant to HSC Section 25356 (state "Superfund" priority list for cleanup of sites);
12. Coordination with the U.S. Environmental Protection Agency (**USEPA**), state agencies within the California Environmental Protection Agency (**Cal/EPA**) (e.g., DTSC, Air Resources Control Board), air pollution control districts, local environmental health agencies, and other responsible federal, state, and local agencies: (1) promotes effective protection of water quality, human health, and the environment and (2) is in the best interest of the people of the state. The principles of coordination are embodied in many statutes, regulations, and interagency memoranda of understanding (**MOU**) or agreement which affect the State and Regional Water Boards and these agencies;
13. In order to clean up and abate the effects of a discharge or threat of a discharge, a discharger may be required to perform an investigation to define the

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nature and extent of the discharge or threatened discharge and to develop appropriate cleanup and abatement measures;

14. Investigations that were not properly planned have resulted in increases in overall costs and, in some cases, environmental damage. Overall costs have increased when original corrective actions were later found to have had no positive effect or to have exacerbated the pollution. Environmental damage may increase when a poorly conceived investigation or cleanup and abatement program allows pollutants to spread to previously unaffected waters of the state;

15. A phased approach to site investigation should facilitate adequate delineation of the nature and extent of the pollution, and may reduce overall costs and environmental damage, because: (1) investigations inherently build on information previously gained; (2) often data are dependent on seasonal and other temporal variations; and (3) adverse consequences of greater cost or increased environmental damage can result from improperly planned investigations and the lack of consultation and coordination with the Regional Water Board. However, there are circumstances under which a phased, iterative approach may not be necessary to protect water quality, and there are other circumstances under which phases may need to be compressed or combined to expedite cleanup and abatement;

16. Preparation of written workplans prior to initiation of significant elements or phases of investigation, and cleanup and abatement generally saves Regional Water Board and discharger resources. Results are superior, and the overall cost-effectiveness is enhanced;

17. Discharger reliance on qualified professionals promotes proper planning, implementation, and long-term cost-effectiveness of investigation, and cleanup and abatement activities. Professionals should be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. California Business and Professions Code Sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgements be performed by or under the direction of registered professionals;

18. WC Section 13360 prohibits the Regional Water Boards from specifying, but not from suggesting, methods that a discharger may use to achieve compliance with requirements or orders. It is the responsibility of the discharger to propose methods for Regional Water Board review and concurrence to achieve compliance with requirements or orders;

19. The USEPA, California state agencies, the American Society for Testing and Materials, and similar organizations have developed or identified methods successful in particular applications. Reliance on established, appropriate methods can reduce costs of investigation, and cleanup and abatement;

20. The basis for Regional Water Board decisions regarding investigation, and cleanup and abatement includes: (1) site-specific characteristics; (2) applicable state and federal statutes and regulations; (3) applicable water quality control plans adopted by the State Water Board and Regional Water Boards, including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board and Regional Water Board policies, including State Water Board Resolutions No. 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California) and No. 88-63 (Sources of Drinking Water); and (5) relevant standards, criteria, and advisories adopted by other state and federal agencies;

21. Discharges subject to WC Section 13304 may include discharges of waste to land; such discharges may cause, or threaten to cause, conditions of soil or water pollution or nuisance that are analogous to conditions associated with migration of waste or fluid from a waste management unit;

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22. The State Water Board has adopted regulations governing discharges of waste to land (California Code of Regulations (CCR), Title 23, Division 3, Chapter 15);

23. State Water Board regulations governing site investigation and corrective action at underground storage tank unauthorized release sites are found in 23 CCR Division 3, Chapter 16, in particular Article 11 commencing with Section 2720;

24. It is the responsibility of the Regional Water Board to make decisions regarding cleanup and abatement goals and objectives for the protection of water quality and the beneficial uses of waters of the state within each Region;

25. Cleanup and abatement alternatives that entail discharge of residual wastes to waters of the state, discharges to regulated waste management units, or leaving wastes in place, create additional regulatory constraints and long-term liability, which must be considered in any evaluation of cost-effectiveness;

26. It is not the intent of the State or Regional Water Boards to allow dischargers, whose actions have caused, permitted, or threaten to cause or permit conditions of pollution, to avoid responsibilities for cleanup. However, in some cases, attainment of applicable water quality objectives for ground water cannot reasonably be achieved. In these cases, the State Water Board determines that establishment of a containment zone is appropriate and consistent with the maximum benefit to the people of the State if applicable requirements contained in the Policy are satisfied. The establishment of a containment zone does not limit or supersede obligations or liabilities that may arise under other laws;

27. The Porter-Cologne Water Quality Control Act

allows Regional Water Boards to impose more stringent requirements on discharges of waste than any statewide requirements promulgated by the State Water Board (e.g., in this Policy) or than water quality objectives established in statewide or regional water quality control plans as needed to protect water quality and to reflect regional and site-specific conditions; and

28. Pursuant to Section 13320 of the Water Code, aggrieved persons may petition the State Water Board to review any decisions made under this policy.

THEREFORE BE IT RESOLVED:

These policies and procedures apply to all investigations, and cleanup and abatement activities, for all types of discharges subject to Section 13304 of the WC.

I. The Regional Water Board shall apply the following procedures in determining whether a person shall be required to investigate a discharge under WC Section 13267, or to clean up waste and abate the effects of a discharge or a threat of a discharge under WC Section 13304. The Regional Water Board shall:

A. Use any relevant evidence, whether direct or circumstantial, including, but not limited to, evidence in the following categories:

1. Documentation of historical or current activities, waste characteristics, chemical use, storage or disposal information, as documented by public records, responses to questionnaires, or other sources of information;
2. Site characteristics and location in relation to other potential sources of a discharge;
3. Hydrologic and hydrogeologic information, such as differences in upgradient and downgradient water quality;
4. Industry-wide operational practices that historically have led to discharges, such as leakage of pollutants from wastewater

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collection and conveyance systems, sumps, storage tanks, landfills, and clarifiers;

5. Evidence of poor management of materials or wastes, such as improper storage practices or inability to reconcile inventories;

6. Lack of documentation of responsible management of materials or wastes, such as lack of manifests or lack of documentation of proper disposal;

7. Physical evidence, such as analytical data, soil or pavement staining, distressed vegetation, or unusual odor or appearance;

8. Reports and complaints;

9. Other agencies' records of possible or known discharge; and

10. Refusal or failure to respond to Regional Water Board inquiries;

B. Make a reasonable effort to identify the dischargers associated with the discharge. It is not necessary to identify all dischargers for the Regional Water Board to proceed with requirements for a discharger to investigate and clean up;

C. Require one or more persons identified as a discharger associated with a discharge or threatened discharge subject to WC Section 13304 to undertake an investigation, based on findings of I.A and I.B above;

D. Notify appropriate federal, state, and local agencies regarding discharges subject to WC Section 13304 and coordinate with these agencies on investigation, and cleanup and abatement activities.

II. The Regional Water Board shall apply the following policies in overseeing: (a) investigations to determine the nature and horizontal and vertical extent of a discharge and (b) appropriate cleanup and abatement measures.

A. The Regional Water Board shall:

1. Require the discharger to conduct investigation, and cleanup and abatement, in a progressive sequence ordinarily consisting of the following phases, provided that the sequence shall be adjusted to accommodate site-specific circumstances, if necessary:

a. Preliminary site assessment (to confirm the discharge and the identity of the dischargers; to identify affected or threatened waters of the state and their beneficial uses; and to develop preliminary information on the nature, and vertical and horizontal extent, of the discharge);

b. Soil and water investigation (to determine the source, nature and extent of the discharge with sufficient detail to provide the basis for decisions regarding subsequent cleanup and abatement actions, if any are determined by the Regional Water Board to be necessary);

c. Proposal and selection of cleanup and abatement action (to evaluate feasible and effective cleanup and abatement actions, and to develop preferred cleanup and abatement alternatives);

d. Implementation of cleanup and abatement action (to implement the selected alternative, and to monitor in order to verify progress);

e. Monitoring (to confirm short- and long-term effectiveness of cleanup and abatement);

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2. Consider, where necessary to protect water quality, approval of plans for investigation, or cleanup and abatement, that proceed concurrently rather than sequentially, provided that overall cleanup and abatement goals and objectives are not compromised, under the following conditions:

- a. Emergency situations involving acute pollution or contamination affecting present uses of waters of the state;
- b. Imminent threat of pollution;
- c. Protracted investigations resulting in unreasonable delay of cleanup and abatement; or
- d. Discharges of limited extent which can be effectively investigated and cleaned up within a short time;

3. Require the discharger to extend the investigation, and cleanup and abatement, to any location affected by the discharge or threatened discharge;

4. Where necessary to protect water quality, name other persons as dischargers, to the extent permitted by law;

5. Require the discharger to submit written workplans for elements and phases of the investigation, and cleanup and abatement, whenever practicable;

6. Review and concur with adequate workplans prior to initiation of investigations, to the extent practicable. The Regional Water Board may give verbal concurrence for investigations to proceed, with written follow-up. An adequate workplan should include or reference, at least, a comprehensive description of proposed investigative, cleanup, and abatement activities, a sampling and analysis plan, a quality assurance project plan, a health and safety plan, and a commitment to implement the workplan;

7. Require the discharger to submit reports on results of all phases of investigations, and cleanup and abatement actions, regardless of degree of oversight by the Regional Water Board;

8. Require the discharger to provide documentation that plans and reports are prepared by professionals qualified to prepare such reports, and that each component of investigative and cleanup and abatement actions is conducted under the direction of appropriately qualified professionals. A statement of qualifications of the responsible lead professionals shall be included in all plans and reports submitted by the discharger;

9. Prescribe cleanup levels which are consistent with appropriate levels set by the Regional Water Board for analogous discharges that involve similar wastes, site characteristics, and water quality considerations;

B. The Regional Water Board may identify investigative and cleanup and abatement activities that the discharger could undertake without Regional Water Board oversight, provided that these investigations and cleanup and abatement activities shall be consistent with the policies and procedures established herein.

III. The Regional Water Board shall implement the following procedures to ensure that dischargers shall have the opportunity to select cost-effective methods for detecting discharges or threatened discharges and methods for cleaning up or abating the effects thereof. The Regional Water Board shall:

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A. Concur with any investigative and cleanup and abatement proposal which the discharger demonstrates and the Regional Water Board finds to have a substantial likelihood to achieve compliance, within a reasonable time frame, with cleanup goals and objectives that implement the applicable Water Quality Control Plans and Policies adopted by the State Water Board and Regional Water Boards, and which implement permanent cleanup and abatement solutions which do not require ongoing maintenance, wherever feasible;

B. Consider whether the burden, including costs, of reports required of the discharger during the investigation and cleanup and abatement of a discharge bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports;

C. Require the discharger to consider the effectiveness, feasibility, and relative costs of applicable alternative methods for investigation, and cleanup and abatement. Such comparison may rely on previous analysis of analogous sites, and shall include supporting rationale for the selected methods;

D. Ensure that the discharger is aware of and considers techniques which provide a cost-effective basis for initial assessment of a discharge.

1. The following techniques may be applicable:

- a. Use of available current and historical photographs and site records to focus investigative activities on locations and wastes or materials handled at the site;
- b. Soil gas surveys;
- c. Shallow geophysical surveys;
- d. Remote sensing techniques;

2. The above techniques are in addition to the standard site assessment techniques, which include:

- a. Inventory and sampling and analysis of materials or wastes;
- b. Sampling and analysis of surface water;
- c. Sampling and analysis of sediment and aquatic biota;
- d. Sampling and analysis of ground water;
- e. Sampling and analysis of soil and soil pore moisture;
- f. Hydrogeologic investigation;

E. Ensure that the discharger is aware of and considers the following cleanup and abatement methods or combinations thereof, to the extent that they may be applicable to the discharge or threat thereof:

1. Source removal and/or isolation;

2. In-place treatment of soil or water:

- a. Bioremediation;
- b. Aeration;
- c. Fixation;

3. Excavation or extraction of soil, water, or gas for on-site or off-site treatment by the following techniques:

- a. Bioremediation;

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- b. Thermal destruction;
- c. Aeration;
- d. Sorption;
- e. Precipitation, flocculation, and sedimentation;
- f. Filtration;
- g. Fixation;
- h. Evaporation;

4. Excavation or extraction of soil, water, or gas for appropriate recycling, re-use, or disposal;

F. Require actions for cleanup and abatement to:

1. Conform to the provisions of Resolution No. 68-16 of the State Water Board, and the Water Quality Control Plans of the State and Regional Water Boards, provided that under no circumstances shall these provisions be interpreted to require cleanup and abatement which achieves water quality conditions that are better than background conditions;

2. Implement the provisions of Chapter 15 that are applicable to cleanup and abatement, as follows:

a. If cleanup and abatement involves corrective action at a waste management unit regulated by waste discharge requirements issued under Chapter 15, the Regional Water Board shall implement the provisions of that chapter;

b. If cleanup and abatement involves removal of waste from the immediate place of release and discharge of the waste to land for treatment, storage, or disposal, the Regional Water Board shall regulate the discharge of the waste through waste discharge requirements issued under Chapter 15 provided that the Regional Water Board may waive waste discharge requirements under WC Section 13269 if the waiver is not against the public interest (e.g., if the discharge is for short-term treatment or storage, and if the temporary waste management unit is equipped with features that will ensure full and complete containment of the waste for the treatment or storage period); and

c. If cleanup and abatement involves actions other than removal of the waste, such as containment of waste in soil or ground water by physical or hydrological barriers to migration (natural or engineered), or in-situ treatment (e.g., chemical or thermal fixation, or bioremediation), the Regional Water Board shall apply the applicable provisions of Chapter 15, to the extent that it is technologically and economically feasible to do so; and

3. Implement the applicable provisions of Chapter 16 for investigations and cleanup and abatement of discharges of hazardous substances from underground storage tanks;

G. Ensure that dischargers are required to clean up and abate the effects of discharges in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored, considering all demands being

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made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible; in approving any alternative cleanup levels less stringent than background, apply Section 2550.4 of Chapter 15, or, for cleanup and abatement associated with underground storage tanks, apply Section 2725 of Chapter 16, provided that the Regional Water Board considers the conditions set forth in Section 2550.4 of Chapter 15 in setting alternative cleanup levels pursuant to Section 2725 of Chapter 16; any such alternative cleanup level shall:

1. Be consistent with 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 Water Quality Control Plans and Policies adopted by the State and Regional Water Boards; and

H. Consider the designation of containment zones notwithstanding any other provision of this or other policies or regulations which require cleanup to water quality objectives. A containment zone is defined as a specific portion of a water bearing unit where the Regional Water Board finds, pursuant to Section III.H. of this policy, it is unreasonable to remediate to the level that achieves water quality objectives. The discharger is required to take all actions necessary to prevent the migration of pollutants beyond the boundaries of the containment zone in concentrations which exceed water quality objectives. The discharger must verify containment with an approved monitoring program and must provide reasonable mitigation measures to compensate for any significant adverse environmental impacts attributable to the discharge. Examples of sites which may qualify for containment zone designation include, but are not limited to, sites where either strong sorption of pollutants on soils, pollutant entrapment (e.g. dense non-aqueous phase liquids [DNAPLS]), or complex geology due to heterogeneity or fractures indicate that cleanup to applicable water quality objectives cannot reasonably be achieved. In establishing a containment zone, the following procedures, conditions, and restrictions must be met:

1. The Regional Water Board shall determine whether water quality objectives can reasonably be achieved within a reasonable period by considering what is technologically and economically feasible and shall take into account environmental characteristics of the hydrogeologic unit under consideration and the degree of impact of any remaining pollutants pursuant to Section III.H.3. The Regional Water Board shall evaluate information provided by the discharger and any other information available to it:
 - a. Technological feasibility is determined by assessing available technologies, which have been shown to be effective under similar hydrogeologic conditions in reducing the concentration of the constituents of concern. Bench-scale or pilot-scale studies may be necessary to make this feasibility assessment;
 - b. Economic feasibility is an objective balancing of the incremental benefit of attaining further reductions in the concentrations of constituents of concern as compared with the incremental cost of achieving those reductions. The evaluation of economic feasibility will include consideration of current, planned, or future land use, social, and economic impacts to the surrounding community including property owners other than the discharger. Economic feasibility, in this Policy, does not refer to the discharger's ability to

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finance cleanup. Availability of financial resources should be considered in the establishment of reasonable compliance schedules;

c. The Regional Water Board may make determinations of technological or economic infeasibility after a discharger either implements a cleanup program pursuant to III.G. which cannot reasonably attain cleanup objectives, or demonstrates that it is unreasonable to cleanup to water quality objectives, and may make determinations on the basis of projection, modeling, or other analysis of site-specific data without necessarily requiring that remedial measures be first constructed or installed and operated and their performance reviewed over time unless such projection, modeling, or other analysis is insufficient or inadequate to make such determinations;

2. The following conditions shall be met for all containment zone designations:

a. The discharger or a group of dischargers is responsible for submitting an application for designation of a containment zone. Where the application does not have sufficient information for the Regional Water Board to make the requisite findings, the Regional Water Board shall request the discharger(s) to develop and submit the necessary information. Information requirements are listed in the Appendix to this section;

b. Containment and storage vessels that have caused, are causing, or are likely to cause ground water degradation must be removed or repaired, or closed in accordance with applicable regulations. Floating free product must be removed to the extent practicable. If necessary, as determined by the Regional Water Board, to prevent further water quality degradation, other sources (e.g., soils, nonfloating free product) must be either removed, isolated, or managed. The significance and approach to be taken regarding these sources must be addressed in the management plan developed under H.2.d.;

c. Where reasonable, removal of pollutant mass from ground water within the containment zone may be required, if it will significantly reduce the concentration of pollutants within the containment zone, the volume of the containment zone, or the level of maintenance required for containment. The degree of removal which may be required will be determined by the Regional Water Board in the process of evaluating the proposal for designation of a containment zone. The determination of the extent of mass removal required will include consideration of the incremental cost of mass removal, the incremental benefit of mass removal, and the availability of funds to implement the provisions in the management plan for as long as water quality objectives are exceeded within the containment zone;

d. The discharger or a group of dischargers must propose and agree to implement a management plan to assess, cleanup, abate, manage, monitor, and mitigate the remaining significant human health, water quality, and environmental impacts to the satisfaction of the Regional Water Board. Impacts will be evaluated in accordance with Section III.H.3. The management plan may include management measures,

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such as land use controls, engineering controls, and agreements with other landowners or agreements with the landlord or lessor where the discharger is a tenant or lessee. The contents of the management plan shall be dependent upon the specific characteristics of the proposed containment zone and must include a requirement that the Regional Water Board be notified of any transfer of affected property to a new owner(s);

e. The proposed management plan must provide reasonable mitigation measures to substantially lessen or avoid any significant adverse environmental impacts attributable to the discharge. At a minimum, the plan must provide for control of pollutants within the containment zone such that water quality objectives are not exceeded outside the containment zone as a result of the discharge. The plan must also provide, if appropriate, for equivalent alternative water supplies, reimbursement for increased water treatment costs to affected users, and increased costs associated with well modifications. Additional mitigation measures may be proposed by the discharger based on the specific characteristics of the proposed containment zone. Such measures must assist in water quality improvement efforts within the ground water basin and may include participating in regional ground water monitoring, contributing to ground water basin cleanup or management programs, or contributing to research projects which are publicly accessible (i.e., not protected by patents and licenses) and aimed at developing remedial technologies that would be used in the ground water basin. Proposals for off-site cleanup projects may be considered by the Regional Water Board as a mitigation measure under the following criteria:

1. Off-site cleanup projects must be located in the same ground water basin as the proposed containment zone, and
2. Implementation of an off-site project must result in an improvement in the basin's water quality or protect the basin's water quality from pollution, and
3. Off-site projects must include source removal or other elements for which water quality benefits or water quality protection can be easily demonstrated, and
4. Off-site projects may be proposed independently by the discharger or taken from projects identified as acceptable by the Regional Water Board through a clearinghouse process, or
5. In lieu of choosing to finance a specific off-site project, the discharger may contribute moneys to the SWRCB's Cleanup and Abatement Account (**Account**) or other funding source. Use of such contributions to the Account or other source will be limited to cleanup projects or water quality protection projects for the basin in which the containment zone is designated. Contributions are not to exceed ten percent of the savings in continued active remediation that discharger will accrue over a ten-year period due to designation of a containment zone (less any

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additional costs of containment zone designation during this period, e.g., additional monitoring requirements, Regional Water Board application costs, etc.). Contributions of less than ten percent must be accompanied by a detailed justification as to why a lesser contribution would provide adequate mitigation.

Except where prohibited by Federal law, Federal agencies may be required, based on specific site conditions, to implement mitigation measures;

f. The proposed management plan must include a detailed description of the proposed monitoring program, including the location and construction of monitoring points, a list of proposed monitoring parameters, a detailed description of sampling protocols, the monitoring frequency, and the reporting requirements and frequency. The monitoring points must be at or as close as reasonable to the boundary of the containment zone so as to clearly demonstrate containment such that water quality objectives outside the containment zone are not violated as the result of the discharge. Specific monitoring points must be defined on a case-by-case basis by determining what is necessary to demonstrate containment, horizontally and vertically. All technical or monitoring program requirements and requirements for access shall be designated pursuant to WC Section 13267. The monitoring program may be modified with the approval of the Regional Water Board's Executive Officer based on an evaluation of monitoring data;

g. The management plan must include a detailed description of the method to be used by the discharger to evaluate monitoring data and a specific protocol for actions to be taken in response to evidence that water quality objectives have been exceeded outside the containment zone as a result of the migration of pollutants from within the containment zone;

3. In order for a containment zone to be designated, it shall be limited in vertical and lateral extent; as protective as reasonably possible of human health and safety and the environment; and should not result in violation of water quality objectives outside the containment zone. The following factors must be considered by the Regional Water Board in making such findings:

a. The size of a containment zone shall be no larger than necessary based on the facts of the individual designation. In no event shall the size of a containment zone or the cumulative effect of containment zones cause a substantial decline in the overall yield, storage, or transport capacity of a ground water basin;

b. Evaluation of potentially significant impacts to water quality, human health, and the environment, shall take into consideration the following, as applicable to the specific factual situation:

1. The physical and chemical characteristics of the discharge, including its potential for migration;
2. The hydrogeological characteristics of the site and surrounding land;

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3. The quantity of ground water and surface water and the direction of ground water flow;
4. The proximity and withdrawal rates of ground water users;
5. The patterns of rainfall in the region and the proximity of the site to surface waters;
6. The present and probable future uses of ground water and surface water in the area;
7. The existing quality of ground water and surface water, including other sources of pollution and their cumulative impact on water quality;
8. The potential for health impacts caused by human exposure to waste constituents;
9. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
10. The persistence and permanence of any potential adverse effects;
11. Exposure to human or other biological receptors from the aggregate of hazardous constituents in the environment;
12. The potential for the pollutants to attenuate or degrade and the nature of the breakdown products; and
13. Potential adverse effects on approved local development plans, including plans approved by redevelopment agencies or the California Coastal Commission.

c. No provision of this Policy shall be interpreted to allow exposure levels of constituents of concern that could have a significant adverse effect on human health or the environment;

d. A containment zone shall not be designated in a critical recharge area. A critical recharge area is an artificial recharge area or an area determined by the Regional Water Board to be a critical recharge area after the consultation process required by Section III.H.9. Further, a containment zone shall not be designated if it would be inconsistent with a local ground water management plan developed pursuant to Part 2.75 of Division 6 of the WC (commencing at Section 10750) or other provisions of law or court order, judgment or decree;

4. After designation, no further action to reduce pollutant levels, beyond that which is specified in the management plan, will be required within a containment zone unless the Regional Water Board finds that the discharger(s) has failed to fully implement the required management plan or that violation of water quality objectives has occurred beyond the containment zone, as a result of migration of chemicals from inside the containment zone. If the required tasks contained in the approved management plan are not implemented, or appropriate access is not granted by the

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discharger to the Regional Water Board for purposes of compliance inspection, or violation of water quality objectives occurs outside the containment zone and that violation is attributable to the discharge in the containment zone, the Regional Water Board, after 45 days public notice, shall promptly revoke the zone's containment status and shall take appropriate enforcement action against the discharger;

5. The designation of a containment zone shall be accomplished through the adoption of a cleanup and abatement order as authorized by WC Section 13304. The Regional Water Board shall make a finding of fact with regard to each of the conditions which serve as a prerequisite for containment zone designation in the cleanup and abatement order. All applicable criteria of Section III.H. must be met as a prerequisite to designation. The Regional Water Board may reject an application for designation of a containment zone for failure to meet any applicable criteria without having to make findings with regard to each prerequisite. Such orders shall be adopted by the Regional Water Boards themselves and not issued by the Executive Officers of the Regional Water Boards. These orders shall ensure compliance with all procedures, conditions, and restrictions set forth in Section III.H. As authorized by WC Section 13308, time schedules issued as part of the establishment of a containment zone may prescribe a civil penalty which shall become due if compliance is not achieved in accordance with that time schedule;

6. A containment zone shall be implemented only with the written agreement of all fee interest owners of the parcel(s) of property containing the containment zone. Exceptions may be allowed by the Regional Water Board where opposition is found to be unreasonable. In such cases, the Regional Water Board may use the authority of WC Section 13267 to assure access to property overlying the containment zone;

7. Local agencies which are supervising cleanup under contract with the State Water Board or by agreement with the Regional Water Board pursuant to provisions of the Underground Storage Tank Program may propose containment zones for consideration by the Regional Water Board. The local agency will forward its files and proposal to the Regional Water Board for consideration. Regional Water Boards shall use the same procedures, processes, public notice, and criteria that are noted elsewhere in this policy. Approval of Technical Impracticability Waivers by the Department of Toxic Substances Control or the United States Environmental Protection Agency under the requirements of the Federal Resource Conservation and Recovery Act or the Comprehensive Environmental Response, Compensation, and Liability Act are deemed to be equivalent to the actions outlined in Section H. of this Policy if :

- a. the substantive provisions of Sections III.H.2.b., e., f., and g. are met;
- b. interested parties described in III.H.8.a. are included in the public participation process; and
- c. site information is forwarded from the approving agency to the Regional Water Board so that sites for which Technical Impracticability Waivers have been approved can be included in the master listings described in Section III.H.10.;

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8. The Regional Water Board shall comply with the following public participation requirements, in addition to any other legal requirements for notice and public participation, prior to the designation of a containment zone:

- a. Public notice of an intention to designate a containment zone shall be provided to all known interested persons, including the owner of the affected property(s), owners and residents of properties adjacent to the containment zone, and agencies identified in Section III.H.9, at least 45 days prior to the proposed designation of a containment zone;
- b. Interested persons shall be given the opportunity to review the application, including the proposed management plan, and any other available materials and to comment on any proposed designation of a containment zone. These materials, which contain information upon which the proposed designation of a containment zone is based, must be available for review at least 45 days prior to the proposed designation of a containment zone;
- c. The proposed designation of a containment zone shall be placed on the agenda for consideration at a Regional Water Board meeting;

9. At least 45 days prior to the proposed designation of a containment zone, the Regional Water Board shall invite a technical advisory committee to review any proposed designation and shall meet as a committee at the request of any committee member. The committee or any committee member shall provide advice to the Regional Water Board as to the appropriateness of the requested designation and such designation will become part of the public record. No person or agency shall be made a member of the committee who is employed by or has a financial interest with the discharger seeking the designation. The following agencies shall be invited to participate in the advisory committee:

- a. The California Department of Toxic Substances Control;
- b. The California Department of Health Services, Drinking Water Branch;
- c. The California Department of Fish and Game;
- d. The local health authority;
- e. The local water purveyor, in the event ground water is used or planned to be used as a source of water supply;
- f. Any local ground water management agency including an appointed water master;
- g. The United States Environmental Protection Agency; and
- h. The California Coastal Commission if the site is located within the coastal zone of California.

10. The Regional Water Boards shall keep a master listing of all designated containment zones. The master listing shall describe the location and physical boundaries of the containment zone, the pollutants which exceed applicable water quality objectives, and any land use controls associated with the containment zone designation. The Regional Water Board shall forward the information on the master list to the State Water Board and to the local well permitting agency whenever a new containment zone is

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designated. The State Water Board will compile the lists from the Regional Water Boards into a comprehensive master list;

11. To assure consistency of application of this Policy, the State Water Board will designate a Containment Zone Review Committee consisting of staff from the State Water Board and each of the Regional Water Boards. This review committee shall meet quarterly for two years and review all designation actions taken. The committee shall review problems and issues and make recommendations for consistency and improved procedures. In any event the State Water Board shall review the containment zone issue not later than five years after the adoption of Section III.H. and periodically thereafter. Such review shall take place in a public proceeding;

12. In the event that a Regional Water Board finds that water quality objectives within the containment zone have been met, after public notice, the Regional Water Board will rescind the designation of the containment zone and issue a closure letter; and

13. The Regional Water Board's cost associated with review of applications for containment zone designation will be recoverable pursuant to Section 13304 of the Water Code, provided a separate source of funding has not been provided by the discharger.

14. Designation of a containment zone shall have no impact on a Regional Water Board's discretion to take appropriate enforcement actions except for the provisions of Section III.H.4.

IV. The Regional Water Board shall determine schedules for investigation, and cleanup and abatement, taking into account the following factors:

A. The degree of threat or impact of the discharge on water quality and beneficial uses;

B. The obligation to achieve timely compliance with cleanup and abatement goals and objectives that implement the applicable Water Quality Control Plans and Policies adopted by the State Water Board and Regional Water Boards;

C. The financial and technical resources available to the discharger; and

D. Minimizing the likelihood of imposing a burden on the people of the state with the expense of cleanup and abatement, where feasible.

V. The State and Regional Water Boards shall develop an expedited technical conflict resolution process so when disagreements occur, a prompt appeal and resolution of the conflict is accomplished.

Appendix to Section III.H. Application for a Containment Zone Designation

The discharger is responsible for submitting an application for designation of a containment zone. Supporting information which is readily available to the Regional Water Board and which would be cumbersome or costly to reproduce can be included in the application by reference. In order to facilitate the preparation of an acceptable application, the discharger may request that the Regional Water Board provide a preliminary review of a partial application. The partial application should be detailed enough to allow the Regional Water Board to determine if the site passes the threshold criteria for establishment of a containment zone (e.g., it is not reasonable to achieve water quality objectives at that site, plume management measures are likely to be effective, etc.). As appropriate, the application shall include:

a) Background information (location, site history, regulatory history);

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- b) Site characterization information, including a description of the nature and extent of the discharge. Hydrogeologic characterization must be adequate for making the determinations necessary for a containment zone designation;
- c) An inventory of all wells (including abandoned wells and exploratory boreholes) that could affect or be affected by the containment zone;
- d) A demonstration that it is not reasonable to achieve water quality objectives;
- e) A discussion of completed source removal and identification of any additional sources that will be addressed during implementation of the management plan;
- f) A discussion of the extent to which pollutant mass has been reduced in the aquifer and identification of any additional mass removal that will be addressed during implementation of the management plan;
- g) If necessary, information related to the availability of funds to implement the provisions of the management plan throughout the expected duration of the containment zone designation;
- h) The proposed boundaries for the proposed containment zone pursuant to Section III.H.3.a.;
- i) An evaluation of potential impacts to water quality, human health and the environment pursuant to Sections III.H.3.b. and c.;
- j) A statement that the discharger believes that the site is not located in a critical recharge area, as required by Section III.H.3.d.;
- k) Copies of maps and cross sections that clearly show the boundaries of the proposed containment zone and that show the locations where land use restrictions will apply. Maps must include at least four points of reference near the map corners. Reference points must be identified by latitude and longitude (accurate to within 50 feet), as appropriate for possible inclusion in a geographic information system (GIS) database; and
- l) A management plan for review and approval. The management plan must contain provisions for:
 - 1) source removal as appropriate;
 - 2) pollutant mass removal from the aquifer as appropriate;
 - 3) land use or engineering controls necessary to prevent the migration of pollution, including the proper abandonment of any wells within the vicinity of the containment zone that could provide a conduit for pollution migration beyond the containment zone boundary;
 - 4) land use or engineering controls necessary to prevent water quality impacts and risks to human health and the environment;
 - 5) mitigation measures, an implementation schedule for mitigation, and reporting requirements for compliance with mitigation measures;
 - 6) a detailed description of the proposed monitoring program;
 - 7) a detailed description of the method to be used by the discharger to evaluate monitoring data;
 - 8) a specific protocol for actions to be taken if there is evidence that water quality objectives have been exceeded outside the containment zone as a result of the migration of pollutants from within the containment zone;
 - 9) a detailed description of the frequency and content of reports to be submitted to the Regional Water Board;

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10) detailed procedures and designs for well maintenance, replacement and decommissioning;

11) a protocol for submittal to and approval by the Executive Officer of minor modifications to the management plan as necessary to optimize monitoring and containment; and

12) a description of file and data base maintenance requirements.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 18, 1992, and amended at meetings of the State Water Resources Control Board held on April 21, 1994, and October 2, 1996.

Maureen Marche
Administrative Assistant to the Board

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The California Water Boards include the State Water Resources Control Board and nine Regional Boards
The State Water Board is one of six environmental entities operating under
the authority of the California Environmental Protection Agency
Cal/EPA | ARB | CalRecycle | DPR | DTSC | OEHHA | SWRCB

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From: Ciccarelli, Paul@Waterboards [mailto:Paul.Ciccarelli@Waterboards.ca.gov]
Sent: Friday, November 20, 2015 3:14 PM
To: Jack Chevlen
Cc: Frank Hamed; Whyte, Dyan@Waterboards; Tang, Lila@Waterboards; Thompson, Brian@Waterboards; Gregg, Jack@Waterboards
Subject: RE: Hamed---Complaint R2-2015-1012/ CONFIDENTIAL SETTLEMENT COMMUNICATION
Importance: High

Mr. Chevlen,

This message discusses the next steps for 1) the deed restriction and 2) the production of Mr. Hamed's financial information

I. **Deed Restriction**

Regional Board staff notified me that Mr. Hamed dropped off a signed/notarized deed restriction. Thank you for the cooperation. Below are the remaining steps for this matter:

1. Mr. Hamed must arrange for a public notary to notarize the Executive Officer's signature. The notary will arrange a signature time with the Executive Officer (see 3 below). A notary list is provided below for your convenience.
2. Mr. Hamed must provide a prepaid envelop, such as FedEx, or may use a courier to ensure the timely and correctly addressed return of the deed restriction after the Executive Officer has signed.
3. Notary contacts Water Board staff at Brian.Thompson@waterboards.ca.gov or (510) 622-2422 to schedule signing with the Executive Officer. Water Board staff schedules 15-minute meeting with Executive Officer to sign deed restriction. Water Board staff and notary attend meeting with Executive Officer.
4. Executive Officer signs the deed restriction with notary. Mr. Hamed and staff coordinate the return of the deed restriction to Mr. Hamed.
5. Mr. Hamed receives the signed deed restriction and is required to record it with the appropriate county as soon as possible. Remember that this case is still on calendar. Please be mindful of the deadlines in the Revised Hearing Procedure.
6. Mr. Hamed emails Water Board staff a PDF version of the recorded deed restriction.
7. Water Board staff uploads the recorded deed restriction into GeoTracker.

Notaries

Below is a list of public notaries who have come to our offices to notarize the Executive Officer's signature.

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ST } Red Tomatoes Bay Area Mobile Notary
2141 Broadway #2, Oakland, CA
(510) 269-7852

Sundance Mobile Notary
610 16th Street, Oakland, CA
(510) 485-3534

Adrienne McDowell
mrepaidlegal@msn.com
Portable Mobile Notary
(510) 681-0045

Road Warrior Mobile Notary
John Timothy
(510) 541-7750

* 45⁰⁰
+ 90
55⁰⁰

Spoke by
Sunday @
Red Tomatoes
11/24/15.

He will call
Water Board
and set
up Apt.
for
Signing &
Notarization
Deed
Restrictions

II. **Financial Information**

Regional Board staff confirmed their receipt of Mr. Hamedí's foreclosure notice. Thank you for providing this information. However, the Prosecution Team will need the additional information we requested on Nov. 4, 2015, to analyze the ability to pay. We need this information **as soon as possible** given the submission deadlines in the Revised Hearing Procedure. Does Mr. Hamedí intend to provide this information? If so, when? I attached the financial information form again for your convenience.

Please let me know if you have any questions. I look forward to your response and resolving the outstanding issues in a timely manner.

Regards,

Paul D. Ciccarelli, Attorney
Office of Enforcement
State Water Resources Control Board
1001 I Street, P.O. Box 100
Sacramento, CA 95812
Tel.: 916.322.3227
Email: Paul.Ciccarelli@Waterboards.ca.gov

000041

Law Offices of
S. JACK CHEVLEN

5902 Deerland Court
San Jose, California 95124-6575
Telephone (408) 369-8000
Facsimile (408) 369-8200
E-mail: JackChevlen@ChevlenLaw.com

11/24/15
Filed [initials]
Served [initials]

November 24, 2015

Brian Thompson, Section Leader,
Prosecution Team
California Regional Water Board
San Francisco Bay Water Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Hamedí Complaint No. R2-2015-1012
My file no: 3470

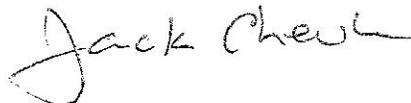
Dear Mr. Thompson:

Accompanying this letter is a large self-addressed stamped envelope as requested in the e-mail sent by Atty. Paul Ciccarelli to my office on November 20, 2015 regarding the above referenced matter.

After the appropriate executive officer has signed the Deed Restriction previously delivered to your Water Board it is then requested you mail back to my office in the self-addressed stamped envelope provided the Deed Restriction appropriately signed by your executive officer.

Upon receipt of the same I will have it recorded and provide your office with a .pdf version of the recorded Deed Restriction.

Very truly yours,



S. Jack Chevlen

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SJC:db

Encl.: Self-addressed stamped envelope

Cc w/o encl. via e-mail only: Paul Ciccarelli, Staff Counsel – Paul.Ciccarelli@waterboards.ca.gov

Cc w/o encl. via e-mail only: Frank Hamedí

DOCUMENT: 23143276

Pages: 2



23143276

Fees...	28.00
Taxes...	.00
Copies...	.00
AMT PAID	28.00

Recording requested by:
Quality Loan Service Corp.

When recorded mail to:
Quality Loan Service Corporation
411 Ivy Street
San Diego, CA 92101

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
FIRST AMER NDTs - SIMPLEFILE

RDE # 008
11/16/2015
02:59 PM

TS No. CA-15-681597-JB
Order No.: 8575975

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF TRUSTEE'S SALE

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED TO THE COPY PROVIDED TO THE MORTGAGOR OR TRUSTOR (Pursuant to Cal. Civ. Code 2923.3)

注：本文件包含一个信息摘要

참고사항: 본 첨부 문서에 정보 요약서가 있습니다

NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO
TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP
LUU Ý: KÈM THEO ĐẦY LÀ BÀN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 3/25/2008. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 to the Financial Code and authorized to do business in this state, will be held by duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

BENEFICIARY MAY ELECT TO BID LESS THAN THE TOTAL AMOUNT DUE.

Trustor(s): **FARHANG HAMEDI-FARD AND ROSEMARY HAMEDI-FARD, HUSBAND AND WIFE AS JOINT TENANTS**

Recorded: **4/2/2008** as Instrument No. **19798094** and modified as per Modification Agreement recorded 4/30/2014 as Instrument No. 22580416 of Official Records in the office of the Recorder of **SANTA CLARA** County, California;

Date of Sale: **12/15/2015 at 10:00 AM**

Place of Sale: **At the gated North Market Street entrance to the Superior Courthouse, located at 190 N. Market Street, San Jose, CA 95113**

Amount of unpaid balance and other charges: **\$1,026,989.17**

The purported property address is: **1093 PETRONI WAY, SAN JOSE, CA 95120**

000044

TS No.: CA-15-681597-JB

Assessor's Parcel No.: 583-33-023

NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call 916.939.0772 for information regarding the trustee's sale or visit this Internet Web site <http://www.qualityloan.com>, using the file number assigned to this foreclosure by the Trustee: CA-15-681597-JB. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein. If no street address or other common designation is shown, directions to the location of the property may be obtained by sending a written request to the beneficiary within 10 days of the date of first publication of this Notice of Sale.

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse. If the sale is set aside for any reason, the Purchaser at the sale shall be entitled only to a return of the deposit paid. The Purchaser shall have no further recourse against the Mortgagor, the Mortgagee, or the Mortgagee's Attorney.

If you have previously been discharged through bankruptcy, you may have been released of personal liability for this loan in which case this letter is intended to exercise the note holders right's against the real property only. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit report agency if you fail to fulfill the terms of your credit obligations.

QUALITY MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Date:

NOV 10 2015

Quality Loan Service Corporation
411 Ivy Street
San Diego, CA 92101
619-645-7711 For NON SALE information only
Sale Line: 916.939.0772
Or Login to: <http://www.qualityloan.com>
Reinstatement Line: (866) 645-7711 Ext 5318

Quality Loan Service Corp. by: Christine Bitanga, as Authorized Agent.

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Trustee Sale Number: CA-15-681597-JB

NOTICE OF SALE
SUMMARY OF KEY INFORMATION

The attached notice of sale was sent to FARHANG HAMEDI-FARD AND ROSEMARY HAMEDI-FARD, HUSBAND AND WIFE AS JOINT TENANTS, in relation to 1093 PETRONI WAY, SAN JOSE, CA 95120.

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 3/25/2008. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE.

IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

The total amount due in the notice of sale is \$1,026,989.17. Your property is scheduled to be sold on 12/15/2015 at 10:00 AM At the gated North Market Street entrance to the Superior Courthouse, located at 190 N. Market Street, San Jose, CA 95113.

However, the sale date shown on the attached notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call 916.939.0772 or visit this Internet Web site address <http://www.qualityloan.com> using the file number assigned to this case CA-15-681597-JB. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

If you would like additional copies of this summary, you may obtain them by calling 619-645-7711.

RECORDING REQUESTED BY
CHICAGO TITLE COMPANY
AND WHEN RECORDED MAIL TO

Ahmad Azimian
739 Portswood Dr.
San Jose, California 95120

DOCUMENT: 17718909

Pages: 6



Fees . . . 31.00
Taxes . . .
Copies . . .
AMT PAID 31.00

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Chicago Title

RDE # 006
4/13/2004
8:00 AM

Escrow No. 990062 - SM
Order No. 990062 - MJC

1761 Junction Ave, San Jose

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Assessor's Parcel No:
237-09-145

DEED OF TRUST WITH ASSIGNMENT OF RENTS AS ADDITIONAL SECURITY

This DEED OF TRUST, made this 19TH day of March, 2004, between
Frank Hamedi-Fard and Rosemary Hamedi-Fard, Husband and Wife

237-24-125

herein called TRUSTOR, whose address is 131 Tully Rd. San Jose, Ca. 95111

CHICAGO TITLE COMPANY, a California Corporation herein called TRUSTEE, and
Ahmad Azimian, an unmarried man and Sara Margaret Azimian, an unmarried woman as
joint tenants

herein called BENEFICIARY, Trustor irrevocably grants, transfers and assigns to Trustee in Trust, with Power of Sale
that property in the City of San Jose County SANTA CLARA
California, described as:

(LEGAL DESCRIPTION CONTINUED ON ATTACHED EXHIBIT AND MADE A PART HEREOF)

ADDITIONAL PROVISIONS EXHIBIT ATTACHED AND MADE A PART HEREOF BY REFERENCE

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon
Beneficiary to collect and apply such rents, issues and profits.

For the Purpose of Securing (1) payment of the sum of \$600,000.00 with interest thereon according to the terms of a
promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof; (2) the
performance of each agreement of Trustor incorporated by reference or contained herein or reciting it is so secured; (3) Payment of additional sums
and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting
that they are secured by this Deed of Trust.

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To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A of that certain Fictitious Deed of Trust referenced herein, and it is mutually agreed that all of the provisions set forth in subdivision B of that certain Fictitious Deed of Trust recorded in the book and page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T-3878	874	Sacramento	71-10-26	615	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego Series 5 Book 1964, Page 149774					

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties) are printed on the following pages hereof, and are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by laws.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

STATE OF CALIFORNIA
 COUNTY OF Santa Clara) SS

[Signature]
 Frank Hamedi-Fard

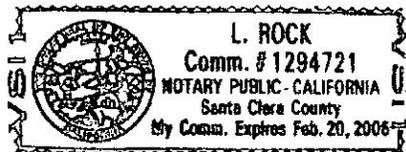
On April 12, 2004 before me,
the undersigned
 a Notary Public in and for said County and State, personally appeared
Frank Hamedi-Fard and Rosemary Hamedi-Fard

[Signature]
 Rosemary Hamedi-Fard

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
 NOTARY'S SIGNATURE



(THIS AREA FOR OFFICIAL NOTARIAL SEAL OR STAMP)

LEGAL DESCRIPTION EXHIBIT

All that certain Real Property in the City of San Jose, County of Santa Clara, State of California, described as follows:

Being a portion of that certain Parcel of land conveyed to the Bank of America, National Trust and Savings Association, Trustee for Engineering Fabrications Incorporated Profit Sharing Retirement Plan, a trust by Grant Deed recorded April 20, 1966, in Book 7353, Official Records, Page 260, Santa Clara County Records, described as follows:

Commencing at a nail in the center line of Junction Avenue, 80 feet wide, distant thereon South 38 deg. 26' East 899.83 feet from a monument at the intersection thereof with the center line of East Brokaw Road, 60 feet wide; thence parallel with said center line of East Brokaw Road, South 51 deg. 17' 04" West, 40.00 feet to an iron pipe in the Southwesterly line of Junction Avenue, and the True Point of Beginning of the parcel of land to be described; thence continuing parallel with aid center line of East Brokaw Road, South 51 deg. 17' 04" West 250.18 feet to the intersection thereof with the Northeasterly line of that certain parcel of land conveyed to Velcon Filters, Inc., a California Corporation, by Grant Deed recorded October 22, 1970, in Book 9095, official Records, Page 524, Santa Clara County Records; thence along said Northeasterly line of that certain Parcel of land conveyed to Velcon Filters, Inc., S. 41 deg. 21' 07" E. 112.28 feet to the intersection thereof with the Southeasterly line of said certain Parcel of Land conveyed to Velcon Filters, Inc., thence along the Northeasterly prolongation of the said Southeasterly line of that certain parcel of land conveyed to Velcon Filters, Inc., North 48 deg. 40' 05" East, 244.78 feet to the intersection thereof with the said Southwesterly line of Junction Avenue; thence along said Southwesterly line of Junction Avenue, North 38 deg. 26' West, 100.90 feet to the true point of beginning.

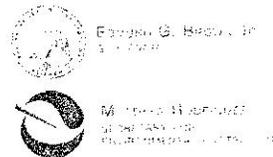
Escrow No: 990062 SM

Assessor's Parcel No: 237-09-145

ADDITIONAL PROVISIONS EXHIBIT

In the event Trustor, without the prior consent of the Beneficiary, sells, agrees to sell, transfers or conveys its interest in the real property or any part thereof or any interest therein, Beneficiary may at its option declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions. The terms "Trustor" and "Beneficiary" include their successors.

Eye Copy



State Water Resources Control Board

October 29, 2015

(sent via electronic mail and certified mail)

CERTIFIED MAIL

No. 7015 0640 0006 0950 4551

Mr. George Chavez
Director of Public Works Services
City of Beverly Hills
345 Foothill Road
Beverly Hills, CA 90210
gchavez@beverlyhills.org

SUBJECT: ENFORCEMENT ACTION: ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO MEET WATER CONSERVATION STANDARD

Dear Mr. Chavez:

On May 5, 2015, the State Water Resources Control Board (State Water Board) adopted Resolution 2015-0032, an Emergency Regulation for Statewide Urban Water Conservation (Emergency Regulation) pursuant to Water Code section 1058.5. The Emergency Regulation became effective on May 18, 2015. Among other things, the Emergency Regulation is designed to achieve the 25 percent statewide potable water usage reduction through February 2016 ordered by Governor Brown in his April 1, 2015 Executive Order.

The Emergency Regulation requires each urban water supplier to "reduce its total potable water production by the percentage identified as its conservation standard." (Cal. Code Regs., tit. 23, § 865(c)(1).) The City of Beverly Hills has failed to meet its conservation standard. Therefore, I am issuing you the enclosed Administrative Civil Liability Complaint (Complaint) under Water Code sections 1846 and 1055. The proposed civil liability is based on the findings set forth in the enclosed Complaint.

If you have questions, or believe the allegations are erroneous, please contact Dr. Matthew Buffleben at (916) 341-5891, or by email at Matthew.Buffleben@waterboards.ca.gov. Your right to request a hearing to contest the allegations is also described in the Complaint.

Sincerely,

Christian M. Carrigan, Director
Office of Enforcement

Enclosure

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cc: *(via email only)*

Ms. Caitlin Sims
Senior Management Analyst
City of Beverly Hills
csims@beverlyhills.org

State Water Resources Control Board

Ms. Caren Trgovcich
Chief Deputy Director
caren.trgovcich@waterboards.ca.gov

Mr. Eric Oppenheimer, Director
Office of Research, Planning and Performance
eric.oppenheimer@waterboards.ca.gov

Mr. Max Gomberg
Office of Research, Planning and Performance
max.gomberg@waterboards.ca.gov

Dr. Matthew Buffleben, Chief
Special Investigations Unit
Matthew.Buffleben@waterboards.ca.gov

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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

OFFICE OF ENFORCEMENT

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Urban Water Conservation
by
CITY OF BEVERLY HILLS

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Beverly Hills (Beverly Hills) is alleged to have failed to reduce its total potable water production by 32 percent for each month as compared to the amount used in the same month in 2013, in violation of California Code Regulations, title 23, section 865(c)(9), adopted by the State Water Resources Control Board (State Water Board or Board) pursuant to Water Code section 1058.5.
2. Water Code section 1846, subdivision (a)(2), provides that any person or entity that violates a regulation adopted by the Board may be liable for up to five hundred dollars (\$500) for each day the violation occurs. Water Code section 1846, subdivision (c), provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. Water Code section 1055, subdivision (a), provides that the Executive Director of the Board may issue a complaint to any person or entity on which Administrative Civil Liability (ACL) may be imposed. State Water Board Executive Director Thomas Howard has delegated this authority to Chief Deputy Director Caren Trgovcich, who in turn has delegated the authority to issue a complaint for violation of California Code Regulations, title 23, section 865(d)(1) to the Director of the State Water Board's Office of Enforcement, Cris Carrigan.

ALLEGATIONS

4. On January 17, 2014, Governor Edmund G. Brown Jr. (Governor Brown) issued Proclamation No. 1-17-2014 (Proclamation), declaring a State of Emergency to exist in California under the Emergency Services Act due to severe drought conditions. The Proclamation, among other things, called on all Californians to reduce their water usage by 20 percent.
5. On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency due to drought conditions, based on the need to strengthen the state's ability to manage water and habitat effectively in drought conditions.
6. On April 1, 2015, Governor Brown issued Executive Order B-29-15 (Executive Order) to strengthen the state's ability to manage water and habitat effectively in drought conditions. The Executive Order calls on all Californians to redouble their efforts to conserve water, and directs the State Water Board to impose restrictions on urban water suppliers to achieve a statewide 25 percent reduction in potable urban water usage through February 2016.
7. On May 5, 2015, the State Water Board adopted Resolution 2015-0032, an Emergency Regulation for Statewide Urban Water Conservation (Emergency Regulation) pursuant to Water Code section 1058.5. The Emergency Regulation adds a new section to title 23 of the California Code of Regulations intended to safeguard urban water supplies in the event of continued drought, minimize the potential for waste and unreasonable use of water, and

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achieve the 25 percent statewide potable water usage reduction ordered by Governor Brown in the Executive Order. The Emergency Regulation was approved by the Office of Administrative Law and became effective on May 18, 2015.

8. The Emergency Regulation requires each urban water supplier to "reduce its total potable water production by the percentage identified as its conservation standard." California Code Regulations, title 23, section 865(c)(1).
9. Section 865(b)(2) requires urban water suppliers to prepare and submit a monitoring report to the State Water Board by the 15th of each month detailing the total amount of potable water produced compared to the amount produced in the same calendar month in 2013.
10. The drought conditions that formed the basis for the Executive Order and Emergency Regulations continue to exist and will likely continue to exist for the foreseeable future.
11. Beverly Hills has a conservation target, pursuant to section 865(c)(9), of 32 percent savings over its water usage in 2013. As of the date of its last report, Beverly Hills is cumulatively 11.7 percent behind in meeting the applicable conservation standard, which translates to an estimated 174,609,442 gallons of water.
12. On August 7th the State Water Board Office of Enforcement issued a Notice of Violation and an Information Order pursuant to its authority outlined in Section 866(b) of the Emergency Regulations, to determine what actions Beverly Hills had taken to comply with its conservation standard. Beverly Hills responded to the Information Order on August 19, 2015.
13. Water Board staff reviewed the information provided by Beverly Hills in response to the Information Order and has been monitoring ongoing conservation efforts. While Beverly Hills has changed their water rate structure, it is deficient on its face in regards to water conservation for two reasons: 1) new rates will not go into effect until November, which is long after the critical summer months, and 2) the rate structure is uniform across water users, failing to incentivize water conservation in any manner. More importantly, there are significant deficiencies in Beverly Hills' conservation program including: failure to issue penalties for water users who waste water or violate the local ordinance, and failure to implement its conservation program in a timely fashion.
14. Water Board staff reviewed the urban supplier monthly reports and used two metrics to assess the nature and persistence of the water conservation standard violations: 1) monthly and cumulative performance in meeting the numeric conservation standard, and 2) the total volume of water produced by the water supplier above the applicable conservation standard. These metrics were analyzed together to compile a single ranking. Beverly Hills was identified as a water supplier whose violation of the regulation was one of the most severe.
15. The circumstances described above indicate that Beverly Hills has violated section 865(c)(9) by failing to reduce its total potable water production by 32 percent for each month as compared to the amount used in the same month in 2013, or for a total of 122 days from the effective date of the Emergency Regulation on June 1, 2015 and the September 30, 2015 date tabulated in its last report.

PROPOSED CIVIL LIABILITY

16. Water Code section 1846, subdivision (a)(2), provides that any person or entity that violates a regulation adopted by the Board may be liable for up to five hundred dollars (\$500) for each day the violation occurs.
17. The evidence provided by Beverly Hills in the monthly reports that are submitted in compliance with Section 865(b)(2) demonstrates that Beverly Hills is in ongoing violation of the Conservation

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Order, beginning on June 1, 2015 and extending through at least September 30th, 2015 – a total of 122 days.

18. The maximum civil liability for the alleged violations is \$61,000.
19. In determining the amount of civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action taken by the violator.
20. In this case, Beverly Hills has consistently failed to meet its conservation standard, even after a Notice of Violation was issued by the State Water Board. Beverly Hills has issued no penalties to its customers, and as such has failed to enforce its own water restrictions put in place to meet the conservation standard. Beverly Hills' violation of the emergency regulation has spanned four months, and is ongoing with little to no change in behavior, regardless of the enforcement actions taken by the State Water Board.
21. Although not required under Water Code section 1055, State Water Board staff evaluated Beverly Hills' ability to pay the proposed civil liability. Water Board staff reviewed Beverly Hills' ability to satisfy immediate financial obligations by reviewing its financial reports and found the budgetary reserve is more than enough to pay the proposed civil liability without impairing essential functions.
22. Having taken into consideration the factors described above, the Director for the Office of Enforcement recommends an ACL for violating the emergency regulation of \$61,000. The recommended penalty is based on the circumstances known at this time: Beverly Hills' continued failure to meet its conservation standard despite repeated warnings during extreme ongoing drought conditions, Beverly Hills' ability to pay, and the need to provide a strong disincentive for further non-compliance and continued violation by Beverly Hills, its residents and any similarly-situated parties.

RIGHT TO HEARING

23. Beverly Hills may request a hearing on this matter before the State Water Board. Any such request for hearing must be in writing and received or postmarked within 20 days of the date this notice is received. (California Water Code, § 1055, subd. (b).)
24. If Beverly Hills requests a hearing, Beverly Hills will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of the liability proposed herein by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.
25. If Beverly Hills requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and, if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the California Water Code. Any State Water Board order imposing an ACL shall become final and effective upon issuance.
26. If Beverly Hills does not wish to request a hearing, please remit a cashier's check or money order within 20 days of the date of this Complaint for the amount of the ACL set forth above to:

State Water Resources Control Board
Division of Administrative Services
Accounting Branch 1001 I Street, 18th Floor,
Sacramento, CA 95814

000057

27. If Beverly Hills does not request a hearing and does not remit the ACL amount, the State Water Board may seek recovery of the ACL amount as authorized by Water Code section 1055.4, may issue a Cease and Desist Order subjecting Beverly Hills to up to \$10,000 per day in civil liabilities for non-compliance, or may seek any other remedy authorized by law.

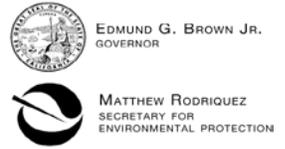
STATE WATER RESOURCES CONTROL BOARD



Christian M. Carrigan, Director
Office of Enforcement

Dated: 10/29/2015

000058



San Francisco Bay Regional Water Quality Control Board

December 24, 2015
CS 270314 (JHG)

Elizabeth Wells, Advisory Team
San Francisco Bay Regional Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Elizabeth.Wells@waterboards.ca.gov

**BY PERSONAL SERVICE &
ELECTRONIC MAIL**

Subject: Administrative Civil Liability Complaint No. RI-2015-1012 Against Frank Hamedí (Former Velcon II Property), Santa Clara County; Prosecution Team's Submission of Rebuttal Information

Dear Ms. Wells:

In accordance with the Revised Hearing Procedure for the above-referenced matter (Revised Hearing Procedure), the Prosecution Team is providing you with one hard copy and one electronic copy of the rebuttal information required under Revised Hearing Procedure section, *Submission of Evidence and Policy Statements*. The deadline for the Prosecution Team to submit all rebuttal information required under *Submission of Evidence and Policy Statements* is December 24, 2015 by 12:00 p.m.

All Evidence for the Regional Water Board's Consideration:

Enclosed with this letter, please find the Prosecution Team's Rebuttal Evidence, which includes Exhibits 26 through 32.

Legal and Technical Arguments or Analysis:

The Prosecution Team's Rebuttal Brief in Response to Frank Hamedí's Legal and Technical Arguments or Analysis is enclosed herewith.

As required by the Hearing Procedure, the Prosecution Team also provided one hard copy and one electronic copy of this letter, including the enclosure, to Mr. Frank Hamedí.

(continued on next page)

If you have any questions, please contact Jack Gregg at 510-622-2437 or
Jack.Gregg@Waterboards.ca.gov.

Sincerely,



Paul Ciccarelli
Staff Counsel

Enclosure: Prosecution Team's Rebuttal Evidence
Prosecution Team's Rebuttal Brief in Response to Frank Hamedi's Legal and
Technical Arguments or Analysis

Copy to: (by certified mail and electronic mail)

Certified Mail No. 7014 0510 0001 3749 9283

Mr. Frank Hamedi
131 Old Tully Road
San Jose, CA 95111-1921
Email: info@envirosoiltech.com

Copy to: (by electronic mail)

Regional Water Board Prosecution Team
S. Jack Chevlen, 5902 Deerland Court, San Jose, CA 95124-6575

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**PROSECUTION TEAM'S REBUTTAL BRIEF IN
RESPONSE TO FRANK HAMEDI'S LEGAL AND
TECHNICAL ARGUMENTS OR ANALYSIS**

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1 **II. REGIONAL WATER BOARD STAFF PROVIDED MR. HAMEDI WITH CORRECT AND**
2 **CONSISTENT INFORMATION REGARDING HIS RESPONSIBILIY AT THE CLEANUP**
3 **SITE**

4 Mr. Hamedi references an alleged conversation he had with David Barr,
5 an experienced staff member in the Regional Water Board's Site Cleanup
6 Program, on April 15, 2014. (Submission, page 5, lines 15-16.) This date is
7 inconsistent with the record (See Complaint, paragraph 15; Exhibits 16-18.)
8 This rebuttal assumes that Mr. Hamedi is describing a phone conversation that
9 occurred on April 15, 2015, which is consistent with the phone call described
10 in the Submission. (Exhibit¹ 17.)

11 During the call on April 15, 2015, Mr. Hamedi alleges that Mr. Barr
12 told Mr. Hamedi that he "would be primarily responsible for the cleanup site
13 in the event there was a closure of the site and then the site was reopened .
14 . . and Velcon [Filters, Inc.] would not be responsible." (Submission, page
15 5, lines 20-25.) Because Mr. Barr made this statement, Mr. Hamedi added
16 language to the deed restriction he submitted on June 22, 2015. (Submission,
17 page 6, lines 10-13.)

18 The Regional Water Board has record of the above communication in an
19 email dated April 15, 2015. (Exhibit 17.) The email explains that the
20 Regional Water Board and Mr. Hamedi reached an agreement on proposed deed
21 restriction language and directed Mr. Hamedi to submit a signed and notarized
22 deed restriction with the agreed upon language. The email, however, does not
23 mention any dispute about naming responsible parties for future enforcement
24 requiring cleanup at 1761 Junction Avenue, San Jose, California ("Site").

25 Mr. Barr will be available to testify at the hearing should the
26 Regional Water Board want additional testimony on the April 15, 2015,
27 telephone conversation. Mr. Barr is prepared to testify that he made

28 _____
¹ References to "Exhibit(s)" refers to the Exhibits submitted as part of
the Prosecution Team's Submission of Evidence and Policy Statements.

1 statements to Mr. Hamedi that are consistent with the Board's cleanup process
2 (i.e., Resolution 92-49) and the Board's practice for naming responsible
3 parties. Mr. Barr has a detailed understanding of site cleanup as he is one
4 of the most experienced staff in the Site Cleanup Program. His employment
5 with the Water Boards dates back almost 30 years (1986). Mr. Barr has worked
6 for the Regional Water Board since 1990 and has managed cleanup cases for the
7 last 22 years (since 1993).

8 This case is not about Mr. Hamedi's misunderstandings of the deed
9 restriction's purpose under the Order, but Mr. Hamedi's refusal to accept
10 responsibility for the Order Tasks for which he is primarily responsible as
11 the current Site owner. Mr. Hamedi is knowledgeable of environmental cleanup
12 standards. Mr. Hamedi is the general manager of Enviro Soil Tech Consultants,
13 an environmental consulting firm in San Jose, California, which has worked on
14 multiple cleanup sites under Site Cleanup Program oversight (i.e., 450
15 Montague Expressway, Milpitas; 15595 Washington Avenue, San Lorenzo; and 290
16 Keyes Street, San Jose). (Rebuttal Exhibit 26.) It appears that Mr. Hamedi
17 has worked as an engineering consultant since 1984 (Rebuttal Exhibit 27), and
18 the Prosecution Team understands that Enviro Soil Tech Consultants worked on
19 the cleanup of the site Mr. Hamedi currently owns.

20
21 **III. REGIONAL WATER BOARD STAFF HAS COOPERATED WITH MR. HAMEDI AND HAS**
22 **EXHAUSTED SIGNIFICANT TIME AND RESOURCES TO ACHIEVE ORDER COMPLIANCE**

23 Mr. Hamedi contends that Regional Water Board staff was neither
24 responsive nor worked in good faith with Mr. Hamedi. (Submission, page 8,
25 lines 1-3; page 18, lines 3-11.) Mr. Hamedi holds the position that the
26 Complaint was unnecessary. Mr. Hamedi would have submitted an acceptable deed
27 restriction if Regional Water Board staff responded to his attorney's, Jack
28

1 Chevlen's, communications sent on July 2 and July 23, 2015. (Submission, page
2 8, lines 16-19.)

3 The history of interactions between Regional Water Board staff and Mr.
4 Hamedi reveal that the Complaint was necessary to achieve Order compliance.
5 There is a substantial record of communications with Mr. Hamedi, which
6 culminated into the case before the Board. Mr. Hamedi has opposed the
7 recordation of a deed restriction on the Site since 2001, when the Regional
8 Water Board adopted the Order with the deed restriction requirements.
9 (Exhibit 9.) Mr. Hamedi, named in the Order as a secondarily responsible
10 party (Exhibit 6), did not cooperate when first asked to record a deed
11 restriction. On March 17, 2011, Mr. Hamedi was warned that his status could
12 be elevated to a primarily responsible party for the deed restriction tasks.
13 (Exhibit 10.) On February 5, 2014, Mr. Hamedi's status was elevated to
14 primarily responsible party for the deed restriction tasks because he failed
15 to file an acceptable deed restriction. (Exhibit 11.)

16 Since 2011, Regional Water Board staff has actively requested a signed
17 deed restriction from Mr. Hamedi through 17 inquiries and requests. (See
18 Exhibits 10-11; Rebuttal Exhibits 28 (summarizing communications with Mr.
19 Hamedi from March 17, 2011 to September 2, 2015), 29-30.) The Submission
20 glosses over this long history of interactions. The July 2 and July 23, 2015,
21 letters from Mr. Chevlen occurred after the Prosecution Team made two things
22 clear to Mr. Hamedi: 1) his case was referred for formal enforcement; and 2)
23 he had one last opportunity to submit the deed restriction that he and the
24 Site Cleanup Program agreed to. (Exhibits 18-19.) As the Regional Water Board
25 may appreciate from the information item presented at its December 16, 2015,
26 meeting, the simple matter of recording a deed restriction as required under
27 California Water Code section 13307.1, has taken a significant amount of
28 Regional Water Board staff time and resources; when, as acknowledged by Mr.

1 Hamed, there are much higher priorities for protecting human health and the
2 environment. (Submission, page 4, line 23; page 5, line 14.)

3 Moreover, the Prosecution Team did, in fact, respond to Mr. Chevlen's
4 letter dated July 2, 2015. Regional Water Board enforcement staff sent a
5 letter to Mr. Hamed and Mr. Chevlen on July 20, 2015. (Exhibit 19.) Mr.
6 Chevlen's letter dated July 23, 2015, confirms receipt of the July 20, 2015,
7 response. The letter provides Mr. Chevlen with background information of Mr.
8 Hamed's historical non-compliance and his repeated attempts to change deed
9 restriction language.

10
11 **IV. MR. HAMED'S INABILITY TO PAY CLAIM IS INCOMPLETE AND MISLEADING**

12 Mr. Hamed's claim of an inability to pay the proposed liability amount
13 lacks appropriate and sufficient supporting evidence. As directed in the
14 State Water Resources Control Board Enforcement Policy ("Enforcement Policy"),
15 page 19, staff conducted a simple preliminary asset search before issuing the
16 Complaint. The finding in Exhibit A of the Complaint puts some evidence into
17 the record about the ability to pay factor to give the discharger an
18 opportunity to submit additional financial evidence if it chooses. As stated
19 in the Submission, it is Mr. Hamed's ultimate responsibility for providing
20 *all relevant and reliable information* regarding his financial situation.
21 (Submission, page 3, lines 8-9)(emphasis added.)

22 Mr. Hamed references public documents to support his inability to pay
23 claim: a *Notice of Trustee Sale* for his residence located at 1093 Petroni
24 Way, San Jose, California; and a loan of \$600,000 Mr. Hamed secured on the
25 Site. (Submission, page 11, line 19-26; page 12, line 1-8.) While the
26 Prosecution Team is sympathetic to all inability to pay claims, Mr. Hamed
27 failed to submit relevant and reliable information regarding his financial
28 situation.

1 The Prosecution Team provided Mr. Hamedi multiple opportunities to
2 submit financial information to enable the Prosecution Team to fully analyze
3 his ability to pay. On September 2, 2015, Mr. Hamedi received the
4 *Administrative Civil Liability Fact Sheet* ("ACL Fact Sheet") as an attachment
5 to the Complaint. The majority of the ACL Fact Sheet is dedicated to ability
6 to pay, stating, "[i]f the Discharger [or Responsible Party] intends to
7 present arguments about its ability to pay, it must provide reliable
8 documentation to establish that ability or inability." The ACL Fact Sheet
9 lists examples of documents that should be submitted to establish ability or
10 inability to pay, and includes documents not only pertaining to debt, but
11 documents related to assets and income (i.e., last three years of signed
12 federal income tax returns (IRS Form 1040) including schedules, bank account
13 statements, investment statements, and retirement account statements). The
14 Submission only references a selective field of personal debt.

15 In expectation of an inability to pay claim, the Prosecution Team
16 provided an *Individual Ability to Pay Form* (Rebuttal Exhibit 31) for Mr.
17 Hamedi to complete more than once, as shown in the Submission (Bates Stamp
18 000043-000044). The form requested information the Prosecution Team needed to
19 evaluate Mr. Hamedi's ability to pay the proposed liability. The form
20 notified Mr. Hamedi that a failure to provide this information may result in
21 denial of his inability to pay claim. Mr. Hamedi failed to submit the
22 provided *Individual Ability to Pay Form*.

23 The Prosecution Team attempted to issue an Administrative Subpoena for
24 Records and Documents ("Subpoena") to Mr. Hamedi via rush process service on
25 November 24, 2015. (Exhibit 25.) From November 24, 2015, to December 3, 2015,
26 the hired process server repeatedly attempted to serve the Subpoena at Mr.
27 Hamedi's home and business addresses. The Prosecution Team then sent the
28 Subpoena via electronic mail and overnight mail to Mr. Hamedi and Mr. Chevlen

1 on December 4, 2015. The Prosecution Team has confirmed receipt of the mailed
2 Subpoena at Mr. Hamedí's home and business addresses. (Rebuttal Exhibit 32.)
3 Despite the Prosecution Team's proactive efforts, Mr. Hamedí has failed to
4 produce relevant and reliable financial information.

5 The Revised Hearing Procedure directed Mr. Hamedí to submit supporting
6 evidence as set forth in the ACL Fact Sheet by December 14, 2015, if he
7 intends to argue an inability to pay. Because Mr. Hamedí neither produced the
8 evidence in the Submission nor responded to the Prosecution Team's requests
9 for financial documents, Mr. Hamedí has failed to establish an inability to
10 pay claim. The Prosecution Team intends to object to any submission of
11 financial evidence not timely submitted in accordance with the Revised
12 Hearing Procedure.

13 The Regional Water Board should not adjust the penalties proposed in
14 the Complaint based on the claimed inability to pay.

15
16 **V. THE PARTIES HELD A CONFIDENTIAL SETTLEMENT MEETING PURSUANT TO**
17 **GOVERNMENT CODE SECTION 11415.60**

18 Mr. Hamedí, through his attorney, contends that he requested an
19 "informal meeting to clarify outstanding issues" with the Prosecution Team
20 that took place on October 30, 2015. The Prosecution Team scheduled a meeting
21 in response to the Advisory Team's pre-hearing ruling, which denied Mr.
22 Hamedí's request for a pre-hearing conference. (Exhibit 22.) The Advisory
23 Team ruled a pre-hearing conference was premature and further explained, "if
24 a pre-hearing conference is scheduled at a future date, the Advisory Team is
25 not a designated party, and as a result any communications where the Advisory
26 Team is present would not be settlement-confidential or privileged." (Exhibit
27 22.) The Prosecution Team took this as a suggestion to meet with Mr. Hamedí
28

1 in an attempt to resolve the violations alleged in the Complaint through
2 confidential settlement negotiations.

3 California Government Code section 11415.60 states, in relevant part:

4 **(a) An agency may formulate and issue a decision by**
5 **settlement, pursuant to an agreement of the parties,**
6 **without conducting an adjudicative proceeding**
7 **No evidence of an offer to compromise or statement**
8 **made in settlement negotiations is admissible to**
9 **prove liability for any loss or damage except to the**
10 **extent provided in Section 1152 of the Evidence Code.**

11 The communications the Prosecution Team had with Mr. Hamed and his
12 attorney before, during, and after the meeting on October 30, 2015,
13 emphasized that all statements, information, or documents provided in
14 settlement discussions would be considered confidential per Government Code
15 section 11415.60. The Prosecution Team is willing to provide records of these
16 communications under seal if directed to do so by the Advisory Team or the
17 Regional Water Board.

18 The Prosecution Team attempted to jointly resolve the alleged
19 violations through settlement. The Prosecution Team, to promote candor
20 between the Parties, guaranteed that all settlement discussions would remain
21 confidential and that no statements would be used against Mr. Hamed before
22 the Regional Water Board should the case proceed to a hearing. Despite this,
23 Mr. Hamed, through his attorney, introduced several settlement statements
24 and communications into the record. (Submission page 8, lines 16-26; page 9,
25 lines 1-11, 23-25; page 10, lines 1-5.)

26 While the Prosecution Team finds it improper to introduce such
27 statements and communications into the record, it is not requesting the
28 Regional Water Board to strike anything from the record. The Prosecution Team
will not, however, breach confidentiality in order to rebut Mr. Hamed's
submission of statements and/or documents obtained during settlement.
Nonetheless, the Prosecution Team intends to object to any testimony

1 presented at the hearing concerning confidential settlement discussions not
2 already identified in the record.

3
4 **VI. THE LANGUAGE MR. HAMEDI ADDED TO THE DEED RESTRICTION**
5 **SUBMITTED ON JUNE 22, 2015, IS INCONSISTENT WITH THE PURPOSE**
6 **OF TASK C.2 OF THE ORDER**

7 Mr. Hamedi contends that the added language included in the deed
8 restriction submitted on June 22, 2015, is consistent with Resolution
9 92-49. (Submission, page 15, lines 5-22.) The Submission then
10 analogizes Task C.2 of the Order as a contractual obligation between
11 the Executive Officer and Mr. Hamedi. The Regional Water Board, through
12 its Executive Officer and/or staff, somehow violated an implied
13 covenant of good faith and fair dealing by finding Mr. Hamedi's deed
14 restriction unacceptable. (Submission, page 16, lines 1-13.)

15 The purpose of the deed restriction under Task C.2 and C.3 of the
16 Order is to restrict land use for the protection of health, safety, or
17 the environment from hazardous materials. The Order does not create "a
18 contractual obligation that one party is to perform for the benefit of
19 another party." (Submission, page 16, lines 1-3.) The Regional Water
20 Board is mandated to protect water quality and the Board issued the
21 Order to further its mandate. Regardless, as explained above, Regional
22 Water Board staff has provided Mr. Hamedi with correct and consistent
23 information regarding his responsibility at the Site. The Prosecution
24 Team submits that Regional Water Board staff has acted in good faith
25 and fair dealing in every interaction with Mr. Hamedi regarding Order
26 compliance.

27 Alternatively, a deed restriction is not a proper venue to
28 predetermine Mr. Hamedi's or other dischargers' liability for future
cleanup and/or investigation at the Site. The Regional Water Board must

1 provide due process to all parties named in any Amended Order or any
2 future cleanup and abatement orders at the Site.

3
4 **VII. THE YOUNGER CASE IS INAPPLICABLE TO THE PROPOSED LIABILITY IN**
5 **THE COMPLAINT**

6 Mr. Hamedi cites California Supreme Court case law to argue that
7 "a faultless spiller of oil should not be subject to the same civil
8 penalties as those to be assessed against an intentional or negligent
9 spiller of oil." (Submission, page 16, lines 22-24.) The Submission
10 then states that the current Water Code section 13350(a) makes no
11 distinction between a discharger and non-discharger, "but rather having
12 only violated an Order of the Regional Water Board." (Submission, page
13 17, line 3.)

14 In *People ex rel. Younger v. Superior Court* (1976) 16 Cal.3d 30,
15 the Court reviews the imposition of civil penalties under Water Code
16 section 13350, subdivision (a)(3). The Court conducted statutory
17 interpretation of the section and rejected the Plaintiff's contention
18 that the statute imposes strict liability. In 1976, Water Code section
19 13350, subdivision (a) stated:

20 "Any person who (1) intentionally or negligently
21 violates any cease and desist order hereafter issued,
22 reissued, or amended by a regional board or the state
23 board, or (2) in violation of any waste discharge
24 requirement or other order issued, reissued, or
25 amended by a regional board or the state board,
26 intentionally or negligently discharges waste or
27 causes or permits waste to be deposited where it is
28 discharged into the waters of the state and creates a
condition of pollution or nuisance, or (3) causes or
permits any oil or any residuary product of petroleum
to be deposited in or on any of the waters of the
state, except in accordance with waste discharge
requirements or other provisions of this division,
may be liable civilly in a sum of not to exceed six
thousand dollars (\$6,000) for each day in which such

1 violation or deposit occurs." (Younger, supra, at
2 34.)

3 The Legislature has amended the Water Code, including Water Code
4 section 13350, subdivision (a), which currently states:

5 "A person who (1) violates a cease and desist order
6 or cleanup and abatement order hereafter issued,
7 reissued, or amended by a regional board or the state
8 board, or (2) in violation of a waste discharge
9 requirement, waiver condition, certification, or
10 other order or prohibition issued, reissued, or
11 amended by a regional board or the state board,
12 discharges waste, or causes or permits waste to be
13 deposited where it is discharged, into the waters of
14 the state, or (3) causes or permits any oil or any
15 residuary product of petroleum to be deposited in or
16 on any of the waters of the state, except in
17 accordance with waste discharge requirements or other
18 actions or provisions of this division, shall be
19 liable civilly, and remedies may be proposed, in
20 accordance with subdivision (d) or (e)."

21 Water Code section 13350, subdivision (a), as amended, permits civil
22 liability against a person who, "violates a . . . cleanup and abatement
23 order", or "causes or permits any oil or any residuary product of petroleum
24 to be deposited in or on any waters of the state" A distinction
25 between a discharger and non-discharger exists under Water Code section
26 13350, subdivision (a). (See also Wat. Code, § 13350, subd. (e)(1)(explaining
27 minimum civil liability for non-discharge violations).)

28 The Complaint states, "a person who violates a cleanup and
abatement order issued by the Regional Water Board shall be civilly
liability under Water Code section 13350." Here, liability is assessed
against Mr. Hamedi pursuant to Water Code section 13350, subdivision
(a)(1). The cause of the enforcement action is Mr. Hamedi's failure to
comply with Task C.2 of the Order: a cleanup and abatement order issued
by the Regional Water Board under Water Code section 13304. The Order
names Mr. Hamedi as a discharger because as the current Site owner, he

1 is permitting or threatens to cause or permit a discharge of waste to
2 waters of the state. The State Water Board has historically recognized
3 current landowners as dischargers in cleanup orders, regardless of
4 whether the landowner owned at the time of the initial release. (See
5 State Water Board Order WQ 84-6 (*Logsdon*); State Water Board Order 86-
6 2, (*Zoecon*) (naming Zoecon Corporation a responsible party "not because
7 it had 'deposited' chemicals on to land where they will eventually
8 'discharge' into state waters, but because it owns contaminated land
9 which is directly discharging chemicals into water."); State Water
10 Board Order 86-18 (*Vallco Park*).)

11 *Younger* is inapplicable because the Prosecution Team is alleging
12 that Mr. Hamedí violated a cleanup and abatement order issued by a
13 regional board. (See *Wat. Code*, § 13350, subd. (a)(1).) Further, the
14 legislature removed all reference to intent and negligence in regards
15 to cleanup and abatement order violations. A person who violates a
16 cleanup and abatement order is held strictly liable.

17
18 **VIII. MR. HAMEDÍ'S POLICY ARGUMENT DOES NOT JUSTIFY A LOWER**
19 **LIABILTIY AMOUNT**

20 Mr. Hamedí contrasts the proposed liability in the Complaint to the
21 proposed liability set forth *In the Matter of Urban Water Conservation by the*
22 *City of Beverly Hills* ("Beverly Hills ACLC"), an Administrative Civil
23 Liability Complaint before the State Water Resources Control Board ("State
24 Water Board"). (Submission, page 17, lines 9-14.) The Complaint and Beverly
25 Hills ACLC are easily distinguished.

26 The Beverly Hills ACLC alleges a four month violation of State Water
27 Board Resolution 2015-0032, an Emergency Regulation for Statewide Urban Water
28 Conservation ("Emergency Regulation") pursuant to Water Code section 1058.5.

1 The Emergency Regulation followed from Executive Order B-29-15 issued by
2 Governor Brown on April 1, 2015. The Emergency Regulation requires each urban
3 water supplier to "reduce its total potable water production by the
4 percentage identified as its conservation standard." (Cal. Code Regs., tit.
5 23, § 865, subd. (c)(1).)

6 The Complaint alleges Mr. Hamedi violated a cleanup and abatement order
7 issued under Water Code section 13304 for 513 days. The Order is based on
8 water quality concerns and not water conservation efforts. The Prosecution
9 Team reminds Mr. Hamedi that the maximum violation for the alleged violations
10 is \$2,565,000. The Prosecution Team reduced the days of violation, as
11 permitted under the Enforcement Policy, to 23 days, which significantly
12 reduces the penalty amount. For the reasons previously asserted herein, the
13 Complaint, and the Prosecution Team's Legal and Technical Arguments or
14 Analysis, the proposed liability of \$65,600 is justified.

15
16 **IX. CONCLUSION**

17 Based on the Prosecution Team's evidence submitted in accordance with
18 the Revised Hearing Procedures specified in this enforcement action, the
19 Complaint, including all attachments, relevant testimony and additional
20 submissions, the Prosecution Team respectfully requests the Regional Water
21 Board to assess administrative civil liability in the amount proposed.

22
23
24 
25 _____
26 Paul D. Ciccarelli
27 Staff Attorney
28 On Behalf of the Prosecution Team

Prosecution Team Initial Evidence Submittal

Exhibit No.	Description of Exhibit Provided by Reference
1	State Water Resources Control Board Porter-Cologne Water Quality Control Act http://www.waterboards.ca.gov/laws_regulations/docs/portercologne.pdf
2	State Water Resources Control Board Water Quality Enforcement Policy http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
3	Assessment Tool for Closure of Low-Threat Chlorinated Solvent sites http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/sitecleanup/Low_Threat_Closure_Assessment_Tool.pdf

Exhibit No.	Description of Exhibit Provided by Hard Copy and Electronically
4	Enforcement Policy Penalty Methodology Presentation to the Regional Water Quality Control Board, San Francisco Bay Region on December 14, 2011, Board Meeting agenda item #8
5	Complaint R2-2015-1012 Frank Hamedi Violation of Site Cleanup Requirements Former Velcon II Property, 1761 Junction Avenue, San Jose, Santa Clara County Regional Water Quality Control Board, San Francisco Bay Region
6	Final Site Cleanup Requirements for Velcon Filters, Inc., Board Order 01-108 Regional Water Quality Control Board, San Francisco Bay Region
7	Location Map and Zoning Map
8	Deed Restriction Exhibit
9	Staff Summary Report for the Velcon Filters hearing at the Regional Water Board meeting on September 19, 2001.

ACL Complaint R2-2015-1012 – List of Exhibits

Exhibit No.	Description of Exhibit Provided by Hard Copy and Electronically: Correspondence prior to issuance of Complaint R2-2015-1012
10	<p style="text-align: center;">Correspondence from 2011</p> <ul style="list-style-type: none"> • March 17, 2011 – Letter to Mr. Hamedy - Notification of Intent to Revoke Secondly Responsible Status. • August 5, 2011 - Letter to Mr. Hamedy - Submittal of Draft Deed Restriction • October 13, 2011 – Letter to Mr. Hamedy - Draft deed restriction for 1761 Junction Avenue.
11	<p style="text-align: center;">Correspondence from February 2014</p> <ul style="list-style-type: none"> • February 5, 2014 – Letter to Mr. Hamedy - naming Mr. Hamedy as Primarily Responsible for Board Order 01-108, Task C.2 and C.3 for a deed restriction.
12	<p style="text-align: center;">Correspondence from May 2014</p> <ul style="list-style-type: none"> • May 29, 2014 – Email to Mr. Hamedy - warning of a notice of violation for noncompliance.
13	<p style="text-align: center;">Correspondence from August 2014</p> <ul style="list-style-type: none"> • August 14, 2014 – Letter to Mr. Hamedy - Notice of Violation – Failure to Submit an acceptable deed restriction and return receipt.
14	<p style="text-align: center;">Correspondence from October 2014</p> <ul style="list-style-type: none"> • October 3, 2014 – Letter to Mr. Hamedy - Conditional Approval of Deed Restriction.
15	<p style="text-align: center;">Correspondence from January 2015</p> <ul style="list-style-type: none"> • January 6, 2015 – Emails to Mr. Hamedy and to Water Board staff –draft deed restriction edits.
16	<p style="text-align: center;">Correspondence from March 2015</p> <ul style="list-style-type: none"> • March 27, 2015 – Letter to Mr. Hamedy - Rejection of draft deed restriction with attached example of acceptable draft deed restriction. • March 27, 2015 – Attachment - example of acceptable deed restriction draft.
17	<p style="text-align: center;">Correspondence from April 2015</p> <ul style="list-style-type: none"> • April 15, 2015 – Email to Mr. Hamedy - approving two changes to the acceptable deed restriction draft that were requested by Mr. Hamedy on that date and instructions about the deed restriction notarization process. • April 22, 2015 – Email to Mr. Hamedy - inquiry seeking the signed notarized draft of the deed restriction.

ACL Complaint R2-2015-1012 – List of Exhibits

Exhibit No.	Description of Exhibit Provided by Hard Copy and Electronically: Correspondence prior to issuance of Complaint R2-2015-1012
18	<p style="text-align: center;">Correspondence from June 2015</p> <ul style="list-style-type: none"> • June 5, 2015 – Email to Mr. Hamedi – informing him of impending enforcement. • June 16, 2015 – Email to Mr. Hamedi - acknowledging a phone call with Mr. Hamedi in which enforcement staff informed him of impending enforcement. • June 25, 2015 – Email to Mr. Hamedi - rejecting a notarized deed restriction delivered to the Water Board on June 22, 2015, and identifying text added to the April 15, 2015 version of the deed restriction that was not acceptable.
19	<p style="text-align: center;">Correspondence from July 2015</p> <ul style="list-style-type: none"> • July 2, 2015 – Letter from Mr. Hamedi’s representative (Mr. Chevlen) regarding the deed restriction requirement. • July 20, 2015 – Letter to Mr. Chevlen - clarifying the Water Board Order 01-108 requirement and the reason the text added to the April 15, 2015, draft deed restriction is not acceptable. • July 23, 2015 – Letter from Mr. Chevlen - stating that the added text should be acceptable and requesting an attachment missing from the July 20, 2015, communications. • July 23, 2015 – Email to Mr. Chevlen - providing the attachment that was missing from the July 23, 2015, letter.
20	<p style="text-align: center;">Correspondence from August 2015</p> <ul style="list-style-type: none"> • August 25, 2015 – Email to Mr. Chevlen - acknowledging the recent communications, citing the Water Code authority, the alleged number of days of noncompliance, and reiterating that enforcement was imminent.

ACL Complaint R2-2015-1012 – List of Exhibits

Exhibit No.	Description of Exhibit Provided by Hard Copy and Electronically: Correspondence after issuance of Complaint R2-2015-1012
21	<p style="text-align: center;">Correspondence from August 2015</p> <ul style="list-style-type: none"> • September 11, 2015 – email from Office of Enforcement attorney to the Advisory Team • September 15, 2015 – Signed ACL Complaint Waiver of 90-day hearing requirement. • September 15, 2015 – Letter from Mr. Chevlen to the Advisory Team with questions about Final Site Cleanup Requirements Board Order 01-108. • September 17, 2015 – email from Mr. Ciccarelli to the Advisory Team • September 22, 2015 Letter from Mr. Ciccarelli to the Advisory Team regarding Mr. Chevlen’s questions to the Complaint enforcement proceedings. • September 24, 2015 – Letter from Mr. Chevlen to the Advisory Team responding to the September 22, 2015, letter.
22	<p style="text-align: center;">Correspondence from August 2015</p> <ul style="list-style-type: none"> • October 2, 2015 Advisory Team rulings. • October 20, 2015 Advisory Team rulings. • October 23, 2015 – Letter from Mr. Ciccarelli responding to Advisory Team rulings with a revised Hearing Procedure jointly submitted by the Designated Parties. • October 29, 2015 Advisory Team issued Revised Hearing Procedure with deadlines for a January 13, 2016 hearing.
23	<p style="text-align: center;">Hand-delivered documents November 20, 2015</p> <ul style="list-style-type: none"> • November 20, 2015 – hand delivered draft deed restriction signed and notarized by the property owners. • November 20, 2015 – Notice of Default and Election to Sell for Mr. Hamedi’s residence.
24	<p>November 24, 2015 – Deed restriction signed and notarized the Water Board Executive Officer, Bruce Wolfe.</p>
25	<ul style="list-style-type: none"> • Frank Hamedi Subpoena Package (11-24-2015) • Frank Hamedi Subpoena Reissuance Cover Letter (12-4-15)

Prosecution Team Rebuttal Evidence Submittal

Exhibit No.	Description of Exhibit Provided by Hard Copy and Electronically
26	<ul style="list-style-type: none">• 2008 Hamedi Business letter 450 Montague Expressway, Milpitas• 2004 Hamedi Business letter 15595 Washington Ave., San Lorenzo• 2007 Hamedi Business letter 290 Keyes Street, San Jose
27	<ul style="list-style-type: none">• 1984 Soil Tech Engineering Business Incorporation record
28	<ul style="list-style-type: none">• Hamedi Water Board Communications 2011-2015
29	<ul style="list-style-type: none">• Response to Request for Board Action Letter 9-15-11
30	<ul style="list-style-type: none">• Velcon Property Deed Restriction deadline Email 6-5-15
31	<ul style="list-style-type: none">• Individual Inability to Pay Form
32	<ul style="list-style-type: none">• OnTrac Package Delivery Confirmations

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit 1

Exhibit Provided by Reference

State Water Resources Control Board

Porter-Cologne Water Quality Control Act:

http://www.waterboards.ca.gov/laws_regulations/docs/portercologne.pdf

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Reference

Exhibit 2

State Water Resources Control Board Water Quality Enforcement Policy:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Reference

Exhibit 3

Assessment Tool for Closure of Low-Threat Chlorinated Solvent sites:
http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/sitecleanup/Low_Threat_Closure_Assessment_Tool.pdf

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 4

Enforcement Policy Penalty Methodology Presentation to the
Regional Water Quality Control Board, San Francisco Bay Region on
December 14, 2011, Board Meeting agenda item #8.

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**EXECUTIVE OFFICER SUMMARY REPORT
MEETING DATE: DECEMBER 14, 2011**

ITEM: **8**

SUBJECT: **Enforcement Policy Penalty Methodology - Overview of the Methodology**

DISCUSSION: This item provides the Board with an overview of the penalty methodology included in the State Board's Water Quality Enforcement Policy and some insights from the Board's advisory staff about the methodology. The Enforcement Policy requires a prescriptive methodology for calculating the amount of penalties to assess in Administrative Civil Liabilities (ACL) actions. Since the Policy's approval in 2010, there has not been a hearing on an ACL action before the Board. The purpose of this item is to prepare the Board for hearings on ACL actions that may occur in the near future, both to ensure that the Board understands how a penalty was calculated, but also so that if the Board decides to change a proposed penalty, the change will be consistent with the Enforcement Policy.

Having served as the Board's advisor on nearly all ACL actions, I will be providing this overview. As you may recall, ACL actions must adhere to a "separation of functions" process where a team of Board staff who has not been involved in investigating and prosecuting an enforcement case provides unbiased technical and legal advice to the Board, while a separate team of Board staff prosecutes the case by advocating for the proposed enforcement action. The Assistant Executive Officers have generally led the prosecution teams.

The accompanying Staff Report (Appendix A) summarizes the mechanics of the penalty methodology and provides supplemental information about its use including excerpts of the penalty methodology from the Enforcement Policy.

RECOMMEN-
DATION: No action is necessary, as this is an information item.

APPENDIX A: Staff Report on the Enforcement Policy Penalty Methodology

APPENDIX A



Matthew Rodriguez
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Francisco Bay Region

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(510) 622-2300 • FAX (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>



Edmund G. Brown Jr.
Governor

TO: Bruce H. Wolfe
Executive Office

FROM: Brian Thompson
Enforcement Coordinator

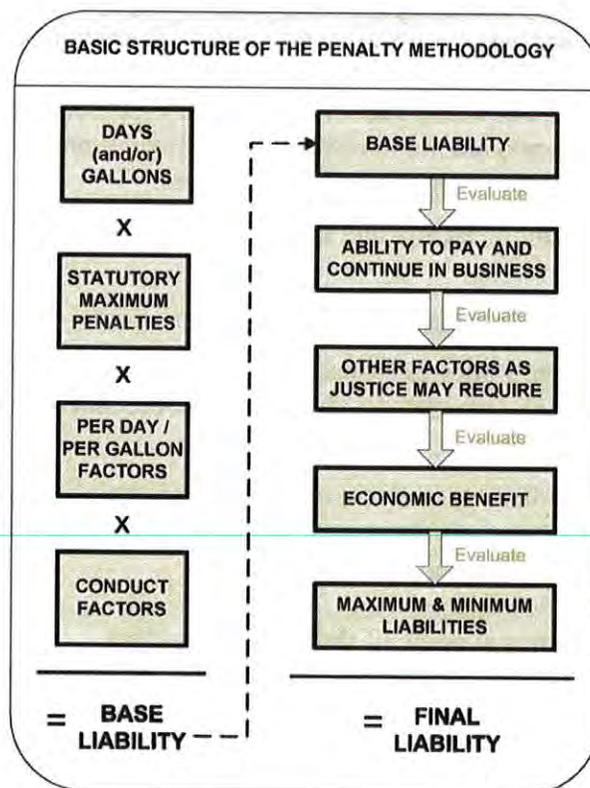
DATE: November 30, 2011

SUBJECT: **Enforcement Policy Penalty Methodology** – Summary of penalty methodology calculations and discussion of penalty factor assessments.

This staff report reviews how Administrative Civil Liabilities (ACLs) are calculated under the May 20, 2010, Water Quality Enforcement Policy (Enforcement Policy), it recommends an approach for changing a proposed ACL at a hearing, and it provides insight into some of the subjective penalty factors which may be contested during a hearing.

Basic Structure to the Penalty Methodology

There is a basic structure to the penalty methodology which shows the general “equation” for calculating an ACL. There are two parts to the calculation: (1) the steps taken to calculate a Base Liability; and (2) the steps taken to calculate the Final Liability (as illustrated below).



In general, the steps for calculating a Base Liability are based on factors associated with the violation (i.e., factors required by statute such as the nature, extent, gravity, and circumstances of the violation, toxicity of a discharge and its susceptibility to cleanup and abatement, discharger conduct, history of violations, etc.), and the steps for calculating the Final Liability consider other factors associated with the case (i.e., factors required by statute such as the discharger's ability to pay and continue in business, economic benefit, maximum and minimum penalties, etc.).

Penalty Factors Input into the Methodology

The functional part of the penalty methodology is the evaluation of penalty factors and the assessment of values which are input into the methodology to calculate an ACL. Within each step (or main factor) of the methodology, there are more specific penalty factors and sub-factors that are assessed to calculate the Base and Final Liabilities. For Base Liabilities, these factors are illustrated in the first two charts of Attachment A. The first chart is for non-discharge violations, which involve administrative- or procedural-type violations such as not obtaining a permit or submitting a report late, and the second chart is for discharge violations. For Final Liabilities, the factors are illustrated in the third chart. The factors input into the methodology are highlighted in these illustrations and, when applicable, there are page and table references to where the factor is discussed in the Enforcement Policy. For your convenience, a copy of the penalty methodology section of the Enforcement Policy (Section VI) is provided in Attachment B.

A Recommended Process for Changing a Proposed Liability

At an ACL hearing, the Board may decide to change a liability proposed by its Prosecution Team. Since adoption of the May 20, 2010, Enforcement Policy, modifications to a proposed liability must be explained and be compliant with the penalty methodology. Assuming that all facts surrounding the violation(s) are not in dispute, the following process is recommended for the Board and its advisory team to help facilitate this process.

- 1) Identify a penalty factor or factors that the Board wishes to modify based on hearing testimony.
- 2) Select an alternative input value.
- 3) Check the Enforcement Policy to ensure that the alternative value(s) remains within the allowable range and to verify that the definition is consistent with what was learned through hearing testimony.
- 4) Re-calculate the final liability and cross-check that the liability remains compliant with the Policy or statute (e.g., liability at least ten percent more than the economic benefit, and within minimum and maximum liabilities).

Supplemental Information about some of the Penalty Factors

There are some penalty factors that are conceptually similar but are evaluated separately in the methodology. The following penalty factors may, at times, be confused with another factor when discussing an alleged violation. Here are some additional thoughts about these penalty factors for your consideration.

“Potential for Harm” for Discharge Violations

The Potential for Harm factor for a discharge violation is the sum of three factors: Factors 1 + Factor 2 + Factor 3 (second chart, Attachment A).

Factors 1 and 2 both address harm associated with the discharge. For Factor 1, harm is evaluated by assessing the end result of the discharge (i.e., observed impacts or threat to the receiving water and beneficial uses). For Factor 2, harm is evaluated by assessing the risk associated with the material itself (i.e., the material poses an inherent risk based on the physical, chemical, biological, and thermal characteristics of the discharge). The main different between these two harm factors is that Factor 1 considers where, when, and how the discharge occurred, Factor 2 does not.

Factor 3 is an evaluation of how much of the discharge is susceptible to cleanup or abatement. The factor is assessed regardless of whether the discharge was actually cleaned up. The evaluation is based on whether 50 percent or more of the discharged material could be cleaned up or the effects abated. Credit for any actual cleanup is given in other steps of the methodology. These steps include the amount of gallons assessed in the Base Liability calculation, and the consideration of cleanup activities under the “Cleanup and Cooperation” conduct factor.

“Culpability”

Culpability is a penalty factor which considers fault of the discharger (e.g., if the was an intentional, negligent, or accidental violation). It is an evaluation of actions taken (or not taken) to cause a violation and the amount of responsibility the discharger bears. To help determine culpability, conduct may be compared to what a reasonable or prudent person would have done under similar circumstances, and it may compare operational procedures at a discharger’s facility to professional standards or industry practices. The evaluation also considers extenuating circumstances or circumstances beyond the discharger’s control which may have contributed to or caused the violation.

“Deviation from Requirement”

The Deviation from Requirement penalty factor is an evaluation of the effect of the violation on a legal requirement. For example, deviation may be considered minor when a discharger complies with most but not all of a permit provision and there is little difference between the noncompliance and what was intended by the legal requirement (i.e., effectiveness of the legal requirement remains generally intact). Deviation may be considered major when a discharger violates most or all of a requirement, such as when a discharge occurs in violation of a discharge prohibition, and there is a significant difference between the noncompliance and what was intended by the legal requirement (i.e., the legal requirement is rendered ineffective).

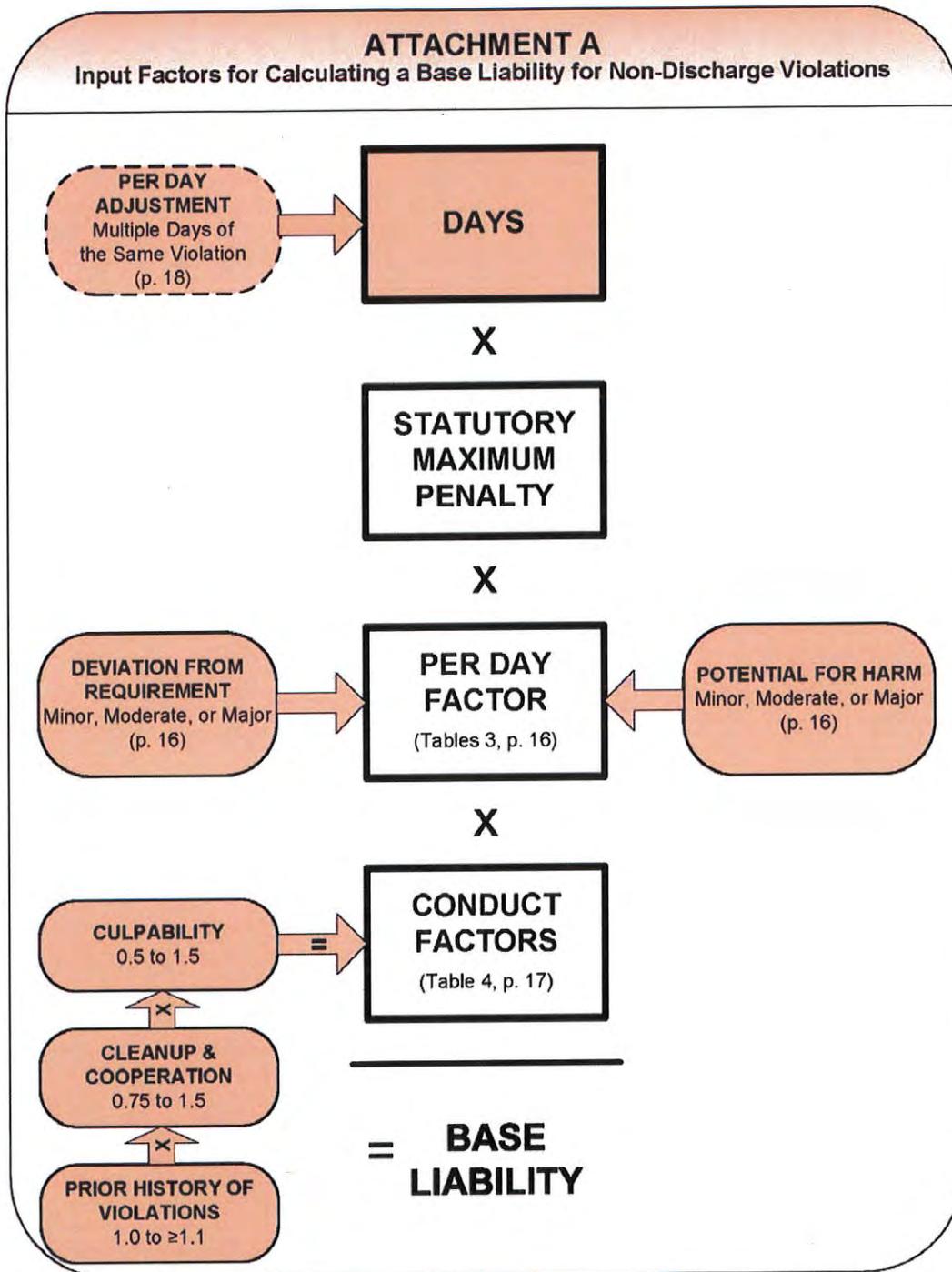
It should be noted that the Policy’s description of Deviation from Requirement includes parenthetical consideration of a discharger’s intent to help explain the requirement. We recommend that discharger intent be evaluated separately under the Culpability factor so as to not weigh this consideration twice.

Final Thoughts

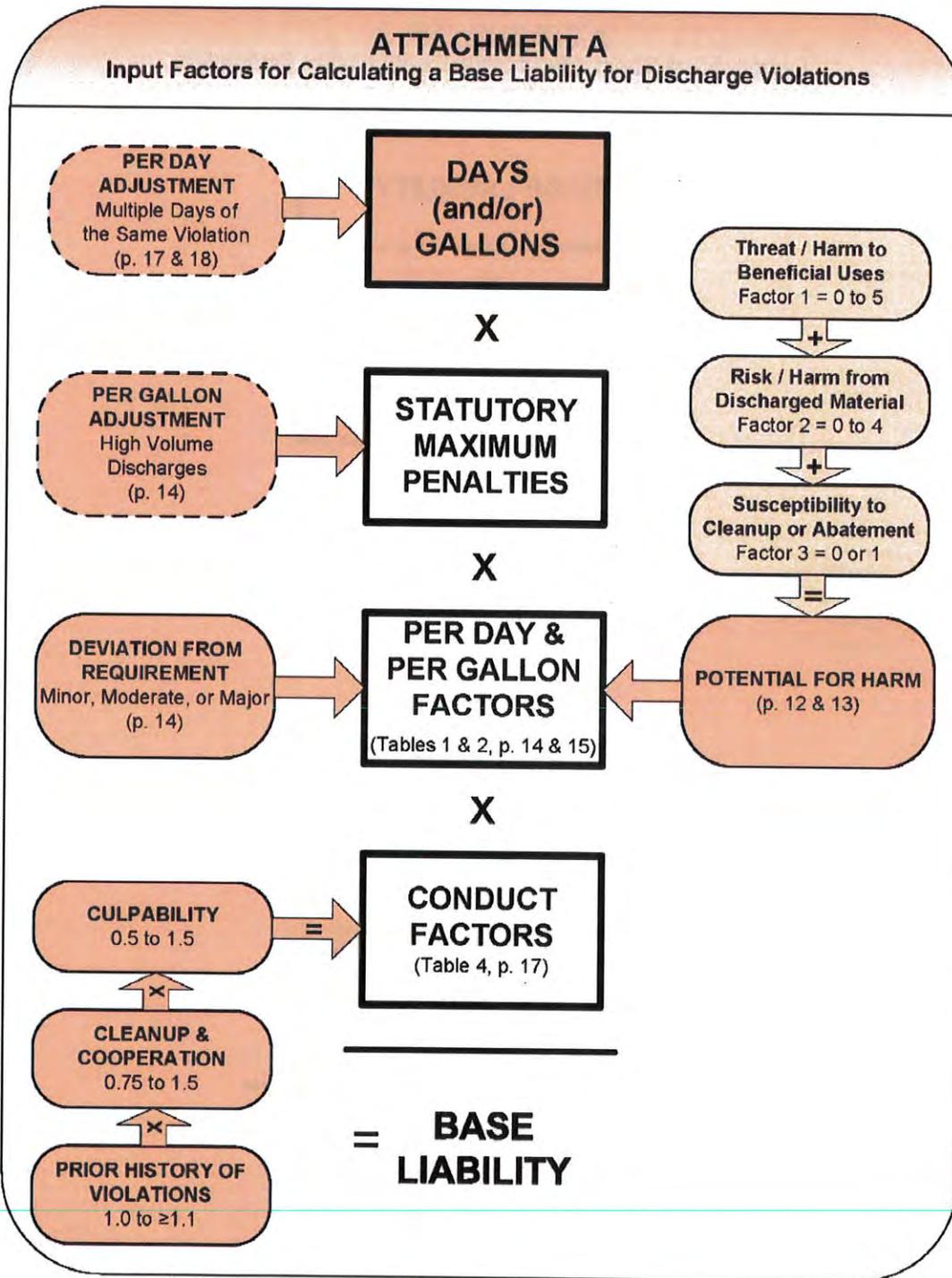
The Enforcement Policy requires that penalty assessments be derived through the penalty methodology. We hope this discussion of the methodology and its penalty factors is helpful to the Board and its advisory team. The attached information, in particular, may be useful tools to aid penalty methodology discussions during an ACL hearing by helping to quickly identify the primary adjustment dials in the methodology with a reference to where these dials are discussed in the Enforcement Policy.

- Attachment A: - Input Factors for Calculating a Base Liability for Non-Discharge Violations
 - Input Factors for Calculating a Base Liability for Discharge Violations
 - Factors to be Considered for the Final Liability Calculation
- Attachment B: - Enforcement Policy (Section VI), effective date May 20, 2010

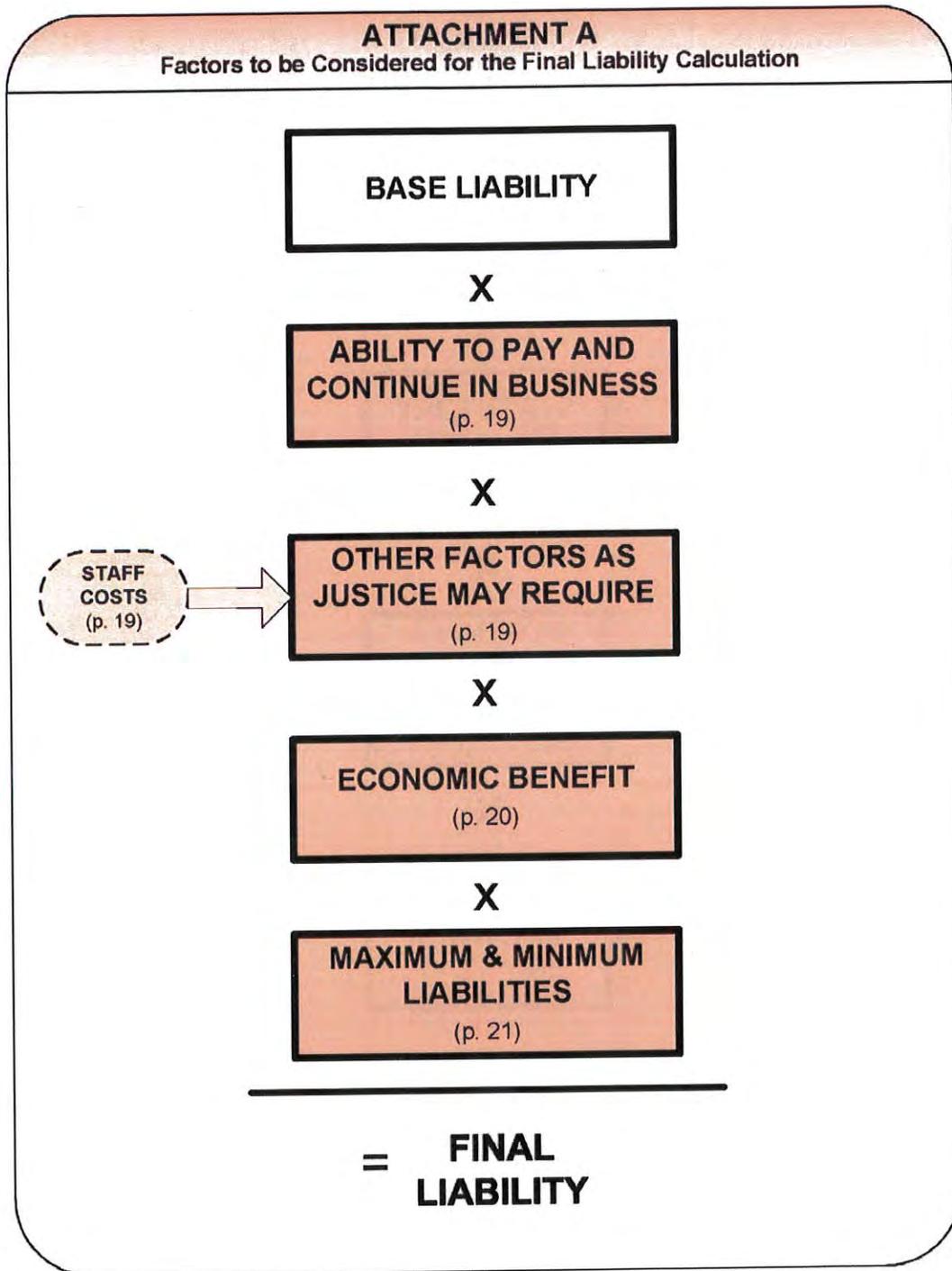
ATTACHMENT A



Thick Border: Calculation step in methodology
 Orange Fill: Penalty factor assessed in the methodology
 Solid Border: Required factor to be assessed
 ➔ Directional arrow showing inputs to methodology steps
 Dashed Border: Optional factor to be assessed
 () Reference to location of factor in Enforcement Policy
 +, x, = Math symbols indicating type of calculation



- Thick Border: Calculation step in methodology
- Solid Border: Required factor to be assessed
- Dashed Border: Optional factor to be assessed
- Orange Fill: Penalty factor assessed in the methodology
- Pink Fill: Sub-factor assessment for a penalty factor
- Directional arrow showing inputs to methodology steps
- + Math symbols indicating type of calculation
- X Math symbols indicating type of calculation
- = Math symbols indicating type of calculation
- () Reference to location of factor in Enforcement Policy



- Thick Border: Calculation step in methodology
- Solid Border: Required factor to be assessed
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- Orange Fill: Penalty factor assessed in the methodology
- Pink Fill: Sub-factor assessment for a penalty factor
- Directional arrow showing inputs to methodology steps
- Math symbols indicating type of calculation
- Reference to location of factor in Enforcement Policy

ATTACHMENT B

STATE WATER RESOURCES CONTROL BOARD

**WATER QUALITY
ENFORCEMENT POLICY**

Effective May 20, 2010

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

any investigation and the Office of Enforcement will seek input from the Regional Water Board enforcement staff in the development of any resulting enforcement action. Such action may be brought before the State Water Board or the Regional Water Board, as may be deemed appropriate for the particular action. The decision as to where to bring the enforcement action will be discussed with the affected Regional Water Board enforcement staff. Enforcement actions requiring compliance monitoring or long-term regulatory follow-up will generally be brought before the appropriate Regional Water Board.

V. COORDINATION WITH OTHER REGULATORY AGENCIES

A. Hazardous Waste Facilities

At hazardous waste facilities where the Regional Water Board is the lead agency for corrective action oversight, the Regional Water Board shall consult with Department of Toxic Substances Control (DTSC) to ensure, among other things, that corrective action is at least equivalent to the requirements of the Federal Resource, Conservation, and Recovery Act (RCRA).

B. Oil Spills

The Water Boards will consult and cooperate with the Office of Spill Prevention and Response at the Department of Fish and Game (OSPR) for any oil spill involving waters under the jurisdiction of OSPR.

C. General

The Water Boards will work cooperatively with other local, state, regional, and federal agencies when violations, for which the agency itself is not responsible, occur on lands owned or managed by the agency. Where appropriate, the Water Boards will also coordinate enforcement actions with other agencies that have concurrent enforcement authority.

VI. MONETARY ASSESSMENTS IN ADMINISTRATIVE CIVIL LIABILITY (ACL) ACTIONS

A. Penalty Calculation Methodology

As a general matter, where, as in the California Water Code, a civil penalty structure has been devised to address environmental violations, civil penalties do not depend on proof of actual damages to the environment. Courts in reviewing similar environmental protection statutes have held that a plaintiff need not prove a loss before recovering a penalty; instead, the defendant must demonstrate that the penalty should be less than the statutory maximum. In certain cases, a strong argument can be made that consideration of the statutory factors can support the statutory maximum as an appropriate penalty for water quality violations, in the absence of any other mitigating evidence. Moreover, as discussed below, the Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. (Wat. Code, § 13385, subd. (e).) Economic benefit or savings is a factor to be considered in determining the amount of other civil liabilities. (Wat. Code, § 13327.) The Water Boards have powerful liability provisions at their disposal which the Legislature and the public expect them to fairly and consistently implement for maximum enforcement impact to address, correct, and deter water quality violations.

While it is a goal of this Policy to establish broad consistency in the Water Boards' approach to enforcement, the Policy recognizes that, with respect to liability determinations, each Regional Water Board, and each specific case, is somewhat unique. The goal of this section is to provide a consistent approach and analysis of factors to determine administrative civil liability. Where violations are standard and routine, a consistent outcome can be reasonably expected using this Policy. In more complex matters, however, the need to assess all of the applicable factors in liability determinations may yield different outcomes in cases that may have many similar facts.

Liabilities imposed by the Water Boards are an important part of the Water Boards' enforcement authority. Accordingly, any assessment of administrative civil liability, whether negotiated pursuant to a settlement agreement or imposed after an administrative adjudication, should:

- Be assessed in a fair and consistent manner;
- Fully eliminate any economic advantage obtained from noncompliance;¹
- Fully eliminate any unfair competitive advantage obtained from noncompliance;
- Bear a reasonable relationship to the gravity of the violation and the harm to beneficial uses or regulatory program resulting from the violation;
- Deter the specific person(s) identified in the ACL from committing further violations; and
- Deter similarly situated person(s) in the regulated community from committing the same or similar violations.

The liability calculation process set forth in this chapter provides the decision-maker with a methodology for arriving at a liability amount consistent with these objectives. This process is applicable to determining administratively-adjudicated assessments as well as those obtained through settlement. In reviewing a petition challenging the use of this methodology by a Regional Water Board, the State Water Board will generally defer to the decisions made by the Regional Water Boards in calculating the liability amount unless it is demonstrated that the Regional Water Board made a clear factual mistake or error of law, or that it abused its discretion.

The following provisions apply to all discretionary administrative civil liabilities (ACLs). Mandatory Minimum Penalties (MMPs) required pursuant to California Water Code section 13385, subdivisions (h) and (i), are discussed in Chapter VII.

General Approach

A brief summary of each step is provided immediately below. A more complete discussion of each step is presented later in this section.

- Step 1.** *Potential for Harm for Discharge Violations* – Calculate Potential for Harm considering: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement.

¹ When liability is imposed under California Water Code § 13385, Water Boards are statutorily obligated to recover, at a minimum, all economic benefit to the violator as a result of the violation.

- Step 2. *Per Gallon and Per Day Assessments for Discharge Violations* – For discharges resulting in violations, use Table 1 and/or Table 2 to determine Per Gallon and/or Per Day Assessments. Depending on the particular language of the ACL statute being used, either or both tables may be used. Multiply these factors by per gallon and/or per day amounts as described below. Where allowed by code, both amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.
- Step 3. *Per Day Assessments for non-Discharge Violations* – For non-discharge violations, use Table 3 to determine per day assessments. Multiply these factors by the per day amount as described below. Where allowed by the California Water Code, amounts for these violations should be added to amounts (if any) for discharge violations from Step 2, above. This becomes the initial amount of the ACL for the non-discharge violations.
- Step 4. *Adjustment Factors* – Adjust the initial amounts for each violation by factors addressing the violator’s conduct, multiple instances of the same violation, and multiple day violations.
- Step 5. *Total Base Liability Amount* – Add the adjusted amounts for each violation from Step 4.

Thereafter, the Total Base Liability amount may be adjusted, based on consideration of the following:

- Step 6. *Ability to Pay and Ability to Continue in Business* – If the ACL exceeds these amounts, it may be adjusted downward provided express findings are made to justify this.
- Step 7. *Other Factors as Justice May Require* – Determine if there are additional factors that should be considered that would justify an increase or a reduction in the Total Base Liability amount. These factors must be documented in the ACL Complaint. One of these factors is the staff costs of investigating the violations and issuing the ACL. The staff costs should be added to the amount of the ACL.
- Step 8. *Economic Benefit* – The economic benefit of the violations must be determined based on the best available information, and the amount of the ACL should exceed this amount. (Note that the Economic Benefit is a statutory minimum for ACLs issued pursuant to California Water Code section 13385.)
- Step 9. *Maximum and Minimum Liability Amounts* - Determine the statutory maximum and minimum amounts of the ACL, if any. Adjust the ACL to ensure it is within these limits.
- Step 10. *Final Liability Amount* – The final liability amount will be assessed after consideration of the above factors. The final liability amount and significant considerations regarding the liability amount must be discussed in the ACL Complaint and in any order imposing liability.

STEP 1 - Potential for Harm for Discharge Violations

Calculating this factor is the initial step for discharge violations. Begin by determining the actual or threatened impact to beneficial uses caused by the violation using a three-factor scoring

system to quantify: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement for each violation or group of violations.

Factor 1: Harm or Potential Harm to Beneficial Uses

The evaluation of the potential harm to beneficial uses factor considers the harm that may result from exposure to the pollutants or contaminants in the illegal discharge, in light of the statutory factors of the nature, circumstances, extent and gravity of the violation or violations. The score evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5).

0 = Negligible - no actual or potential harm to beneficial uses.

1 = Minor - low threat to beneficial uses (i.e., no observed impacts but potential impacts to beneficial uses with no appreciable harm).

2 = Below moderate – less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor).

3 = Moderate - moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects).

4 = Above moderate – more than moderate threat to beneficial uses (i.e., impacts are observed or likely substantial, temporary restrictions on beneficial uses (e.g., less than 5 days), and human or ecological health concerns).

5 = Major - high threat to beneficial uses (i.e., significant impacts to aquatic life or human health, long term restrictions on beneficial uses (e.g., more than five days), high potential for chronic effects to human or ecological health).

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

The characteristics of this discharge factor are scored based on the physical, chemical, biological, and/or thermal nature of the discharge, waste, fill, or material involved in the violation or violations. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material, as outlined below. For purposes of this Policy, "potential receptors" are those identified considering human, environmental and ecosystem health exposure pathways.

0 = Discharged material poses a negligible risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material are benign and will not impact potential receptors).

1 = Discharged material poses only minor risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material are relatively benign or are not likely to harm potential receptors).

- 2 = Discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection).
- 3 = Discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and /or there is substantial concern regarding receptor protection).
- 4 = Discharged material poses a significant risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material far exceed risk factors or receptor harm is considered imminent).

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned for this factor if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the violator.

Final Score – “Potential for Harm”

The scores for the factors are then added to provide a Potential for Harm score for each violation or group of violations. The total score is used in the “Potential for Harm” axis for the Penalty Factor in Tables 1 and 2. The maximum score is 10 and the minimum score is 0.

STEP 2 - Assessments for Discharge Violations

For violations of NPDES permit effluent limitations, the base liability should be established by calculating the mandatory penalty required under Water Code section 13385(h) and (i). The mandatory penalty should be adjusted upward where the facts and circumstances of the violation warrant a higher liability.

This step addresses per gallon and per day assessments for discharge violations. Generally, it is intended that effluent limit violations be addressed on a per day basis only. Where deemed appropriate, such as for a large scale spill or release, both per gallon and per day assessments may be considered.

Per Gallon Assessments for Discharge Violations

Where there is a discharge, the Water Boards shall determine an initial liability amount on a per gallon basis using on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 1 below to determine a Per Gallon Factor for the discharge. Except for certain high-volume discharges discussed below, the per gallon assessment would then be the Per Gallon Factor multiplied by the number of gallons subject to penalty multiplied by the maximum per gallon penalty amount allowed under the California Water Code.

TABLE 1 - Per Gallon Factor for Discharges

Deviation from Requirement	Potential for Harm									
	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.150	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement (effluent limitation, prohibition, monitoring requirement, construction deadline, etc.) that was violated. The categories for **Deviation from Requirement** in Table 1 are defined as follows:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of its adverse impact on the effectiveness of the most significant requirement.

High Volume Discharges

The Water Boards shall apply the above per gallon factor to the maximum per gallon amounts allowed under statute for the violations involved. Since the volume of sewage spills and releases of stormwater from construction sites and municipalities can be very large for sewage spills and releases of municipal stormwater or stormwater from construction sites, a maximum amount of \$2.00 per gallon should be used with the above factor to determine the per gallon amount for sewage spills and stormwater. Similarly, for releases of recycled water that has been treated for reuse, a maximum amount of \$1.00 per gallon should be used with the above factor. Where reducing these maximum amounts results in an inappropriately small penalty, such as dry weather discharges or small volume discharges that impact beneficial uses, a higher amount, up to the maximum per gallon amount, may be used.

Per Day Assessments for Discharge Violations

Where there is a discharge, the Water Boards shall determine an initial liability factor per day based on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 2, below, to determine a Per Day Factor for the violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. Generally, it is intended that effluent limit violations be addressed on a per day basis. Where deemed appropriate, such

as for a large scale spill or release, it is intended that Table 2 be used in conjunction with Table 1, so that both per gallon and per day amounts be considered under Water Code section 13385. Where there is a violation of the permit not related to a discharge incident, Step 3/Table 3 below should be used instead.

TABLE 2 - Per Day Factor for Discharges

	Potential for Harm									
Deviation from Requirement	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.150	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

The categories for **Deviation from Requirement** in Table 2 are defined as follows:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement.

The Water Boards shall apply the above per day factor to the maximum per day amounts allowed under statute for the violations involved. Where allowed by code, both the per gallon and the per day amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.

STEP 3 - Per Day Assessments for Non-Discharge Violations

The Water Boards shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. These violations include, but are not limited to, the failure to conduct routine monitoring and reporting, the failure to provide required information, and the failure to prepare required plans. While these violations may not directly or immediately impact beneficial uses, they harm or undermine the regulatory program. The Water Boards shall use the matrix set forth below to determine the initial liability factor for each violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. For multiple day violations, please refer to the Adjustment Factors in Step 4, below.

Table 3 shall be used to determine the initial penalty factor for a violation. The Water Boards should select a penalty factor from the range provided in the matrix cell that corresponds to the appropriate Potential for Harm and the Deviation from Requirement categories. The numbers in parenthesis in each cell of the matrix are the midpoints of the range.

TABLE 3 - Per Day Factor

Deviation from Requirement	Potential for Harm		
	Minor	Moderate	Major
Minor	0.1	0.2	0.3
	(0.15)	(0.25)	(0.35)
Moderate	0.2	0.3	0.4
	(0.25)	(0.35)	(0.55)
	0.3	0.4	0.7
Major	0.3	0.4	0.7
	(0.35)	(0.55)	(0.85)
	0.4	0.7	1

The categories for **Potential for Harm** in Table 3 are:

Minor – The characteristics of the violation present a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.

Moderate – The characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.

Major – The characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge violations involving particularly sensitive habitats should be considered major.

The categories for **Deviation from Requirement** in Table 3 are:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement.

For any given requirement, the Deviation from Requirements may vary. For example, if a facility does not have a required response plan or has not submitted a required monitoring report, the deviation would be major. If a facility has a prepared a required plan or submitted the required monitoring report, but significant elements are omitted or missing, the deviation would be moderate. If a facility has a required plan or submitted the required monitoring report with only minor elements missing, the deviation would be minor.

STEP 4 – Adjustment Factors

Violator’s Conduct Factors

There are three additional factors that should be considered for modification of the amount of the initial liability: the violator’s culpability, the violator’s efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator’s compliance history. Not all factors will apply in every liability assessment.

TABLE 4 – Violator’s Conduct Factors

Factor	Adjustment
Culpability	<p>Discharger’s degree of culpability regarding the violation. Higher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances.</p> <p>Adjustment should result in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and higher multiplier for intentional or negligent behavior.</p>
Cleanup and Cooperation	<p>Extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken. Adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation, and higher multiplier where this is absent.</p>
History of Violations	<p>Prior history of violations. Where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this.</p>

After each of the above factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Multiple Violations Resulting From the Same Incident

By statute, certain situations that involve multiple violations are treated as a single violation per day, such as a single operational upset that leads to simultaneous violations of more than one pollutant parameter. (Water Code § 13385, sub. (f)(1).) For situations not addressed by statute, a single base liability amount can also be assessed for multiple violations at the discretion of the Water Boards, under the following circumstances:

- a. The facility has violated the same requirement at one or more locations within the facility;
- b. A single operational upset where violations occur on multiple days;
- c. The violation continues for more than one day;

- d. When violations are not independent of one another or are not substantially distinguishable. For such violations, the Water Boards may consider the extent of the violation in terms of the most egregious violation;
- e. A single act may violate multiple requirements, and therefore constitute multiple violations. For example, a construction dewatering discharge to a dewatering basin located on a gravel bar next to stream may violate a requirement that mandates the use of best management practices (BMPs) for sediment and turbidity control, a requirement prohibiting the discharge of soil silt or other organic matter to waters of the State, and a requirement that temporary sedimentation basins be located at least 100 feet from a stream channel. Such an act would constitute three distinct violations that may be addressed with a single base liability amount.

If the violations do not fit the above categories, each instance of the same violation shall be calculated as a separate violation.

Except where statutorily required, multiple violations shall not be grouped and considered as a single base liability amount when those multiple violations each result in a distinguishable economic benefit to the violator.

Multiple Day Violations

For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Water Board must make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment or the regulatory program;
- b. Results in no economic benefit from the illegal conduct that can be measured on a daily basis; or,
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each thirty (30) days of violation. For example, a violation lasting sixty-two (62) days would accrue a total of 8 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, and 60. Similarly, a violation lasting ninety-nine (99) days would accrue a total of 9 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, and 90.

STEP 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount will be determined by adding the amounts above for each violation, though this may be adjusted for multiple day violations as noted above. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

STEP 6 – Ability to Pay and Ability to Continue in Business

If the Water Boards have sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business.

The ability of a discharger to pay an ACL is determined by its revenues and assets. In most cases, it is in the public interest for the discharger to continue in business and bring its operations into compliance. If there is strong evidence that an ACL would result in widespread hardship to the service population or undue hardship to the discharger, the amount of the assessment may be reduced on the grounds of ability to pay. For a violation addressed pursuant to California Water Code section 13385, the adjustment for ability to pay and ability to continue in business can not reduce the liability to less than the economic benefit amount.

If staff anticipates that the discharger's ability to pay or ability to continue in business will be a contested issue in the proceeding, staff should conduct a simple preliminary asset search prior to issuing the ACL complaint. Staff should submit a summary of the results (typically as a finding in the Complaint or as part of staff's initial transmittal of evidence to the discharger), in order to put some evidence about these factors into the record for the proceeding and to give the discharger an opportunity to submit additional financial evidence if it chooses. If staff does not put any financial evidence into the record initially and the discharger later contests the issue, staff may then either choose to rebut any financial evidence submitted by the discharger, or submit some financial evidence and provide an opportunity for the discharger to submit its own rebuttal evidence. In some cases, this may necessitate a continuance of the proceeding to provide the discharger with a reasonable opportunity to rebut the staff's evidence. As a general practice, in order to maintain the transparency and legitimacy of the Water Boards' enforcement programs, any financial evidence that the discharger chooses to submit in an enforcement proceeding will generally be treated as a public record.

STEP 7 – Other Factors As Justice May Require

If the Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this. Examples of circumstances warranting an adjustment under this step are:

- a. The discharger has provided, or Water Board staff has identified, other pertinent information not previously considered that indicates a higher or lower amount is justified.
- b. A consideration of issues of environmental justice indicates that the amount would have a disproportionate impact on a particular disadvantaged group.
- c. The calculated amount is entirely disproportionate to assessments for similar conduct made in the recent past using the same Enforcement Policy.

Costs of Investigation and Enforcement Adjustment

The costs of investigation and enforcement are "other factors as justice may require", and should be added to the liability amount. These costs may include the cost of investigating the violation, preparing the enforcement action, participating in settlement negotiations, and putting on a hearing, including any expert witness expenses. Such costs are the total costs incurred by

the Water Boards enforcement or prosecution staff, including legal costs that are reasonably attributable to the enforcement action. Costs include the total financial impact on the staff of the Water Board, not just wages, and should include benefits and other indirect overhead costs.

STEP 8 – Economic Benefit

The Economic Benefit Amount shall be estimated for every violation. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. In cases where the violation occurred because the discharger postponed improvements to a treatment system, failed to implement adequate control measures (such as BMPs), or did not take other measures needed to prevent the violations, the economic benefit may be substantial. Economic benefit should be calculated as follows:

- a. Determine those actions required to comply with a permit or order of the Water Boards, an enforcement order, or an approved facility plan, or that were necessary in the exercise of reasonable care, to prevent a violation of the Water Code. Needed actions may have been such things as capital improvements to the discharger's treatment system, implementation of adequate BMPs, or the introduction of procedures to improve management of the treatment system.
- b. Determine when and/or how often these actions should have been taken as specified in the order or approved facility plan, or as necessary to exercise reasonable care, in order to prevent the violation.
- c. Estimate the type and cost of these actions. There are two types of costs that should be considered; delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner (e.g., for capital improvements such as plant upgrades and collection system improvements, training, development of procedures and practices) but that the discharger is still obligated to perform. Avoided costs include expenditures for equipment or services that the discharger should have incurred to avoid the incident of noncompliance, but that are no longer required. Avoided costs also include ongoing costs such as needed additional staffing from the time determined under step "b" to the present, treatment or disposal costs for waste that cannot be cleaned up, and the cost of effective erosion control measures that were not implemented as required.
- d. Calculate the present value of the economic benefit. The economic benefit is equal to the present value of the avoided costs plus the "interest" on delayed costs. This calculation reflects the fact that the discharger has had the use of the money that should have been used to avoid the instance of noncompliance. This calculation should be done using the USEPA's BEN² computer program (the most recent

² USEPA developed the BEN model to calculate the economic benefit a violator derives from delaying and/or avoiding compliance with environmental statutes. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures such as capital investments, one-time non-depreciable expenditures, and annual operation and maintenance costs.

BEN uses standard financial cash flow and net present value analysis techniques based on generally accepted financial principles. First, BEN calculates the costs of complying on time and of complying late adjusted for inflation and tax deductibility. To compare the on time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or "cash flows," as of the date of initial noncompliance. BEN derives these values by discounting the annual cash flows at an
(Continued)

version is accessible at <http://www.waterboards.ca.gov/plnspols/docs/wqplans/benmanual.pdf>) unless the Water Board determines, or the discharger demonstrates to the satisfaction of the Water Board, that, based on case-specific factors, an alternate method is more appropriate for a particular situation. However, in more complex cases, such as where the economic benefit may include revenues from continuing production when equipment used to treat discharges should have been shut down for repair or replacement, the total economic benefit should be determined by experts available from the Office of Research Planning and Performance or outside experts retained by the enforcement staff.

- e. Determine whether the discharger has gained any other economic benefits. These may include income from continuing production when equipment used to treat discharges should have been shut down for repair or replacement.

The Water Boards should not adjust the economic benefit for expenditures by the discharger to abate the effects of the unauthorized conduct or discharge, or the costs to come into or return to compliance. In fact, the costs of abatement may be a factor that demonstrates the economic extent of the harm from the violation and, therefore, may be a factor in upwardly adjusting any monetary liability as a benefit from noncompliance. The discharger's conduct relating to abatement is appropriately considered under "cleanup and cooperation" liability factor.

The Economic Benefit Amount should be compared to the adjusted Total Base Liability Amount. The adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

STEP 9 – Maximum and Minimum Liability Amounts

For all violations, the statute sets a maximum liability amount that may be assessed for each violation. For some violations, the statute also requires the assessment of a liability at no less than a specified amount. The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed, and shall be described in any ACL complaint and in any order imposing liability. Where the amount proposed for a particular violation exceeds the statutory maximum, the amount must be reduced to that maximum. Similarly, the minimum statutory amount may require raising the amount being proposed unless there is a specific provision that allows assessment below the minimum. In such cases, the reasons for assigning a liability amount below this minimum must be documented in the resolution adopting the ACL.

STEP 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts.

The administrative record must reflect how the Water Board arrived at the final liability amount. In particular, where adjustments are made to the initial amount proposed in the ACL complaint, the record should clearly reflect the Water Board's considerations, as the staff report or complaint may not reflect those considerations, or for any adjustments that are made at hearing

average of the cost of capital throughout this time period. BEN can then subtract the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance.

that are different from those recommended in the ACL complaint or that further support the final liability amount in the administrative civil liability order.

B. Settlement Considerations

The liabilities resulting from the above methodology are for adoption by the Water Boards after formal administrative proceedings. The calculated liabilities may be adjusted as a result of settlement negotiations with a violator. It is not the goal of the Enforcement Policy to address the full range of considerations that should be entertained as part of a settlement. It is appropriate to adjust the administrative civil liabilities calculated pursuant to the methodology in consideration of hearing and/or litigation risks including: equitable factors, mitigating circumstances, evidentiary issues, or other weaknesses in the enforcement action that the prosecution reasonably believes may adversely affect the team's ability to obtain the calculated liability from the administrative hearing body. Ordinarily, these factors will not be fully known until after the issuance of an administrative civil liability complaint or through pre-filing settlement negotiations with an alleged violator. These factors shall be generally identified in any settlement of an administrative civil liability that seeks approval by a Water Board or its designated representative.

Factors that should not affect the amount of the calculated civil liability sought from a violator in settlement include, but are not limited to, the following:

1. A general desire to avoid hearing or minimize enforcement costs;
2. A belief that members of a Water Board will not support a proposed liability before that Water Board has considered the specific merits of the enforcement case or a similar case;
3. A desire to avoid controversial matters;
4. The fact that the initiation of the enforcement action is not as timely as it might have been under ideal circumstances (timeliness of the action as it affects the ability to present evidence or other timeliness considerations are properly considered); or
5. The fact that a water body affected by the violation is already polluted or impaired.

Except as specifically addressed in this Policy, nothing in this Policy is intended to limit the use of Government Code 11415.60

C. Other Administrative Civil Liability Settlement Components

In addition to a reduction of administrative civil liabilities, a settlement can result in the permanent suspension of a portion of the liability in exchange for the performance of a Supplemental Environmental Project (see the State Water Board's Water Quality Control Policy on Supplemental Environmental Projects) or an Enhanced Compliance Action (see Section IX).

As far as the scope of the settlement is involved, the settlement resolves only the claims that are made or could have been made based on the specific facts alleged in the ACL complaint. A settlement shall never include the release of any unknown claims or a waiver of rights under Civil Code section 1542.

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 5

Complaint R2-2015-1012 Frank Hamedi Violation of Site Cleanup Requirements
Former Velcon II Property, 1761 Junction Avenue, San Jose, Santa Clara County
Regional Water Quality Control Board, San Francisco Bay Region.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**COMPLAINT R2-2015-1012
ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF**

**MR. FRANK HAMEDI
VIOLATION OF SITE CLEANUP REQUIREMENTS
FORMER VELCON II PROPERTY, 1761 JUNCTION AVENUE
SAN JOSE, SANTA CLARA COUNTY
WDID 2 438510N01**

This Administrative Civil Liability Complaint (Complaint) alleges that Mr. Frank Hamed, also known as Frank Hamed-Fard (Mr. Hamed or Responsible Party), failed to comply with Task C.2 of San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Final Site Cleanup Requirements Order 01-108 (Order). Task C.2 requires the submittal of a technical report of proposed institutional constraints, including a deed restriction. The Regional Water Board is authorized to impose administrative civil liabilities pursuant to Water Code section 13350 for the alleged violation. This Complaint is issued under the authority of Water Code section 13323. The proposed liability is \$65,600.

The Assistant Executive Officer of the Regional Water Board hereby gives notice that:

1. Mr. Hamed allegedly violated provisions of law for which the Regional Water Board may impose administrative civil liability. This Complaint presents the factual basis for the alleged violation, legal and statutory authorities (including citations to applicable Water Code sections), and case-specific factors used to propose a \$65,600 liability for the alleged violation.
2. Unless waived, the Regional Water Board will hold a hearing on this matter on November 18, 2015, in the Elihu M. Harris Building, First Floor Auditorium, 1515 Clay Street, Oakland, 94612. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for judicial civil liability. The Responsible Party or his representative(s) will have an opportunity to be heard, and to contest the allegations in this complaint and the imposition of civil liability by the Regional Water Board. The Responsible Party will be mailed an agenda approximately ten days before the hearing date. A meeting agenda will also be available at http://www.waterboards.ca.gov/sanfranciscobay/board_info/agenda.shtml. The Responsible Party must submit all comments and written evidence concerning this Complaint to the Regional Water Board not later than 5 p.m. on October 19, 2015, so that such comments may be considered.
3. The Responsible Party can waive its right to a hearing to contest the allegations contained in this Complaint by signing and submitting the enclosed waiver and paying the civil liability in full or by taking other actions as described in the waiver form. If this matter proceeds to hearing, the Regional Water Board's Prosecution Team reserves the right to seek an increase in the administrative civil liability to recover the costs of enforcement incurred subsequent to the issuance of this Complaint through the hearing.

FACTUAL BASIS FOR THE ALLEGED VIOLATION

4. Mr. Hamedí and his wife, Rosemary Hamedí-Fard (Mr. and Mrs. Hamedí), purchased the property at 1761 Junction Avenue, San Jose, Santa Clara County (Former Velcon II Property), from Velcon Filters, Inc. (Velcon) in 1993. Mr. and Mrs. Hamedí are the current owners of Former Velcon II Property.
5. Velcon manufactured and tested aircraft filters at the Former Velcon II Property and at two adjacent properties beginning in the 1960s. Velcon was responsible for at least two spills of jet fuel during its operations in the mid-1970s that resulted in a discharge of petroleum constituents to surface water, soil, and groundwater.
6. Pursuant to Water Code section 13304, the Order names two dischargers (responsible parties), Velcon and Mr. Hamedí, to cleanup and abate the effects of the discharge of wastes or hazardous materials at the Former Velcon II Property.
7. The Order named Velcon the primarily responsible party for the cleanup of the Former Velcon II Property because Velcon owned and/or occupied the property at the time pollution occurred, and through its actions caused the soil and groundwater pollution at the property.
8. The Order named Mr. Hamedí a secondarily responsible party because he is the current owner of the Former Velcon II Property.¹ The Order holds Mr. Hamedí responsible with Order compliance only if the Regional Water Board finds that Velcon has failed to comply with Order requirements.
9. Finding 11 of the Order states that an excessive risk is present at the Former Velcon II Property pending full remediation of the property. Institutional constraints (i.e., deed restrictions) are appropriate to limit on-site exposure to acceptable levels. An acceptable deed restriction will notify future landowners of sub-surface contamination, prohibit the use of groundwater beneath the property as a source of drinking water, and prohibit residential development.
10. Task C.2 of the Order proposes institutional constraints on the Former Velcon II Property. Task C.2 requires the responsible parties to submit a technical report acceptable to the Executive Officer that documents the procedures the responsible parties will use to prevent or minimize human exposure to soil and groundwater contamination prior to meeting cleanup standards. These procedures must include the following institutional constraint:

[A] deed restriction prohibiting the use of shallow groundwater as a source of drinking water. The deed restriction shall also specify any engineering controls implemented to meet cleanup standards in [Order] section B.3 for the protection of groundwater. The deed restriction shall also include a ban on use of the site for residential development.

¹ The State Water Board has historically recognized that current landowners should be named as dischargers in cleanup orders, regardless of whether the landowner owned at the time of the initial release. (See State Water Board Order WQ 84-6 (*Logsdon*); State Water Board Order 86-2 (*Zoecon*); State Water Board Order 86-18 (*Vallco Park*).)

11. Task C.3 of the Order requires a technical report documenting the recordation of the final deed restriction within 60 days after the Executive Officer approves the draft deed restriction submitted pursuant to Task C.2.

12. Order section D.11 states:

Within 60 days after being notified by the Executive Officer that other named dischargers have failed to comply with this order; Frank Hamed, as property owner, shall then be responsible for complying with this order for the 1761 Junction Avenue Property . . . Task deadlines [in the Order] will be automatically adjusted to add 60 days.

13. In a letter dated March 17, 2011, the Executive Officer notified Mr. Hamed of the Regional Water Board's intent to name Mr. Hamed the primarily responsible party for compliance with Tasks C.2 and C.3. Velcon failed to comply with these tasks due to Mr. Hamed's reluctance to accept a deed restriction.² Only the current owner can prepare and record the required deed restriction.

14. In a letter dated February 5, 2014, the Executive Officer formally notified Mr. Hamed that he is primarily responsible for complying with Task C.2 and C.3 of the Order for the Former Velcon II Property. The Executive Officer set deadlines for compliance pursuant to his authority under the Order, section D.11. For Task C.2, Mr. Hamed was required to submit an acceptable draft deed restriction to the Regional Water Board by April 8, 2014.

15. Mr. Hamed has not submitted an acceptable deed restriction as required by Task C.2. Recent formal communication since the February 2014 notice include the following:

- a. On August 14, 2014, Regional Water Board staff sent Mr. Hamed a Notice of Violation (NOV) for failing to submit a technical report with an acceptable deed restriction. The NOV noted that the report was 128 days late and that Mr. Hamed was subject to fines of up to \$5,000 per day pursuant to Water Code section 13350. On August 28, 2014, Mr. Hamed submitted a draft deed restriction.
- b. On October 3, 2014, the Executive Officer sent a letter conditionally approving the draft deed restriction submitted on August 28, 2014, and required Mr. Hamed to record the fully-signed deed restriction by December 2, 2014. The draft deed restriction approval was subject to the following conditions:

- i. Add a sentence to briefly describe remediation performed at the site;
- ii. Delete the word "shallow" from shallow groundwater;

² The Executive Officer's letter dated March 17, 2011, documents Mr. Hamed's disinclination to the deed restriction requirements. Mr. Hamed commented on the draft Order in writing and at the Regional Water Board hearing, requesting cleanup standards for unrestricted use and removal of the deed restriction tasks. The Board considered these comments, but decided against making the changes requested. Mr. Hamed did not petition the Board's adoption of the Order.

- iii. Refer to an attached legal description of the property; and
 - iv. Reformat the signature area to include signature blocks for all the necessary signatures.
- c. On March 27, 2015, the Executive Officer rescinded the October 3, 2014, letter and rejected the August 28, 2014, draft deed restriction because Mr. Hamedí neither amended nor recorded a deed restriction per the October 3, 2014, conditions. The letter notified Mr. Hamedí that the matter would be referred for formal enforcement if an acceptable deed restriction was not submitted by April 7, 2015. The March 2015 letter also included as an attachment a draft deed restriction that needed only a legal description of the property (Draft Deed Restriction).
- d. On April 15, 2015, Mr. Hamedí communicated to Regional Water Board staff by phone that he would agree to the Draft Deed Restriction language and sign it if two changes were made: (1) removal of the word surveillance from an inspection condition, and (2) removal of a requirement to copy TRC Companies, Inc. regarding notices about the deed restriction. Regional Water Board staff agreed to the changes on the same day by email.
- e. On June 16, 2015, Regional Water Board staff notified Mr. Hamedí that his case was referred for formal enforcement because he failed to submit an acceptable signed deed restriction despite the agreed upon changes to the Draft Deed Restriction language.
- f. On June 22, 2015, Mr. Hamedí submitted a signed, notarized deed restriction consistent with the Draft Deed Restriction language and April 2015 agreed upon changes, but added the following language:
- If the Regional Board, pursuant to its Order No. 01-108 and any amendments, modifications, or rescission of Order No. 01-108, replaced by a new Order of the Regional Board concerning the Burdened Property, has the effect of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omission of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc., and its successors and assigns as the primary discharger responsible for all further investigation and remediation of the site.*
- g. On June 25, 2015, Regional Water Board staff informed Mr. Hamedí that he had failed to provide an acceptable deed restriction and was still in violation of Task C.2 of the Order. Regional Water Board staff explained that the language he added (see 15.f above) was unacceptable because it limited the Regional Water Board's legal authority and enforcement discretion.
16. Mr. Hamedí has not submitted a technical report with an acceptable deed restriction as of the date of this Complaint.

17. Soil and groundwater at the property continue to exceed cleanup standards required by the Order. The soil cleanup standard is based on industrial use of the site and the groundwater cleanup standard is based on the maximum contaminant level for drinking water.

ALLEGED VIOLATION

18. Mr. Hamedí violated Task C.2 of Order by not submitting an acceptable technical report by April 8, 2014, as required by the Executive Officer's February 5, 2014, letter. As of the date of this Complaint, the technical report is 513 days late.

LEGAL AUTHORITY

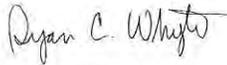
19. Water Code section 13323 authorizes the Regional Water Board to issue a complaint to any person on whom administrative civil liability may be imposed under its statutory authority. This Complaint alleges the Responsible Party's act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability, and the proposed civil liability.
20. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to "actions" and "special proceedings" are contained in the Code of Civil Procedure and apply to judicial proceedings, not administrative proceedings. (See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Proc. 5th (2008) Actions, § 430, p. 546.)
21. There is no possibility that the activity in question may have a significant effect on the environment. (Cal. Code Regs., tit. 14 §§ 15378 and 15061, subd. (b) (3).) This enforcement action is also exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, Title 14, section 15321.
22. Notwithstanding the issuance of this Complaint, the Regional Water Board and/or the State Water Board shall retain the authority to assess additional penalties against Mr. Hamedí for other violations of the Order for which a liability has not yet been assessed or for violations that may subsequently occur.

STATUTORY LIABILITY

23. A person who violates a cleanup and abatement order issued by the Regional Water Board shall be civilly liable under Water Code section 13350.
24. The Regional Water Board may impose administrative civil liability for non-discharge violations on a daily basis. The maximum and minimum civil liability for each day of violation is \$5,000 and \$100 respectively. (See Wat. Code, § 13350, subd. (e)(1).)

PROPOSED CIVIL LIABILITY

25. **Minimum Liability:** The minimum administrative civil liability for the violation is \$51,300. This is based on Water Code section 13350(e)(1)(B) which requires a minimum of \$100 penalty per day for non-discharge violations unless the Regional Water Board makes express findings to justify a lesser amount.
26. **Maximum Liability:** The maximum administrative civil liability is \$2,565,000. This is based on the maximum allowed by Water Code section 13350(e)(1), \$5,000 for each day in which the violation occurs, for a total of 513 days.
27. **Proposed Liability:** The Assistant Executive Officer of the Regional Water Board proposes that administrative civil liability be imposed in the amount of \$65,600. The Exhibit A attachment (incorporated herein by this reference) presents a discussion of the factors considered and the values assessed to calculate the proposed liability in accordance with the Enforcement Policy and Water Code section 13327. The Proposed Liability is within the maximum liability allowed by statute.



Dyan C. Whyte
Assistant Executive Officer

September 2, 2015

Date

Attachments:

Exhibit A: Factors Considered in Determining Administrative Civil Liability

EXHIBIT A

Alleged Violation and Factors in Determining Administrative Civil Liability

MR. FRANK HAMEDÍ VIOLATION OF SITE CLEANUP REQUIREMENTS FORMER VELCON II PROPERTY, 1761 JUNCTION AVENUE SAN JOSE, SANTA CLARA COUNTY WDID 2 438510N01

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by Water Code sections 13327 and 13385(e).

Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the violation is presented below.

ALLEGED VIOLATION

Violation of Final Site Cleanup Requirements Order 01-108

Mr. Frank Hamedí, also known as Frank Hamedí-Fard (Mr. Hamedí), allegedly violated Task C.2 of Regional Water Board Order 01-108 Final Site Cleanup Requirements (Order). Task C.2 requires the submittal of a technical report of proposed institutional constraints, including a deed restriction. Mr. Hamedí and his wife, Rosemary Hamedí-Fard, are the current owners of 1761 Junction Avenue, San Jose, Santa Clara County (Former Velcon II Property). On February 5, 2014, the Executive Officer of the Regional Water Board designated Mr. Hamedí as the primary responsible party for completing Task C.2, and established a compliance date of April 8, 2014, for the deed restriction on the Former Velcon II Property. An acceptable deed restriction has not been recorded and is 513 days late. Mr. Hamedí is subject to administrative liabilities pursuant to Water Code section 13350(a).

ADMINISTRATIVE CIVIL LIABILITY CALCULATION STEPS

STEPS 1 AND 2 – POTENTIAL FOR HARM AND ASSESSMENTS FOR DISCHARGE VIOLATIONS

These steps are not applicable because the violation is a non-discharge violation.

STEP 3 – PER DAY ASSESSMENT FOR NON-DISCHARGE VIOLATIONS

The Enforcement Policy specifies that for non-discharge violations, an initial liability is determined from the maximum per day liability multiplied by the number of days in violation and a per day factor using a matrix that ranges from 0.1 to 1 corresponding to an appropriate Potential for Harm and Deviation from Requirement. The Potential for Harm reflects the characteristics and/or the circumstances of the violation and its threat to beneficial uses.

Deviation from Requirement reflects the extent to which a violation deviates from the specific requirement.

Potential for Harm

The Potential for Harm is minor. A “minor” Potential for Harm applies to violations that “present a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.” The failure to submit an acceptable deed restriction presents a minor potential for harm to the health of users of the property. Although shallow groundwater at the property contains contaminants that exceed residential use standards, the property is not used for residential purposes at this time and the groundwater is not currently used as drinking water.

Deviation from Requirement

The Deviation from Requirement is major. A “major” Deviation from Requirement is one where “the requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” Task C.2 of the Order requires Mr. Hamedi to submit a draft deed restriction that is acceptable to the Executive Officer of the Regional Water Board. Mr. Hamedi has failed to submit a draft deed restriction that is acceptable to the Executive Officer and thereby has rendered this requirement ineffective.

The resulting per day factor is 0.3 based on the above Potential for Harm and Deviation from Requirement from the matrix in Table 3 of the Enforcement Policy.

Initial Liability Amount

For violations lasting more than 30 days, the Enforcement Policy allows adjustment of the per-day basis.

A multiday adjustment is appropriate because this violation did not result in an economic benefit on a daily basis. For this adjustment, the Enforcement Policy provides that an initial liability shall be assessed for the first day of the violation, plus each five-day period until the 30th day, plus each 30 days of violation thereafter. Thus, the total 513 days of violation is adjusted to 23 days for assessment purposes.

$$\text{Initial Liability: } \$5,000/\text{day} \times (0.30) \times (23 \text{ days}) = \$34,500$$

STEP 4 – ADJUSTMENTS TO INITIAL LIABILITY

The Enforcement Policy specifies that three additional factors should be considered for modification of the amount of initial liability: the violator’s culpability, efforts to clean up or cooperate with regulatory authority, and the violator’s compliance history.

Culpability

The Enforcement Policy specifies that higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is used.

The culpability multiplier is 1.3. Mr. Hamedí has disregarded the requirements set forth in Task C.2 of the Order. Mr. Hamedí was put on notice of the Order requirements at the time of its adoption. Beyond this, the Executive Officer and/or Regional Water Board staff has notified Mr. Hamedí of his obligations under the Order on at least eight occasions starting in 2011. Mr. Hamedí has repeatedly submitted signed deed restrictions that are inconsistent with the deed language approved or conditionally approved by the Executive Officer. He has failed to act as a reasonable and prudent landowner of an active cleanup site. A reasonable and prudent landowner under these circumstances would do as the other secondarily responsible parties named in the Order did: record an acceptable deed restriction in compliance with Tasks C.2 and C.3 of the Order.

Cleanup and Cooperation

The Enforcement Policy provides for an adjustment to reflect the extent to which a violator voluntarily cooperated in returning to compliance and correcting environmental damage. The adjustment is a multiplier between 0.75 and 1.5, with a higher multiplier where there is a lack of cooperation.

The cleanup and cooperation multiplier is 1.4. Mr. Hamedí has not been cooperative and has instead responded to Regional Water Board staff sporadically with draft deed restrictions in 2011, 2014, and 2015, which do not adequately restrict land and groundwater use at this property, or that inappropriately constrain future decisions of the Regional Water Board. Moreover, Mr. Hamedí misled the Regional Water Board. On April 15, 2015, Mr. Hamedí told Regional Water Board staff he would agree to submit a draft deed restriction if the Board agreed to specified changes. Despite the Board's approval to these changes, Mr. Hamedí submitted another signed deed restriction that added additional terms and demands from the Board.

History of Violations

The Enforcement Policy provides that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used.

The history multiplier is 1.0 because the Regional Water Board has no record of past violation by Mr. Hamedí.

STEP 5 – DETERMINATION OF TOTAL BASE LIABILITY

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2 for discharge violations and in Step 3 for non-discharge violations.

Total Base Liability = \$34,500 (Initial Liability) x 1.3 (Culpability Multiplier) x 1.4 (Cleanup and Cooperation Multiplier) x 1.0 (History of Violations Multiplier)

Total Base Liability = \$62,800

STEP 6 – ABILITY TO PAY AND TO CONTINUE IN BUSINESS

The Enforcement Policy provides that if there is sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward if warranted.

In this case, Regional Water Board Prosecution Staff has sufficient information to suggest Mr. Hamedí has the ability to pay the proposed liability based on the current assessed value of 1761 Junction Avenue at \$408,000.

STEP 7 – OTHER FACTORS AS JUSTICE MAY REQUIRE

Regional Water Board prosecution staff incurred \$2,800 in staff costs to investigate this case and prepare this analysis and supporting information. This consists of time spent by all members of the prosecution team based on the low end of the salary range for each classification. Costs will continue to accrue during any settlement and/or hearing. Staff costs should be considered in relation to the total administrative civil liability. Although the final amount for such costs cannot be determined until completion of the matter, such costs are usually quite substantial when additional investigation and analysis is required or if there is a hearing on matters before the Regional Water Board.

STEP 8 – ECONOMIC BENEFIT

The Enforcement Policy requires recovery of the economic benefit gained associated plus 10 percent. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation.

Staff has not identified an economic benefit from the delay in submitting the required report. Mr. Hamedí has engaged in the process to secure a deed restriction and submitted draft reports that were not accepted, incurring costs of equal or higher value than what compliance with the Order would have required.

The adjusted Total Base Liability from Step 7 is unchanged because it is more than 10 percent higher than any estimated economic benefit.

STEP 9 – MAXIMUM AND MINIMUM LIABILITY

a) *Minimum Liability*

The minimum administrative civil liability for the violation is \$51,300. This is based on Water Code section 13350(e)(1)(B) that requires \$100 per day for non-discharge violations. There were 513 days of violation.

b) *Maximum Liability*

The maximum administrative civil liability is \$2,565,000. This is based on the maximum allowed by Water Code section 13350(e)(1): \$5,000 for each day in which the violation occurs. The total days of violation is 513.

STEP 10 – FINAL LIABILITY

The final liability proposed is **\$65,600** (rounded), based on consideration of the penalty factors discussed above. It is within the minimum and maximum liabilities.



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

September 2, 2015
CS - 270314

*Certified Mail No. 7014 0510 0001 3749 6237
Return Receipt Requested*

Frank Hamedi
131 Old Tully Road
San Jose, CA 95111-1921

Also sent via email: info@envirosoiltech.com

**Subject: Administrative Civil Liability Complaint No. R2-2015-1012
for violation of Site Cleanup Requirements Order
01-108, Former Velcon II Property, 1761 Junction Avenue, Santa Clara
County**

Dear Mr. Hamedi:

Complaint No. R2-2015-1012 (Complaint) enclosed with this letter issues an administrative civil liability (ACL) against you in the amount of \$65,600. This liability is based on allegations that you violated Task C.2 in the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order 01-108 and is issued under the authority of California Water Code sections 13350 and 13323.

You can respond to the Complaint by appearing before the Regional Water Board at a public hearing to contest the matter or by signing a waiver to pursue other options.

1. The Complaint can be contested before the Regional Water Board at the following meeting:

Date/Time: November 18, 2015, commencing at 9:00 a.m.
Place: First Floor Auditorium, Elihu Harris State Building
1515 Clay Street, Oakland

At this meeting, the Regional Water Board will consider whether to impose administrative civil liability (as proposed in the Complaint or for a different amount), decline the administrative civil liability, or refer the matter to the Attorney General for judicial enforcement at a public hearing.

Please refer to the enclosed Public Notice and Hearing Procedure for the Complaint and the ACL Fact Sheet for additional information about the Regional Water Board's process, hearing procedure, and important deadlines (for submitting comments or evidence, obtaining designated party status, waiving or postponing a hearing, making objections or rebuttals to evidence, etc.).

Frank Hamedi
Transmittal ACL Complaint No. R2-2015-1012

2. The public hearing that has been scheduled (above) can be waived to pursue one of the following options:
 - a. Pay the liability as proposed in the Complaint;
 - b. Request more time and postpone the date of the public hearing;
 - c. Promptly engage in settlement discussions with the Regional Water Board Prosecution Team;

The Waiver, attached to the Complaint, describes these options in further detail. To pursue one of these options, **the Waiver must be signed, dated, and received by Elizabeth Wells of the Regional Water Board Advisory Team with a copy to the Prosecution Team contact listed below no later than 5:00 p.m. on October 2, 2015. It is at the discretion of the Regional Water Board Advisory Team to either accept or deny a waiver request.**

If you wish to communicate directly with the Prosecution Team regarding the Complaint, please contact Brian Thompson at (510) 622-2422 or Brian.Thompson@waterboards.ca.gov.

Please refer to the letterhead for our mailing address and fax number.

Sincerely,

Dyan C. Whyte
Assistant Executive Officer

Enclosures: ACL Complaint No. R2-2015-1012
Waiver Form for ACL Complaint No. R2-2015-1012
Public Notice and Hearing Procedure for ACL Complaint No. R2-2015-1012
Administrative Civil Liability Fact Sheet

Copy to: Regional Water Board Lyris Enforcement email list
Regional Water Board Advisory and Prosecution Teams
S. Jack Chevlen, 5902 Deerland Court, San Jose, CA 95124-6575

Administrative Civil Liability Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code (CWC) Section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that are alleged to have been committed, the CWC provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form, and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to complaint proceedings are the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Prosecution Team and the person or entity named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to seven board members appointed by the Governor) or before a panel of three Board members. The Board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. The Advisory Team is comprised of Regional Water Board staff and management. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the Board members or the Advisory Team about the complaint without including all other parties. This is explained in more detail in the Hearing Procedure.

Complaint Resolution options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; and/or (5) hearing. Each of these options is described below.

Withdrawal: may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested order for administrative civil liability.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other designated parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the Board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, may issue an order requiring payment of a reduced amount, may order the payment of a higher amount, decide not to impose an assessment, or may refer the matter to the Attorney General's Office for further enforcement.

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under CWC Section 13385 (i) and (h), the Regional Water Board is required to consider several factors specified in the CWC, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (CWC sections 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay, it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules
2. Members of household, including relationship, age, employment and income
3. Current living expenses
4. Bank account statements
5. Investment statements
6. Retirement account statements
7. Life insurance policies
8. Vehicle ownership documentation
9. Real property ownership documentation
10. Credit card and line of credit statements
11. Mortgage loan statements
12. Other debt documentation

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals signed and dated
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows the IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns.
3. The following information can be substituted if income tax returns cannot be made available:
 - Audited Financial Statements for last three years
 - A list of major accounts receivable with names and amounts
 - A list of major accounts payable with names and amounts
 - A list of equipment acquisition cost and year purchased
 - Ownership in other companies and percent of ownership for the last three years
 - Income from other companies and amounts for the last three years

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village
 - County
 - Municipality with enterprise fund
 - Independent or publicly owned utility
2. The following 1990 and 2000 US Census data:
 - Population
 - Number of persons age 18 and above

- Number of persons age 65 and above
 - Number of individuals below 125% of poverty level
 - Median home value
 - Median household income
3. Current or most recent estimates of:
 - Population
 - Median home value
 - Median household income
 - Market value of taxable property
 - Property tax collection rate
 4. Unreserved general fund ending balance
 5. Total principal and interest payments for all governmental funds
 6. Total revenues for all governmental funds
 7. Direct net debt
 8. Overall net debt
 9. General obligation debt rating
 10. General obligation debt level
 11. Next year's budgeted/anticipated general fund expenditures plus net transfers out

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public. Consequently, **please take care in submitting any documents that include private information**, such as social security numbers, home addresses, home telephone numbers, account numbers and/or drivers' license numbers. Such private information must be "redacted" (i.e., obscured or crossed out) prior to submittal of the documents.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to CWC Section 13320.

More information on the petition process is available at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

An order of the State Water Board resolving the petition for review of the Regional Water Board's order for administrative civil liability can be challenged by filing a petition for writ of mandate in the superior court pursuant to CWC Section 13330.

Once an order for administrative civil liability becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under CWC Section 13328, if necessary, in order to collect payment of the administrative civil liability amount.

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 6

Final Site Cleanup Requirements for Velcon Filters, Inc., Board Order 01-108
Regional Water Quality Control Board, San Francisco Bay Region

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. 01-108

ADOPTION OF FINAL SITE CLEANUP REQUIREMENTS AND RESCISSION OF
ORDER NO. 95-064 FOR:

VELCON FILTERS, INC.
FRANK HAMEDI
FORMER VELCON II PROPERTY - 1761 JUNCTION AVENUE
SAN JOSE, SANTA CLARA COUNTY

VELCON FILTERS, INC.
LUCIAN W. TAYLOR & JEAN B. TAYLOR
TRIAD TOOL AND ENGINEERING, INC.
FORMER TAYLOR PROPERTY - 1750 ROGERS AVENUE, 1759 JUNCTION AVENUE
FORMER VELCON I PROPERTY - 1750 ROGERS AVENUE
SAN JOSE, SANTA CLARA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Board), finds that:

1. **Site Location:** Velcon Filters, Inc. (hereinafter, Velcon) is a company that manufactures fuel filters for aircraft. The Velcon Filters site consists of three adjacent properties located between Junction Avenue and Rogers Avenue in a light industrial area of northern San Jose (see figure 1). The entire site is approximately 4.5 acres in area. The area is a level plain. Coyote Creek is about 0.4 mile to the northeast.
2. **Site History:** Development of the site began in the 1960s and the site was used by Velcon for the manufacturing and testing of fuel filters for aircraft. The site consists of three properties as shown on the attached site map. These properties are the former Velcon II property at 1761 Junction Avenue, the former Taylor Property which spans both 1759 Junction Avenue and 1750 Rogers Avenue, and the former Velcon I Property at 1750 Rogers Avenue. The 1750 Rogers Avenue address is thus used for two separate parcels.

Jet fuel used for testing of the fuel filters was stored onsite in five 10,000 gallon and one 6,000 gallon underground tanks on the 1761 Junction Avenue property. A five hundred gallon wastewater sump was also used. A major fuel spill occurred at the site in 1975 or 1976. The spill involved 7,000 gallons of Jet-A fuel some of which found its way to Coyote Creek. The U.S. Coast Guard and Department of Fish and Game

responded to the spill. An estimated 1,500 gallons of fuel were recovered from Coyote Creek. A second major spill occurred in 1976. This spill resulted in the loss of 4,000 gallons of Jet-A fuel. No fuel was recovered. Other spills ranging from two to thirty gallons have occurred over the years. Velcon sold the properties that make up the site in 1993. The former Velcon I and Taylor properties were sold to Triad Tool and Engineering, Inc. The former Velcon II property was sold to Frank Hamedi.

3. **Named Dischargers:** Velcon Filters, Inc., is named as a discharger because Velcon owned and/or occupied the three properties at the time pollution occurred and through its actions is responsible for causing the soil and groundwater pollution at this site.

Lucian W. Taylor and Jean B. Taylor are named as secondarily responsible dischargers because they were the owners of the property at 1750 Rogers Avenue/1759 Junction Avenue (the Taylor property) at a time that discharges of pollutants to soil and groundwater are believed to have occurred.

Triad Tool and Engineering, Inc. is named as a secondarily responsible discharger because they are the current owners of 1750 Rogers Avenue/1759 Junction Avenue, the former Taylor Property and the former Velcon I property.

Frank Hamedi is named as a secondarily responsible discharger because he is the current owner of 1761 Junction Avenue, the former Velcon II property.

The secondarily responsible parties will be responsible for compliance only if the Board or Executive Officer finds that Velcon Filters, Inc., has failed to comply with the requirements of this order.

If additional information is submitted indicating that other parties caused or permitted any waste to be discharged on the site where it entered or could have entered waters of the state, the Board will consider adding those parties' names to this order.

4. **Regulatory Status:** This site is subject to NPDES General Permit (Order No. 99-051) adopted on July 21, 1999 and was subject to Site Cleanup Requirements (Order No. 95-064) adopted March 15, 1995.
 - b. **Site Hydrogeology:** The Velcon site is located in the Santa Clara Valley, a structural basin filled with marine and alluvial sediments. The coarser deposits are probably the result of deposition in or near stream channels that drain the highlands that surround the basin. Finer grain deposits result from a variety of conditions with the eventual result of a heterogenous sequence of interbedded sands, silts, and clays. Municipal water supply wells tap an extensive deep regional confined aquifer that lies generally greater than 200 feet below ground surface (BGS). A thick, relatively impermeable aquitard

separates this deep confined aquifer from a complex series of discontinuous aquifers and aquitards that may extend up to within a few feet of the ground surface. Three shallow water bearing zones have been investigated as part of the remedial investigation at Velcon. The uppermost aquifer, designated the A aquifer, generally consists of clay with minor silt layers or lenses and lies generally between 10 and 30 feet BGS. Below this is the second aquifer, designated the B1 aquifer. The B1 aquifer consists of a discontinuous sand and silt layer of variable thickness. Below about 45 feet is the third aquifer, designated the B2 aquifer. The B2 aquifer is a sandy layer of unknown thickness. The upper two zones are not well separated and are hydraulically interconnected. The A zone and B1 zone are predominantly clay, and much of the groundwater in these zones appears to be associated with rootholes which are abundant.

6. **Remedial Investigation:** Petroleum hydrocarbons were detected in soil and groundwater when the underground jet fuel storage tanks were investigated for leakage in 1988. Jet fuel was discovered to be floating on the groundwater surface in the area of the underground tanks. Velcon began a site characterization program and installed seven groundwater monitoring wells, performed a soil vapor survey, and began extracting floating product from two of the wells. In 1990, halogenated volatile organic compounds (VOCs) were discovered to be present in groundwater also. Velcon expanded the focus of the remedial investigation to include VOCs and continued sampling of soil and groundwater, and added additional groundwater monitoring wells.

The extent of soil and groundwater contamination has been fully characterized. Jet fuel contaminated soil is found beneath much of the 1761 Junction Avenue property (Velcon II), which is where the underground jet fuel storage tanks and the fuel filter testing lab were located. This is the jet fuel source area. VOCs are present in soil beneath most of 1759 Junction Avenue, the unpaved portion of the Taylor Property. VOC contamination extends down to groundwater throughout this area. Soil with VOC concentrations in excess of 1 mg/kg extends over much of the 1759 Junction Avenue property, and a portion of the property has concentrations in excess of 10 mg/kg, with a maximum concentration of 52 mg/kg. The origin of this contamination is unknown. Also, a localized area of VOC contaminated soil is found beneath the 1750 Rogers Avenue property (Taylor Property portion) where Velcon's TCE vapor degreaser was located. Soil in the unsaturated zone polluted with VOCs contains almost exclusively TCE. In the saturated zone, the breakdown products of TCE, including TCA, DCE, DCA, and Vinyl Chloride are also found. The presence of jet fuel in the saturated zone provides the necessary conditions for enhanced breakdown of TCE.

The releases of contaminants at the site have impacted groundwater. A groundwater pollutant plume containing jet fuel and VOCs underlies much of the site and extends downgradient offsite. The VOC plume, which is most extensive, is approximately 800 x 650 feet. The portion of the plume containing jet fuel is about 550 x 200 feet in

extent. Jet fuel is present as floating product in the jet fuel source area. The amount of floating product has declined since remediation began, and currently jet fuel product is mainly found as a sheen on groundwater in monitoring wells near the former jet fuel underground storage tank location. VOC levels in groundwater are very high in the VOC source areas. During the first quarter of 2001, TCE was found at up to 5,000 ug/l; cis-1,2-DCE was found at up to 10,000 ug/l; and vinyl chloride was found at up to 280 ug/l in the A aquifer zone. Downgradient offsite, the highest concentrations of VOCs are found in the B1 aquifer zone. This is apparently due to "dropdown" of the VOCs through permeable areas connecting the two zones. During the first quarter of 2001, TCE was found at up to 660 ug/l; cis-1,2-DCE was found at up to 790 ug/l; and vinyl chloride was not detected above 25 ug/l in the B1 zone. Only trace levels of TCE and cis-1,2-DCE, below drinking water maximum contaminant levels, (MCLs) have been found in the B2 aquifer.

7. **Adjacent Sites:** The polluted groundwater plume extends offsite onto a number of downgradient properties. One of these properties, 1781 Junction Avenue, has had a release of gasoline to groundwater from an underground storage tank (UST). This site has undergone remediation and received case closure for the UST release. There are residual levels of BTEX compounds remaining from the gasoline release. Upgradient sources of VOCs are suggested by VOCs detected in monitoring wells MW-18A and MW-18B.

8. **Interim Remedial Measures:** In August 1988 after the discovery of jet fuel product floating on groundwater, Velcon began a floating product removal program from two monitoring wells in the jet fuel source area. Periodic pumping of jet fuel product continued through October 1991. In June 1993, Velcon removed two above-ground jet fuel/kerosene storage tanks, a resin tank, vapor degreaser, and associated above-ground piping at 1750 Rogers Avenue. In 1994, Velcon removed the six underground jet fuel storage tanks and sump at 1761 Junction Avenue. Approximately 680 cubic yards of pea gravel and 4 cubic yards of jet fuel saturated soil were removed from the tank pit excavation. Between March 1995 and June 1999, Velcon installed nine groundwater extraction wells in accordance with a two phase approach to hydraulic containment specified in Board Order No. 95-064. Phase 1 consisted of installing groundwater extraction wells onsite to provide remediation and hydraulic containment near the source areas and to prevent further migration of contaminants offsite onto downgradient properties. Phase 2 consisted of installing offsite extraction wells to provide remediation and hydraulic containment for the downgradient portion of the plume, and adding additional onsite extraction wells. Two more extraction wells were installed in April 2001 to provide additional remediation and capture in the area of the northern corner of the 1750 Rogers property. Currently there are 11 groundwater extraction wells, two product removal wells, and 53 monitoring wells that have been installed to remediate and monitor the pollutant plume. Groundwater is extracted, treated by

filtration, ultraviolet peroxidation, activated carbon, and then discharged to a storm drain under the NPDES General Permit.

9. **Feasibility Study:** Velcon submitted a report, "Proposed Final Cleanup Objectives and Actions", dated April 16, 1999, pursuant to Order No. 95-064. This report contains the feasibility study for the site, as well as a summary of the remedial actions, soil and groundwater pollution levels, and an evaluation of the effectiveness of the interim remedial measures. As part of the feasibility study, Velcon screened six remedial technologies for soil and seven for groundwater. Technologies were screened for effectiveness, implementability, and cost. Evaluation factors used during the screening process included: protection of human health and the environment; protection of groundwater beneficial uses; and plume containment. The technologies screened for soil remediation included excavation, soil vapor extraction, in situ chemical oxidation, in situ thermal treatment using steam injection, in-situ electrical resistive soil heating, and enhanced in situ biodegradation. The groundwater remedial technologies screened included pump and treat, in situ chemical oxidation, in-situ thermal treatment using steam injection, resistive heating, enhanced biodegradation, surfactant/co-solvent injection, and permeable reaction wall containment. The recommended final remedial action in the April 1999 report was continued source reduction by shallow excavation of the jet fuel source area at 1761 Junction Avenue, and groundwater extraction and treatment onsite and offsite.

At the request of Board staff, Velcon submitted a June 30, 2000 report proposing soil cleanup objectives for VOCs for specific VOC source areas of the site that would be protective of groundwater, i.e. soil cleanup levels that would result in no additional leaching of VOCs from soil to underlying groundwater.

10. **Cleanup Plan:** Velcon's "Proposed Final Cleanup Objectives and Actions" calls for remediation of soil at the source areas to levels that meet the human health risk criteria for an industrial land-use scenario. The plan proposes soil cleanup levels to meet an excess cancer target risk level of 10^{-5} and a cumulative hazard index of one. Institutional constraints are proposed to provide protection for site occupants. Cleanup levels for VOCs in soil based on the potential for chemicals of concern to migrate from soil to groundwater were not included in the plan, but were submitted as an addendum (June 30, 2000 report). The cleanup plan proposes narrative groundwater cleanup objectives of: containing the groundwater pollutant plume through groundwater extraction so that there is no additional migration of pollutants; continued removal of the mass of pollutants from the affected groundwater via treatment of extracted groundwater followed by discharge of treated groundwater to a storm drain; and monitoring of groundwater quality.

This Order accepts Velcon's cleanup plan, but modifies it to include numerical cleanup standards for groundwater (drinking water maximum contaminant levels), and incorporates numerical soil cleanup levels contained in the June 30, 2000 addendum. Due to the volume of contaminated soil and financial constraints of the discharger, a phased approach to soil remediation is required pursuant to Task C.2 of this Order.

11. **Risk Assessment:** Velcon performed a risk assessment for the site, which is detailed in its May 19, 1998 report, "Human Health Risk-Based Cleanup Objectives for Soil and Groundwater". The report developed risk-based cleanup objectives for soil and groundwater. Current and potential future exposure pathways were evaluated. The primary exposure pathways were inhalation of vapor in indoor air and exposure to construction workers working in contaminated areas. The risk assessment did not include the use of site groundwater as a source of drinking water. Shallow groundwater is not currently used for drinking water supply nor is it expected that it will be used in the future at this site. The groundwater cleanup standards specified by this Order are Drinking Water MCLs because shallow groundwater at the site is considered a potential source of drinking water under the guidelines promulgated by the State Board. Velcon developed cleanup standards for soil and groundwater using a carcinogenic risk level of both 10^{-5} and 10^{-6} for potentially carcinogenic compounds and hazard index of below 1.0 for noncarcinogenic health risks. The groundwater cleanup levels selected, drinking water MCLs, meet the 10^{-6} risk level. The soil cleanup standards selected for VOCs are based on protection of groundwater which was the most stringent limiting factor. It meets the 10^{-5} risk level for the potential human health exposure pathways for soil contamination at the site. The soil cleanup standards for jet fuel are different than the standards developed in the 1998 report and are based on Velcon's updated risk assessment for the 1761 Junction Avenue property which is detailed in the July 27, 2001 report, "Updated Feasibility Study, 1761 Junction Avenue", and on limits the Board uses for protection of human health and prevention of nuisance conditions. The jet fuel soil cleanup standards have a hazard index of less than 1.0. Carcinogenic compounds are not associated with jet fuel at the site.

For comparison, the Board considers the following risks to be acceptable at remediation sites: a hazard index of 1.0 or less for non-carcinogens, and an excess cancer risk of 10^{-4} to 10^{-6} or less for carcinogens.

Due to excessive risk that will be present at the site pending full remediation, institutional constraints are appropriate to limit on-site exposure to acceptable levels. Institutional constraints include a deed restriction that notifies future owners of subsurface contamination and prohibits the use of shallow groundwater beneath the site as a source of drinking water until cleanup standards are met. The deed restriction also prohibits use of the site for residential development.

12. **Basis for Cleanup Standards**

- a. **General:** State Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background must be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives. The previously-cited cleanup plan confirms the Board's initial conclusion that background levels of water quality cannot be restored. The Board has experience with numerous sites where groundwater has been polluted by solvents. Experience has shown that in most cases current technology can reduce the concentrations of contaminants in groundwater but cannot restore groundwater to background quality. This order and its requirements are consistent with Resolution No. 68-16.

State Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304," applies to this discharge. This order and its requirements are consistent with the provisions of Resolution No. 92-49, as amended.

- b. **Beneficial Uses:** The Board adopted a revised Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) on June 21, 1995. This updated and consolidated plan represents the Board's master water quality control planning document. The revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20, 1995, and November 13, 1995, respectively. A summary of regulatory provisions is contained in Title 23, California Code of Regulations, Section 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters.

Board Resolution No. 89-39, "Sources of Drinking Water," defines potential sources of drinking water to include all groundwater in the region, with limited exceptions for areas of high TDS, low yield, or naturally-high contaminant levels. Groundwater underlying and adjacent to the site qualifies as a potential source of drinking water.

The Basin Plan designates the following potential beneficial uses of groundwater underlying and adjacent to the site:

- o Municipal and domestic water supply
- o Industrial process water supply
- o Industrial service water supply
- o Agricultural water supply
- o Freshwater replenishment to surface waters

At present, there is no known use of shallow groundwater underlying the site for the above purposes. Deep groundwater from below the regional aquitard is used for municipal supply as discussed in Finding 5.

The existing and potential beneficial uses of Coyote Creek include:

- o Water contact and non-contact recreation
- o Wildlife habitat
- o Cold freshwater and warm freshwater habitat
- o Fish migration and spawning
- o Preservation of rare and endangered species

- c. **Basis for Groundwater Cleanup Standards:** The groundwater cleanup standards for the site are based on applicable water quality objectives and are the more stringent of EPA and California primary maximum contaminant levels (MCLs). Cleanup to this level will result in acceptable residual risk to humans.
 - d. **Basis for Soil Cleanup Standards:** The soil cleanup standards for VOCs at the site are based on modeling studies performed by the discharger (June 30, 2000 cleanup plan addendum). These standards assure no additional significant leaching of VOCs from soil sources to groundwater. The soil cleanup standards for TPH are based on the prevention of nuisance conditions and on the protection of health for onsite workers. The shallow soil TPH cleanup level of 1,000 mg/kg is based on the Massachusetts Department of Environmental Protection (DEP) ceiling level for an industrial land-use scenario. The deeper soil TPH cleanup level of 3,000 mg/kg is based on the saturation limit cited in the discharger's July 27, 2001 updated feasibility study for the 1761 Junction Avenue property, and on the last several years of monitoring data for the site, which indicate that the TPH groundwater plume is shrinking and soil is no longer contributing significantly to the plume.
13. **Future Changes to Cleanup Standards:** The goal of this remedial action is to restore the beneficial uses of groundwater underlying and adjacent to the site. Results from other sites suggest that full restoration of beneficial uses to groundwater as a result of active remediation at this site may not be possible. If full restoration of beneficial uses

is not technologically nor economically achievable within a reasonable period of time, then the discharger may request modification to the cleanup standards or establishment of a containment zone, a limited groundwater pollution zone where water quality objectives are exceeded. Conversely, if new technical information indicates that cleanup standards can be surpassed, the Board may decide that further cleanup actions should be taken.

14. **Reuse or Disposal of Extracted Groundwater:** Board Resolution No. 88-160 allows discharges of extracted, treated groundwater from site cleanups to surface waters only if it has been demonstrated that neither reclamation nor discharge to the sanitary sewer is technically and economically feasible.
15. **Basis for 13304 Order:** The discharger has caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the State and creates or threatens to create a condition of pollution or nuisance.
16. **Cost Recovery:** Pursuant to California Water Code Section 13304, the discharger is hereby notified that the Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this order.
17. **CEQA:** This action is an order to enforce the laws and regulations administered by the Board. As such, this action is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15321 of the Resources Agency Guidelines.
18. **Notification:** The Board has notified the discharger and all interested agencies and persons of its intent under California Water Code Section 13304 to prescribe site cleanup requirements for the discharge, and has provided them with an opportunity to submit their written comments.
19. **Public Hearing:** The Board, at a public meeting, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED, pursuant to Section 13304 of the California Water Code, that the dischargers (or their agents, successors, or assigns) shall cleanup and abate the effects described in the above findings as follows:

A. PROHIBITIONS

1. The discharge of wastes or hazardous substances in a manner which will degrade water quality or adversely affect beneficial uses of waters of the State is prohibited.
2. Further significant migration of wastes or hazardous substances through subsurface transport to waters of the State is prohibited.
3. Activities associated with the subsurface investigation and cleanup which will cause significant adverse migration of wastes or hazardous substances are prohibited.

B. CLEANUP PLAN AND CLEANUP STANDARDS

1. **Implement Cleanup Plan:** The dischargers shall implement the cleanup plan described in finding 10 and as modified by this Order.
2. **Groundwater Cleanup Standards:** The following groundwater cleanup standards shall be met in all wells identified in the Self-Monitoring Program:

Constituent	Standard (ug/l)	Basis
Tetrachloroethene (PCE)	5	MCL
Trichloroethene (TCE)	5	MCL
Cis-1,2-dichloroethene (cis-1,2-DCE)	6	MCL
Trans-1,2-dichloroethene (trans-1,2-DCE)	10	MCL
Vinyl Chloride	0.5	MCL
1,1-Dichloroethane (1,1-DCA)	5	MCL
1,2-Dichloroethane (1,2-DCA)	0.5	MCL
1,1,1-Trichloroethane (1,1,1-TCA)	200	MCL

1,1,2-Trichloroethane (1,1,2-TCA)	5	MCL
Total Extactable Petroleum Hydrocarbons as Jet Fuel (TPHj)	Removal of floating product	
Benzene	1	MCL
Toluene	150	MCL
Ethylbenzene	700	MCL
Xylene	1,750	MCL

3. **Soil Cleanup Standards:** Soil cleanup standards shall be as follows:
1750 Rogers Avenue – 14.4 mg/kg of TCE, with current engineering controls *
1759 Junction Avenue - 1.5 mg/kg of TCE. **
1761 Junction Avenue - 1000 mg/kg of TPH as jet fuel for soil three feet or less below ground surface and 3000 mg/kg of TPH as jet fuel for soil greater than three feet below ground surface. ***

* If the existing building overlying the VOC soil source at 1750 Rogers Avenue is removed, soil shall be remediated to the 1.5 mg/kg standard or an alternative cleanup standard as in ** below.

** The dischargers may propose an alternative cleanup standard, subject to Regional Board approval. Such a proposal must demonstrate that (1) it is infeasible to meet the 1.5 mg/kg standard based on phase 1 soil remediation results and other relevant factors, and (2) appropriate engineering controls can be shown to prevent soil containing VOCs at the proposed alternative cleanup level from acting as a source of contaminants leaching to groundwater.

*** Due to the inaccessibility of TPH contaminated soil under current site conditions, remediation of TPH contaminated soil may be delayed until such soil is accessible. Soil shall be considered accessible when the current tenant vacates the property or when enough currently existing equipment and materials are removed to make remediation practical. In the meantime, a risk management plan approved by the Executive Officer must be developed. The plan shall provide for the prevention of nuisance conditions associated with TPH contaminated soil, as well as ensure that activities on-site do not result in

unacceptable risk or exposure to workers from TPH contaminated soil. The plan shall be submitted by November 1, 2001.

C. TASKS

1. ADDITIONAL SOIL REMEDIATION

- a. PHASE 1 WORKPLAN
COMPLIANCE DATE: November 1, 2001

Submit a technical report acceptable to the Executive Officer proposing a plan, including a time schedule, to remediate the area of highest TCE concentration on the 1759 Junction Avenue property, which is in the vicinity of soil boring T-4. The report shall address remediation of the "hot spot" where TCE levels are higher than the general level of TCE soil pollution on the property. At a minimum, vadose zone soil in the area of soil boring location T-4 containing TCE in excess of 15 mg/kg shall be remediated.

- b. PHASE 1 IMPLEMENTATION REPORT
COMPLIANCE DATE: According to schedule in the Phase 1 Workplan approved by the Executive Officer.

Submit technical reports documenting completion of Phase 1 soil remediation activities.

- c. PHASE 2 WORKPLAN
COMPLIANCE DATE: July 30, 2005

Submit a technical report acceptable to the Executive Officer proposing a plan, including a time schedule, to remediate VOC impacted vadose zone soil to the TCE cleanup standard over the whole source area at 1759 Junction Avenue.

- d. PHASE 2 IMPLEMENTATION REPORT
COMPLIANCE DATE: According to schedule in the Phase 2 Workplan approved by the Executive Officer.

Submit a technical report documenting completion of Phase 2 soil remediation activities.

2. **PROPOSED INSTITUTIONAL CONSTRAINTS**

COMPLIANCE DATE: November 1, 2001

Submit a technical report acceptable to the Executive Officer documenting procedures to be used by the dischargers to prevent or minimize human exposure to soil and groundwater contamination prior to meeting cleanup standards. Such procedures shall include a deed restriction prohibiting the use of shallow groundwater as a source of drinking water. The deed restriction shall also specify any engineering controls implemented to meet cleanup standards contained in Section B.3 for the protection of groundwater. The deed restriction shall also include a ban on use of the site for residential development.

3. **IMPLEMENTATION OF INSTITUTIONAL CONSTRAINTS**

COMPLIANCE DATE: 60 days after Executive Officer approval

Submit a technical report acceptable to the Executive Officer documenting that the proposed institutional constraints have been implemented in cooperation with current property owners (Frank Hamedi and Triad Tool).

4. **FIVE-YEAR STATUS REPORT**

COMPLIANCE DATE: December 30, 2006

Submit a technical report acceptable to the Executive Officer evaluating the effectiveness of the approved cleanup plan. The report should include:

- a. Summary of effectiveness in controlling contaminant migration and protecting human health and the environment
- b. Comparison of contaminant concentration trends with cleanup standards
- c. Comparison of anticipated versus actual costs of cleanup activities
- d. Performance data (e.g. groundwater volume extracted, chemical mass removed, mass removed per million gallons extracted)
- e. Cost effectiveness data (e.g. cost per pound of contaminant removed)
- f. Summary of additional investigations (including results) and significant modifications to remediation systems
- g. Additional remedial actions proposed to meet cleanup standards (if applicable) including time schedule

If cleanup standards have not been met and are not projected to be met within a reasonable time, the report should assess the technical practicability of meeting cleanup standards and may propose an alternative cleanup strategy.

5. PROPOSED CURTAILMENT

COMPLIANCE DATE: 60 days prior to proposed curtailment

Submit a technical report acceptable to the Executive Officer containing a proposal to curtail remediation. Curtailment includes system closure (e.g. well abandonment), system suspension (e.g. cease extraction but wells retained), and significant system modification (e.g. major reduction in extraction rates, closure of individual extraction wells within extraction network). The report should include the rationale for curtailment. Proposals for final closure should demonstrate that cleanup standards have been met, contaminant concentrations are stable, and contaminant migration potential is minimal.

6. IMPLEMENTATION OF CURTAILMENT

COMPLIANCE DATE: 60 days after Executive Officer approval

Submit a technical report acceptable to the Executive Officer documenting completion of the tasks identified in Task 5.

7. EVALUATION OF NEW HEALTH CRITERIA

COMPLIANCE DATE: 90 days after requested
by Executive Officer

Submit a technical report acceptable to the Executive Officer evaluating the effect on the approved cleanup plan of revising one or more cleanup standards in response to revision of drinking water standards, maximum contaminant levels, or other health-based criteria.

8. EVALUATION OF NEW TECHNICAL INFORMATION

COMPLIANCE DATE: 90 days after requested
by Executive Officer

Submit a technical report acceptable to the Executive Officer evaluating new technical information which bears on the approved cleanup plan and cleanup

standards for this site. In the case of a new cleanup technology, the report should evaluate the technology using the same criteria used in the feasibility study. Such technical reports shall not be requested unless the Executive Officer determines that the new information is reasonably likely to warrant a revision in the approved cleanup plan or cleanup standards.

9. **Delayed Compliance:** If the dischargers are delayed, interrupted, or prevented from meeting one or more of the completion dates specified for the above tasks, the dischargers shall promptly notify the Executive Officer and the Board may consider revision to this Order.

D. PROVISIONS

1. **No Nuisance:** The storage, handling, treatment, or disposal of polluted soil or groundwater shall not create a nuisance as defined in California Water Code Section 13050(m).
2. **Good O&M:** The dischargers shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.
3. **Cost Recovery:** The dischargers shall be liable, pursuant to California Water Code Section 13304, to the Board for all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. If the site addressed by this Order is enrolled in a State Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the dischargers over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.
4. **Access to Site and Records:** In accordance with California Water Code Section 13267(c), the dischargers shall permit the Board or its authorized representative:
 - a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.
 - b. Access to copy any records required to be kept under the requirements of this Order.

- c. Inspection of any monitoring or remediation facilities installed in response to this Order.
 - d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the dischargers.
5. **Self-Monitoring Program:** The dischargers shall comply with the Self-Monitoring Program as attached to this Order and as may be amended by the Executive Officer.
 6. **Contractor / Consultant Qualifications:** All technical documents shall be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.
 7. **Lab Qualifications:** All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Board using approved EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control (QA/QC) records for Board review. This provision does not apply to analyses that can only reasonably be performed on-site (e.g. temperature).
 8. **Document Distribution:** Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the following agencies:
 - a. Santa Clara Valley Water District

The Executive Officer may modify this distribution list as needed.
 9. **Reporting of Changed Owner or Operator:** The dischargers shall file a technical report on any changes in site occupancy or ownership associated with the property described in this Order.
 10. **Reporting of Hazardous Substance Release:** If any hazardous substance is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the dischargers shall report such discharge to the Regional Board by calling (510) 622-2300 during regular office hours (Monday through Friday, 8:00 to 5:00). A written report shall be filed with the Board within five working days. The report shall describe: the nature of the hazardous substance, estimated quantity

involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective actions taken or planned, schedule of corrective actions planned, and persons/agencies notified.

This reporting is in addition to reporting to the Office of Emergency Services required pursuant to the Health and Safety Code.

- 11. **Secondarily-Responsible Dischargers:** Within 60 days after being notified by the Executive Officer that other named dischargers have failed to comply with this order; Frank Hamedi, as property owner, shall then be responsible for complying with this order for the 1761 Junction Avenue Property; Lucian W. Taylor & Jean B. Taylor, as property owners at the time contamination occurred, and Triad Tool and Engineering, Inc., as the current property owner, shall then be responsible for complying with this order for the 1750 Rogers Avenue and 1759 Junction Avenue Property. Task deadlines above will be automatically adjusted to add 60 days.
- 12. **Rescission of Existing Order:** This Order supercedes and rescinds Order No. 95-064.
- 13. **Periodic SCR Review:** The Board will review this Order periodically and may revise it when necessary.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 19, 2001.

Loretta K. Barsamian

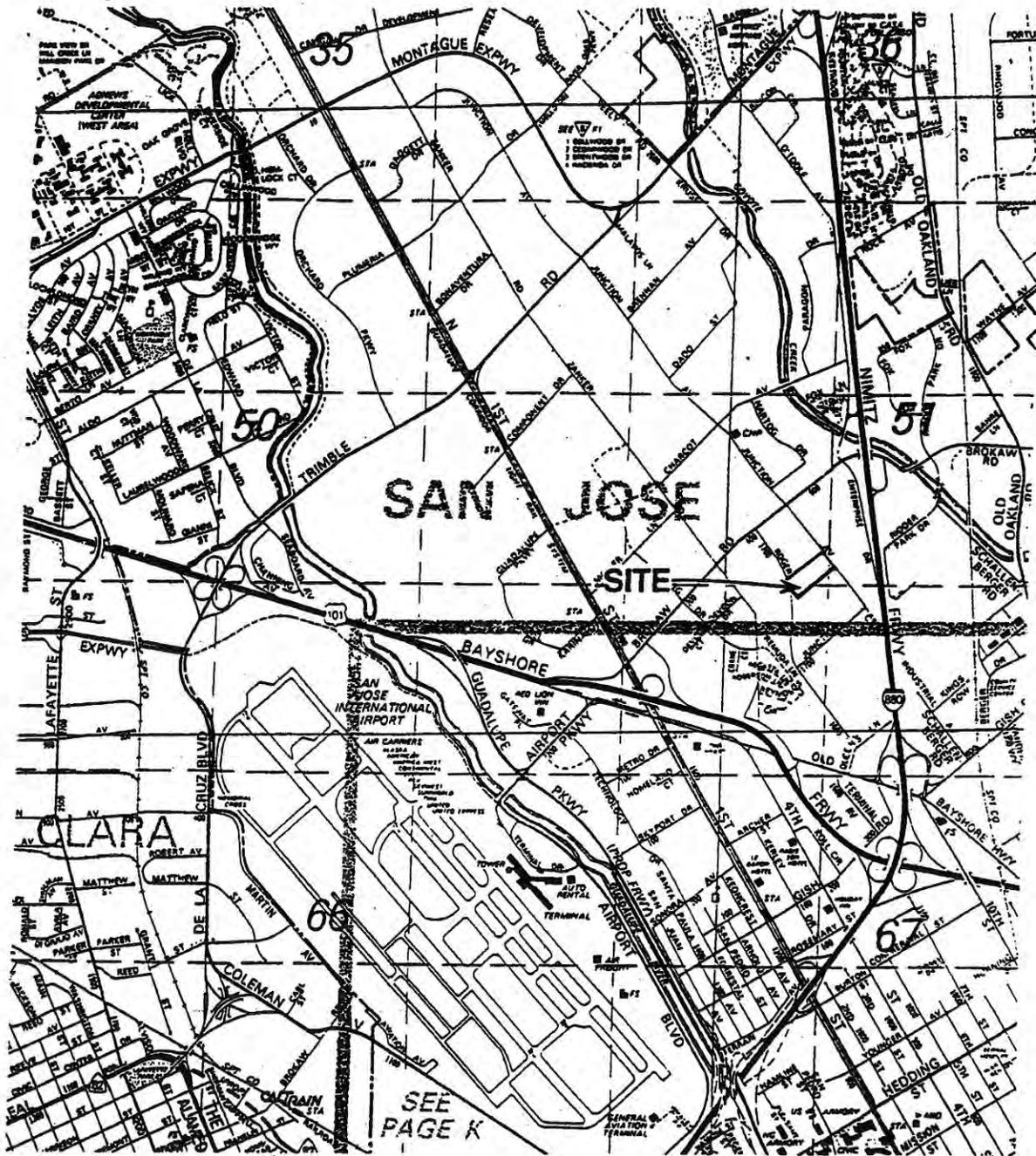
Loretta K. Barsamian
Executive Officer

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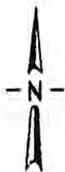
FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO: IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER CODE SECTIONS 13268 OR 13350, OR REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY

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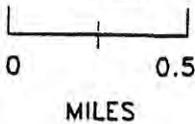
Attachments: Self-Monitoring Program
Site Maps (Figure 1 and Figure 2)



SOURCE: THE THOMAS GUIDE
ALAMEDA AND SANTA CLARA
COUNTIES STREET GUIDE AND
DIRECTORY, 1989 EDITION



SCALE



Cypress
Environmental

111 West Evans Avenue, Suite 305
Sunnyvale, CA 94086

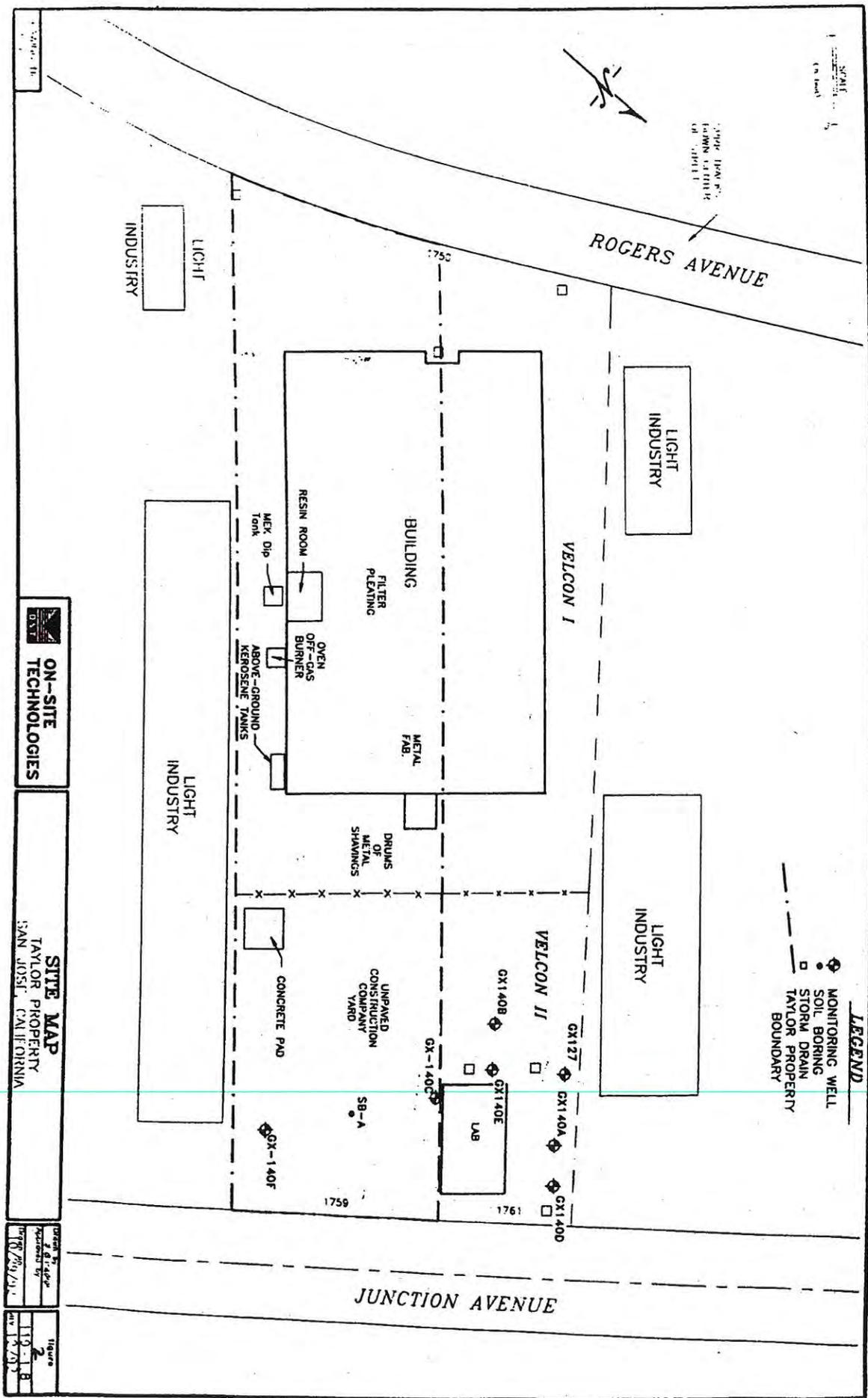
SITE LOCATION

VELCON FILTERS, INC.
JUNCTION AND ROGERS AVENUES
SAN JOSE, CALIFORNIA

PROJECT DATE
9/20/95

PROJECT NUMBER
138-1.1

FIGURE
1



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

SELF-MONITORING PROGRAM FOR:

VELCON FILTERS, INC.
FRANK HAMEDI
FORMER VELCON II PROPERTY - 1761 JUNCTION AVENUE
SAN JOSE, SANTA CLARA COUNTY

VELCON FILTERS, INC.
LUCIAN W. TAYLOR & JEAN B. TAYLOR
TRIAD TOOL AND ENGINEERING, INC.
FORMER TAYLOR PROPERTY - 1750 ROGERS AVENUE, 1759 JUNCTION AVENUE
FORMER VELCON I PROPERTY - 1750 ROGERS AVENUE
SAN JOSE, SANTA CLARA COUNTY

1. **Authority and Purpose:** The Board requests the technical reports required in this Self-Monitoring Program pursuant to Water Code Sections 13267 and 13304. This Self-Monitoring Program is intended to document compliance with Board Order No. 01-108 (site cleanup requirements).
2. **Monitoring:** The dischargers shall measure groundwater elevations quarterly in all monitoring wells, and shall collect and analyze representative samples of groundwater according to the following table:

Well No.	TPHj	VOCs
A-Zone Wells		
GX-140B	Q	Q
GX-140C		Q
GX-140D	Q	Q
GX-140F	Q	Q
MW-2A	Q	Q
MW-3A		Q
MW-7A	Q	Q
MW-8A	Q	Q
MW-10A	Q	Q
MW-11A		Q
MW-12A	Q	Q
MW-14A		Q
MW-15A		Q
MW-18A	Q	Q

Well No.	TPHj	VOCs
MW-19A		Q
MW-20A		Q
MW-3	Q	Q
MW-4		Q
MW-7		Q
B1-Level Wells		
MW2-B1		Q
MW-3B1		Q
MW-4B1		Q
MW-5B1	Q	Q
MW-6B1		Q
MW-8B1		Q
MW-9B1	Q	Q
MW-10B1		Q
MW-11B1		Q
MW-13B1		Q
MW-15B1		Q
MW-16B1		Q
MW-18B1		Q
EW-7		Q
B2-Level Well		
MW-11B2		Q

Key: Q = Quarterly

The analytical methods used shall be:

TPHj – Method 8015 modified

BTEX – Method 8020

Halogenated VOCs – Method 8010

The dischargers shall sample any new monitoring or extraction wells and analyze groundwater samples for the same constituents as shown in the above table, in accordance with a schedule approved by the Executive Officer. The dischargers may propose changes in the above table; any proposed changes are subject to Executive Officer approval.

3. **Quarterly Monitoring Reports:** The dischargers shall submit quarterly monitoring reports to the Board no later than 30 days following the end of the quarter (e.g. report for first quarter of the year due April 30). The first quarterly monitoring report shall be due on October 30, 2001. The reports shall include:

- a. **Transmittal Letter:** The transmittal letter for the quarterly NPDES reports shall discuss any violations during the reporting period and actions taken or planned to correct the problem. The letter shall be signed by the discharger's principal executive officer or his/her duly authorized representative, and shall include a statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge.
 - b. **Groundwater Elevations:** Groundwater elevation data shall be presented in tabular form, and a groundwater elevation map should be prepared for each monitored water-bearing zone. Historical groundwater elevations shall be included in the fourth quarterly report each year.
 - c. **Groundwater Analyses:** Groundwater sampling data shall be presented in tabular form, and an isoconcentration map should be prepared for one or more key contaminants for each monitored water-bearing zone, as appropriate. The report shall indicate the analytical method used, detection limits obtained for each reported constituent, and a summary of QA/QC data. Historical groundwater sampling results shall be included in the fourth quarterly report each year. The report shall describe any significant increases in contaminant concentrations since the last report, and any measures proposed to address the increases. Supporting data, such as lab data sheets, need not be included (however, see record keeping - below).
 - d. **Groundwater Extraction:** If applicable, the quarterly NPDES report shall include groundwater extraction results in tabular form, for each extraction well and for the site as a whole, expressed in gallons per minute and total groundwater volume for the quarter. The report shall also include contaminant removal results, from groundwater extraction wells and from other remediation systems (e.g. soil vapor extraction), expressed in units of chemical mass per day and mass for the quarter. Historical mass removal results shall be included in the fourth quarterly report each year.
 - e. **Status Report:** The quarterly report shall describe relevant work completed during the reporting period (e.g. site investigation, interim remedial measures) and work planned for the following quarter.
5. **Violation Reports:** If the dischargers violate requirements in the Site Cleanup Requirements, then the dischargers shall notify the Board office by telephone as soon as practicable once the dischargers has knowledge of the violation. Board staff may, depending on violation severity, require the dischargers to submit a separate technical report on the violation within five working days of telephone notification.

6. **Other Reports:** The dischargers shall notify the Board in writing prior to any site activities, such as construction or underground tank removal, which have the potential to cause further migration of contaminants or which would provide new opportunities for site investigation.
7. **Record Keeping:** The dischargers or his/her agent shall retain data generated for the above reports, including lab results and QA/QC data, for a minimum of six years after origination and shall make them available to the Board upon request.
8. **SMP Revisions:** Revisions to the Self-Monitoring Program may be ordered by the Executive Officer, either on his/her own initiative or at the request of the dischargers. Prior to making SMP revisions, the Executive Officer will consider the burden, including costs, of associated self-monitoring reports relative to the benefits to be obtained from these reports.

I, Loretta K. Barsamian, Executive Officer, hereby certify that this Self-Monitoring Program was adopted by the Board on September 19, 2001.

Attachment: Well Location Map


Loretta K. Barsamian
Executive Officer

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

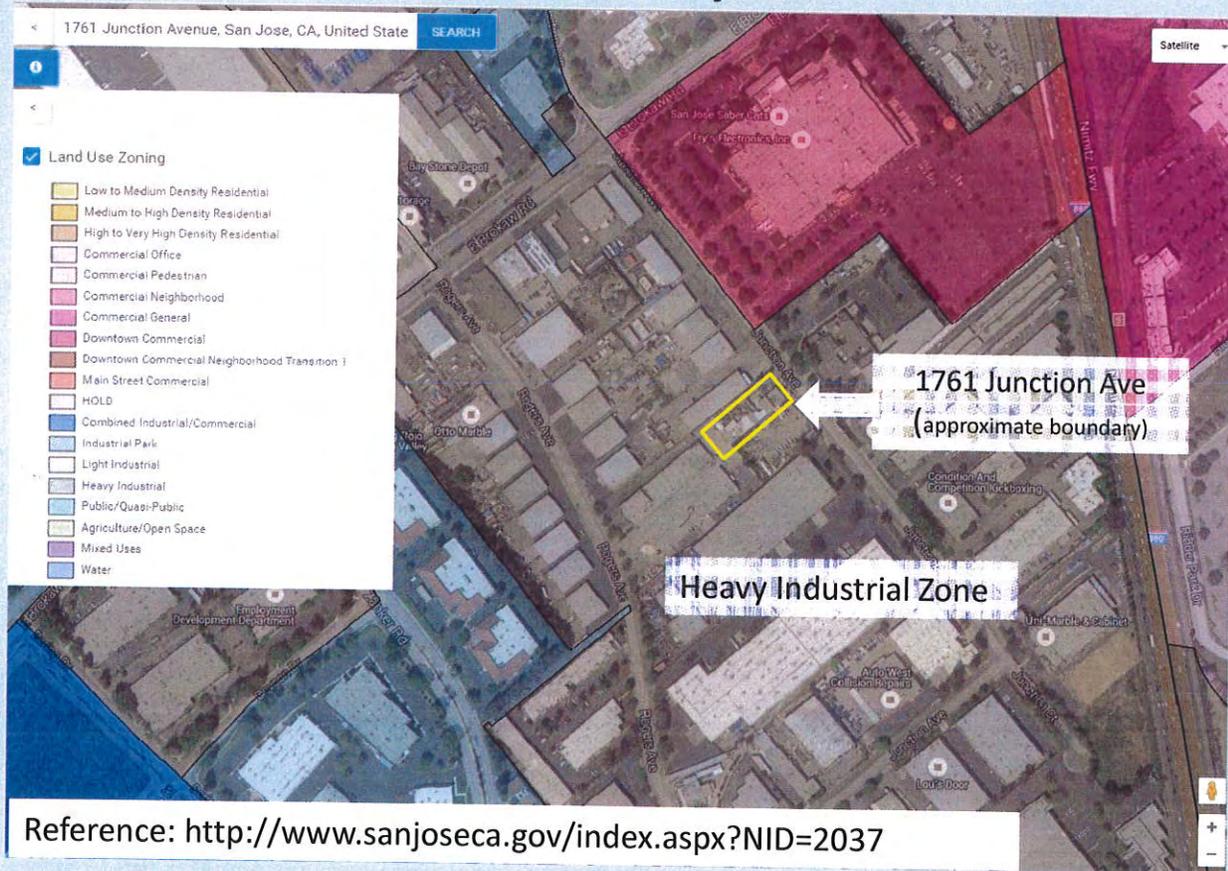
Exhibit 7

Location Map and Zoning Map

1761 Junction Ave. Location Map



Zoning Map – City of San Jose



ACL Complaint R2-2015-1012

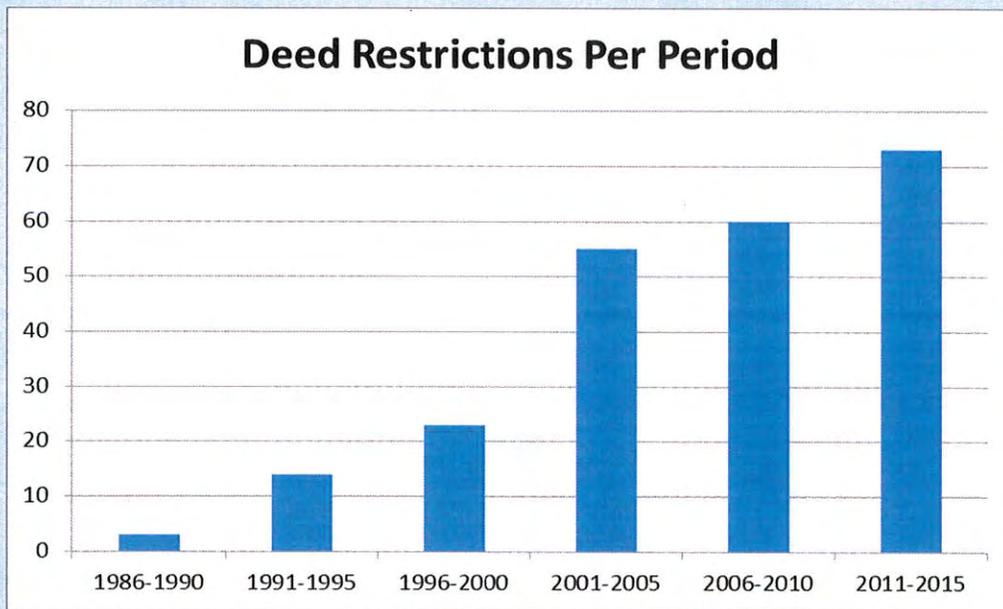
Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 8

Deed Restriction Exhibit

Deed Restriction requirements



ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 9

Staff Summary Report for the Velcon Filters hearing at the Regional Water Board meeting on September 19, 2001.

STATE OF CALIFORNIA {PRIVATE }
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (David Barr)
MEETING DATE: September 19, 2001

ITEM: 18

SUBJECT: **VELCON FILTERS, INC., AND FRANK HAMEDI, FOR THE PROPERTY AT 1761 JUNCTION AVENUE, AND VELCON FILTERS, INC., LUCIAN W. TAYLOR AND JEAN B. TAYLOR, AND TRIAD TOOL AND ENGINEERING, INC., FOR THE PROPERTIES AT 1750 ROGERS AVENUE AND 1759 JUNCTION AVENUE, SAN JOSE, SANTA CLARA COUNTY – Adoption of Final Site Cleanup Requirements**

CHRONOLOGY: March 15, 1995 - Site Cleanup Requirements adopted.

DISCUSSION: This item was continued from the August meeting due to concerns raised by Mr. Frank Hamed, one of the two property owners at the subject site. Mr. Hamed objected to the deed restriction requirement contained in Task C. 2 of the Tentative Order (Appendix A).

The Velcon Filters (hereinafter Velcon) site consists of three adjacent properties, all of which were owned or used by Velcon from the 1970s until 1994 to 1996 when Velcon sold the properties. Velcon has retained responsibility for the soil and groundwater cleanup. Velcon manufactured fuel filters for jet aircraft at the site. In 1988 it was discovered that soil and groundwater in the vicinity of underground jet fuel storage tanks and a fuel filter testing lab were contaminated with jet fuel. Jet fuel was found to be floating on groundwater. Velcon began extracting floating product. In 1990, halogenated volatile organic compounds (VOCs) were discovered to be present in soil and groundwater also. Velcon expanded the focus of the remedial investigation to include VOCs. Since 1995 eleven groundwater extraction wells have been installed on and offsite. The extraction wells provide plume remediation and containment. This site is notable for its widespread soil pollution.

The Tentative Order prescribes final Site Cleanup Requirements for the site. It generally approves Velcon's cleanup plan and sets cleanup standards for soil and groundwater suitable for a commercial/industrial land use scenario. Due to economic and access limitations, a phased approach to soil cleanup is specified in the Tentative Order. In addition, the Tentative Order allows the discharger to propose alternate soil cleanup levels for VOCs if it is infeasible to meet the cleanup standard in the Order

and appropriate engineering controls will prevent leaching of contaminants to groundwater.

We have received comments from two interested parties, Frank Hamedí, the current owner of one of the properties making up the Velcon Site, and Velcon (Appendix C). Mr. Hamedí objects to Task C. 2 of the Tentative Order. Task C. 2 requires a deed restriction which prohibits, among other things, residential development on the site. Mr. Hamedí claims that a deed restriction will reduce the value of his property. He wants the requirement for a deed restriction eliminated or else the soil cleanup standards set to a level acceptable for residential development. Velcon replies that cleanup to commercial/industrial standards was agreed to in 1998 and that Mr. Hamedí was aware of this and has received all the documents in which the cleanup standards and plan were developed. The site is currently zoned heavy industrial. Current land use is industrial and commercial, and residential use is unlikely for the foreseeable future. Velcon wishes the Tentative Order to remain as is. The attached Staff Report (Appendix B) provides a detailed analysis.

Board staff believe that cleanup to commercial/industrial standards for soil is acceptable and appropriate for this site given the current and expected future industrial zoning and land use of the area. The proposed cleanup standards and risk management are protective of human health and water quality under current and expected future land use.

**RECOMMEN-
DATION:**

Adoption of the Tentative Order.

File No. 2189.8305 (DIB)

Appendices:

- A. Tentative Order
- B. Staff Report
- C. Correspondence

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 10

Correspondence from 2011:

- March 17, 2011 – Letter to Mr. Hamedi - Notification of Intent to Revoke Secondarily Responsible Status.
- August 5, 2011 – Letter to Mr. Hamedi - Submittal of Draft Deed Restriction.
- October 13, 2011 – Letter to Mr. Hamedi - Draft deed restriction for 1761 Junction Avenue.



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Acting Secretary for
Environmental Protection

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(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>

Edmund G. Brown, Jr.
Governor

Date: March 17, 2011
File No. 43S0346 (dib)

Mr. Frank Hamedi
Soil Tech Engineering
131 Tully Road
San Jose, CA 95111
[info@envirosoiltech.com]

SUBJECT: Notification of Intent to Revoke Secondly Responsible Status for Compliance with Tasks C. 2 and C.3 of Regional Water Board Order No. 01-108, Site Cleanup Requirements for the Velcon Filters Site, 1761 Junction Avenue, San Jose, Santa Clara County

Dear Mr. Hamedi:

We intend to revoke your status as a secondarily responsible discharger for implementation of Tasks C.2 (submittal of a draft deed restriction) and C.3 (implementation of an approved deed restriction) of Order No. 01-108 and name you as a primarily responsible discharger for completion of these Tasks with respect to the parcel you own at the subject site. As explained below, this letter provides you with notice of our intended action and provides you with an opportunity to comment.

Regional Water Board Order No. 01-108 establishes Site Cleanup Requirements (Order) for the Velcon Filters site, comprising properties at 1761 Junction Avenue, 1759 Junction Avenue, and 1750 Rogers Avenue. Velcon Filters is named as the primarily responsible discharger for compliance with the Order. The current landowners (Mr. Frank Hamedi for 1761 Junction Avenue and Trial Tools for the remainder of the site) are named as secondarily responsible dischargers. Provision D.11 of the Order allows the Regional Water Board or the Regional Water Board's Executive Officer to revoke secondarily responsible discharger status if there is non-compliance by the primarily responsible discharger. The secondarily responsible discharger is then responsible to comply within 60 days.

The Order approves the cleanup plan for the site and sets cleanup standards appropriate for continued commercial-industrial land use. The Order also requires a deed restriction to prohibit sensitive land uses such as residential. Specifically, Task C.2 requires submittal of a draft deed restriction by November 1, 2001, and Task C.3 requires recordation of the final deed restriction within 60 days after the Executive Officer of the Regional Water Board approves the draft deed restriction. Velcon Filters has generally complied with the Order. However, it has not complied with the deed restriction task for the parcel you own due to your reluctance to accept a deed restriction.

You commented on the draft Order in writing and at the Regional Water Board hearing, requesting cleanup standards for unrestricted use and removal of the deed restriction tasks. The Board considered these comments but decided against making the changes requested. You chose not to petition the Board's adoption of the Order, yet in later telephone conversations with Regional Water Board staff you have said that you will not implement a deed restriction for the parcel you own at 1761 Junction Avenue.

It should be noted that even if the Order set cleanup standards were for unrestricted use including residential, it would take many years before these cleanup standards are achieved. Some site buildings would need to be removed to access underlying soil to achieve these cleanup standards. Therefore, a deed restriction prohibiting sensitive land uses such as residential would still be necessary in the interim.

Velcon Filters, the primarily responsible discharger, does not own the 1761 Junction Avenue property and thus cannot comply with the deed restriction tasks without your cooperation. **As such we intend to issue a letter changing your status for completion of both Tasks C.2 and C.3 to primarily responsible discharger.** You would remain a secondarily responsible discharger for all other requirements of the Order.

Any comments you have concerning this matter should be received by the Regional Water Board in writing by **Monday, April 18, 2011.**

If you have any questions, please contact David Barr at (510) 622-2313, or via e-mail at dbarr@waterboards.ca.gov.

Sincerely,



for
Bruce H. Wolfe
Executive Officer

Digitally signed by Stephen Hill
Date: 2011.03.17 14:42:03
-07'00'

Enclosure: Order No. 01-108

cc w/enclosure: Mailing List

Mailing List

Velcon Filters, Inc.
1210 Garden of the Gods Rd
Colorado Springs, CO 80919
Attn: Mr. Dave Taylor
[dtaylor@velcon.com]

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[dmaslonkowski@trcsolutions.com]

George Cook
Santa Clara Valley Water District
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[gcook@valleywater.org]

Lucien and Jean Taylor
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Bill Bartlett
Triad Tool and Engineering, Inc.
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Cindy Hamilton
Hamilton & Hamilton
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Jenifer Beatty
LFR-Levine Fricke
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Granite Bay, CA 95746-9

Brian Hannon
McGrane Greenfield LLP
40 South Market Street, 7th floor
San Jose, CA 95113



Matthew Rodriguez
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Francisco Bay Region

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<http://www.waterboards.ca.gov/sanfranciscobay>



Edmund G. Brown Jr.
Governor

Date: August 5, 2011
File: 43S0346 (dib)

Mr. Frank Hamedi
Soil Tech Engineering
131 Tully Road
San Jose, CA 95111
[info@envirosoiltech.com]

SUBJECT: SUBMITTAL OF DRAFT DEED RESTRICTION FOR 1761 JUNCTION AVENUE, SAN JOSE, SANTA CLARA COUNTY

Dear Mr. Hamedi:

This letter is in regards to the requirement for a draft deed restriction in Task C. 2 of Regional Water Board Order No. 01-108, the Site Cleanup Requirements for the Velcon Filters site located at 1761 and 1759 Junction Avenue and 1750 Rogers Avenue. It is our understanding, based on correspondence and conversations with you and your legal counsel, Gary Grimm, that you are willing to submit a draft deed restriction for your parcel (1761 Junction Avenue) to the Water Board as required by Order No. 01-108. We have provided a draft deed restriction done by TRC, the consultant performing the cleanup of the Site, to your legal counsel. Your legal counsel has informed us that he will discuss the deed restriction with you and give us your response.

Please submit a draft deed restriction to the Water Board by August 29, 2011. If you do not submit a draft deed restriction by that date, then we will proceed as stated in our March 17, 2011, letter with naming you as a primarily responsible party for compliance with Tasks C. 2 (submittal of a draft deed restriction) and Task C. 3 (implementation of an approved deed restriction) in Order No. 01-108, for 1761 Junction Avenue.

If you have any questions please, contact David Barr of my staff at (510) 622-2313 [e-mail dbarr@waterboards.ca.gov].

Sincerely,

Digitally signed by
Stephen Hill

Date: 2011.08.05 14:43:06
-07'00'

Bruce H. Wolfe
Executive Officer

cc: mailing list

Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 60 years

Mailing List

Velcon Filters, Inc.
1210 Garden of the Gods Road
Colorado Springs, CO 80919
Attn: Mr. Dave Taylor
[dtaylor@velcon.com]

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[dmaslonkowski@trcsolutions.com]

George Cook
Santa Clara Valley Water District
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Lucien and Jean Taylor
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Matthew Rodriguez
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Francisco Bay Region

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Edmund G. Brown Jr.
Governor

Date: October 13, 2011
File: 43S0346 (dib)

Mr. Frank Hamedi
Soil Tech Engineering
131 Tully Road
San Jose, CA 95111
[info@envirosoiltech.com]

SUBJECT: DRAFT DEED RESTRICTION FOR 1761 JUNCTION AVENUE, SAN JOSE,
SANTA CLARA COUNTY

Dear Mr. Hamedi:

This letter addresses the draft deed restriction submitted by your attorney, Gary Grimm, to comply with Task C. 2 of Regional Water Board Order No. 01-108, the Site Cleanup Requirements for the Velcon Filters site. We have reviewed the draft deed restriction submitted by your attorney, Gary Grimm, on August 29, 2011. Most of the draft deed restriction is acceptable. However, we have a few comments that need to be addressed in the final version:

1. For B. Contamination of the Burdened Property – jet fuel should be added to the contaminants listed.
2. A statement about exposure pathways should follow statement B. The following language is from the model deed restriction as adapted to the Velcon Filters site. This language or equivalent should be used:

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Exposure to these contaminants could take place via in-place contact or ingestion of groundwater. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

3. In Article I 1.1 the second sentence should begin, “The restrictions set forth in article III”.
4. In Article I 1.2, first sentence, “shall become owners or occupants as defined herein and” should be struck.
5. In Article III 3.1 h, “shallow” should be struck.
6. In Article III 3.2, the last sentence should be changed to, “Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner, Occupant, or any person who violates the restrictions, as provided by law.
7. In Article V 5.8, Mortgage Protection, should be removed.

Please submit a revised deed restriction that addresses these comments to the Water Board by October 30, 2011. If you do not submit a revised draft deed restriction by that date, we may

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proceed as stated in our March 17, 2011 letter with naming you as a primarily-responsible discharger for compliance with Task C. 2 (submittal of a draft deed restriction) and Task C. 3 (implementation of an approved deed restriction) in Order No. 01-108.

If you have any questions please, contact David Barr of my staff at (510) 622-2313 [e-mail dbarr@waterboards.ca.gov].

Sincerely,



Digitally signed by Stephen Hill
Date: 2011.10.13 08:13:56
-07'00'

Bruce H. Wolfe
Executive Officer

cc:

Velcon Filters, Inc.
1210 Garden of the Gods Rd
Colorado Springs, CO 80919
Attn: Mr. Dave Taylor
[dtaylor@velcon.com]

Dennis Maslonkowski
TRC Solutions
1590 Solano Way, Suite A
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[dmaslonkowski@trcsolutions.com]

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Jenifer Beatty
LFR-Levine Fricke
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Brian Hannon
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40 South Market Street, 7th floor
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Gary Grimm
Law Office of Gary J. Grimm
2390 Vine Street
Berkeley, CA 94708

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 11

Correspondence from February 2014:

- February 5, 2014 – Letter to Mr. Hamedi - naming Mr. Hamedi as Primarily Responsible for Board Order 01-108, Task C.2 and C.3 for a deed restriction.



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

February 5, 2014
File No. 43S0346 (dib)

Mr. Frank Hamedi
131 Tully Road
San Jose, CA 95111
[info@envirosoiltech.com]

SUBJECT: Deed Restriction Requirement for 1761 Junction Avenue, Former Velcon Filters Site, 1759 and 1761 Junction Avenue, 1750 Rogers Avenue, San Jose, Santa Clara County

Dear Mr. Hamedi:

This letter notifies you that you are responsible for complying with Task 2 (Proposed Institutional Constraints) and Task 3 (Implementation of Institutional Constraints) of Regional Water Board Order No. 01-108 (Order) for the 1761 Junction Avenue property at the former Velcon Filters site and sets deadlines for completion of these tasks.

Background on Order Requirements

You are named as a discharger on the Order for the investigation and cleanup of the site. Finding 3 of the Order states:

Frank Hamedi is named as a secondarily responsible discharger because he is the current owner of 1761 Junction Avenue, the former Velcon II property.

The secondarily responsible parties will be responsible for compliance only if the Board or Executive Officer finds that Velcon Filters, Inc., has failed to comply with the requirements of this order.

Finding 11 of the Order states:

Due to excessive risk that will be present at the site pending full remediation, institutional constraints are appropriate to limit on-site exposure to acceptable levels. Institutional constraints include a deed restriction that notifies future owners of sub-surface contamination and prohibits the use of shallow groundwater beneath the site as a source of drinking water until cleanup standards are met. The deed restriction also prohibits use of the site for residential development.

Task 2 of the Order states:

Proposed Institutional Constraints

Compliance Date: November 1, 2001:

Submit a technical report acceptable to the Executive Officer documenting procedures to be used by the dischargers to prevent or minimize human exposure to soil and

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

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

groundwater contamination prior to meeting cleanup standards. Such procedures shall include a deed restriction prohibiting the use of shallow groundwater as a source of drinking water. The deed restriction shall also specify any engineering controls implemented to meet cleanup standards contained in Section B.3 for the protection of groundwater. The deed restriction shall also include a ban on use of the site for residential development.

Task 3 of the Order states:

Implementation of Institutional Constraints

Compliance Date: 60 days after Executive Officer approval:

Submit a technical report acceptable to the Executive Officer documenting that the proposed institutional constraints have been implemented in cooperation with current property owners (Frank Hamedi and Triad Tool).

Provision 11 of the Order states:

Secondarily-Responsible Dischargers

Within 60 days after being notified by the Executive Officer that other named dischargers have failed to comply with this order; Frank Hamedi, as property owner, shall then be responsible for complying with this order for the 1761 Junction Avenue Property; Lucian W. Taylor & Jean B. Taylor, as property owners at the time contamination occurred, and Triad Tool and Engineering, Inc., as the current property owner, shall then be responsible for complying with this order for the 1750 Rogers Avenue and 1759 Junction Avenue Property. Task deadlines above will be automatically adjusted to add 60 days.

Background on Deed Restriction

Regional Water Board staff has made repeated requests that you record an acceptable deed restriction for 1761 Junction Avenue. In a March 17, 2011, letter, I informed you of Velcon's failure to comply with the deed restriction tasks (Tasks 2 and 3) and asked you to complete these tasks. The required deed restriction for 1761 Junction Avenue can only be prepared and recorded by you because you are the owner of the property. Velcon Filters is not the property owner so it is not able to comply with Tasks 2 and 3.

In an April 14, 2011, letter, you requested an additional 60 days to respond to my March 17, 2011, letter. In an April 28, 2011 letter, I gave you a 30-day extension for a response.

TRC, the consultant performing the cleanup at the Velcon Filters site, provided a draft deed restriction to you for 1761 Junction Avenue in order to assist you in compliance with Task 2. Your attorney made some changes to this draft and submitted it on your behalf to the Regional Water Board on August 29, 2011. In an October 13, 2011, letter, I required that some changes be made to the draft and that the draft be resubmitted. To date we have not received the revised draft deed restriction. Regional Water Board staff has made numerous inquiries with you and your attorney regarding the status of the deed restriction. In a November 4, 2013, email communication, your attorney informed Regional Water Board staff that he is no longer representing you in this matter.

Requirement for Tasks 2 and 3 Completion

You were originally informed of Velcon's failure to comply with Tasks 2 and 3 on March 17, 2011. As the property owner for 1761 Junction Avenue, you are responsible for complying with Tasks 2 and 3 of the Order.

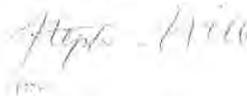
Regarding Task 2, **you are required to submit an acceptable draft deed restriction to this office by April 8, 2014.** The proposed deed restriction shall name the Regional Water Board as a beneficiary and shall anticipate that the Regional Water Board will be a signatory. Our October 13, 2011, letter that contains our most recent comments on the draft deed restriction is attached for your reference.

Regarding Task 3, **you are required to sign and record the deed restriction with the Santa Clara County Recorder's Office within 30 days following Regional Water Board approval of the draft deed restriction** (and after the Regional Water Board's Executive Officer has also signed it).

This letter reminds you that it has been more than 60 days since you were notified that the named dischargers have failed to comply with Tasks 2 and 3 of the Order. We have therefore adjusted the deadlines for compliance. If you fail to comply with Tasks 2 and 3 as described in the Order by the deadlines established in this letter, we will consider formal enforcement action pursuant to Water Code section 13350.

If you have any questions, please contact David Barr of my staff at (510) 622-2313 [e-mail dbarr@waterboards.ca.gov].

Sincerely,



Digitally signed by Stephen Hill
Date: 2014.02.05 08:08:19
-08'00'

Bruce H. Wolfe
Executive Officer

Attachment: October 13, 2011 Regional Water Board Letter
cc w/attachment: Mailing List

Mailing List

TRC Solutions
Attention: Gary Gunderson
1590 Solano Way, Suite A
Concord, CA 94520
[ggunderson@trcsolutions.com]

Velcon Filters, Inc.
Attention: Mr. Dave Taylor
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Colorado Springs, CO 80904
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Santa Clara Valley Water District
Attention: George Cook
5750 Almaden Expressway
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[gcook@valleywater.org]

Lucien and Jean Taylor
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Triad Tool and Engineering, Inc.
Attention: Bill Bartlett
1750 Rogers Avenue
San Jose, CA 95112

Hamilton & Hamilton
Attention: Cindy Hamilton
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McGrane Greenfield LLP
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40 South Market Street, 7th floor
San Jose, CA 95113
[bhannon@greenfieldsullivan.com]

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 12

Correspondence from May 2014:

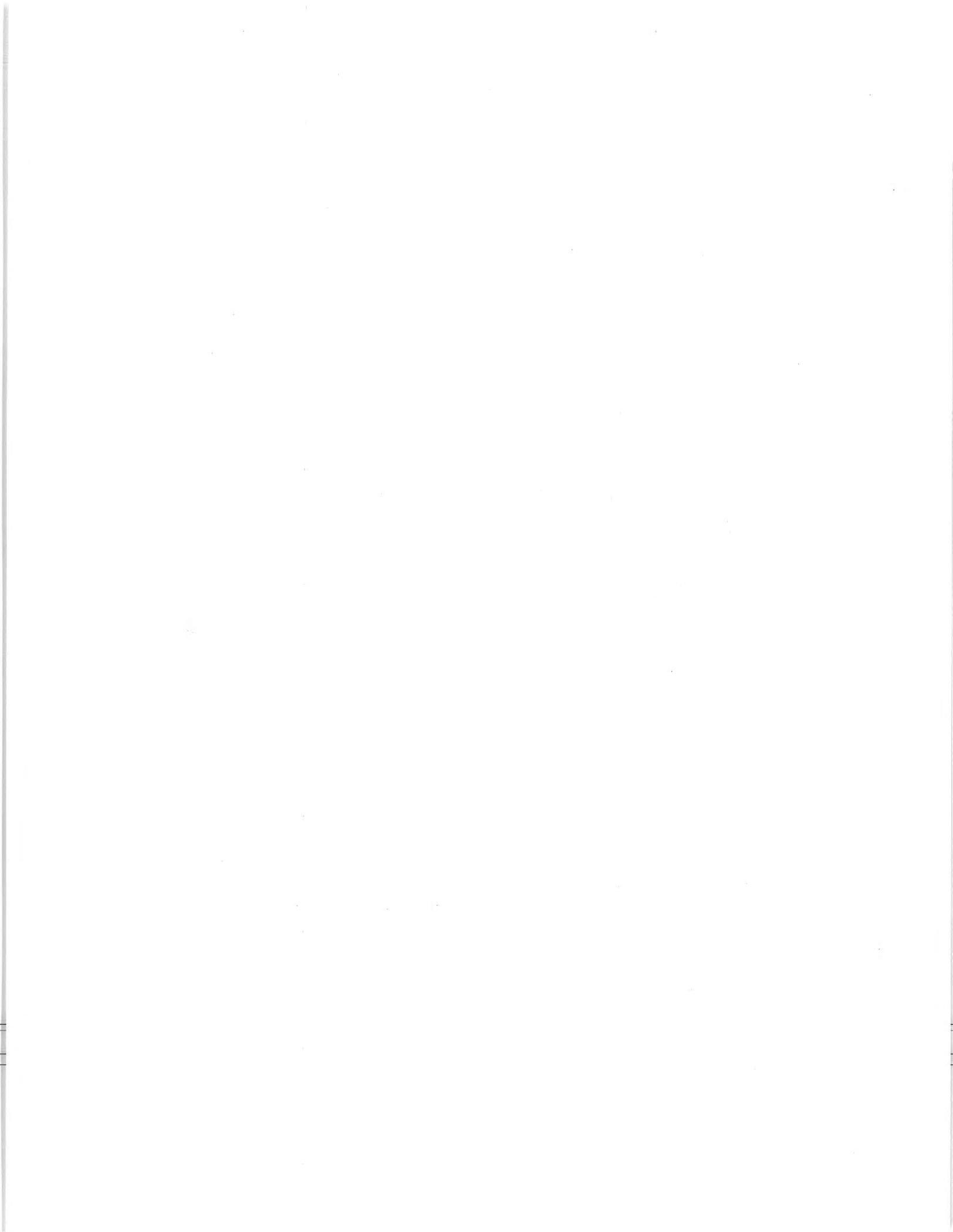
- May 29, 2014 – Email to Mr. Hamedi - warning of a notice of violation for noncompliance.

From: Barr, David@Waterboards
To: info@envirosoltech.com
Subject: 1761 Junction Avenue
Date: Thursday, May 29, 2014 3:08:00 PM

Mr. Hamedi,

We haven't been too successful in reaching each other on the phone, so I will try email instead. I just need to know whether or not you intend to submit the deed restriction required by Regional Water Board Order No. 01-108, the Site Cleanup Requirements for the Velcon Filters Site. If not I need to send a notice of violation of the Order. Thank you.

David Barr, P.E.
San Francisco Bay Regional Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94619
(510) 622-2313
Email: dbarr@waterboards.ca.gov



ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 13

Correspondence from August 2014:

- August 14, 2014 – Letter to Mr. Hamedi - Notice of Violation – Failure to Submit an acceptable deed restriction and return receipt.



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

August 14, 2014
File No. 43S0346 (dib)

Certified Mail
Return receipt requested

Mr. Frank Hamedi
Soil Tech Engineering
131 Tully Road
San Jose, CA 95111
[info@envirosoiltech.com]

SUBJECT: Notice of Violation – Failure to Submit an Acceptable Deed Restriction, 1761
Junction Avenue, San Jose, Santa Clara County

Dear Mr. Hamedi:

You have failed to submit an acceptable deed restriction for the subject property and are therefore in violation of Regional Water Board Order No. 01-108 (Site Cleanup Requirements). As explained below, the Regional Water Board may pursue enforcement action for this violation. You are hereby given notice that we will refer this matter to the Regional Water Board's enforcement unit by August 29, 2014. We will reconsider this enforcement-referral action if an acceptable draft deed restriction is submitted by this date.

Order No. 01-108 names you as a secondarily-liable discharger; it makes you responsible for compliance only if the Executive Officer finds that the other named dischargers have failed to comply with the Order's requirements. In that event, Provision 11 of the Order requires your compliance within 60 days of Executive Officer notification. Task 2 of the Order requires submittal of a draft deed restriction that prohibits sensitive land uses such as residential and prohibits the use of shallow groundwater as a source of drinking water. Task 3 of the Order requires recordation of the final deed restriction.

My February 5, 2014, letter (attached) finds that the other named dischargers have failed to comply with Tasks 2 and 3, and revokes your secondarily-responsible status with respect to those tasks. Pursuant to Provision 11 of the Order, this letter required you to submit the Task 2 report (draft deed restriction) by April 8, 2014.

Current site contamination will threaten human health if groundwater is extracted and used or if residential or other sensitive uses are allowed. A deed restriction is necessary to prevent these uses from occurring until such time as there is no longer a potential threat. Regional Water Board staff has discussed the requirement for a deed restriction with you numerous times, met with you about

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the issue, and informed you of the requirement to submit an acceptable deed restriction. Despite these efforts, you have not submitted the Task 2 report. As of today's date, the report is 128 days late.

You are in violation of Regional Water Board Order No. 01-108. Water Code section 13350 allows the Regional Water Board to impose administrative civil liability of up to \$5,000 per violation day for such violations.

If you have any questions, please contact David Barr of my staff at (510) 622-2313 [e-mail dbarr@waterboards.ca.gov].

Sincerely,



Dyan C. Whyte
Assistant Executive Officer

Attachment
cc w/attachment:

TRC Solutions
Attention: Gary Gunderson
1590 Solano Way, Suite A
Concord, CA 94520
[ggunderson@trcsolutions.com]

Velcon Filters, Inc.
Attention: Mr. Dave Taylor
3320 Camels Ridge Lane
Colorado Springs, CO 80904
[Davet610@gmail.com]

Santa Clara Valley Water District
Attention: George Cook
5750 Almaden Expressway
San Jose, CA 95118
[gcook@valleywater.org]

Lucien and Jean Taylor
675 Arrowood Court
Los Altos, CA 94022

Triad Tool and Engineering, Inc.
Attention: Bill Bartlett
1750 Rogers Avenue
San Jose, CA 95112

Hamilton & Hamilton
Attention: Cindy Hamilton
1419 N. 10th St.
San Jose, CA 95112

Arcadis
Attention: Jenifer Beatty
4190 Douglas Boulevard, Suite 200
Granite Bay, CA 95746-9460
[jenifer.beatty@arcadis-us.com]

McGrane Greenfield LLP
Attention: Brian Hannon
40 South Market Street, 7th floor
San Jose, CA 95113
[bhannon@greenfieldsullivan.com]

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 14

Correspondence from October 2014:

- October 3, 2014 – Letter to Mr. Hamedi - Conditional Approval of Deed Restriction.



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

October 3, 2014
File No. 43S0346 (dib)

Certified Mail
Return receipt requested

Mr. Frank Hamedi
131 Tully Road
San Jose, CA 95111
[info@envirosoiltech.com]

SUBJECT: Conditional Approval of Deed Restriction, 1761 Junction Avenue, San Jose,
Santa Clara County

Dear Hamedi:

This letter responds to the proposed deed restriction for the property at 1761 Junction Avenue sent via email to the Regional Water Board on August 28, 2014. As explained below, I conditionally approve the draft deed restriction and require you to record the fully-signed version within 60 days.

Background

Our February 5, 2014, letter made you primarily responsible for compliance with Tasks 2 (Proposed Institutional Constraints) and 3 (Implementation of Institutional Constraints) of Regional Water Board Order No. 01-108 (site cleanup requirements), and required you to submit an acceptable draft deed restriction for 1761 Junction Avenue by April 8, 2014, to comply with Task 2.

In an August 14, 2014, letter the Regional Water Board informed you that you were in violation of Order No. 01-108 and that this matter would be referred to the Regional Water Board enforcement unit by August 29, 2014.

Conditional Approval of Draft Deed Restriction

The August 28, 2014 draft deed restriction does not fully comply with the requirements of Order No. 01-108 for the following reasons:

- A brief description of the remediation performed is needed in B. *Contamination of the Burdened Property*
- Only water wells tapping shallow groundwater are prohibited in the draft deed restriction. The Regional Water Board's October 13, 2011 comment letter required that all water wells be prohibited unless permitted in writing by the Regional Water Board.
- A legal description of the property should be included as an attachment

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- The signature area needs to have signature blocks for all the necessary signatures.

I hereby approve the draft deed restriction subject to the following conditions:

- Add a sentence at the end of B. *Contamination of the Burdened Property* to briefly describe remediation performed at the site
- Delete the word shallow from shallow groundwater in Article III 3.1 h
- Refer to an attached legal description of the property
- Reformat the signature area so that there are signature blocks for all the necessary signatures.

The attached deed restriction includes the above changes with the exception of an attachment containing a legal description of the property.

Deadline for Task 3 Compliance

Order No. 01-108 requires that Task 3, recording of an approved deed restriction, be completed within 60 days following approval of an acceptable deed restriction by the Executive Officer. Therefore, Task 3 must be completed by December 2, 2014. As noted earlier, the Regional Water Board's February 5, 2014, letter makes you primarily responsible for this task.

The approved deed restriction must be signed by you and notarized. The deed restriction must then be sent to the Regional Water Board. Once the deed restriction is signed by the Executive Officer, you must record it with the Santa Clara County Recorder's office. You must then send a copy of the recorded deed restriction to the Regional Water Board. All of the above actions must be completed by December 2, 2014, pursuant to Task 3.

If you have any questions, please contact David Barr of my staff at (510) 522-2313 [e-mail dbarr@waterboards.ca.gov].

Sincerely,



Digitally signed by Stephen Hill
Date: 2014.10.03 14:42:35
-07'00'

Bruce H. Wolfe
Executive Officer

Attachment: Approved Deed Restriction
cc w/attach: Mailing List

Mailing List

TRC Solutions
Attention: Gary Gunderson
1590 Solano Way, Suite A
Concord, CA 94520
[ggunderson@trcsolutions.com]

Velcon Filters, Inc.
Attention: Mr. Dave Taylor
3320 Camels Ridge Lane
Colorado Springs, CO 80904
[Davet610@gmail.com]

Santa Clara Valley Water District
Attention: George Cook
5750 Almaden Expressway
San Jose, CA 95118
[gcook@valleywater.org]

Lucien and Jean Taylor
675 Arrowood Court
Los Altos, CA 94022

Triad Tool and Engineering, Inc.
Attention: Bill Bartlett
1750 Rogers Avenue
San Jose, CA 95112

Hamilton & Hamilton
Attention: Cindy Hamilton
1419 N. 10th Street
San Jose, CA 95112

Arcadis
Attention: Jenifer Beatty
4190 Douglas Boulevard, Suite 200
Granite Bay, CA 95746-9460
[jenifer.beatty@arcadis-us.com]

McGrane Greenfield LLP
Attention: Brian Hannon
40 South Market Street, 7th floor
San Jose, CA 95113

Recording Requested By:

California Regional Water Quality Control Board,
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

When Recorded, Mail To:

California Regional Water Quality Control Board,
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

Frank Hamedi-Fard and
Rosemary Hamedi-Fard,
Husband and Wife, as Joint Tenants
131 Old Tully Road
San Jose, CA 95111-1921

**COVENANT AND ENVIRONMENTAL
RESTRICTION ON PROPERTY**

1761 Junction Avenue
San Jose, Santa Clara County

This Covenant and Environmental Restriction on Property (“**Covenant**”) is made as of the ____ day of October, 2014 by Frank Hamedi-Fard and Rosemary Hamedi-Fard, Husband and Wife, as Joint Tenants (collectively, “**Covenantor**”) who is Owner of record of that certain property situated at 1761 Junction Avenue, City of San Jose, County of Santa Clara, State of California, which further is known by Assessor’s Parcel Number APN 237-09-145 (the “**Burdened Property**”) which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference, for the benefit of the California Regional Water Quality Control Board, San Francisco Bay Region (the “**Regional Board**”), with reference to the following facts:

A. Nature of Covenant. This Covenant is required by Order of the Regional Board because the Burdened Property and the groundwater underlying it is contaminated by hazardous materials as defined in section 25260 of the Health and Safety Code.

B. Contamination of the Burdened Property. The soil, soil vapor, and groundwater on the Burdened Property were contaminated by Velcon Filters, Inc.’s historic operations at the

Burdened Property prior to the sale of the Burdened Property to Covenantor. These operations included use of jet fuel used for testing of fuel filters that were stored onsite in underground tanks. An onsite wastewater sump was also used. Major fuel spills occurred at the site in 1975 and 1976 and other smaller spills occurred over the years prior as a result of Velcon operations at the Burdened Property. The contamination on the Burdened Property consists primarily of trichloroethylene and its breakdown products, cis-1,2 dichloroethylene, and vinyl chloride; and petroleum hydrocarbons – jet fuel. Remediation has included excavation of underground tanks, groundwater extraction and treatment, and in-situ bioremediation.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Exposure to these contaminants could take place via in-place contact or ingestion of groundwater. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Disclosure and Sampling. Full and voluntary disclosure of the presence of hazardous materials on the Burdened Property has been made by Velcon Filters, Inc. and their consultants to the Board and extensive sampling of the Burdened Property has been conducted by Velcon Filters, Inc. and their consultants.

E. Use of Burdened Property. The Board desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that might result from any hazardous materials that might remain deposited on portions of the Burdened Property.

ARTICLE I **GENERAL PROVISIONS**

1.1. Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions, and restrictions (collectively referred to as “**Restrictions**”) upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions: (a) are imposed upon the entire Burdened Property, unless expressly stated as applicable to a specific portion of the Burdened Property; (b) run with the land pursuant to section 1471 of the Civil Code; and (c) are enforceable by the Board.

1.2. Concurrence of Owners and Lessees Presumed. All purchasers, lessees, and possessors of all or any portion of the Burdened Property shall be deemed by their purchase, lease, or possession of the Burdened Property to be bound by the Restrictions and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions herein established

must be adhered to for the benefit of the Board and all Owners and Occupants of the Burdened Property, and that the interest of all Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3. Incorporation into Deeds and Leases. The Board desires and covenants that the Restrictions shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant has been attached to or incorporated into any given deed or lease.

1.4. Purpose. It is the purpose of this instrument to convey to the Regional Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II **DEFINITIONS**

2.1. Regional Board. “Regional Board” shall mean the California Regional Water Quality Control Board, San Francisco Region and shall include its successor agencies, if any.

2.2. Improvements. “Improvements” shall mean all buildings, structures, roads, driveways, gradings, re-gradings, and paved areas, constructed or placed upon any portion of the Burdened Property.

2.3. Occupant or Occupants. “Occupant” or “Occupants” shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the right to use and/or occupy all or any portion of the Burdened Property.

2.4. Owner or Owners. “Owner” or “Owners” shall mean the Covenantor and Covenantor’s successors in interest who hold title to all or any portion of the Burdened Property.

ARTICLE III **DEVELOPMENT, USE, AND CONVEYANCE OF THE BURDENED PROPERTY**

3.1. Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

- a. Development and use of the Burdened Property shall be restricted to industrial, commercial, office space or any other uses allowed for the Burdened Property under local agency zoning and land use restrictions;

- b. No residence for human habitation shall be authorized on the Burdened Property;
- c. No hospitals shall be authorized on the Burdened Property;
- d. No schools for persons under twenty-one (21) years of age shall be authorized on the Burdened Property;
- e. No care or community centers for children or senior citizens that would involve the regular congregation of children or senior citizens shall be authorized on the Burdened Property;
- f. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by the Owner, Owner's agent, Occupant, Occupant's agent or other persons acting pursuant to Regional Board orders in accordance with all applicable provisions of local, state, and federal law. If the excavation work resulted from an emergency, the Owner or Occupant or other person acting pursuant to Regional Board orders shall notify the Regional Board by registered mail within ten (10) working days of both the date of commencement of such excavation and after the date of completion;
- g. All uses and development of the Burdened Property shall be consistent with any applicable Regional Board Order or Risk Management Plan which is hereby incorporated herein by reference, and including future amendments thereto. All uses and development shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Regional Board, unless otherwise expressly authorized in writing by the Regional Board;
- h. No Owner, Occupant shall drill, bore, otherwise construct, or use a well for the purpose of extracting ground water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly authorized in writing by the Regional Board; nor shall the Owner or Occupant authorize or engage any third party to do such acts;
- i. Velcon Filters and their consultants shall notify the Regional Board of each of the following: (1) the type, cause, location, and date of any disturbance to any cap, any remedial measures take or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Regional Board, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions; and (2) the type and date of repair of such disturbance. Notifications to the Regional Board shall be made by registered mail within ten (10) working days of both the date of discovery of such disturbance and the date of completion of repairs;

j. The Covenantor agrees that the Regional Board, and any persons acting pursuant to Regional Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring as provided in Division 7 of the Water Code and in advance notification to Conventor.

k. No Owner, Occupant or any other person shall act in any manner that threatens or is likely to aggravate or contribute to the existing contaminated conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of any capped areas.

3.2. Enforcement. Failure of an Owner, Occupant or any other person to comply with any of the Restrictions set forth in Paragraph 3.1 shall be grounds for the Regional Board, by the authority of this Covenant, to require that the Owner, Occupant or other person to modify or remove, or cause to be modified or removed, any Improvements constructed in violation of that Paragraph. Violation of this Covenant shall also be grounds for the Regional Board to file civil actions against the Owner, Occupant or any person who violates the restrictions as provided by law.

3.3. Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument that shall accompany all purchase agreements or ground leases relating to the Burdened Property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the groundwater under the property, and is subject to a Covenant and Environmental Restriction on Property dated as of October __, 2014, and recorded on _____, 2014, in the Official Records of Santa Clara County, California, as Document No. _____, which Covenant and Environmental Restriction on Use of Property imposes certain covenants conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE V

VARIANCE AND TERMINATION

4.1. Variance. Any Owner or, with the Owner's written consent, any Occupant may apply to the Regional Board for a written variance from the provisions of this Covenant.

4.2. Termination. Any Owner or, with the Owner's written consent, any Occupant may apply to the Regional Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3. Term. Unless terminated in accordance with Paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V
MISCELLANEOUS

5.1. No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2. Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective: (a) when delivered, if personally delivered to the person being served or an official of a government agency being served; or (b) three (3) business days after deposit in the mail if mailed by U.S. mail, postage paid certified, return receipt requested, addressed:

If to Covenantor:

Frank Hamed-Fard and Rosemary Hamed-Fard,
Husband and Wife, as Joint Tenants
131 Old Tully Road
San Jose, CA 95111-1921

If to Regional Board:

California Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

In both cases, with a copy to:

Velcon Filters, Inc
Attn: David Taylor
3320 Camels Ridge Lane
Colorado Springs, CO 80904

TRC Companies, Inc.
Attn: Ronald E. Bock
Sr. Vice President
123 Technology Drive
Irvine, CA 92618

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined by a court having jurisdiction to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4. Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of Santa Clara within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to preserve and implement the purpose of this instrument and the policies and purposes of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS HEREOF, the parties execute this Covenant as of the date set forth above.

Frank Hamedi-Fard

Date: _____

Rosemary Hamedi-Fard

Date: _____

Agency: State of California
Regional Water Quality Board,
San Francisco Bay Region

By: _____

Title: Executive Officer

Date: _____

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On September ___, 2014 before me, the undersigned a Notary Public in and for said state, personally appeared Frank Hamedi-Fard, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

On September ___, 2014 before me, the undersigned a Notary Public in and for said state, personally appeared Rosemary Hamedi-Fard, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On _____, 2014 before me, the undersigned a Notary Public in and for said state, personally appeared Bruce Wolfe, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 15

Correspondence from January 2015:

- January 6, 2015 – Emails to Mr. Hamedi and to Water Board staff –draft deed restriction edits.

From: info@envirosoiltech.com
To: Barr_David@Waterboards
Subject: RE: 1761 Junction Avenue, San Jose
Date: Tuesday, January 06, 2015 2:22:24 PM

Good Afternoon Mr. Barr,

I received the documents for 1761 Junction Avenue property. Mr. Hamedi is out the office and will be back next Wednesday. I printed out the document and had left it on his desk.

Sincerely,
ESTC
Dianna Nguyen
Tel: 408-297-1500
Email: info@envirosoiltech.com

----- Original Message -----

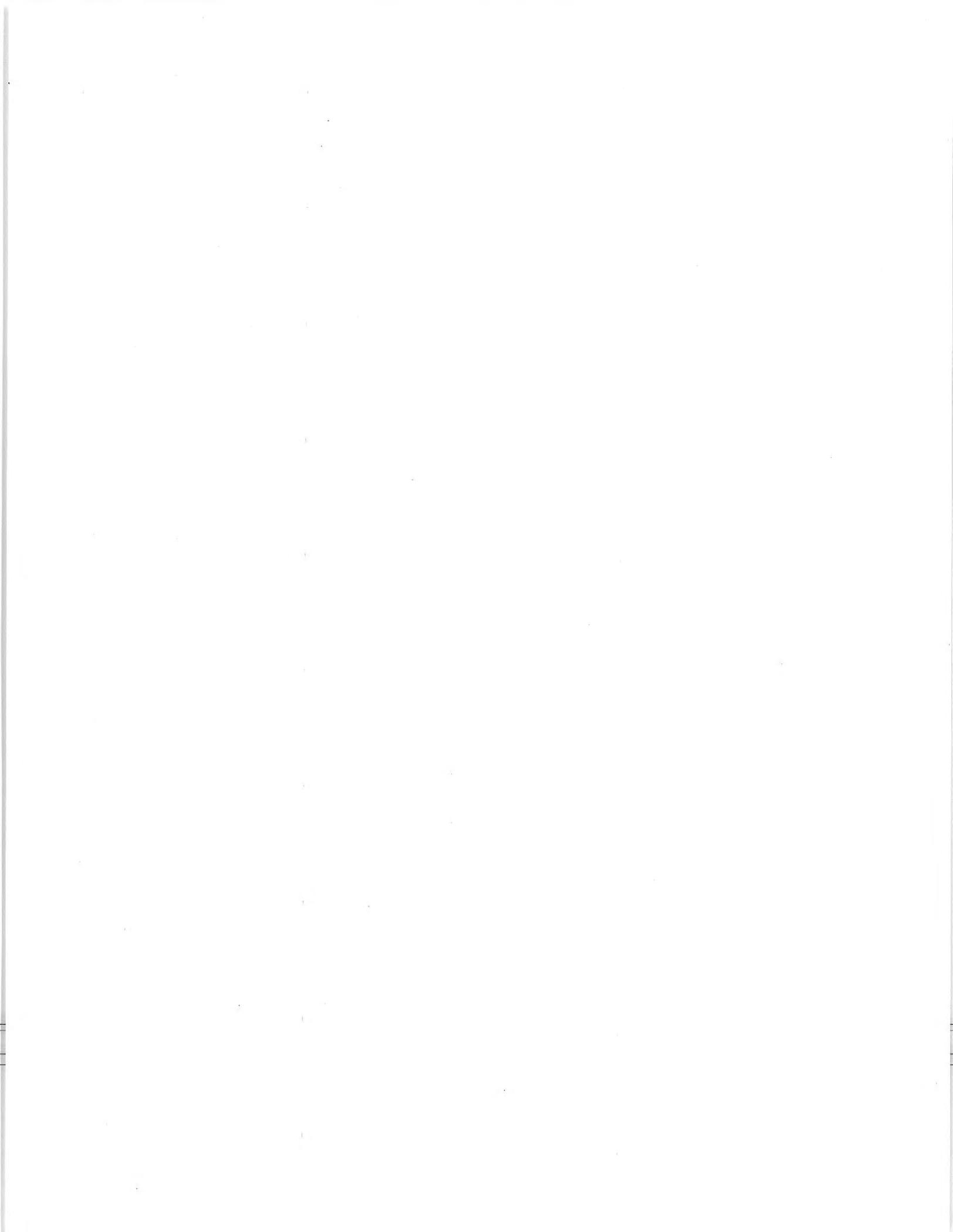
Subject: 1761 Junction Avenue, San Jose
From: "Barr, David@Waterboards" <David.Barr@waterboards.ca.gov>
Date: Mon, January 05, 2015 4:38 pm
To: "info@envirosoiltech.com" <info@envirosoiltech.com>

Mr. Hamedi,

Attached is an updated copy of the draft deed restriction for the 1761 Junction Avenue property. It contains two changes that are necessary. They are:
Article III, 3.1 a. removal of *or any other uses allowed for the burdened property under local agency zoning and land use restrictions.*

Article III, 3.1 i. Change *Velcon Filters and their consultants* to The Owner. If you wish to add something like "or the Owner's designated representative" or something similar after "The Owner" that is acceptable.

David Barr, P.E.
San Francisco Bay Regional Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94619
(510) 622-2313
Email: dbarr@waterboards.ca.gov



ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 16

Correspondence from March 2015:

- March 27, 2015 – Letter to Mr. Hamedi - Rejection of draft deed restriction with attached example of acceptable draft deed restriction draft.
- March 27, 2015 – Attachment - example of acceptable draft deed restriction.



San Francisco Bay Regional Water Quality Control Board

March 27, 2015
File No. 43S0346 (dib)

Certified Mail
Return Receipt Requested

Mr. Frank Hamedi
131 Tully Road
San Jose, CA 95111
[info@envirosoiltech.com]

SUBJECT: Rejection of Draft Deed Restriction, 1761 Junction Avenue, San Jose, Santa Clara County

Dear Mr. Hamedi:

This letter rescinds our October 3, 2014, letter and responds to your draft deed restriction for the property at 1761 Junction Avenue sent via email to the Regional Water Board on August 28, 2014. As explained below, I reject the draft deed restriction. You are hereby given notice that we will refer this matter to the Regional Water Board's enforcement unit by April 7, 2015. We will reconsider this enforcement-referral action if an acceptable draft deed restriction is submitted by this date.

Background

The final site cleanup requirements for this site (Order No. 01-108) include a requirement for a deed restriction on the subject property (Tasks 2 and 3). Finding 11 explains the rationale for this requirement and states in part:

Due to excessive risk that will be present at the site pending full remediation, institutional constraints are appropriate to limit on-site exposure to acceptable levels. Institutional constraints include a deed restriction that notifies future owners of subsurface contamination and prohibits the use of shallow groundwater beneath the site as a source of drinking water until cleanup standards are met. The deed restriction also prohibits use of the site for residential development.

Our February 5, 2014, letter notified you that you are responsible for complying with Tasks 2 (Proposed Institutional Constraints) and 3 (Implementation of Institutional Constraints) of Order No. 01-108 (Order), and required you to submit an acceptable draft deed restriction for 1761 Junction Avenue by April 8, 2014, to comply with Task 2.

DR. TERRY F. YOUNG, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

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

In an August 14, 2014, letter the Regional Water Board informed you that you were in violation of Order No. 01-108 and that this matter would be referred to the Regional Water Board enforcement unit by August 29, 2014.

Our October 3, 2014, letter conditionally approved your draft deed restriction provided certain changes were made and required submittal of the recorded deed restriction by December 2, 2014. You did not submit the recorded deed restriction by December 2, 2014. In a January 5, 2015, email and telephone call, Regional Water Board staff informed you that two additional changes to the draft deed restriction were necessary. The necessary changes were detailed in the January 5, 2015, email and are detailed below.

Rejection of Draft Deed Restriction

The August 28, 2014, draft deed restriction does not fully comply with the requirements the Order for the following reasons:

- 1) Task 2 of the Order states that the deed restriction must prohibit residential use. Article 3.1.a (copied below) is not acceptable because this language would allow residential or other sensitive uses if allowed by a local agency. This language is therefore inconsistent with the Task 2 requirement:
Development and use of the Burdened Property shall be restricted to industrial, commercial, office space or any other uses allowed for the Burdened Property under local agency zoning and land use restrictions.
- 2) In article 3.1.i, the property owner must be the entity to complete the stated notifications because the property owner records the deed restriction and has control of the site.
- 3) A legal description of the property is needed as an attachment so it is clear which property has the deed restriction.
- 4) The signature area needs to have signature blocks for all the necessary signatures because the Regional Water Board and the property owner must sign the deed restriction for it to be valid.

If the below changes are made to the draft deed restriction, the draft deed restriction will be acceptable:

- 1) In article 3.1.a, change:
Development and use of the Burdened Property shall be restricted to industrial, commercial, office space or any other uses allowed for the Burdened Property under local agency zoning and land use restrictions.
to:
Development and use of the Burdened Property shall be restricted to industrial, commercial, or office space.
- 2) In article 3.1.i, change *Velcon Filters and their consultants* to *The Owner*.
- 3) Add a legal description of the property as an attachment.
- 4) Reformat the signature area so that there are signature blocks for all the necessary signatures.

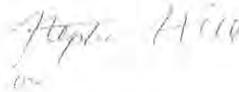
The attached deed restriction includes the above changes with the exception of an attachment containing a legal description of the property.

Deadline for Submittal of Acceptable Draft Deed Restriction

You are in violation of Task 2 of the 2001 site cleanup requirements for this site. We will refer this matter to the Regional Water Board's enforcement unit by April 7, 2015. We will reconsider this enforcement-referral action if an acceptable draft deed restriction is submitted by this date.

If you have any questions, please contact David Barr of my staff at (510) 522-2313 [e-mail dbarr@waterboards.ca.gov].

Sincerely,



Digitally signed by Stephen Hill
Date: 2015.03.27 13:40:43
-07'00'

Bruce H. Wolfe
Executive Officer

Attachment: Acceptable Deed Restriction except for Legal Description of Property
cc w/attachment: Mailing List

Mailing List

TRC Solutions
Attention: Gary Gunderson
1590 Solano Way, Suite A
Concord, CA 94520
[ggunderson@trcsolutions.com]

Velcon Filters, Inc.
Attention: Mr. Dave Taylor
3320 Camels Ridge Lane
Colorado Springs, CO 80904
[Davet610@gmail.com]

Santa Clara Valley Water District
Attention: George Cook
5750 Almaden Expressway
San Jose, CA 95118
[gcook@valleywater.org]

Lucien and Jean Taylor
675 Arrowood Court
Los Altos, CA 94022

Triad Tool and Engineering, Inc.
Attention: Bill Bartlett
1750 Rogers Avenue
San Jose, CA 95112

Hamilton & Hamilton
Attention: Cindy Hamilton
1419 N. 10th Street
San Jose, CA 95112

Arcadis
Attention: Jenifer Beatty
4190 Douglas Boulevard, Suite 200
Granite Bay, CA 95746-9460
[jenifer.beatty@arcadis-us.com]

McGrane Greenfield LLP
Attention: Brian Hannon
40 South Market Street, 7th floor
San Jose, CA 95113

Ken Davies
City of San Jose
Ken.davies@sanjoseca.gov

Recording Requested By:

Frank Hamedi-Fard and
Rosemary Hamedi-Fard,
Husband and Wife, as Joint Tenants
131 Old Tully Road
San Jose, CA 95111-1921

When Recorded, Mail To:

California Regional Water Quality Control Board,
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

Frank Hamedi-Fard and
Rosemary Hamedi-Fard,
Husband and Wife, as Joint Tenants
131 Old Tully Road
San Jose, CA 95111-1921

**COVENANT AND ENVIRONMENTAL
RESTRICTION ON PROPERTY**

1761 Junction Avenue
San Jose, Santa Clara County

This Covenant and Environmental Restriction on Property (“**Covenant**”) is made as of the ____ day of _____, 2015 by Frank Hamedi-Fard and Rosemary Hamedi-Fard, Husband and Wife, as Joint Tenants (collectively, “**Covenantor**”) who is Owner of record of that certain property situated at 1761 Junction Avenue, City of San Jose, County of Santa Clara, State of California, which further is known by Assessor’s Parcel Number APN 237-09-145 (the “**Burdened Property**”) which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference, for the benefit of the California Regional Water Quality Control Board, San Francisco Bay Region (the “**Regional Board**”), with reference to the following facts:

A. Nature of Covenant. This Covenant is required by Order of the Regional Board because the Burdened Property and the groundwater underlying it is contaminated by hazardous materials as defined in section 25260 of the Health and Safety Code.

B. Contamination of the Burdened Property. The soil, soil vapor, and groundwater on the Burdened Property were contaminated by Velcon Filters, Inc.’s historic operations at the

Burdened Property prior to the sale of the Burdened Property to Covenantor. These operations included use of jet fuel used for testing of fuel filters that were stored onsite in underground tanks. An onsite wastewater sump was also used. Major fuel spills occurred at the site in 1975 and 1976 and other smaller spills occurred over the years prior as a result of Velcon operations at the Burdened Property. The contamination on the Burdened Property consists primarily of trichloroethylene and its breakdown products, cis-1,2 dichloroethylene, and vinyl chloride; and petroleum hydrocarbons – jet fuel. Remediation has included excavation of underground tanks, groundwater extraction and treatment, and in-situ bioremediation.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Exposure to these contaminants could take place via in-place contact or ingestion of groundwater. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Disclosure and Sampling. Full and voluntary disclosure of the presence of hazardous materials on the Burdened Property has been made by Velcon Filters, Inc. and their consultants to the Board and extensive sampling of the Burdened Property has been conducted by Velcon Filters, Inc. and their consultants.

E. Use of Burdened Property. The Board desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that might result from any hazardous materials that might remain deposited on portions of the Burdened Property.

ARTICLE I **GENERAL PROVISIONS**

1.1. Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions, and restrictions (collectively referred to as “**Restrictions**”) upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions: (a) are imposed upon the entire Burdened Property, unless expressly stated as applicable to a specific portion of the Burdened Property; (b) run with the land pursuant to section 1471 of the Civil Code; and (c) are enforceable by the Board.

1.2. Concurrence of Owners and Lessees Presumed. All purchasers, lessees, and possessors of all or any portion of the Burdened Property shall be deemed by their purchase, lease, or possession of the Burdened Property to be bound by the Restrictions and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions herein established

must be adhered to for the benefit of the Board and all Owners and Occupants of the Burdened Property, and that the interest of all Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3. Incorporation into Deeds and Leases. The Board desires and covenants that the Restrictions shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant has been attached to or incorporated into any given deed or lease.

1.4. Purpose. It is the purpose of this instrument to convey to the Regional Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II **DEFINITIONS**

2.1. Regional Board. “Regional **Board**” shall mean the California Regional Water Quality Control Board, San Francisco Region and shall include its successor agencies, if any.

2.2. Improvements. “**Improvements**” shall mean all buildings, structures, roads, driveways, gradings, re-gradings, and paved areas, constructed or placed upon any portion of the Burdened Property.

2.3. Occupant or Occupants. “**Occupant**” or “**Occupants**” shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the right to use and/or occupy all or any portion of the Burdened Property.

2.4. Owner or Owners. “**Owner**” or “**Owners**” shall mean the Covenantor and Covenantor’s successors in interest who hold title to all or any portion of the Burdened Property.

ARTICLE III **DEVELOPMENT, USE, AND CONVEYANCE OF THE BURDENED PROPERTY**

3.1. Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

- a. Development and use of the Burdened Property shall be restricted to industrial, commercial, or office space;

- b. No residence for human habitation shall be authorized on the Burdened Property;
- c. No hospitals shall be authorized on the Burdened Property;
- d. No schools for persons under twenty-one (21) years of age shall be authorized on the Burdened Property;
- e. No care or community centers for children or senior citizens that would involve the regular congregation of children or senior citizens shall be authorized on the Burdened Property;
- f. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by the Owner, Owner's agent, Occupant, Occupant's agent or other persons acting pursuant to Regional Board orders in accordance with all applicable provisions of local, state, and federal law. If the excavation work resulted from an emergency, the Owner or Occupant or other person acting pursuant to Regional Board orders shall notify the Regional Board by registered mail within ten (10) working days of both the date of commencement of such excavation and after the date of completion;
- g. All uses and development of the Burdened Property shall be consistent with any applicable Regional Board Order or Risk Management Plan which is hereby incorporated herein by reference, and including future amendments thereto. All uses and development shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Regional Board, unless otherwise expressly authorized in writing by the Regional Board;
- h. No Owner, Occupant shall drill, bore, otherwise construct, or use a well for the purpose of extracting shallow ground water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly authorized in writing by the Regional Board; nor shall the Owner or Occupant authorize or engage any third party to do such acts;
- i. The Owner shall notify the Regional Board of each of the following: (1) the type, cause, location, and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Regional Board, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions; and (2) the type and date of repair of such disturbance. Notifications to the Regional Board shall be made by registered mail within ten (10) working days of both the date of discovery of such disturbance and the date of completion of repairs;

j. The Covenantor agrees that the Regional Board, and any persons acting pursuant to Regional Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring as provided in Division 7 of the Water Code and in advance notification to Conventor.

k. No Owner, Occupant or any other person shall act in any manner that threatens or is likely to aggravate or contribute to the existing contaminated conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of any capped areas.

3.2. Enforcement. Failure of an Owner, Occupant or any other person to comply with any of the Restrictions set forth in Paragraph 3.1 shall be grounds for the Regional Board, by the authority of this Covenant, to require that the Owner, Occupant or other person to modify or remove, or cause to be modified or removed, any Improvements constructed in violation of that Paragraph. Violation of this Covenant shall also be grounds for the Regional Board to file civil actions against the Owner, Occupant or any person who violates the restrictions as provided by law.

3.3. Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument that shall accompany all purchase agreements or ground leases relating to the Burdened Property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the groundwater under the property, and is subject to a Covenant and Environmental Restriction on Property dated as of October __, 2014, and recorded on _____, 2014, in the Official Records of Santa Clara County, California, as Document No. _____, which Covenant and Environmental Restriction on Use of Property imposes certain covenants conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE V

VARIANCE AND TERMINATION

4.1. Variance. Any Owner or, with the Owner's written consent, any Occupant may apply to the Regional Board for a written variance from the provisions of this Covenant.

4.2. Termination. Any Owner or, with the Owner's written consent, any Occupant may apply to the Regional Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3. Term. Unless terminated in accordance with Paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V
MISCELLANEOUS

5.1. No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2. Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective: (a) when delivered, if personally delivered to the person being served or an official of a government agency being served; or (b) three (3) business days after deposit in the mail if mailed by U.S. mail, postage paid certified, return receipt requested, addressed:

If to Covenantor:

Frank Hamed-Fard and Rosemary Hamed-Fard,
Husband and Wife, as Joint Tenants
131 Old Tully Road
San Jose, CA 95111-1921

If to Regional Board:

California Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

In both cases, with a copy to:

Velcon Filters, Inc
Attn: David Taylor
3320 Camels Ridge Lane
Colorado Springs, CO 80904

5.3. Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined by a court having jurisdiction to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4. Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of Santa Clara within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to preserve and implement the purpose of this instrument and the policies and purposes of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS HEREOF, the parties execute this Covenant as of the date set forth above.

Frank Hamedi-Fard

Date: _____

Rosemary Hamedi-Fard

Date: _____

Agency: State of California
Regional Water Quality Board,
San Francisco Bay Region

By: _____

Title: Executive Officer _____

Date: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____ (insert date), before me, _____ (insert name and title of the officer), personally appeared _____ [Covenantor], who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California
County of _____

On _____ (insert date), before me, _____ (insert name and title of the officer), personally appeared _____ [Executive Officer], who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 17

Correspondence from April 2015:

- April 15, 2015 – Email to Mr. Hamedi - approving two changes to the acceptable deed restriction draft that were requested by Mr. Hamedi on that date and instructions about the deed restriction notarization process.
- April 22, 2015 – Email to Mr. Hamedi - inquiry seeking the signed notarized draft of the deed restriction.

From: Barr, David@Waterboards
To: info@envirosoiltech.com
Subject: deed restriction
Date: Wednesday, April 15, 2015 2:54:00 PM

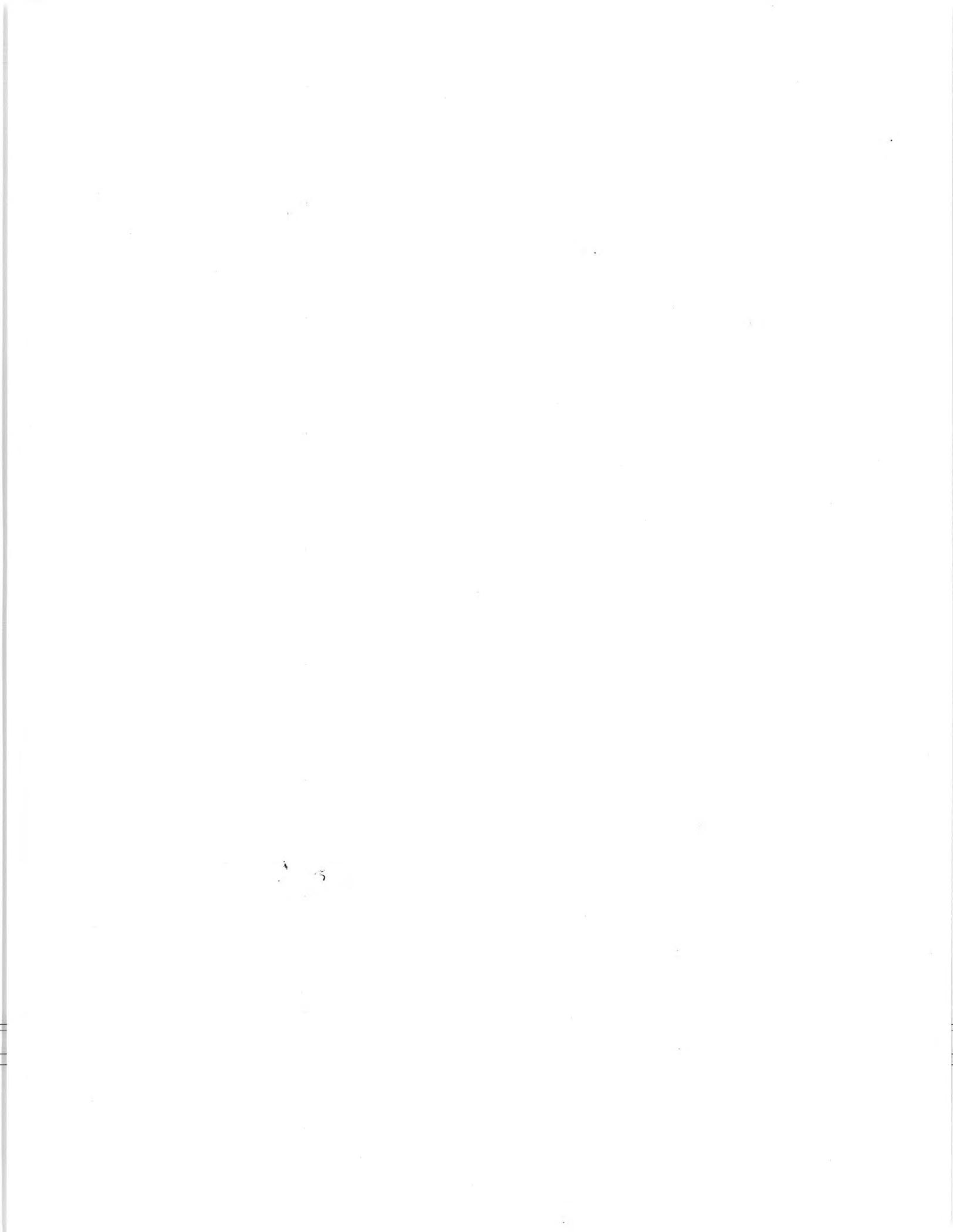
Mr. Hamedi,

Per our phone conversation today, Wednesday, April 15, 2015, I have spoken with my supervisor about the requested changes to the deed restriction:

- removal of surveillance from Article 3.1j
- removal of TRC from Article 5.2 notices.

The proposed changes are acceptable. The deed restriction should be signed by yourself and Rosemary Hamedi-Fard and notarized, and then sent to the Regional Water Board Office to my attention. I will arrange for Bruce to sign the document. I will then send it back to you to be recorded with the County.

David Barr, P.E.
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2313
Email: dbarr@waterboards.ca.gov

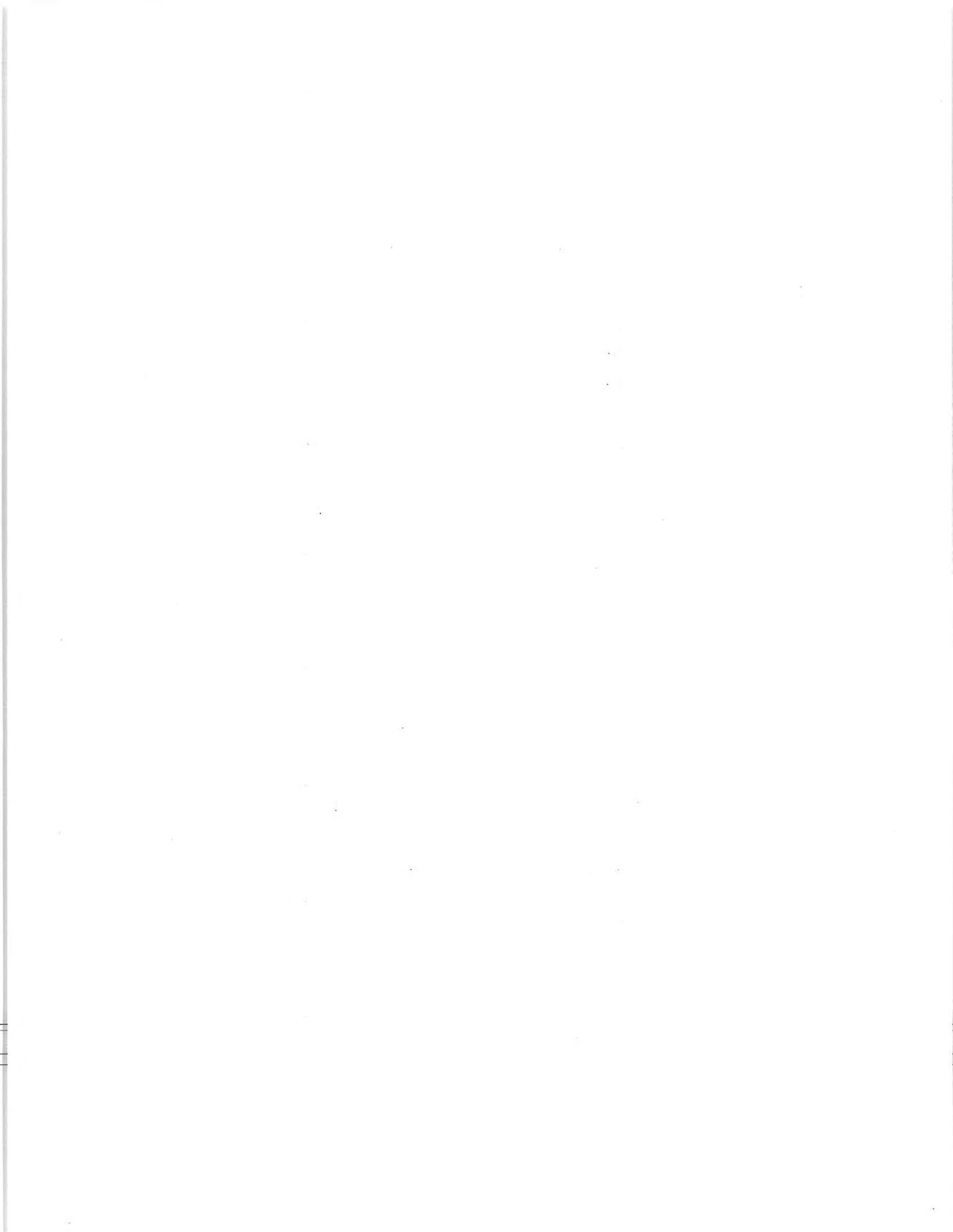


From: Barr, David@Waterboards
To: info@envirosoiltech.com
Subject: 1761 Junction Avenue deed restriction
Date: Wednesday, April 22, 2015 11:29:00 AM

Hello Mr. Hamed,

Have you signed the deed restriction for 1761 Junction Avenue and had it notarized? Have you sent the deed restriction to the Regional Water Board yet? The deadline for doing so is past and my management is going to refer this matter to our enforcement section. If you have not signed and sent the deed restriction to the Regional Water Board yet, I recommend that you do so before the matter goes to the enforcement section.

David Barr, P.E.
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2313
Email: dbarr@waterboards.ca.gov



ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 18

Correspondence from June 2015:

- June 5, 2015 – Email to Mr. Hamedi – informing him of impending enforcement.
 - June 16, 2015 – Email to Mr. Hamedi - acknowledging a phone call with Mr. Hamedi in which enforcement staff informed him of impending enforcement.
 - June 25, 2015 – Email to Mr. Hamedi - rejecting a notarized deed restriction delivered to the Water Board on June 22, 2015, and identifying text added to the April 15, 2015 version of the deed restriction that was not acceptable.
-

Gregg, Jack@Waterboards

From: Gregg, Jack@Waterboards
Sent: Friday, June 05, 2015 4:31 PM
To: info@envirosoiltech.com
Subject: RE: Velcon Property Deed Restriction - June 5, 2015 deadline

MKs. Nguyen - Thanks for responding to my email. I look forward to talking to Mr. Hamedi as soon as possible while our staff considers options for resolving this case. Since Mr. Hamedi is returning next Wednesday, I will expect to hear from him by the close of business next Thursday. If he is not able to reach me during my normal business hours (8am-4:30pm), he should leave me a voicemail with contact information (e.g., cell phone) and the best times to reach him. Jack Gregg

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2437

From: info@envirosoiltech.com [<mailto:info@envirosoiltech.com>]
Sent: Friday, June 05, 2015 10:05 AM
To: Gregg, Jack@Waterboards
Subject: RE: Velcon Property Deed Restriction - June 5, 2015 deadline

Good Morning Mr. Gregg,

My name is Dianna Nguyen, and I work for ESTC. Our office had received your email and phone message. Mr. Hamedi is out of the area until Wednesday but his schedule for Wednesday is already tied up and probably won't be able to get back to you until maybe sometime in the afternoon. Unfortunately, his cell is receiving any calls and we can't get through to him. If it is very urgent, his attorney is Mr. Jack Chevlen, and his phone number is 408-369-8000, or if you can wait until Wednesday afternoon, he will return your call.

Sincerely,
ESTC
Dianna Nguyen
Tel: 408-297-1500
Email: info@envirosoiltech.com

----- Original Message -----

Subject: Velcon Property Deed Restriction - June 5, 2015 deadline
From: "Gregg, Jack@Waterboards" <Jack.Gregg@Waterboards.ca.gov>
Date: Wed, June 03, 2015 1:19 pm
To: Frank Hamedi <info@envirosoiltech.com>

Mr. Hamedi – I left you a voicemail today at (408) 297-1500 and am following up with this email. As you know, Regional Water Board Order No. 01-108 requires that deed restriction be recorded by you on your property. Staff in our Toxic Cleanup Division have referred this issue to the Water Board's Enforcement Section. As a courtesy, we want to talk to you to confirm that you understand the consequences of ignoring a requirement of Board Order No. 01-108. Those consequences were listed in the Notice of Violation sent to you on August 14, 2014. At this time, communications on this matter should come directly to me at the phone number or email address below.

If you have questions about this matter or substantive information that may inform our enforcement file review, you need to contact me by 4pm on this Friday, June 5, 2015.

As we move forward with reviewing your file, we want to make sure we have the best contact information for you. At present we have your contact information as: Frank Hamedi, 131 Old Tully Road, San Jose, CA 95111, *Email:* info@envirosoiltech.com, *Phone:* (408) 297-1500. Please let us know if there are better ways to contact you.

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2437

Gregg, Jack@Waterboards

From: Gregg, Jack@Waterboards
Sent: Tuesday, June 16, 2015 12:45 PM
To: Frank Hamedi
Cc: Thompson, Brian
Subject: Velcon Property Deed Restriction - June 26, 2015 deadline

Mr. Hamedi,

Thanks for responding to my phone calls regarding compliance with Regional Water Board Order No. 01-108 and clean up at the former Velcon property. As you are now aware, your case has been transferred to our enforcement unit. My supervisor (copied) has asked me to clarify what this means for you. Your time for negotiating language and submittal of the deed restriction with staff members in our Toxics Cleanup Program has passed. You are now facing enforcement of the Order requirement, and we will give you one last opportunity to submit the deed restriction with the language that was agreed upon with staff in the Toxics Cleanup Program.

This is your last notice to submit a signed and notarized deed restriction to me by June 26, 2015, if you wish to avoid enforcement proceedings.

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2437

Gregg, Jack@Waterboards

From: Gregg, Jack@Waterboards
Sent: Thursday, June 25, 2015 10:54 AM
To: Frank Hamedi
Cc: Thompson, Brian
Subject: RE: Velcon Property Deed Restriction - June 26, 2015 deadline

Mr. Hamedi,

We received the draft Deed Restriction that you signed this week, but cannot accept the following text that you added to section 3.g:

If the Regional Board, pursuant to its Order No. 01-108 and any amendments, modifications, or rescission of Order No. 01-108, replaced by a new Order of the Regional Board concerning the Burdened Property, has the effect of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omission of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc., and its successors and assigns as the primary discharger responsible for all further investigation and remediation of the site.

As I stated in an email on June 16, 2015, you need to submit a signed, notarized deed restriction with the language that was agreed upon with staff in the Toxics Cleanup Program. You continue to be out of compliance with Regional Water Board Order No. 01-108 and you need to send us the signed document as soon as possible to avoid enforcement action by my unit. My supervisor was willing to give you until today to submit the signed document because he thought that I may have given you the impression that you can continue to negotiate deed restriction language. We are not going to negotiate and, in particular, agree to any language that undermines our legal authority.

This is your last notice to submit a signed and notarized deed restriction, with the language that was agreed upon with staff in the Toxics Cleanup Program. It must be submitted to the Water Board office by Friday, July 3rd, 2015, if you wish to avoid enforcement proceedings.

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2437

From: Gregg, Jack@Waterboards
Sent: Tuesday, June 16, 2015 12:45 PM
To: Frank Hamedi
Cc: Thompson, Brian
Subject: Velcon Property Deed Restriction - June 26, 2015 deadline

Mr. Hamedi,

Thanks for responding to my phone calls regarding compliance with Regional Water Board Order No. 01-108 and clean up at the former Velcon property. As you are now aware, your case has been transferred to our enforcement unit. My supervisor (copied) has asked me to clarify what this means for you. Your time for negotiating language and submittal of the deed restriction with staff members in our Toxics Cleanup Program has passed. You are now facing enforcement of the Order requirement, and we will give you one last opportunity to submit the deed restriction with the language that was agreed upon with staff in the Toxics Cleanup Program.

This is your last notice to submit a signed and notarized deed restriction to me by June 26, 2015, if you wish to avoid enforcement proceedings.

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2437

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 19

Correspondence from July 2015:

- July 2, 2015 – Letter from Mr. Hamedi’s representative (Mr. Chevlen) regarding the deed restriction requirement.
 - July 20, 2015 – Letter to Mr. Chevlen - clarifying the Water Board Order 01-108 requirement and the reason the text added to the April 15, 2015, draft deed restriction is not acceptable.
 - July 23, 2015 – Letter from Mr. Chevlen - stating that the added text should be acceptable and requesting an attachment missing from the July 20, 2015, communications.
 - July 23, 2015 – Email to Mr. Chevlen - providing the attachment that was missing from the July 23, 2015, letter.
-

Law Offices of
S. JACK CHEVLEN

5902 Deerland Court
San Jose, California 95124-6575
Telephone (408) 369-8000
Facsimile (408) 369-8200
E-mail: JackChevlen@ChevlenLaw.com

July 2, 2015

VIA E-MAIL Jack.Gregg@Waterboards.ca.gov
& FIRST CLASS USPS MAIL

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Water Board Order No. 01-108;
1761 Junction Ave., San Jose, CA
My Client: Frank Hamedi
My file no: 3470

Dear Dr. Gregg:

The purpose of at this letter is to follow up with respect to our telephone conversation of June 30, 2015.

Your e-mail to Mr. Hamedi of June 16, 2015 states, in part:

...Your time for negotiating language and submittal of the deed restriction with staff members in our Toxics Cleanup Program has passed. You are now facing enforcement of the Order requirement, and we will give you one last opportunity to submit the deed restriction with the language that was agreed upon with staff in the Toxics Cleanup Program.

Your e-mail to Mr. Hamedi dated June 25, 2015 states, in part:

As I stated in an e-mail on June 16, 2015, you need to submit a signed, notarized deed restriction with the language that was agreed upon with staff in the Toxics Cleanup Program. You continue to be out of compliance with Region Water Board Order No. 01-108 and you need to send us the signed document as soon as possible to avoid enforcement action by my unit... We are not going to negotiate and, in particular, agree to any language that undermines our legal authority.

This is your last notice to submit a signed and notarized deed restriction, with the language that was agreed upon with staff in the Toxics Cleanup Program. It must be submitted to the Water Board office by Friday, July 3rd, 2015, if you wish to avoid enforcement proceedings.

I have taken the opportunity of reviewing and re-reviewing Order No. 01-108.

Order No. 01-108 at paragraph 3, page 2 names Velcon Filters, Inc. a discharger because it owned and/or occupied the property at the time pollution occurred and through its actions is responsible for causing the soil and ground water pollution at this site. Frank Hamedi is named as a secondarily responsible discharger because he is the current owner of the property.

Order No. 01-108 at paragraph 11, page 6 states:

Due to excessive risk that will be present at the site pending full remediation, institutional constraints are appropriate to limit on-site exposure to acceptable levels. Institutional constraints include a deed restriction that notifies future owners of subsurface contamination and prohibits the use of shallow groundwater beneath the site as a source of drinking water until cleanup standards are met. The deed restriction also prohibits use of the site for residential development.

Order No. 01-108 at page 9 states:

IT IS HEREBY ORDERED, pursuant to Section 13304 of the California Water Code, that the dischargers (or their agents, successors, or assigns) shall cleanup and abate the effects described in the above findings as follows:...

(C)(2). Proposed Institutional Constraints...Such procedures shall include a deed restriction prohibiting the use of shallow groundwater as a source of drinking water. The deed restriction shall also specify any engineering controls implemented to meet cleanup standards contained in Section B.3 for the protection of groundwater. The deed restriction shall also include a ban on use of the site for residential development.

The compliance date for recording a deed restriction was November 1, 2001.

I do not know why it has taken so long for a deed restriction to be drafted (by your agency) nor what caused the delay in having Mr. Hamedi sign and deliver to you the required Covenant and Environmental Restriction on Property.

Currently it is my understanding Velcon Filters, Inc., is fully complying with Order No. 01-108.

Please advise me if Velcon Filters, Inc. is not currently fully complying with Order No. 01-108.

A few days ago Frank Hamedi delivered a signed and notarized Covenant and Environmental Restriction on Property as required by Order No. 01-108.

Paragraph 3.1 of the Covenant and Environmental Restriction on Property, subparagraphs (a) through (k) sets forth the restrictions on the property required by Order No. 01-108.

The only new language inserted in the Covenant and Environmental Restriction on Property by Mr. Hamedi is contained at the paragraph 3.1(g). This added language states:

...If the Regional Board, pursuant to its Order No. 01-108 and any amendments, modifications, or rescision of Order No. 01-108, replaced by a new Order of the Regional Board concerning the Burdened Property, has the effect of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omissions of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc. and its successors and assigns as the primary discharger responsible for all further investigation and remediation of the site.

The purpose of this added language is to make clear if the cleanup site is closed and thereafter further contamination is discovered which was caused by some act or omission of Velcon Filters, Inc. that your agency would again look to Velcon Filters, Inc. as the named discharger.

This added language does not change the intent nor findings of Order No. 01-108.

Rather, it further clarifies your agency will look to the party who actually caused the contamination in the first instance and not substitute a secondarily responsible discharger in place of the primary discharger who has done nothing to cause hazardous contamination on the property but rather is named as secondarily responsible party in Order No. 01-108 solely as a result of purchasing the property from Velcon Filters, Inc.

The language added in paragraph 3.1(g) in the Covenant and Environmental Restriction on Property does not undermine the Water Board's legal authority.

With all due respect how does the added language undermined the Water Board's legal authority?

Furthermore, what was the date my client agreed to as the last date for "negotiating" the language of the Covenant and Environmental Restriction on Property?

Finally, please advise as to how, subsequent to your receipt of the signed and notarized Covenant and Environmental Restriction on Property, is my client out of compliance with respect to Order No. 01-108.

I found nothing in Order No. 01-108 prohibiting the added language set forth in paragraph 3.1(g) in the Covenant and Environmental Restriction on Property.

Rather than threatening enforcement action it is requested you specifically identify how the language added in paragraph 3.1(g) is contrary to the language and intent of Order No. 01-108.

The applicable regulation of the State Water Resources Control Board San Francisco Bay states one of the reasons the Water Board commences enforcement action is to "ensure compliance with Water Board Regulations and Orders."

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board

July 2, 2015
Page 4

Again, how is the Covenant and Environmental Restriction on Property signed by Mr. Hamedí not in compliance with the Water Board's Regulations and Orders?

Very truly yours,

S. Jack Chevlen

SJC:db

Cc via e-mail only: Frank Hamedí



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

July 20, 2015

Mr. Frank Hamedi
Soil Tech Engineering
131 Old Tully Road
San Jose, CA 95111
[info@envirosoiltech.com]

c/o S. Jack Chevlen
5902 Deerland Court
San Jose, California 95124-6575

Sent via email: JackChevlen@ChevlenLaw.com

Subject: Failure to Submit an Acceptable Deed Restriction per San Francisco Bay Regional Water Quality Control Board Order No. 01-108, former Velcon Filters, Inc. facility at 1761 Junction Avenue, San Jose, Santa Clara County

Dear Mr. Chevlen:

Water Board Order No. 01-108 requires your client, Mr. Hamedi, to submit a signed, notarized deed restriction that is acceptable to the Executive Officer of the Water Board. Mr. Hamedi has not complied with this requirement. Pursuant to Water Code section 13350, the Water Board is authorized to impose administrative civil liability against a person who violates a Cleanup and Abatement Order. After four years of notifications, we are prepared to take an enforcement action against Mr. Hamedi with a penalty between \$43,000 and \$55,000 unless Mr. Hamedi delivers to our office the required document by close of business on Friday July 24, 2015.

The purpose of recent communications with Mr. Hamedi has been to encourage him to comply with Water Board Order No.01-108 and avoid formal enforcement. Water Board staff informed Mr. Hamedi of his responsibility to submit a deed restriction in at least eight written communications since March 17, 2011. On February 5, 2014, the Executive Officer of the Water Board informed Mr. Hamedi that the Water Board had had formally elevated Mr. Hamedi to a primary responsible party for Order No.01-108 Tasks 2 and 3 (letter attached). Water Board staff provided an example of an acceptable deed restriction on August 5, 2011, and provided feedback on Mr. Hamedi's requested modifications on October 13, 2011, October 3, 2014, and March 27, 2015. Mr. Hamedi has indicated several times that he would submit a signed deed restriction and on April 15, 2015, he told Water Board staff that he would sign the deed restriction if two more changes were made. Water Board staff agreed to those changes on the same day, but Mr. Hamedi did not send in a signed document and stopped answering communications from Water Board staff.

After the Water Board's Toxics Cleanup Division referred this case to the Enforcement Section, Mr. Hamedi resumed communications. He delivered a signed deed restriction on June 22, 2015,

DR. TERRY F. YOUNG, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

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

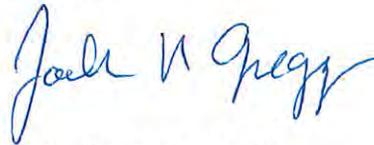
but the following text had been added to the deed restriction language previously approved by Water Board staff:

...If the Regional [Water] Board, pursuant to its Order No. 01-108 and any amendments, modifications, or rescission of Order No. 01-108, replaced by a new Order of the Regional Board concerning the Burdened Property, has the effect of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omissions of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc. and its successors and assigns as the primary discharger responsible for all further investigation and remediation of the site.

We cannot agree to the above language in a deed restriction because it limits the Water Board's authority and discretion in determining responsible party(ies) under the Water Code. Because Mr. Hamedi has not submitted a deed restriction that is acceptable to the Executive Officer, as required by Task 2 of Order No. 01-0108, enforcement of this matter will now proceed unless Mr. Hamedi resolves the matter by submittal of the document by the date requested.

If you have any questions, please contact me at Jack.Gregg@waterboards.ca.gov or (510) 622-2437.

Sincerely,

A handwritten signature in blue ink that reads "Jack H. Gregg". The signature is written in a cursive style with a large initial "J".

Jack H. Gregg, PhD, PG
Enforcement Section
San Francisco Bay Water Board

Law Offices of
S. JACK CHEVLEN

5902 Deerland Court
San Jose, California 95124-6575
Telephone (408) 369-8000
Facsimile (408) 369-8200
E-mail: JackChevlen@ChevlenLaw.com

July 23, 2015

VIA E-MAIL Jack.Gregg@Waterboards.ca.gov
& FIRST CLASS USPS MAIL

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Water Board Order No. 01-108;
1761 Junction Ave., San Jose, CA
My Client: Frank Hamedi
My file no: 3470

Dear Dr. Gregg:

My office is in receipt of your e-mail dated July 20, 2015.

The second paragraph of your e-mail states in part "On February 5, 2014, the Executive Officer of the Water Board informed Mr. Hamedi that the Water Board had formally elevated Mr. Hamedi to a primary responsible party for Order No. 01-108 Tasks 2 and 3 (letter attached)..."

Unfortunately, the "letter attached" did not accompany your letter on July 20, 2015.

Please e-mail me the "letter attached."

Your July 20, 2015 e-mail also states "...Pursuant to Water Code section 13350, the Water Board is authorized to impose administrative civil liability against a person who violates a Cleanup and Abatement Order..."

To the extent Mr. Hamedi violated or did not fully perform Tasks 2 and 3 of the California Regional Water Quality Control Board, San Francisco Bay Region, Order No. 01-108 (hereinafter "Order"), which Mr. Hamedi contends he has fully performed, Water Code section 13350 and the case law citing this code section clearly demonstrates Water Code section 13350 is not applicable to Mr. Hamedi with respect to Task 2 and 3 of the Order.

(a) A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

(b) (1) A person who, without regard to intent or negligence, causes or permits a hazardous substance to be discharged in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, shall be strictly liable civilly in accordance with subdivision (d) or (e).

(2) For purposes of this subdivision, the term "discharge" includes only those discharges for which Section 13260 directs that a report of waste discharge shall be filed with the regional board.

(3) For purposes of this subdivision, the term "discharge" does not include an emission excluded from the applicability of Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to Environmental Protection Agency regulations interpreting Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

(c) A person shall not be liable under subdivision (b) if the discharge is caused solely by any one or combination of the following:

(1) An act of war.

(2) An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(3) Negligence on the part of the state, the United States, or any department or agency thereof. However, this paragraph shall not be interpreted to provide the state, the United States, or any department or agency thereof a defense to liability for any discharge caused by its own negligence.

(4) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(5) Any other circumstance or event that causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.

(d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed fifteen thousand dollars (\$15,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed twenty dollars (\$20) for each gallon of waste discharged.

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged.

(f) A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

(g) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover the sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make the request only after a hearing, with due notice of the hearing given to all affected persons. In determining the amount to be imposed, assessed, or recovered, the court shall be subject to Section 13351.

(h) Article 3 (commencing with Section 13330) and Article 6 (commencing with Section 13360) apply to proceedings to impose, assess, and recover an amount pursuant to this article.

(i) A person who incurs any liability established under this section shall be entitled to contribution for that liability from a third party, in an action in the superior court and upon proof that the discharge was caused in whole or in part by an act or omission of the third party, to the extent that the discharge is caused by the act or omission of the third party, in accordance with the principles of comparative fault.

(j) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, except that no liability shall be recoverable under subdivision (b) for any discharge for which liability is recovered under Section 13385.

(k) Notwithstanding any other law, all funds generated by the imposition of liabilities pursuant to this section shall be deposited into the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be available for expenditure, upon appropriation by the Legislature, for the following purposes:

(1) To the state board to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443, or to assist in implementing Chapter 7.3 (commencing with Section 13560).

(2) Up to five hundred thousand dollars (\$500,000) per fiscal year, to assist the Department of Fish and Wildlife to address the impacts of marijuana cultivation on the natural resources of the state.

(l) This section shall remain in effect only until July 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2017, deletes or extends that date. Water Code section 13350 (Emphasis added)

The holding in the case of Younger v. Superior Court of Alameda County (1976) 16 Cal 3rd 30 is instructive as it relates to Mr. Hamedi.

In Younger (supra) the California Supreme Court held the imposition of strict liability under Water Code section 13350 is only applicable to those persons who intentionally or negligently cause oil spills subject to statutory penalties.

Indeed the statutory language of this Water Code section uses the word "discharge" throughout of the statute.

The findings of the Order are clear and unambiguous.

The named discharger in the Order is Velcon Filters, Inc. because it owned and/or occupied the property at the time the pollution of the property occurred and through its actions it is responsible for causing the soil and groundwater pollution at the site.

Frank Hamedi is named as secondarily responsible discharger solely because he is the current owner of 1761 Junction Avenue.

Frank Hamedi did not cause or permit any hazardous substances to be discharged on the property. At the time of the discharge of the hazardous substances he did not own the property.

Task 2 of the Order states:

Submit a technical report acceptable to the Executive Officer documenting procedures to be used by the dischargers to prevent or minimize human exposure to soil and groundwater contamination prior to meeting cleanup standards. Such procedures shall include a deed restriction prohibiting the use of shallow groundwater as a source of drinking water. The deed restriction shall also specify any engineering controls implemented to meet cleanup standards contained in Section B.3 for the protection of groundwater. The deed restriction shall also include a ban on use of the site for residential development.

My understanding is Velcon Filters, Inc. submitted the report required in Task 2.

The deed restriction signed by Mr. Hamedi and delivered to your office includes all of the restrictions required in Task 2.

Task 3 of the Order states:

Submit a technical report acceptable to the Executive Officer documenting that the proposed institutional constraints have been implemented in cooperation with current property owner (Frank Hamedi and Triad Tool).

My assumption is the "technical report" required by Task 3 is different than the deed restriction referred to in Task 2 and this "technical report" has been submitted and approved by the Executive Officer.

Please advise my office if my understanding of the above is incorrect.

The reason my office added the words to the Covenant and Environmental Restriction on Property to which you object is a result of telephone conversation Mr. Hamedi had on April 15, 2015 with Mr. David Barr.

During this telephone conversation Mr. Hamedi asked Mr. Barr who would be primarily responsible for the cleanup of the site in the event there was a closure of the site and then the site was reopened.

Mr. Barr advised Mr. Hamedi that Mr. Hamedi would be responsible for the site cleanup under those circumstances and Velcon Filters, Inc. would not responsible.

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board

July 23, 2015
Page 6

This is unacceptable to Mr. Hamedí and it was for this reason I drafted the additional verbiage which your department objects too.

The additional verbiage which your department objects to was narrowly drafted to define the potential responsibility of Velcon Filters, Inc. in the event "... of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omissions of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc. and its successors and assigns as the primary discharger..."

In the Order Velcon Filters, Inc. is named as the discharger. Why should Velcon Filters, Inc. not be named as a discharger if for whatever reason any acts or omissions on its part caused the spill of hazardous materials regardless of when the discovery of the release of hazardous materials is made?

The added language in no way limits or diminishes the Water Board's authority and discretion in determining responsible parties under the Water Code.

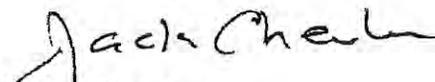
It is requested you advise my office as how the added language inserted in the Covenant and Environmental Restriction on Property limits the Water Board's authority and discretion in determining responsible parties under the Water Code.

If Velcon Filters, Inc. did or did not do an act causing the contamination of the property then why would the Water Board in an exercise of its discretion not determine Velcon Filters, Inc. was a responsible party?

Finally, my client would have no problem signing a Covenant and Environmental Restriction on Property without the added language my office inserted in this document if your department would issue a side letter to my client stating if the Regional Board pursuant to its Order No. 01-108 and any amendments, modifications, or rescission of Order No. 01-108 replaced by a new order of the Regional Water Board concerning the Burdened Property, has the effect of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omissions of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc. and its successors and assigns as the primary discharger responsible for all further investigation and remediation of the site.

Such a side letter would alleviate my client of his concerns and at the same time alleviate your department's objection to the language inserted in a recorded Covenant and Environmental Restriction on Property.

Very truly yours,


S. Jack Chevlen

SJC:db
Cc via e-mail only: Frank Hamedí

Gregg, Jack@Waterboards

From: Gregg, Jack@Waterboards
Sent: Thursday, July 23, 2015 3:06 PM
To: 'Jack Chevlen'
Cc: Frank Hamedi; info@envirosoiltech.com; Thompson, Brian
Subject: RE: File No. 3470 - Hamedi - Junction Avenue
Attachments: 140205 Velcon - revoke secondary status 2-5-14.pdf

Mr. Chevlen – We received your email regarding Mr. Hamedi’s case and we will respond next week. Attached here is the February 5, 2014 letter that I should have sent with my email earlier this week.

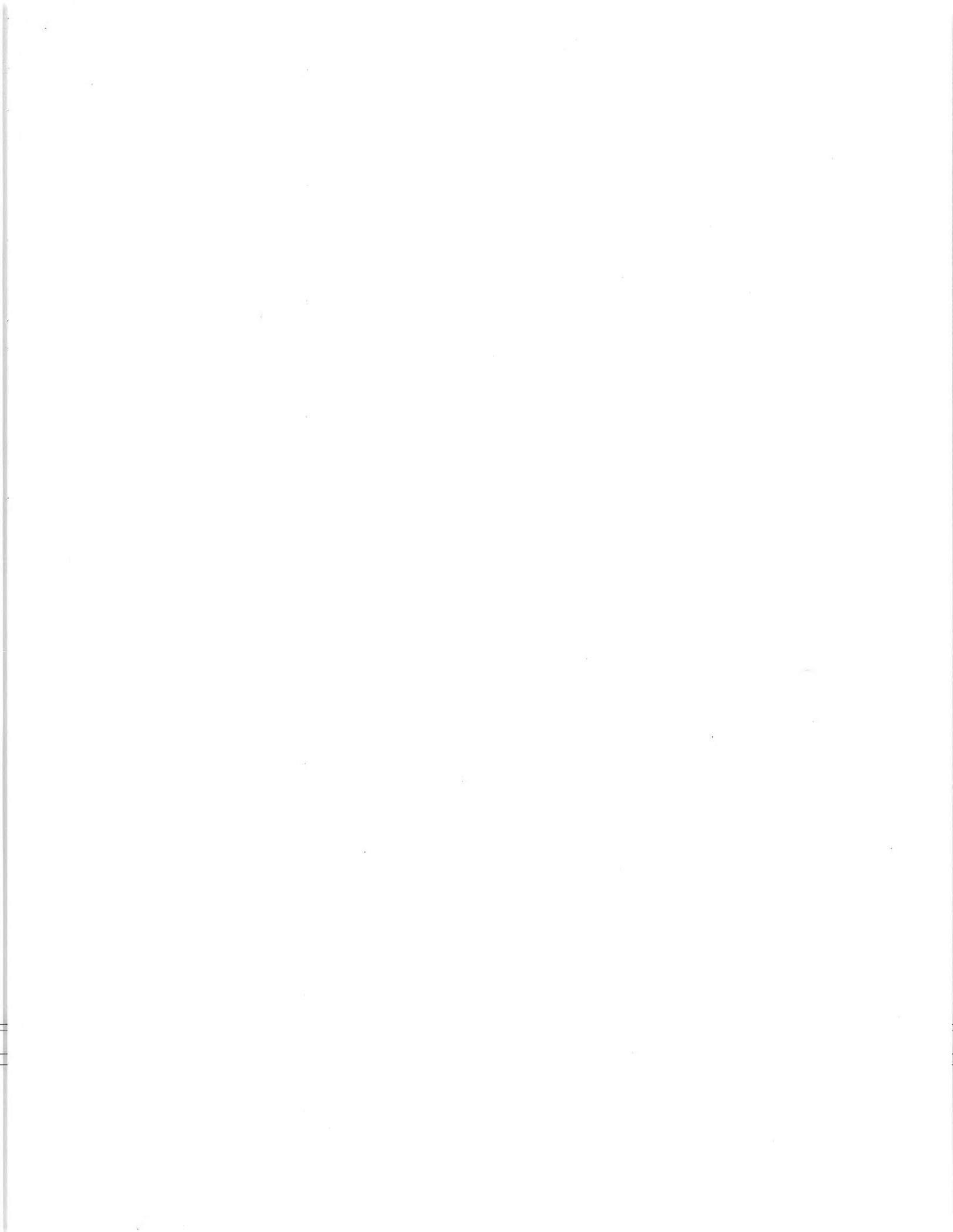
Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2437

From: Jack Chevlen [<mailto:jackchevlen@comcast.net>]
Sent: Thursday, July 23, 2015 2:01 PM
To: Gregg, Jack@Waterboards
Cc: Frank Hamedi; info@envirosoiltech.com
Subject: FW: File No. 3470 - Hamedi - Junction Avenue

Law Offices of S. Jack Chevlen
5902 Deerland Court
San Jose, California 95124-6575
Telephone: (408) 369-8000
Facsimile: (408) 369-8200

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ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 20

Correspondence from August 2015:

- August 25, 2015 – Email to Mr. Chevlen - acknowledging the recent communications, citing the Water Code authority, the alleged number of days of noncompliance, and reiterating that enforcement was imminent.

Gregg, Jack@Waterboards

From: Gregg, Jack@Waterboards
Sent: Tuesday, August 25, 2015 2:03 PM
To: Jack Chevlen
Cc: Frank Hamedi; Thompson, Brian@Waterboards; Ciccarelli, Paul@Waterboards
Subject: Deed Restriction requirement for Former Velcon II, 1761 Junction Avenue,

Reference your File No. 3470 - Hamedi - Junction Avenue

Mr. Chevlen – On July 20, 2015, I provided you with the regulatory background regarding your client Frank Hamedi’s responsibilities per Regional Water Board Order 01-108 and letter dated February 5, 2014. I summarized for you the results of years of correspondence regarding this matter. Your July 23, 2015, letter simply continues the pattern of avoiding responsibility for completing Task C.2 of the order. The requirement that Mr. Hamedi submit a signed, notarized deed restriction has been made clear in our prior correspondence along with our position that language in a deed restriction that undermines the legal authority of the Water Board is not acceptable. There is now over 500 days of violation, and Water Code section 13350(e)(1)(B) requires us to pursue a minimum statutory penalty of \$100 for each day of violation. The maximum penalty for this violation is \$5,000 for each day of violation per Water Code section 13350(e)(1).

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2437

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 21

Correspondence from September 2015:

- September 11, 2015 – email from Office of Enforcement attorney to the Advisory Team
 - September 15, 2015 – Signed ACL Complaint Waiver of 90-day hearing requirement.
 - September 15, 2015 – Letter from Mr. Chevlen to the Advisory Team with questions about Final Site Cleanup Requirements Board Order 01-108.
 - September 17, 2015 – email from Mr. Ciccarelli to the Advisory Team
 - September 22, 2015 Letter from Mr. Ciccarelli to the Advisory Team regarding Mr. Chevlen's questions to the Complaint enforcement proceedings.
 - September 24, 2015 – Letter from Mr. Chevlen to the Advisory Team responding to the September 22, 2015, letter.
-

Gregg, Jack@Waterboards

From: Ciccarelli, Paul@Waterboards
Sent: Friday, September 11, 2015 6:01 PM
To: Wells, Elizabeth@Waterboards; Coupe, David@Waterboards; Wolfe, Bruce@Waterboards
Cc: Whyte, Dyan@Waterboards; Tang, Lila@Waterboards; Thompson, Brian@Waterboards; Gregg, Jack@Waterboards; Jack Chevlen; Frank Hamedi
Subject: ACLC R2-2015-1012
Importance: High

Advisory Team,

At this time, the Prosecution Team has no objection to Mr. Hamedi's request to waive his right to a hearing before the Board within 90 days of receiving Administrative Civil Liability Complaint No. R2-2015-1012 (Complaint). However, we would like additional information on the basis for this request; the information typically obtained through submission of the approved "Waiver Form" issued with the Complaint and its hearing procedures. We contacted Mr. Hamedi's attorney, Mr. Chevlen, and asked whether he or his client plans to submit the Waiver Form or something equivalent to it. Mr. Chevlen said he would send out another letter to the Advisory Team on this matter on Tuesday, September 15, 2015. Once we review the content of this letter, we will let the Advisory Team know if our position changes.

Sincerely,

*Paul D. Ciccarelli, Attorney
Office of Enforcement
State Water Resources Control Board
1001 I Street, P.O. Box 100
Sacramento, CA 95812
Tel.: 916.322.3227
Email: Paul.Ciccarelli@Waterboards.ca.gov*

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**WAIVER FORM
ACL COMPLAINT R2-2015-1012**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Mr. Frank Hamed, also known as Frank Hamed-Fard, (hereinafter "Discharger") in connection with Administrative Civil Liability (ACL) Complaint R2-2015-1012 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

OPTION 1: PAY THE CIVIL LIABILITY

(Check here if the Discharger waives the hearing requirement and will pay the civil liability in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **\$65,600** by check that references "ACL Complaint R2-2015-1012" made payable to the "State Water Resources Control Board." Payment must be sent to the following address and a copy of the payment received by the Regional Water Board by **October 2, 2015** or the Regional Water Board may adopt an ACL Order requiring payment.

State Water Resources Control Board
Attn: Accounting Department
P.O. Box 1888
1001 I Street
Sacramento, CA 95812

- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Regional Water Board Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board or its Executive Officer, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

OPTION 2: REQUEST A TIME EXTENSION

(Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)

I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board Advisory Team to approve the extension.

OPTION 3: ENGAGE IN SETTLEMENT DISCUSSIONS

(Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)

I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will contact the Regional Water Board Prosecution Team within five business days of submittal of this waiver to request that the Prosecution Team engage in settlement discussions to attempt to resolve the outstanding violation(s). As part of a settlement discussion, the Discharger may propose a supplemental environmental project

WAIVER FORM
ACL COMPLAINT R2-2015-1012

to the extent such a project is authorized by law and the State Water Resources Control Board Policy on Supplemental Environmental Projects. By checking this box, the Discharger requests that the Regional Water Board Advisory Team delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board Advisory Team to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1c and d."

Jack Chewlar, Atty. for Granite Hancock
(Print Name and Title)

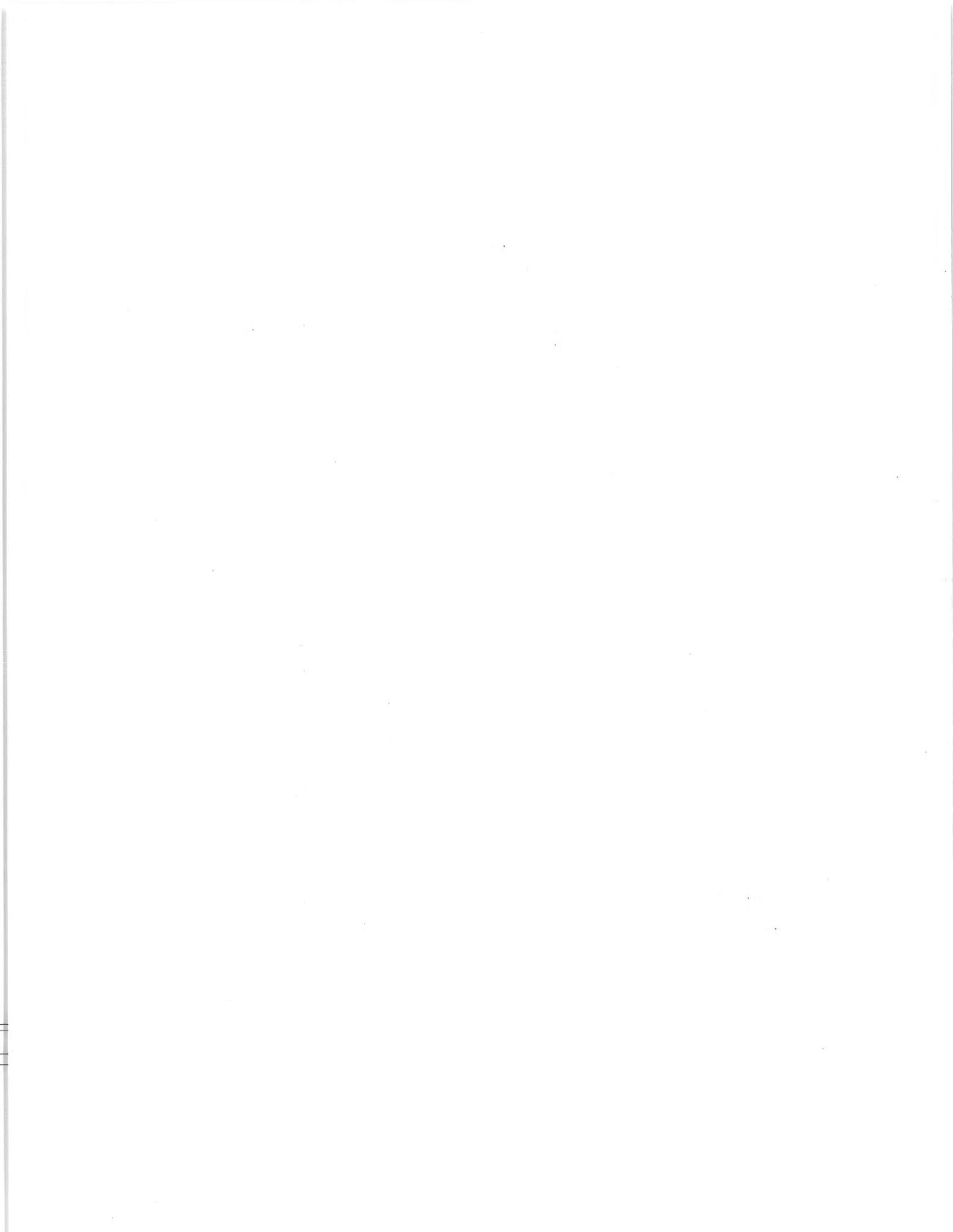
Jack Chewlar
(Signature)

9/15/15
(Date)

ATTACHMENT TO WAIVER FORM
ACL Complaint R2-2015-1012

Frank Hamedí requests a thirty (30) day time extension of the hearing in this matter from November 18, 2015 to December 18, 2015.

The reason for the requested time extension of the hearing is because Frank Hamedí will be requesting, pursuant to Water Code §13228.15 and Government Code §11511.5(b), a prehearing conference.



Law Offices of
S. JACK CHEVLEN

5902 Deerland Court
San Jose, California 95124-6575
Telephone (408) 369-8000
Facsimile (408) 369-8200
E-mail: JackChevlen@ChevlenLaw.com

September 15, 2015

VIA E-MAIL Elizabeth.Wells@Waterboards.ca.gov
& FIRST CLASS USPS MAIL

Elizabeth Wells
California Regional Water Board
San Francisco Bay Water Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: California Regional Water Quality Control Board
San Francisco Bay Region
Complaint No. R2-2015-1012
Administrative Civil Liability In the Matter of
Mr. Frank Hamedi
Violation of Site Cleanup Requirements
Former Velcon II Property, 1761 Junction Avenue,
San Jose, Santa Clara County
WDID 2 438510N01

My file no: 3470

Dear Ms. Wells:

Frank Hamedi, pursuant to Water Code §13228.15 and Government Code §11511.5(b) requests a prehearing conference to address the following matters relating to the California Regional Water Quality Control Board San Francisco Bay Region Order Number 01-108, the Adoption of Final Site Cleanup Requirements and Rescission of Order Number 95-064 for Velcon Filters, Inc., Frank Hamedi, former Velcon II property – 1761 Junction Avenue, San Jose, Santa Clara County.

- (a) Is Velcon Filters, Inc. still named as a discharger?
- (b) Is Frank Hamedi still named as a secondarily responsible discharger?
- (c) With respect Order Number 01-108 what specific requirements of Order Number 01-108 has Velcon Filters, Inc. failed to comply with?
- (d) Other than a Deed Restriction what other institutional constraints required by Velcon Filters, Inc. to perform have not been performed by Velcon Filters, Inc.?
- (e) Other than the Deed Restriction what other institutional constraints required by Frank Hamedi to perform have not been performed?

- (f) Have the tasks identified in Order Number 01-108 as C1 and all of its subparagraphs been complied with and if not which tasks identified as C1 and its subparagraphs have not been complied with?
- (g) With respect to Task C2 identified in Order Number 01-108 what is meant by the term "technical report"? Has Velcon Filters, Inc. submitted a technical report required in Task C2 of Order Number 01-108?
- (h) Whether the Deed Restriction signed and delivered by Frank Hamedi included:
 - i. The prohibition of the use of shallow groundwater as a source of drinking water;
 - ii. Whether the Deed Restriction specified any engineering controls implemented to meet cleanup standards contained in Section B.3 for the protection of groundwater;
 - iii. Whether the Deed Restriction included a ban on the use of the site for residential development;
 - iv. The date the first proposed Deed Restriction was presented to Frank Hamedi for his signature and the date the last proposed Deed Restriction was presented to Frank Hamedi for his signature.
- (i) If any of the actions identified in Paragraph (h)(i-iii) above have not been completed which action(s) were required to be completed by Velcon Filters, Inc. and which actions were required to be completed by Frank Hamedi;
- (j) In what way do the words "If the Regional Board, pursuant to its Order No. 01-108 and any amendments, modifications, or rescission of Order No. 01-108, replaced by a new Order of the Regional Board concerning the Burdened Property, has the effect of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omissions of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc. and its successors and assigns as the primary discharger responsible for all further investigation and remediation of the site" limit the Water Board's authority and discretion in determining responsible parties under the Water Code.
- (k) With respect to Task C3 of Order Number 01-108 what is meant by the words "Technical Report"; "institutional constraints" and who was to cooperate with Frank Hamedi?
- (l) Were Tasks C4 through C9 of Order Number 01-108 timely completed and if not the dates each of these Tasks were to be completed and whether the person or entity responsible for completing these Tasks were fined and/or assessed a penalty for their failure to timely complete each Task and if so the amount of such fine or penalty?

Elizabeth Wells
California Regional Water Board
San Francisco Bay Water Region

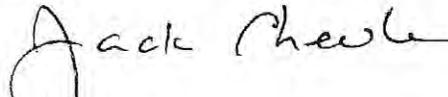
September 15, 2015
Page 3

(m) With reference to Task C11 of Order Number 01-108 (Secondarily Responsible Dischargers) how does the inclusion of the added language of the Deed Restriction limit the Water Board's authority and discretion in determining the responsible parties under the Water Code?

It is requested the prehearing conference be scheduled on a date other than:

September 22, 23, 28
October 12 through 23, 27, 28
December 8 through 11

Very truly yours,



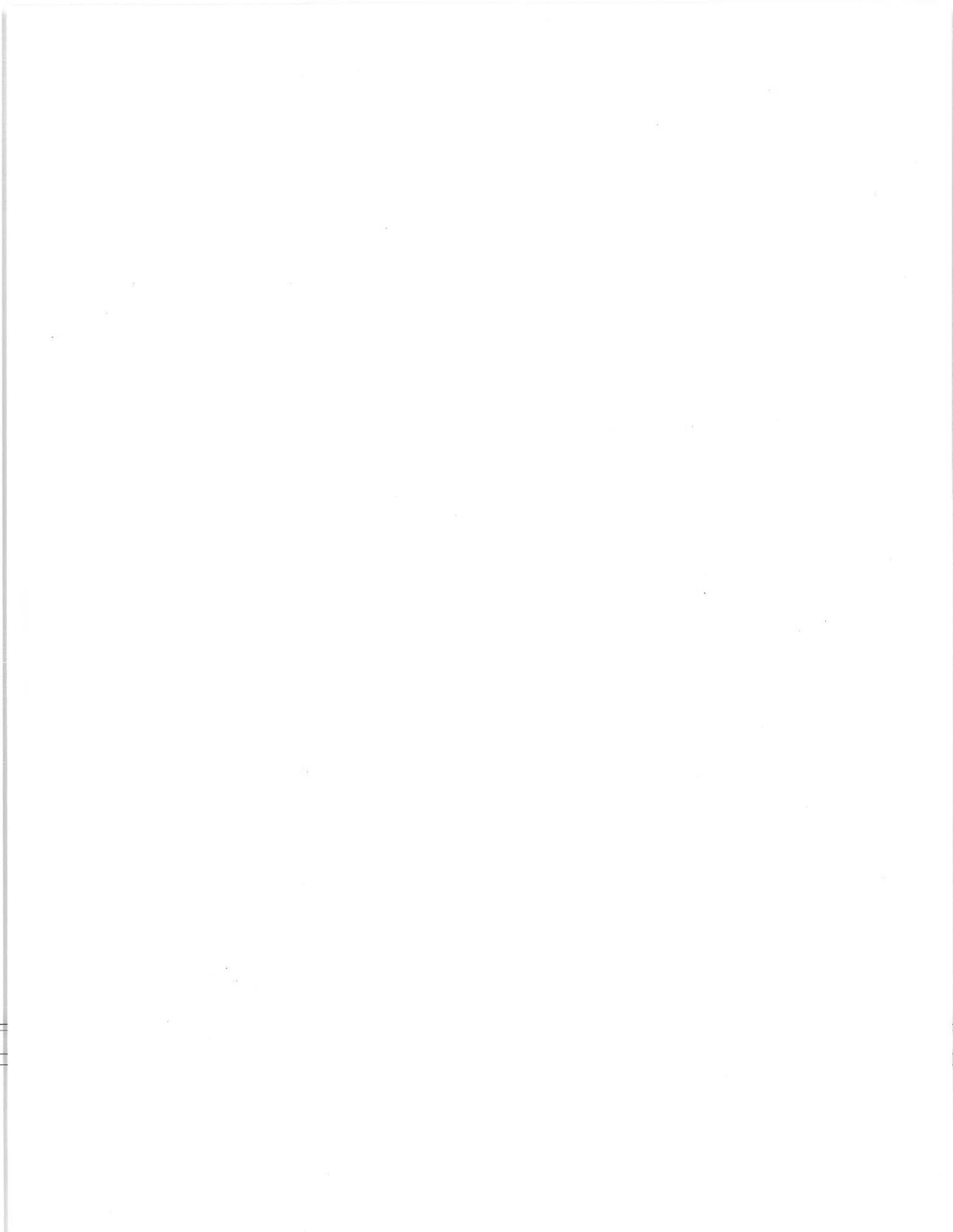
S. Jack Chevien

SJC:db

Cc via mail & e-mail: Brian Thompson, Section Leader – Brian.Thompson@waterboards.ca.gov

Cc via mail & e-mail: Paul Ciccarelli, Staff Counsel – Paul.Ciccarelli@waterboards.ca.gov

Cc e-mail only: Client



Gregg, Jack@Waterboards

From: Ciccarelli, Paul@Waterboards
Sent: Thursday, September 17, 2015 5:53 PM
To: Wells, Elizabeth@Waterboards; Coupe, David@Waterboards; Wolfe, Bruce@Waterboards
Cc: Whyte, Dyan@Waterboards; Tang, Lila@Waterboards; Thompson, Brian@Waterboards; Gregg, Jack@Waterboards; Jack Chevlen; Frank Hamedi
Subject: RE: ACLC R2-2015-1012

Advisory Team,

The Prosecution Team received and reviewed Mr. Hamedi's Waiver Form and request for a prehearing conference. The Prosecution Team does not object to the request to extend and reschedule the hearing date and/or hearing deadlines. The Prosecution Team is currently preparing a response to the request for a prehearing conference for the Advisory Team's consideration. Please expect this response by Wednesday, 9/23.

Sincerely,

*Paul D. Ciccarelli, Attorney
Office of Enforcement
State Water Resources Control Board
1001 I Street, P.O. Box 100
Sacramento, CA 95812
Tel.: 916.322.3227
Email: Paul.Ciccarelli@Waterboards.ca.gov*

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From: Ciccarelli, Paul@Waterboards
Sent: Friday, September 11, 2015 6:01 PM
To: Wells, Elizabeth@Waterboards; Coupe, David@Waterboards; Wolfe, Bruce@Waterboards
Cc: Whyte, Dyan@Waterboards; Tang, Lila@Waterboards; Thompson, Brian@Waterboards; Gregg, Jack@Waterboards (Jack.Gregg@Waterboards.ca.gov); 'Jack Chevlen'; Frank Hamedi
Subject: ACLC R2-2015-1012
Importance: High

Advisory Team,

At this time, the Prosecution Team has no objection to Mr. Hamedi's request to waive his right to a hearing before the Board within 90 days of receiving Administrative Civil Liability Complaint No. R2-2015-1012 (Complaint). However, we would like additional information on the basis for this request; the information typically obtained through submission of the approved "Waiver Form" issued with the Complaint and its hearing procedures. We contacted Mr. Hamedi's attorney, Mr. Chevlen, and asked whether he or his client plans to submit the Waiver Form or something equivalent to it. Mr. Chevlen said he would send out another letter to the Advisory Team on this matter on Tuesday, September 15, 2015. Once we review the content of this letter, we will let the Advisory Team know if our position changes.

Sincerely,

Paul D. Ciccarelli, Attorney
Office of Enforcement
State Water Resources Control Board
1001 I Street, P.O. Box 100
Sacramento, CA 95812
Tel.: 916.322.3227
Email: Paul.Ciccarelli@Waterboards.ca.gov

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EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

September 22, 2015

Ms. Elizabeth Wells
California Regional Water Board
San Francisco Bay
Advisory Staff
Elizabeth.Wells@waterboards.ca.gov

Via Electronic Mail Only

Dear Ms. Wells,

SUBJECT: PROSECUTION TEAM'S RESPONSE TO MR. FRANK HAMEDI'S REQUEST TO WAIVE THE 90-DAY HEARING REQUIREMENT AND REQUEST FOR A PREHEARING CONFERENCE, ACL COMPLAINT R2-2015-1012

The San Francisco Bay Regional Water Board ("Water Board") Prosecution Team ("Prosecution Team") hereby submits its response to Mr. Frank Hamedí's request to waive the 90-day hearing requirement and request for a prehearing conference on Administrative Civil Liability Complaint R2-2015-1012 ("Complaint"). The Complaint alleges that Mr. Hamedí failed to comply with Task C.2 of Final Site Cleanup Requirements Order 01-108 (Order).

The Prosecution Team does not object to Mr. Hamedí's submission of Waiver Form Option 2 (waiver of the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines). The Prosecution Team respectfully requests that the Water Board Advisory Team approve the time extension and determine the appropriate amendments to the Complaint's Hearing Procedure ("Hearing Procedure").

As explained below, the Prosecution Team objects to Mr. Hamedí's request for a prehearing conference (the "Request"). The Request lists a series of questions related to the Order. Because these questions do not relate to procedural matters, this response assumes that Mr. Hamedí, through his attorney, submitted the Request to clarify and/or narrow the scope of issues before the Board. The Prosecution Team expressly reserves the right to supplement this response at any time prior to when the Water Board reaches a final decision on the Complaint.

Background Information

Water Board members, or their designees, may carry out prehearing conferences to address any of the matters set forth in Government Code section 11511.5, subdivision (b) with respect to matters within the Water Board's jurisdiction (Wat. Code, § 13228.15.). A prehearing conference may deal with the clarification of issues and/or procedural matters enumerated in Government

DR. TERRY F. YOUNG, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

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



Code section 11511.5, subdivision (b).¹ The purpose of a prehearing conference in agency adjudication is to clear away procedural issues and is a means for efficient case management. Prehearing conferences do not resolve central issues that should be decided by the Water Board.

The Prosecution Team Objects to Mr. Hamedí's Request for a Prehearing Conference because the Request Seeks Clarifications on Either Irrelevant Issues or the Central Issue

The Complaint alleges that Mr. Hamedí failed to comply with Task C.2 of the Order. The Request seeks clarifications on either irrelevant issues or the central issue to the Complaint.

- **Irrelevant Issues**

As alleged in the Complaint, Mr. Hamedí is primarily responsible for compliance with Task C.2 of the Order. The request for clarifications on other Tasks required under the Order, or for clarifications on other responsible parties' compliance with the Order (i.e., Velcon Filters, Inc.), are irrelevant to resolving the alleged violation. Therefore, a prehearing conference is not a proper venue to clarify the issues identified in Request paragraphs:

- (a) Is Velcon Filters, Inc. still named as a discharger [in the Order]?
- (c) With respect [to the Order,] what specific requirements of [the Order] has Velcon Filters, Inc., failed to comply with?
- (d) Other than a Deed Restriction what other institutional constraints required by Velcon Filters, Inc. to perform have not been performed by Velcon Filters, Inc.?
- (f) Have the tasks identified in [the Order] as C1 and all of its subparagraphs been complied with and if not which tasks identified as C1 and its subparagraphs have not been complied with?
- (k) With respect to Task C3 of [the Order] what is meant by the words "Technical Report" [and] "institutional constraints" and who was to cooperate with Frank Hamedí?
- (l) Were tasks C4 through C9 of [the Order] timely completed and if not the dates each of these Tasks were to be completed and whether the person or entity responsible for completing these Tasks were fined and/or assessed a penalty for their failure to timely complete each Task and if so the amount of such fine or penalty?

¹ "A prehearing conference may deal with one or more of the following matters: (1) exploration of settlement possibilities; (2) preparation of stipulations; (3) clarification of issues; (4) rulings on identity and limitation of the number of witnesses; (5) objections to proffers of evidence; (6) order of presentation of evidence and cross-examination; (7) rulings regarding issuance of subpoenas and protective orders; (8) schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing; (9) exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing; (10) motions for intervention; (11) exploration of the possibility of using alternative dispute resolution provided in Article 5 (commencing with Section 11420.10) of, or the informal hearing procedure provided in Article 10 (commencing with Section 11445.10) of, Chapter 4.5, and objections to use of the informal hearing procedure. Use of alternative dispute resolution or of the informal hearing procedure is subject to subdivision (d); and (12) any other matters as shall promote the orderly and prompt conduct of the hearing." (Govt. Code, § 11511.5, subd. (b).)

- **The Central Issue**

The request for clarifications on Mr. Hamedí's responsibility and on requirements for institutional constraints under Task C.2 all relate to the Complaint's central issue: whether Mr. Hamedí committed the alleged violation. Therefore, a prehearing conference is not a proper venue to clarify the issues identified in Request paragraphs:

- (b) Is Frank Hamedí still named as a secondarily responsible party?
- (e) Other than the Deed Restriction what other institutional constraints required by Frank Hamedí to perform have not been performed?
- (g) With respect to Task C2 what is meant by the term "technical report"? Has Velcon Filters, Inc. submitted a technical report required in Task C2 of [the Order]?
- (h) Whether the Deed Restriction signed and delivered by Frank Hamedí included:
 - i. The prohibition of the use of shallow groundwater as a source of drinking water;
 - ii. Whether the Deed Restriction specified any engineering controls implemented to meet cleanup standards contained in [Order] Section B.3 for the protection of groundwater;
 - iii. Whether the Deed Restriction included a ban on the use of the site for residential development;
 - iv. The date the first proposed Deed Restriction was presented to Frank Hamedí for his signature and the date the last proposed Deed Restriction was presented to Frank Hamedí for his signature.
- (i) If any of the actions identified in Paragraph (h) (i-iii) above have not been completed which action(s) were required to be completed by Velcon Filters, Inc. and which actions were required to be completed by Frank Hamedí[?]
- (j) In what way do the words "[i]f the Regional Board, pursuant to [the Order] and any amendments, modifications, or rescissions of [the Order], replaced by a new Order of the Regional Board concerning the Burdened Property, has the effect of closing the site cleanup and thereafter a new site cleanup plan is opened due to acts or omissions of Velcon Filters, Inc., then in such event the Regional Board shall name Velcon Filters, Inc., its successors and assigns as the primary discharger responsible for all further investigations and remediation of the site" limit the Water Board's authority and discretion in determining responsible parties under the Water Code[?]
- (m) With reference to Task C11 of [the Order] (Secondarily Responsible Dischargers) how does the inclusion of the added language of the Deed Restriction limit the Water Board's authority and discretion in determining the responsible parties under the Water Code?

The Prosecution Team will address the above issues in its "Submission of Evidence and Policy Statements" as required by the Hearing Procedure. The Prosecution will submit its evidence and policy statements according to the schedule provided in the Hearing Procedure or any amendments thereto should the Water Board Advisory Team approve Mr. Hamedí's request to extend the hearing date and/or hearing deadlines.

Conclusion

The Prosecution Team does not object to Mr. Hamedi's submission of Waiver Form Option 2. The Prosecution Team objects to the request for a prehearing conference because the questions raised therein do not involve matters set forth in Government Code section 11511.5, subdivision (b).

Please contact me if you any questions. The Prosecution Team looks forward to the Advisory Team's response on the above matters.

Sincerely,



Paul Ciccarelli
Staff Counsel
Paul.Ciccarelli@waterboards.ca.gov

cc: (provided on next page)

cc: (via electronic mail only)

Advisory Team

Bruce Wolfe
Executive Officer
Bruce.Wolfe@waterboard.ca.gov

David Coupe
Senior Staff Counsel
David.Coupe@waterboards.ca.gov

Prosecution Team

Dyan C. Whyte
Assistant Executive Officer
Dyan.Whyte@waterboards.ca.gov

Lila Tang
Division Chief
Lila.Tang@waterboards.ca.gov

Brian Thompson
Section Leader
Brian.Thompson@waterboards.ca.gov

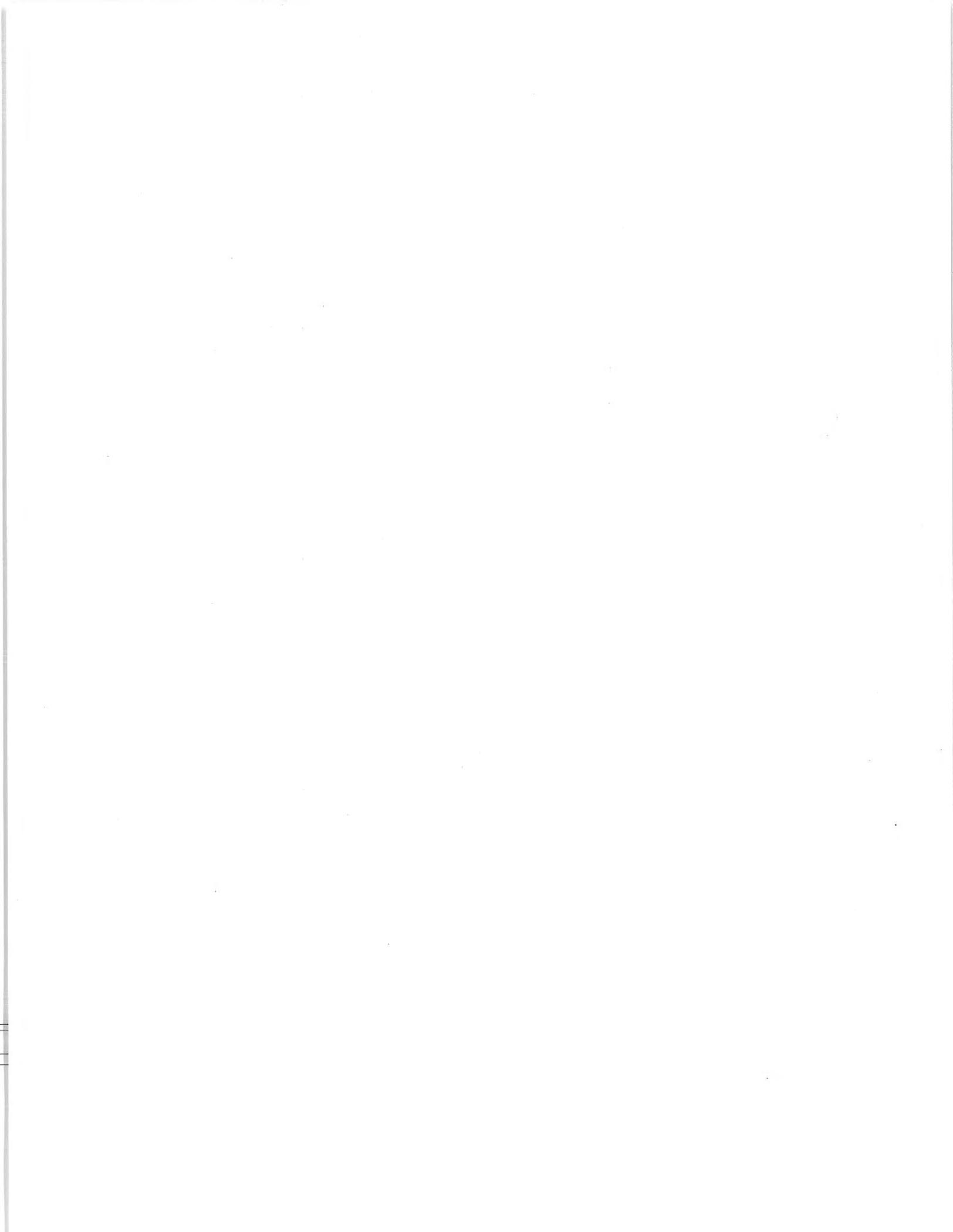
Jack Gregg
Technical Staff
Jack.Gregg@waterboards.ca.gov

Tamarin Austin
Staff Counsel
Tamarin.Austin@waterboards.ca.gov

Responsible Party

Frank Hamedi
info@envirosoiltech.com

S. Jack Chevlen
Attorney for Frank Hamedi
jackchevlen@comcast.net



Law Offices of
S. JACK CHEVLEN

5902 Deerland Court
San Jose, California 95124-6575
Telephone (408) 369-8000
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E-mail: JackChevlen@ChevlenLaw.com

September 24, 2015

VIA E-MAIL Elizabeth.Wells@Waterboards.ca.gov
& FIRST CLASS USPS MAIL

Elizabeth Wells
California Regional Water Board
San Francisco Bay Water Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: California Regional Water Quality Control Board
San Francisco Bay Region
Complaint No. R2-2015-1012
Administrative Civil Liability In the Matter of
Mr. Frank Hamedi
Violation of Site Cleanup Requirements
Former Velcon II Property, 1761 Junction Avenue,
San Jose, Santa Clara County
WDID 2 438510N01

My file no: 3470

Dear Ms. Wells:

This letter is a brief reply to the Prosecution's Team letter of September 22, 2015 whereby they consent to Mr. Hamedi's request for a time extension but object to Mr. Hamedi's request for a prehearing conference.

I need not address the issue of the request to extend the hearing date since the Prosecution Team has no objection to this request.

However, with respect to the Prosecution Team's objection to Mr. Hamedi's request for a prehearing conference the Prosecution Team's letter of September 22, 2015 states, in part, "...The purpose of a prehearing conference in agency adjudication is to clear away procedural issues and is a means for efficient case management. Prehearing conferences do not resolve central issues that should be decided by the Water Board."

The Prosecution Team's above quoted statement misstates the purpose of a prehearing conference. The purpose of a prehearing conference is to do much more than clear away procedural issues.

Elizabeth Wells
California Regional Water Board
San Francisco Bay Water Region

September 24, 2015
Page 2

Pursuant to Government Code §11511.5(b) a prehearing conference may deal with one or more of the following matters "... (3) clarification of issues... (12) any other matters as shall promote the orderly and prompt conduct of the hearing..."

Government Code §11511.5(e) states "The administrative law judge shall issue a prehearing order incorporating the matters determined at the prehearing conference. The administrative law judge may direct one or more of the parties to prepare a prehearing order."

As succinctly demonstrated above the purpose of a prehearing conference goes far beyond clearing away procedural issues.

The Prosecution Team's letter of September 22, 2015 at Page 3 identifies seven (7) different issues requested by Mr. Hamedi to be addressed at a prehearing conference and at the bottom of Page 3 states "The Prosecution Team will address the above issues in its 'Submission of Evidence and Policy Statements' as required by the Hearing Procedure..."

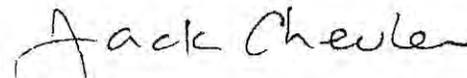
At a minimum Frank Hamedi does not want to rely on the representation the Prosecution Team will address the central issues identified on Page 3, Paragraphs (b), (e), (g), (h) and its subparagraphs, (i), (j) and (m) in its letter dated September 22, 2015 in its Submission of Evidence and Policy Statements.

Rather, Frank Hamedi again at a minimum requests he have the answers to these questions from the Prosecution Team through a prehearing conference and order thereon.

The denial of Mr. Hamedi's request for a prehearing conference will certainly prejudice Mr. Hamedi.

The granting of a prehearing conference will not in any manner whatsoever prejudice the Prosecution Team.

Very truly yours,


S. Jack Chevlen

SJC:db

Cc via mail & e-mail: Brian Thompson, Section Leader – Brian.Thompson@waterboards.ca.gov

Cc via mail & e-mail: Paul Ciccarelli, Staff Counsel – Paul.Ciccarelli@waterboards.ca.gov

Cc e-mail only: Client

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 22

Correspondence from October 2015:

- October 2, 2015 Advisory Team rulings.
 - October 20, 2015 Advisory Team rulings.
 - October 23, 2015 – Letter from Mr. Ciccarelli responding to Advisory Team rulings with a revised Hearing Procedure jointly submitted by the Designated Parties.
 - October 29, 2015 Advisory Team issued Revised Hearing Procedure with deadlines for a January 13, 2016 hearing.
-

Gregg, Jack@Waterboards

From: Wolfe, Bruce@Waterboards
Sent: Friday, October 02, 2015 3:29 PM
To: Ciccarelli, Paul@Waterboards; Jack Chevlen
Cc: Whyte, Dyan@Waterboards; Tang, Lila@Waterboards; Thompson, Brian@Waterboards; Gregg, Jack@Waterboards; Austin, Tamarin@Waterboards; Frank Hamedi; Coupe, David@Waterboards; Wells, Elizabeth@Waterboards
Subject: Pre-hearing Rulings concerning ACL Complaint No. R2-2015-1012

Mr. Ciccarelli and Mr. Chevlen:

I. Background

On September 2, 2015, the San Francisco Bay Regional Water Quality Control Board's Prosecution Team issued Administrative Civil Liability Complaint No. R2-2015-1012. The complaint proposes an administrative civil liability of \$65,600 for alleged violations of Water Code section 13350, subdivision (e)(1).

This email memorializes rulings of the Regional Water Board's Advisory Team in response to recent correspondence lodged by Mr. Chevlen and Mr. Ciccarelli.

II. Rulings

Request: The Advisory Team is in receipt of Mr. Chevlen's letter dated September 10, 2015. The letter requests the removal of Mr. Chevlen as a designated party as noted in the Hearing Procedure. The Advisory Team is aware of no objection to this request.

Ruling: The Advisory Team directs the Prosecution Team to remove Mr. Chevlen as a designated party from the Hearing Procedure and to repost a revised version of the Hearing Procedure to the Regional Water Board's website.

Request: In correspondence dated September 15, 2015, Mr. Chevlen submitted a waiver form and selected Option 2 to request a time extension and to waive the 90-day hearing requirement. The attachment to the waiver form asks for a 30-day extension from November 18 until December 18, 2015. The reason for the time extension is to facilitate Mr. Chevlen's request for a pre-hearing conference. In correspondence dated September 22, 2015, the Prosecution Team notes that it does not object to the extension request and respectfully requests that the Advisory Team approve the time extension and determine the appropriate amendments to the Hearing Procedure.

Ruling: The Advisory Team **GRANTS** Mr. Chevlen's request for an extension and **DENIES** the Prosecution Team's request to determine the appropriate amendments. Consequently, the dates referenced in the Hearing Procedure are withdrawn. The Designated Parties are directed to meet and confer to establish new deadlines and a new hearing date pertaining ACL Complaint No. R2-2015-1012 and to provide a revised Hearing Procedure to the Advisory Team for its consideration no later than October 16, 2015. If no Hearing Procedure with agreed-upon dates is provided by the Parties by that time, the Advisory Team shall establish new dates accordingly and direct the Prosecution Team to post the new Hearing Procedure to the Board's website. The Prosecution Team is also directed to post the signed waiver form Mr. Chevlen submitted on September 15, 2015, to the Board's website.

Request: The Advisory Team is also in receipt of Mr. Chevlen's letter dated September 15, 2015, requesting a pre-hearing conference. The letter also includes a list of issues for discussion. Mr. Ciccarelli responded in a letter dated September 22, 2015, and objected to Mr. Chevlen's request for a pre-hearing conference. Mr. Ciccarelli also noted that the request seeks clarifications concerning what he considers irrelevant issues or what he considers to be the central

issue, namely, whether Mr. Hamedi committed an alleged violation of Task C.2 in Final Site Cleanup Requirements Order No. 01-108. Mr. Chevlen responded to Mr. Ciccarelli in a letter dated September 24, 2015, and reiterated his request for a pre-hearing conference.

Ruling: Without ruling on whether various issues raised are relevant or not, the Advisory Team **DENIES** Mr. Chevlen's request for a pre-hearing conference. The Advisory Team believes that it would be premature to conduct a pre-hearing conference at this time. As noted previously, an extension has been granted concerning the Regional Water Board's consideration of this matter, and consequently new deadlines and a hearing date need to be established accordingly. After the Hearing Procedure has been revised, approved, and posted to the Board's website, either Mr. Chevlen or the Prosecution Team may request a pre-hearing conference at that time or at some future date prior to the Board's consideration of this matter. It should be noted that Mr. Chevlen and the Prosecution Team are free to meet and confer concerning the issues raised in Mr. Chevlen's letter of September 15, 2015.

Please note that there is no affirmative legal obligation or duty to conduct a pre-hearing conference, but one or more pre-hearing conferences may be requested by a designated party or by the Advisory Team for the purposes noted in Government Code section 11511.5, subdivision (b). In addition, if a pre-hearing conference is scheduled at a future date, the Advisory Team is not a designated party, and as a result any communications where the Advisory Team is present would not be settlement-confidential or privileged.

Questions of strictly a procedural nature may be addressed to Ms. Wells, with a copy to me and Mr. Coupe.

Bruce H. Wolfe
Executive Officer and Member of the Advisory Team

Gregg, Jack@Waterboards

From: Wolfe, Bruce@Waterboards
Sent: Tuesday, October 20, 2015 6:28 PM
To: Ciccarelli, Paul@Waterboards; Jack Chevlen
Cc: Whyte, Dyan@Waterboards; Tang, Lila@Waterboards; Thompson, Brian@Waterboards; Gregg, Jack@Waterboards; Austin, Tamarin@Waterboards; Frank Hamed; Coupe, David@Waterboards; Wells, Elizabeth@Waterboards
Subject: Prosecution Team Request from Mr. Ciccarelli Dated October 16, 2015 Concerning ACLC R2-2015-1012

Mr. Ciccarelli and Mr. Chevlen:

Request: The Advisory Team is in receipt of Mr. Ciccarelli's October 16 email. This email requests that the Advisory Team postpone any decisions concerning ACLC R2-2015-1012 until October 23 and that the Parties anticipate providing a joint response to the Advisory Team at that time.

Ruling: In response to Mr. Ciccarelli's request, and upon the receipt of no objection from Mr. Chevlen, the Prosecution Team's request is hereby GRANTED. The Advisory Team will postpone any future pre-hearing rulings concerning ACL R2-2015-1012 until on or after October 23.

Bruce H. Wolfe
Executive Officer and Member of the Advisory Team

Gregg, Jack@Waterboards

From: Ciccarelli, Paul@Waterboards
Sent: Friday, October 23, 2015 9:19 AM
To: Wolfe, Bruce@Waterboards
Cc: Whyte, Dyan@Waterboards; Tang, Lila@Waterboards; Thompson, Brian@Waterboards; Gregg, Jack@Waterboards; Austin, Tamarin@Waterboards; Coupe, David@Waterboards; Wells, Elizabeth@Waterboards; Jack Chevlen; Frank Hamedi
Subject: RE: Prosecution Team Request from Mr. Ciccarelli Dated October 16, 2015 Concerning ACLC R2-2015-1012
Attachments: ACL Complaint R2-2015-1012 Hearing Procedure_REVISED_102315.pdf; ACL Complaint R2-2015-1012 Hearing Procedure_REVISED_102315.doc
Importance: High

Dear Advisory Team,

Pursuant to your pre-hearing rulings on ACLC No. R2-2015-1012, the Parties are jointly submitting a Revised Hearing Procedure (attached in .pdf and .doc format) for your consideration. The Revised Hearing Procedure establishes new deadlines for the Board's hearing on January 13, 2016. After your approval, the Prosecution Team will post the Revised Hearing Procedure to the Board's website.

Sincerely,

*Paul D. Ciccarelli, Attorney
Office of Enforcement
State Water Resources Control Board
1001 I Street, P.O. Box 100
Sacramento, CA 95812
Tel.: 916.322.3227
Email: Paul.Ciccarelli@Waterboards.ca.gov*

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From: Wolfe, Bruce@Waterboards
Sent: Tuesday, October 20, 2015 6:28 PM
To: Ciccarelli, Paul@Waterboards; Jack Chevlen
Cc: Whyte, Dyan@Waterboards; Tang, Lila@Waterboards; Thompson, Brian@Waterboards; Gregg, Jack@Waterboards; Austin, Tamarin@Waterboards; Frank Hamedi; Coupe, David@Waterboards; Wells, Elizabeth@Waterboards
Subject: Prosecution Team Request from Mr. Ciccarelli Dated October 16, 2015 Concerning ACLC R2-2015-1012

Mr. Ciccarelli and Mr. Chevlen:

Request: The Advisory Team is in receipt of Mr. Ciccarelli's October 16 email. This email requests that the Advisory Team postpone any decisions concerning ACLC R2-2015-1012 until October 23 and that the Parties anticipate providing a joint response to the Advisory Team at that time.

Ruling: In response to Mr. Ciccarelli's request, and upon the receipt of no objection from Mr. Cheven, the Prosecution Team's request is hereby GRANTED. The Advisory Team will postpone any future pre-hearing rulings concerning ACL R2-2015-1012 until on or after October 23.

Bruce H. Wolfe

Executive Officer and Member of the Advisory Team

Gregg, Jack@Waterboards

From: Wolfe, Bruce@Waterboards
Sent: Thursday, October 29, 2015 7:01 PM
To: Ciccarelli, Paul@Waterboards; Jack Chevlen
Cc: Whyte, Dyan@Waterboards; Tang, Lila@Waterboards; Thompson, Brian@Waterboards; Gregg, Jack@Waterboards; Austin, Tamarin@Waterboards; Frank Hamed; Coupe, David@Waterboards; Wells, Elizabeth@Waterboards; Ajello, Marnie@Waterboards
Subject: Revised Hearing Procedure for ACLC R2-2015-1012
Attachments: ACL R2-2015-1012 Hearing Procedure_REVISED - 10-29-15.pdf

Mr. Ciccarelli and Mr. Chevlen:

The Advisory Team has reviewed the proposed Revised Hearing Procedure provided in Mr. Ciccarelli's October 23 email and issues the attached final pdf copy of the Revised Hearing Procedure. I request that the Prosecution Team ensure that the Revised Hearing Procedure is posted on the Water Board's website.

The Advisory Team made four changes to the proposed Revised Hearing Procedure:

1. A specific deadline time of 12 p.m. has been added to the December 24 submittal deadline given that that day is Christmas Eve.
2. A new date has been provided of December 4 for interested persons to submit written, non-evidentiary policy statements. While we recognize there were no submittals received by the original date of October 2, it is appropriate to extend the time to receive submittals from interested persons.
3. Language was added to make it clear that the Advisory Team issued the Revised Hearing Procedure on October 29.
4. Marnie Ajello has been added as a member of the Advisory Team.

Please include Ms. Ajello on all future correspondence (email or otherwise) to the Advisory Team concerning the Hamed matter.

Bruce H. Wolfe
Executive Officer and Member of the Advisory Team



San Francisco Bay Regional Water Quality Control Board

REVISED HEARING PROCEDURE FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

R2-2015-1012
ISSUED TO
FRANK HAMEDI
FORMER VELCON II PROPERTY, 1761 JUNCTION AVENUE
SAN JOSE, SANTA CLARA COUNTY

HEARING SCHEDULED FOR
JANUARY 13, 2016, HEARING

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) has issued an Administrative Civil Liability Complaint (Complaint) pursuant to California Water Code section 13323 against Frank Hamedí (Responsible Party) alleging that he violated Task C.2 of San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Final Site Cleanup Requirements Order 01-108 (Order). The Complaint proposes that a civil liability in the amount of \$65,600 be imposed as authorized by Water Code section 13350.

On September 19, 2015, the Responsible Party, through its attorney Mr. Jack Chevlen (Mr. Chevlen), submitted the Complaint's waiver form and selected Option 2 to waive the 90-day hearing requirement and to request a time extension for the hearing date and/or hearing deadlines. Mr. Chevlen also requested that his name be removed as a designated party in these proceedings. On October 2, 2015, the Advisory Team granted both requests. This Revised Hearing Procedure, issued by the Advisory Team on October 29, 2015, establishes new deadlines and a new hearing date and removes Mr. Chevlen as a designated party to these proceedings. All revisions are shown in red and underlined or strikethrough text.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. At the hearing, the Regional Water Board will consider whether to issue an administrative civil liability (ACL) order assessing the liability proposed in the Complaint, or a higher or lower amount, reject the proposed liability, or refer the matter to the Attorney General for judicial enforcement. An agenda for the Regional Water Board meeting where the hearing will be held will be issued at least ten days before the meeting and posted on the Regional Water Board's web site (<http://www.waterboards.ca.gov/sanfranciscobay/>).

DR. TERRY F. YOUNG, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

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

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been pre-approved by the Regional Water Board Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Water Board may be found at Title 23 of the California Code of Regulations (CCR), Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to the hearing.

The procedures and deadlines herein may be amended by the Advisory Team at its discretion.
~~Any objections to this Hearing Procedure must be received by Elizabeth Wells by September 14, 2015 or they will be waived.~~

Hearing Participants

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross-examine witnesses, or be subject to cross-examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Water Board, its staff or others, at the discretion of the Regional Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) The Regional Water Board Prosecution Team
- (2) Frank Hamedi, referred to as the Responsible Party
~~S. Jack Chevlen, 5902 Deerland Court, San Jose, CA 95124-6575~~

Requesting Designated Party Status

~~Persons who wish to participate in the hearing as a designated party (who have not been designated as parties above) must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on September 14, 2015 to Elizabeth Wells. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person’s interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on September 17, 2015. The parties will be notified by 5 p.m. on September 22, 2015 in writing whether the request has been granted or denied.~~

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Water Board (Prosecution Team) have been separated from those who will provide advice to the Regional Water Board (Advisory Team). Members of the Advisory Team and the Prosecution Team are:

Advisory Team:

Bruce Wolfe, Executive Officer, Bruce.Wolfe@waterboards.ca.gov, 510-622-2314

David Coupe, Senior Staff Counsel, Office of Chief Counsel,

David.Coupe@waterboards.ca.gov, 916-327-4439

Marnie Ajello, Staff Counsel, Office of Chief Counsel, Marnie.Ajello@waterboards.ca.gov

Elizabeth Wells, Staff, Elizabeth.Wells@Waterboards.ca.gov, 510-622-2440

Address: California Regional Water Board, San Francisco Bay Region, 1515 Clay Street,
Suite 1400, Oakland, CA 94612

Primary Contact: Elizabeth Wells

Prosecution Team:

Dyan C. Whyte, Assistant Executive Officer, Dyan.Whyte@waterboards.ca.gov, 510-622-2441

Lila Tang, Division Chief, Lila.Tang@waterboards.ca.gov, 510-622-2425

Brian Thompson, Section Leader, Brian.Thompson@waterboards.ca.gov, 510-622-2422

Jack Gregg, Technical Staff, Jack.Gregg@waterboards.ca.gov, 510-622-2437

Tamarin Austin, Staff Counsel, Tamarin.Austin@waterboards.ca.gov, 916-341-5171

Address: California Regional Water Board, San Francisco Bay Region, 1515 Clay Street,
Suite 1400, Oakland, CA 94612

Paul Ciccarelli, Staff Counsel, Paul.Ciccarelli@waterboards.ca.gov, 916-322-3227

Address: State Water Resources Control Board, 1001 I Street, P.O. Box 100, Sacramento, CA
95812

Primary Contact: Brian Thompson

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Water Board in other, unrelated matters, but they are not advising the Regional Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and

are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 30 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than December 24, 2015, by 12 p.m. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the designated party would like the Regional Water Board to consider. Evidence and exhibits already in the public files of the Regional Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of designated party members, title and/or role, and contact information (email addresses, addresses, and phone numbers).
4. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the qualifications of each expert witness.
5. (Responsible Party only) If the Responsible Party intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Water Board), the Responsible Party should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit one hard copy and one electronic copy of the above information not already included in or with the Complaint to Elizabeth Wells and other designated parties no later than December 4, 2015, by 5 p.m.

The remaining designated parties shall submit one hard copy and one electronic copy of the above information to Elizabeth Wells and other designated parties no later than December 14, 2015, by 5 p.m.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit one hard copy and one electronic copy to Elizabeth Wells and the other designated parties no later than December 24, 2015, by 12 p.m. Rebuttal information shall be limited to the scope of the information previously submitted

by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team to Elizabeth Wells and each designated party no later than December 4, 2015, by 5 p.m. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

For all submissions, the Advisory Team may require additional hard copies for those submittals that are either lengthy or difficult and expensive to reproduce.

In accordance with Title 23, CCR, Section 648.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Regional Water Board and will not be included in the administrative record for this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to Elizabeth Wells and all other designated parties no later than December 24, 2015, by 12 p.m. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Water Board's office. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Water Board Chair. Many of these documents are also posted on the Regional Water Board's web site. Although the web page is updated regularly, to assure access to the latest information, you may contact Brian Thompson.

Questions

Questions concerning this proceeding may be addressed to Elizabeth Wells.

IMPORTANT DEADLINES

Note: the Regional Water Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the Responsible Party waives that requirement.

These deadlines apply to all cases upon issuance of the Complaint whether or not the 90-day hearing requirement is waived.

- September 2, 2015 Prosecution Team issues the Complaint to Discharger
- September 14, 2015 Deadline for objections, if any, to this Hearing Procedure
- September 14, 2015 Deadline for requests for designated party status
- September 17, 2015 Deadline for oppositions to requests for designated party status
- September 22, 2015 Advisory Team issues decision on requests for designated party status, if any
- October 2, 2015 Discharger's deadline for waiving right to hearing
- December 4, 2015 Interested persons deadline for submission of written non-evidentiary policy statements

These deadlines apply to cases scheduled to be heard by the Regional Water Board (actual dates are subject to change if the 90-day hearing requirement is waived).

October 29, 2015

Revised Hearing Procedure issued by the Advisory Team

December 4, 2015

Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements"

December 14, 2015

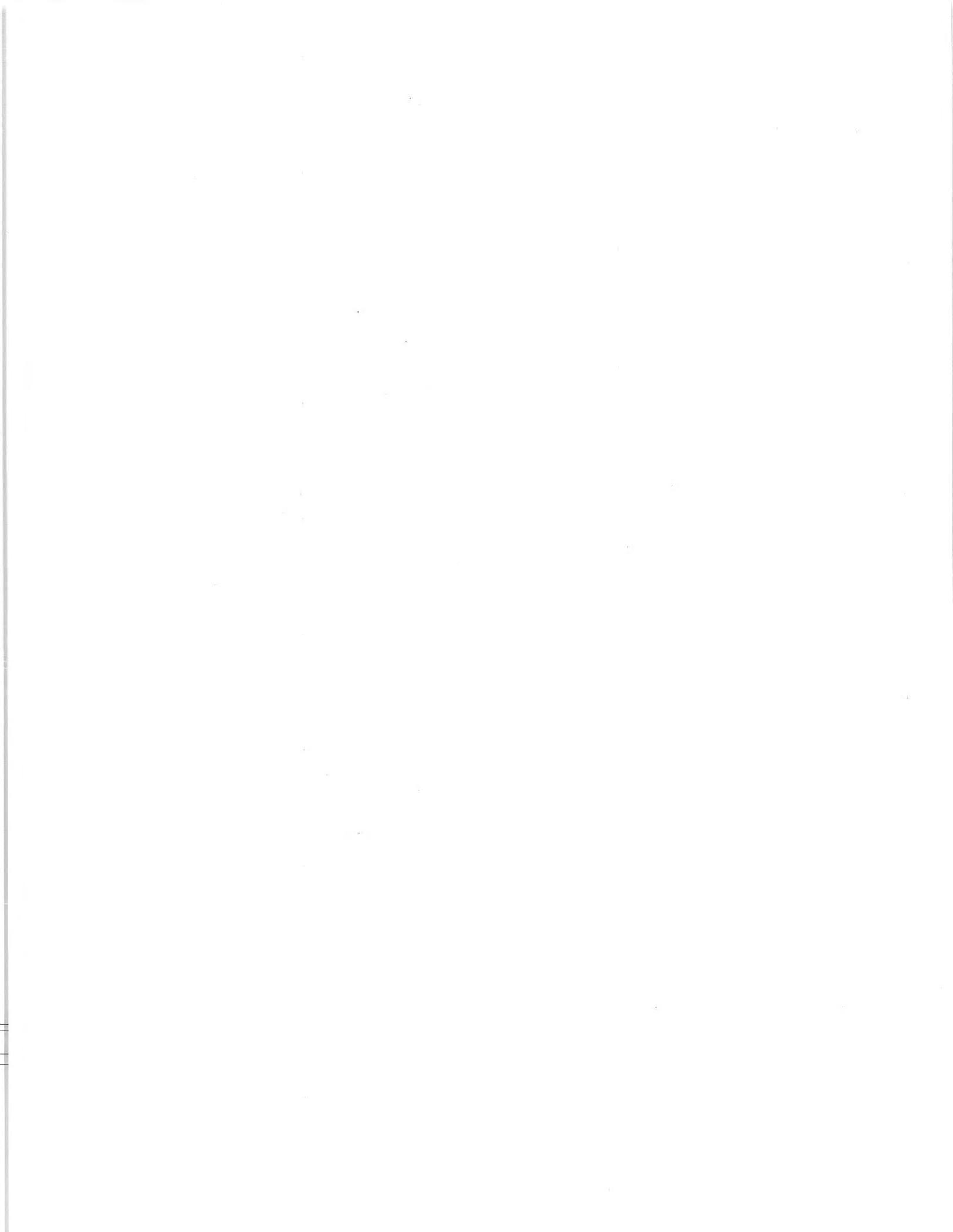
Remaining designated parties' deadline for all information required under "Submission of Evidence and Policy Statements"

December 24, 2015, by 12 p.m.

All designated parties' deadline for rebuttal information, evidentiary objections, and requests for additional time, if any

January 13, 2016

Regional Water Board Hearing



ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 23

Hand-delivered documents November 20, 2015:

- November 20, 2015 – hand delivered draft deed restriction signed and notarized by the property owners.
- November 20, 2015 – hand-delivered Notice of Default and Election to Sell for Mr. Hamedi's residence.

Recording Requested By:

Frank Hamed-Fard and
Rosemary Hamed-Fard,
Husband and Wife, as Joint Tenants
131 Old Tully Road
San Jose, CA 95111-1921

When Recorded, Mail To:

California Regional Water Quality Control Board,
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

Frank Hamed-Fard and
Rosemary Hamed-Fard,
Husband and Wife, as Joint Tenants
131 Old Tully Road
San Jose, CA 95111-1921

**COVENANT AND ENVIRONMENTAL
RESTRICTION ON PROPERTY**

1761 Junction Avenue
San Jose, Santa Clara County

This Covenant and Environmental Restriction on Property ("Covenant") is made as of the ____ day of _____, 2015 by Frank Hamed-Fard and Rosemary Hamed-Fard, Husband and Wife, as Joint Tenants (collectively, "Covenantor") who is Owner of record of that certain property situated at 1761 Junction Avenue, City of San Jose, County of Santa Clara, State of California, which further is known by Assessor's Parcel Number APN 237-09-145 (the "Burdened Property") which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference, for the benefit of the California Regional Water Quality Control Board, San Francisco Bay Region (the "Regional Board"), with reference to the following facts:

A. Nature of Covenant. This Covenant is required by Order of the Regional Board because the Burdened Property and the groundwater underlying it is contaminated by hazardous materials as defined in section 25260 of the Health and Safety Code.

B. Contamination of the Burdened Property. The soil, soil vapor, and groundwater on the Burdened Property were contaminated by Velcon Filters, Inc.'s historic operations at the

Burdened Property prior to the sale of the Burdened Property to Covenantor. These operations included use of jet fuel used for testing of fuel filters that were stored onsite in underground tanks. An onsite wastewater sump was also used. Major fuel spills occurred at the site in 1975 and 1976 and other smaller spills occurred over the years prior as a result of Velcon operations at the Burdened Property. The contamination on the Burdened Property consists primarily of trichloroethylené and its breakdown products, cis-1,2 dichloroethylene, and vinyl chloride; and petroleum hydrocarbons – jet fuel. Remediation has included excavation of underground tanks, groundwater extraction and treatment, and in-situ bioremediation.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Exposure to these contaminants could take place via in-place contact or ingestion of groundwater. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Disclosure and Sampling. Full and voluntary disclosure of the presence of hazardous materials on the Burdened Property has been made by Velcon Filters, Inc. and their consultants to the Board and extensive sampling of the Burdened Property has been conducted by Velcon Filters, Inc. and their consultants.

E. Use of Burdened Property. The Board desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that might result from any hazardous materials that might remain deposited on portions of the Burdened Property.

ARTICLE I

GENERAL PROVISIONS.

1.1. Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions, and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions: (a) are imposed upon the entire Burdened Property, unless expressly stated as applicable to a specific portion of the Burdened Property; (b) run with the land pursuant to section 1471 of the Civil Code; and (c) are enforceable by the Board.

1.2. Concurrence of Owners and Lessees Presumed. All purchasers, lessees, and possessors of all or any portion of the Burdened Property shall be deemed by their purchase, lease, or possession of the Burdened Property to be bound by the Restrictions and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions herein established

must be adhered to for the benefit of the Board and all Owners and Occupants of the Burdened Property, and that the interest of all Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3. Incorporation into Deeds and Leases. The Board desires and covenants that the Restrictions shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant has been attached to or incorporated into any given deed or lease.

1.4. Purpose. It is the purpose of this instrument to convey to the Regional Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II **DEFINITIONS**

2.1. Regional Board. "Regional Board" shall mean the California Regional Water Quality Control Board, San Francisco Region and shall include its successor agencies, if any.

2.2. Improvements. "Improvements" shall mean all buildings, structures, roads, driveways, gradings, re-gradings, and paved areas, constructed or placed upon any portion of the Burdened Property.

2.3. Occupant or Occupants. "Occupant" or "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the right to use and/or occupy all or any portion of the Burdened Property.

2.4. Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and Covenantor's successors in interest who hold title to all or any portion of the Burdened Property.

ARTICLE III **DEVELOPMENT, USE, AND CONVEYANCE OF THE BURDENED PROPERTY**

3.1. Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

- a. Development and use of the Burdened Property shall be restricted to industrial, commercial, or office space;
- b. No residence for human habitation shall be authorized on the Burdened Property;

- c. No hospitals shall be authorized on the Burdened Property;
- d. No schools for persons under twenty-one (21) years of age shall be authorized on the Burdened Property;
- e. No care or community centers for children or senior citizens that would involve the regular congregation of children or senior citizens shall be authorized on the Burdened Property;
- f. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by the Owner, Owner's agent, Occupant, Occupant's agent or other persons acting pursuant to Regional Board orders in accordance with all applicable provisions of local, state, and federal law. If the excavation work resulted from an emergency, the Owner or Occupant or other person acting pursuant to Regional Board orders shall notify the Regional Board by registered mail within ten (10) working days of both the date of commencement of such excavation and after the date of completion;
- g. All uses and development of the Burdened Property shall be consistent with any applicable Regional Board Order or Risk Management Plan which is hereby incorporated herein by reference, and including future amendments thereto. All uses and development shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Regional Board, unless otherwise expressly authorized in writing by the Regional Board;
- h. No Owner, Occupant shall drill, bore, otherwise construct, or use a well for the purpose of extracting shallow ground water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly authorized in writing by the Regional Board; nor shall the Owner or Occupant authorize or engage any third party to do such acts;
- i. The Owner shall notify the Regional Board of each of the following: (1) the type, cause, location, and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Regional Board, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions; and (2) the type and date of repair of such disturbance. Notifications to the Regional Board shall be made by registered mail within ten (10) working days of both the date of discovery of such disturbance and the date of completion of repairs;
- j. The Covenantor agrees that the Regional Board, and any persons acting pursuant to Regional Board orders, shall have reasonable access to the Burdened Property

for the purposes of inspection, maintenance, or monitoring as provided in Division 7 of the Water Code and in advance notification to Conventor.

k. No Owner, Occupant or any other person shall act in any manner that threatens or is likely to aggravate or contribute to the existing contaminated conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of any capped areas.

3.2. Enforcement. Failure of an Owner, Occupant or any other person to comply with any of the Restrictions set forth in Paragraph 3.1 shall be grounds for the Regional Board, by the authority of this Covenant, to require that the Owner, Occupant or other person to modify or remove, or cause to be modified or removed, any Improvements constructed in violation of that Paragraph. Violation of this Covenant shall also be grounds for the Regional Board to file civil actions against the Owner, Occupant or any person who violates the restrictions as provided by law.

3.3. Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument that shall accompany all purchase agreements or ground leases relating to the Burdened Property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the groundwater under the property, and is subject to a Covenant and Environmental Restriction on Property dated as of November __, 2015, and recorded on ____, 2015, in the Official Records of Santa Clara County, California, as Document No. ____, which Covenant and Environmental Restriction on Use of Property imposes certain covenants conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV

VARIANCE AND TERMINATION

4.1. Variance. Any Owner or, with the Owner's written consent, any Occupant may apply to the Regional Board for a written variance from the provisions of this Covenant.

4.2. Termination. Any Owner or, with the Owner's written consent, any Occupant may apply to the Regional Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3. Term. Unless terminated in accordance with Paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V
MISCELLANEOUS

5.1. **No Dedication Intended.** Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2. **Notices.** Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective: (a) when delivered, if personally delivered to the person being served or an official of a government agency being served; or (b) three (3) business days after deposit in the mail if mailed by U.S. mail, postage paid certified, return receipt requested, addressed:

If to Covenantor:

Frank Hamedi-Fard and Rosemary Hamedi-Fard,
Husband and Wife, as Joint Tenants
131 Old Tully Road
San Jose, CA 95111-1921

If to Regional Board:

California Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

In both cases, with a copy to:

Velcon Filters, Inc
Attn: David Taylor
3320 Camels Ridge Lane
Colorado Springs, CO 80904

5.3. **Partial Invalidity.** If any portion of the Restrictions or terms set forth herein is determined by a court having jurisdiction to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

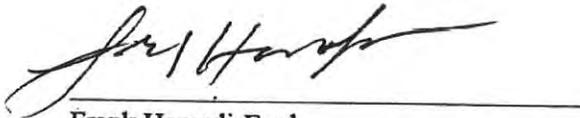
5.4. **Article Headings.** Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not part of the Covenant.

5.5. **Recordation.** This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of Santa Clara within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to preserve and implement the purpose of this instrument and the policies and purposes of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS HEREOF, the parties execute this Covenant as of the date set forth above.



Frank Hamedi-Fard

Date: 11/13/2015



Rosemary Hamedi-Fard

Date: 11/13/2015

Agency:

State of California
Regional Water Quality Board,
San Francisco Bay Region

By: _____

Title: Executive Officer

Date: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

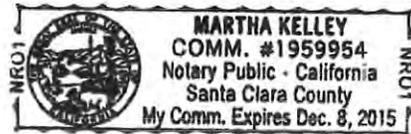
State of California
County of Santa Clara

On NOV 13, 2015 (insert date), before me, MARTHA KELLEY 1 (insert name and title of the officer), personally appeared FARHANG HAMEDIFARD [Covenantor], who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Martha Kelley (Seal)



State of California
County of Santa Clara

On NOV 13, 2015 (insert date), before me, MARTHA KELLEY 1 (insert name and title of the officer), personally appeared ROSEMARY HAMEDIFARD [Executive Officer], who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Martha Kelley (Seal)



EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

DESCRIPTION

All that certain Real Property in the City of San Jose, County of Santa Clara, State of California, described as follows:

Being a portion of that certain Parcel of land conveyed to the Bank of America, National Trust and Savings Association, Trustee for Engineering Fabrications Incorporated Profit Sharing Retirement Plan, a trust by Grant Deed recorded April 20, 1966, in Book 7353, Official Records, Page 260, Santa Clara County Records, described as follows:

Commencing at a nail in the center line of Junction Avenue, 80 feet wide, distant thereon South 38 deg. 26' East 899.83 feet from a monument at the intersection thereof with the center line of East Brokaw Road, 60 feet wide; thence parallel with said center line of East Brokaw Road, South 51 deg. 17' 04" West, 40.00 feet to an iron pipe in the Southwesterly line of Junction Avenue, and the True Point of Beginning of the parcel of land to be described; thence continuing parallel with said center line of East Brokaw Road, South 51 deg. 17' 04" West 250.18 feet to the intersection thereof with the Northeasterly line of that certain parcel of land conveyed to Velcon Filters, Inc., a California Corporation, by Grant Deed recorded October 22, 1970, in Book 9095, official Records, Page 524, Santa Clara County Records; thence along said Northeasterly line of that certain Parcel of land conveyed to Velcon Filters, Inc., S. 41 deg. 21' 07" E. 112.28 feet to the intersection thereof with the Southeasterly line of said certain Parcel of Land conveyed to Velcon Filters, Inc., thence along the Northeasterly prolongation of the said Southeasterly line of that certain parcel of land conveyed to Velcon Filters, Inc., North 48 deg. 40' 05" East, 244.78 feet to the intersection thereof with the said Southwesterly line of Junction Avenue; thence along said Southwesterly line of Junction Avenue, North 38 deg. 26' West, 100.90 feet to the true point of beginning.

Ability to Pay ~ Individual, Sole Proprietorship

California State Water Resources Control Board, Office of Enforcement

Name of Discharger _____

Name of Spouse _____

Address of Discharger _____

County of Residence _____

This form requests information regarding your financial status. The data will be used to evaluate your ability to pay for environmental clean-up or penalties.

Failure to provide this information may result in denial of your claim of inability to pay.

Certification

Under penalties of perjury, I declare that this statement and the attachments are true, correct, and complete to the best of my knowledge and belief. I further understand that I will be subject to prosecution by the California Attorney General to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

Signature

Date

1. Income:

(1) Tax Status: If you are married and filing separately, please submit the last 3 years of signed federal and state income tax returns for yourself and your spouse. Otherwise, submit the last 3 years of your tax returns.

(2) Active Military: If you or your spouse has been or is on active duty and have received combat pay, please send the W2 statements for the last 3 years.

2. Financial Institutions: Banks (insured by FDIC or not), Credit Unions, Savings Institutions, and any organization that facilitates your or your spouse's financial transactions. Include any overseas financial institutions.

Provide the following information for every institution with which you do business.

(1) Financial Institution #1 Name on the account (yours, your spouse, both) _____

(1.1) Institution Name, Full Mailing Address

(1.2) For this institution, provide monthly summary statements the institution issues for the past 24 months. Each summary statement must list all accounts (savings, checking, credit line, loans) and the balance for each account.

(2) Financial Institution #2 Name on the account (yours, your spouse, both) _____

(2.1) Name, Full Mailing Address

(2.2) For this institution, provide monthly summary statements the institution issues for the past 24 months. Each summary statement must list all accounts (savings, checking, credit line, loans) and the balance for each account.

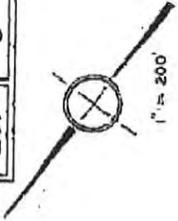
(3) Financial Institution #3 Name on the account (yours, your spouse, both) _____

(3.1) Name, Full Mailing Address

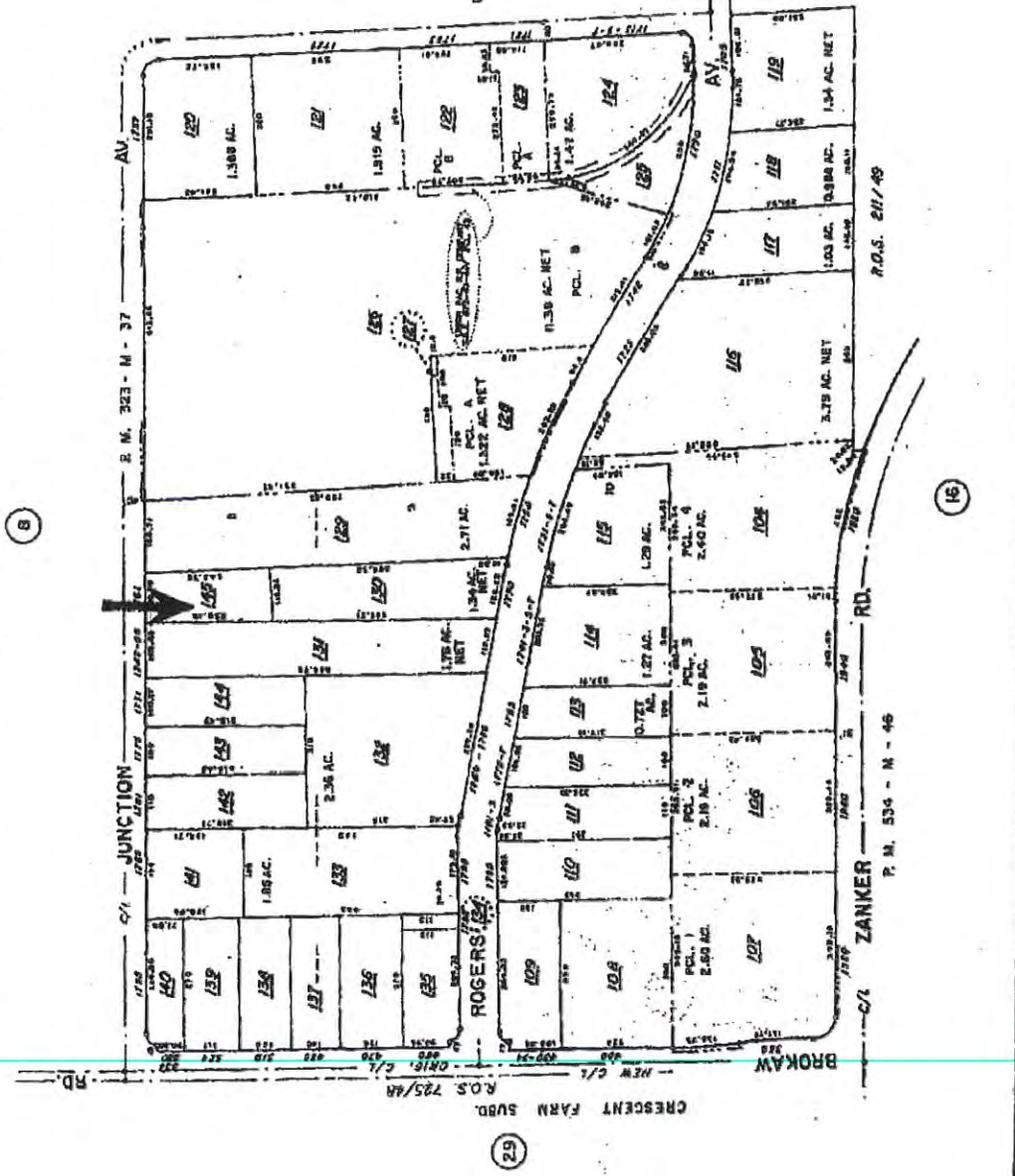
(3.2) For this institution, provide monthly summary statements the institution issues for the past 24 months. Each summary statement must list all accounts (savings, checking, credit line, loans) and the balance for each account.

(4) Use additional paper and this format if you or your spouse use more than three financial institutions.

BOOK 237 PAGE 9

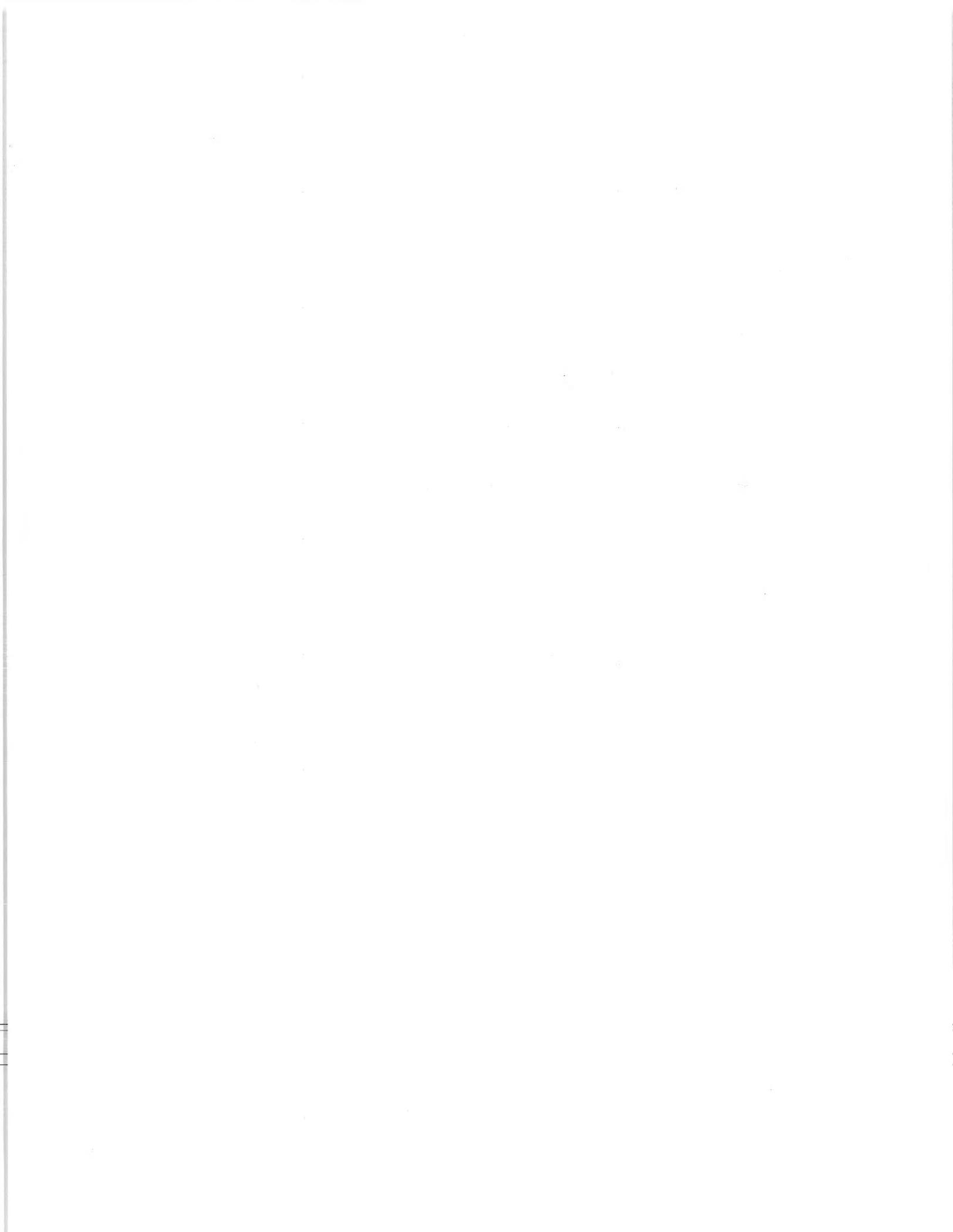


OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA



LAWRENCE E. STONE - ASSESSOR
Certified map for investment purposes only
Compiled under R. S. T. Code, Sec. 327.
Effective for Year 2004-2005

This is not a survey of the land and is inserted as a matter of information only, and while the same is compiled from information we believe to be correct, no liability is assumed by Chicago Title Company as to the correctness of said information.



DOCUMENT: 23050225

Pages: 4



23050225

Fees . . .	34.00
Taxes00
Copies . .	.00
AMT PAID	34.00

Recording requested by:
Quality Loan Service Corp

When recorded mail to:
Quality Loan Service Corporation
411 Ivy Street
San Diego, CA 92101

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
FIRST AMER NDTS - SIMPLEFILE

RDE # 001
8/12/2015
01:16 PM

TS No.: CA-15-681597-JB
Order No.: 8575975
APN No.: 583-33-023

Space above this line for Recorder's use

IMPORTANT NOTICE
NOTICE OF DEFAULT AND ELECTION TO SELL
UNDER DEED OF TRUST

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED TO THE COPY PROVIDED TO THE MORTGAGOR OR TRUSTOR (Pursuant to Cal. Civ. Code § 2923.3)

注：本文件包含一个信息摘要

참고사항: 본 첨부 문서에 정보 요약서가 있습니다

NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO
TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP
LƯU Ý: KÈM THEO ĐẦY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date this Notice of Default may be recorded (which date of recordation appears on this notice). This amount is **\$27,791.87** as of **8/11/2015** and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the

TS No.: CA-15-681597-JB

time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than three-months after this Notice of Default is recorded) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

BANK OF THE WEST
C/O Quality Loan Service Corporation
411 Ivy Street
San Diego, CA 92101
619-645-7711

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

NOTICE IS HEREBY GIVEN: That the undersigned is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated 3/25/2008, executed by **FARHANG HAMEDI-FARD AND ROSEMARY HAMEDI-FARD, HUSBAND AND WIFE AS JOINT TENANTS**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR BANK OF THE WEST, A CALIFORNIA CORPORATION**, as beneficiary, recorded 4/2/2008, as Instrument No. 19798094, and modified as per **Modification Agreement recorded 4/30/2014 as Instrument No. 22580416** of Official Records in the Office of the Recorder of **SANTA CLARA County, California** describing land therein: **as more fully described in said Deed of Trust.**

Said obligations including 1 NOTE(S) FOR THE ORIGINAL sum of **\$960,000.00**, that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the beneficiary; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

The installments of principal and interest which became due on 4/1/2015, and all subsequent installments of principal and interest through the date of this Notice, plus amounts that are due for late charges, delinquent property taxes, insurance premiums, advances made on senior liens, taxes and/or insurance, trustee's fees, and any attorney fees and court costs arising from or associated with the beneficiaries efforts to protect and preserve its security, all of which must be paid as a condition of reinstatement, including all sums that shall

TS No.: CA-15-681597-JB

accrue through reinstatement or pay-off. Nothing in this notice shall be construed as a waiver of any fees owing to the Beneficiary under the Deed of Trust pursuant to the terms of the loan documents.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

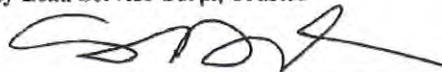
Pursuant to the attached Declaration, the mortgage servicer declares that it has contacted the borrower, tried with due diligence to contact the borrower as required by California Civil Code § 2923.55 or § 2923.5, or is otherwise exempt from the requirements of § 2923.55 and § 2923.5.

If you have previously been discharged through bankruptcy, you may have been released of personal liability for this loan in which case this letter is intended to exercise the note holders right's against the real property only. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

QUALITY MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Dated: 8/11/2015

Quality Loan Service Corp., Trustee



By: Silver De Vera, Assistant Secretary

CALIFORNIA DECLARATION OF COMPLIANCE
(CAL. CIV. CODE § 2923.5(b))

Borrower(s): FARHANG HAMEDI-FARD, ROSEMARY HAMEDI-FARD
Property Address: [REDACTED]
Trustee's Sale No.: CA-15-681597-JB

The undersigned, as an authorized agent or employee of the mortgage servicer named below, declares as follows:

1. The mortgage servicer has contacted the borrower to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure as required by California Civil Code § 2923.5(a)(2). Thirty days have passed since the initial contact was made.
2. The mortgage servicer has tried with due diligence to contact the borrower as required by California Civil Code § 2923.5(e) but has not made contact despite such due diligence. Thirty days have passed since these due diligence efforts were satisfied.
3. No contact was required because the individual did not meet the definition of "borrower" under California Civil Code § 2920.5(c).
4. The requirements of California Civil Code § 2923.5 do not apply because the loan is not secured by a first lien mortgage or deed of trust on "owner-occupied" residential real property as defined by California Civil Code § 2924.15.

I certify that this declaration is accurate, complete and supported by competent and reliable evidence which the mortgage servicer has reviewed to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

Bank of the West

Dated: August 5, 2015.



Signature of Agent or Employee

Rick Baker

Printed Name of Agent or Employee

ATTACHMENT TO NOTICE OF DEFAULT

NOTICE OF DEFAULT
SUMMARY OF KEY INFORMATION

The attached notice of default was sent to FARHANG HAMEDI-FARD, ROSEMARY HAMEDI-FARD, in relation to **000 PETRONI WAY SAN JOSE CA 95128**. This property may be sold to satisfy your obligation and any other obligation secured by the deed of trust or mortgage that is in default. FARHANG HAMEDI-FARD, ROSEMARY HAMEDI-FARD has, as described in the notice of default, breached the mortgage or deed of trust on the property described above.

IMPORTANT NOTICE: IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business_ days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date the attached notice of default may be recorded (which date of recordation appears on the notice).

This amount is \$27,791.87 as of 8/11/2015 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than three months after this notice of default is recorded) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

Trustee Sale Number: CA-15-681597-JB

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

BANK OF THE WEST
C/O Quality Loan Service Corporation
411 Ivy Street
San Diego, CA 92101
619-645-7711

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

If you would like additional copies of this summary, you may obtain them by calling **619-645-7711.**

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 24

Correspondence from November 2015:

- November 24, 2015 – Deed restriction signed and notarized the Water Board Executive Officer, Bruce Wolfe.

Recording Requested By:

Frank Hamed-Fard and
Rosemary Hamed-Fard,
Husband and Wife, as Joint Tenants
131 Old Tully Road
San Jose, CA 95111-1921

When Recorded, Mail To:

California Regional Water Quality Control Board,
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

Frank Hamed-Fard and
Rosemary Hamed-Fard,
Husband and Wife, as Joint Tenants
131 Old Tully Road
San Jose, CA 95111-1921

**COVENANT AND ENVIRONMENTAL
RESTRICTION ON PROPERTY**

1761 Junction Avenue
San Jose, Santa Clara County

This Covenant and Environmental Restriction on Property ("Covenant") is made as of the 13th day of November, 2015 by Frank Hamed-Fard and Rosemary Hamed-Fard, Husband and Wife, as Joint Tenants (collectively, "Covenantor") who is Owner of record of that certain property situated at 1761 Junction Avenue, City of San Jose, County of Santa Clara, State of California, which further is known by Assessor's Parcel Number APN 237-09-145 (the "Burdened Property") which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference, for the benefit of the California Regional Water Quality Control Board, San Francisco Bay Region (the "Regional Board"), with reference to the following facts:

A. Nature of Covenant. This Covenant is required by Order of the Regional Board because the Burdened Property and the groundwater underlying it is contaminated by hazardous materials as defined in section 25260 of the Health and Safety Code.

B. Contamination of the Burdened Property. The soil, soil vapor, and groundwater on the Burdened Property were contaminated by Velcon Filters, Inc.'s historic operations at the

Burdened Property prior to the sale of the Burdened Property to Covenantor. These operations included use of jet fuel used for testing of fuel filters that were stored onsite in underground tanks. An onsite wastewater sump was also used. Major fuel spills occurred at the site in 1975 and 1976 and other smaller spills occurred over the years prior as a result of Velcon operations at the Burdened Property. The contamination on the Burdened Property consists primarily of trichloroethylene and its breakdown products, cis-1,2 dichloroethylene, and vinyl chloride; and petroleum hydrocarbons – jet fuel. Remediation has included excavation of underground tanks, groundwater extraction and treatment, and in-situ bioremediation.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Exposure to these contaminants could take place via in-place contact or ingestion of groundwater. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Disclosure and Sampling. Full and voluntary disclosure of the presence of hazardous materials on the Burdened Property has been made by Velcon Filters, Inc. and their consultants to the Board and extensive sampling of the Burdened Property has been conducted by Velcon Filters, Inc. and their consultants.

E. Use of Burdened Property. The Board desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that might result from any hazardous materials that might remain deposited on portions of the Burdened Property.

ARTICLE I

GENERAL PROVISIONS.

1.1. Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions, and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions: (a) are imposed upon the entire Burdened Property, unless expressly stated as applicable to a specific portion of the Burdened Property; (b) run with the land pursuant to section 1471 of the Civil Code; and (c) are enforceable by the Board.

1.2. Concurrence of Owners and Lessees Presumed. All purchasers, lessees, and possessors of all or any portion of the Burdened Property shall be deemed by their purchase, lease, or possession of the Burdened Property to be bound by the Restrictions and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions herein established

must be adhered to for the benefit of the Board and all Owners and Occupants of the Burdened Property, and that the interest of all Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3. Incorporation into Deeds and Leases. The Board desires and covenants that the Restrictions shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant has been attached to or incorporated into any given deed or lease.

1.4. Purpose. It is the purpose of this instrument to convey to the Regional Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II **DEFINITIONS**

2.1. Regional Board. "Regional Board" shall mean the California Regional Water Quality Control Board, San Francisco Region and shall include its successor agencies, if any.

2.2. Improvements. "Improvements" shall mean all buildings, structures, roads, driveways, gradings, re-gradings, and paved areas, constructed or placed upon any portion of the Burdened Property.

2.3. Occupant or Occupants. "Occupant" or "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the right to use and/or occupy all or any portion of the Burdened Property.

2.4. Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and Covenantor's successors in interest who hold title to all or any portion of the Burdened Property.

ARTICLE III **DEVELOPMENT, USE, AND CONVEYANCE OF THE BURDENED PROPERTY**

3.1. Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

a. Development and use of the Burdened Property shall be restricted to industrial, commercial, or office space;

b. No residence for human habitation shall be authorized on the Burdened Property;

- c. No hospitals shall be authorized on the Burdened Property;
- d. No schools for persons under twenty-one (21) years of age shall be authorized on the Burdened Property;
- e. No care or community centers for children or senior citizens that would involve the regular congregation of children or senior citizens shall be authorized on the Burdened Property;
- f. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by the Owner, Owner's agent, Occupant, Occupant's agent or other persons acting pursuant to Regional Board orders in accordance with all applicable provisions of local, state, and federal law. If the excavation work resulted from an emergency, the Owner or Occupant or other person acting pursuant to Regional Board orders shall notify the Regional Board by registered mail within ten (10) working days of both the date of commencement of such excavation and after the date of completion;
- g. All uses and development of the Burdened Property shall be consistent with any applicable Regional Board Order or Risk Management Plan which is hereby incorporated herein by reference, and including future amendments thereto. All uses and development shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Regional Board, unless otherwise expressly authorized in writing by the Regional Board;
- h. No Owner, Occupant shall drill, bore, otherwise construct, or use a well for the purpose of extracting shallow ground water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly authorized in writing by the Regional Board; nor shall the Owner or Occupant authorize or engage any third party to do such acts;
- i. The Owner shall notify the Regional Board of each of the following: (1) the type, cause, location, and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Regional Board, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions; and (2) the type and date of repair of such disturbance. Notifications to the Regional Board shall be made by registered mail within ten (10) working days of both the date of discovery of such disturbance and the date of completion of repairs;
- j. The Covenantor agrees that the Regional Board, and any persons acting pursuant to Regional Board orders, shall have reasonable access to the Burdened Property

for the purposes of inspection, maintenance, or monitoring as provided in Division 7 of the Water Code and in advance notification to Conventor.

k. No Owner, Occupant or any other person shall act in any manner that threatens or is likely to aggravate or contribute to the existing contaminated conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of any capped areas.

3.2. Enforcement. Failure of an Owner, Occupant or any other person to comply with any of the Restrictions set forth in Paragraph 3.1 shall be grounds for the Regional Board, by the authority of this Covenant, to require that the Owner, Occupant or other person to modify or remove, or cause to be modified or removed, any Improvements constructed in violation of that Paragraph. Violation of this Covenant shall also be grounds for the Regional Board to file civil actions against the Owner, Occupant or any person who violates the restrictions as provided by law.

3.3. Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument that shall accompany all purchase agreements or ground leases relating to the Burdened Property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the groundwater under the property, and is subject to a Covenant and Environmental Restriction on Property dated as of November __, 2015, and recorded on _____, 2015, in the Official Records of Santa Clara County, California, as Document No. _____, which Covenant and Environmental Restriction on Use of Property imposes certain covenants conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV

VARIANCE AND TERMINATION

4.1. Variance. Any Owner or, with the Owner's written consent, any Occupant may apply to the Regional Board for a written variance from the provisions of this Covenant.

4.2. Termination. Any Owner or, with the Owner's written consent, any Occupant may apply to the Regional Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3. Term. Unless terminated in accordance with Paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V
MISCELLANEOUS

5.1. No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2. Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective: (a) when delivered, if personally delivered to the person being served or an official of a government agency being served; or (b) three (3) business days after deposit in the mail if mailed by U.S. mail, postage paid certified, return receipt requested, addressed:

If to Covenantor:

Frank Hamedi-Fard and Rosemary Hamedi-Fard,
Husband and Wife, as Joint Tenants
131 Old Tully Road
San Jose, CA 95111-1921

If to Regional Board:

California Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, CA 94612

In both cases, with a copy to:

Velcon Filters, Inc
Attn: David Taylor
3320 Camels Ridge Lane
Colorado Springs, CO 80904

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined by a court having jurisdiction to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

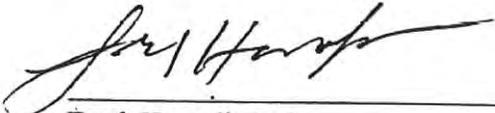
5.4. Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of Santa Clara within ten (10) days of the date of execution.

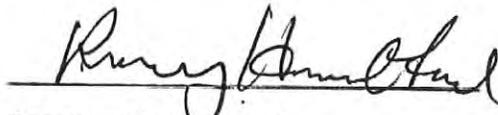
5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to preserve and implement the purpose of this instrument and the policies and purposes of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS HEREOF, the parties execute this Covenant as of the date set forth above.

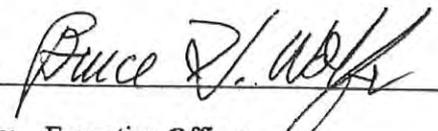


Frank Hamedi-Fard
Date: 11/13/2015



Rosemary Hamedi-Fard
Date: 11/13/2015

Agency: State of California
Regional Water Quality Board,
San Francisco Bay Region

By: 

Title: Executive Officer
Date: Nov. 24, 2015

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

On NOV 13, 2015 (insert date), before me, MARTHA KELLEY 1 (insert name and title of the officer), personally appeared FARHANG HAMEDIFARD [Covenantor], who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Martha Kelley (Seal)



State of California
County of Santa Clara

On NOV 13, 2015 (insert date), before me, MARTHA KELLEY 1 (insert name and title of the officer), personally appeared ROSEMARY HAMEDIFARD [Executive Officer], who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Martha Kelley (Seal)



California Notary Acknowledgement Certificate:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of ALAMEDA } ss.

On 11/24/2011 before me, SUNIL JASWAL Notary Public,

personally appeared

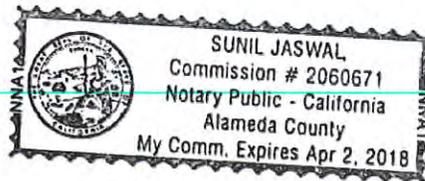
BRUCE HATCH-WOLFE

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public



[Signature]

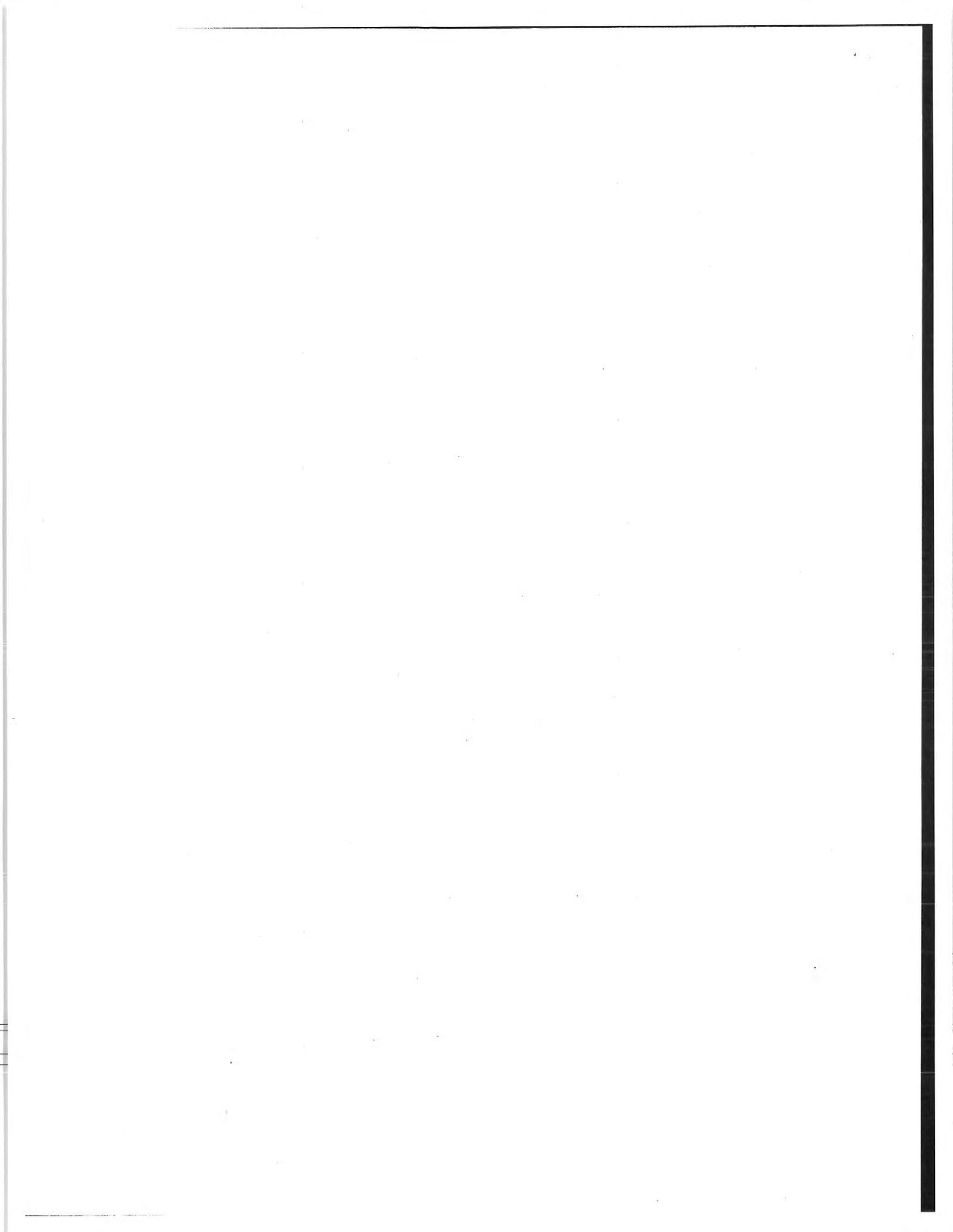


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

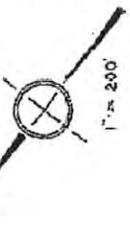
DESCRIPTION

All that certain Real Property in the City of San Jose, County of Santa Clara, State of California, described as follows:

Being a portion of that certain Parcel of land conveyed to the Bank of America, National Trust and Savings Association, Trustee for Engineering Fabrications Incorporated Profit Sharing Retirement Plan, a trust by Grant Deed recorded April 20, 1966, in Book 7353, Official Records, Page 260, Santa Clara County Records, described as follows:

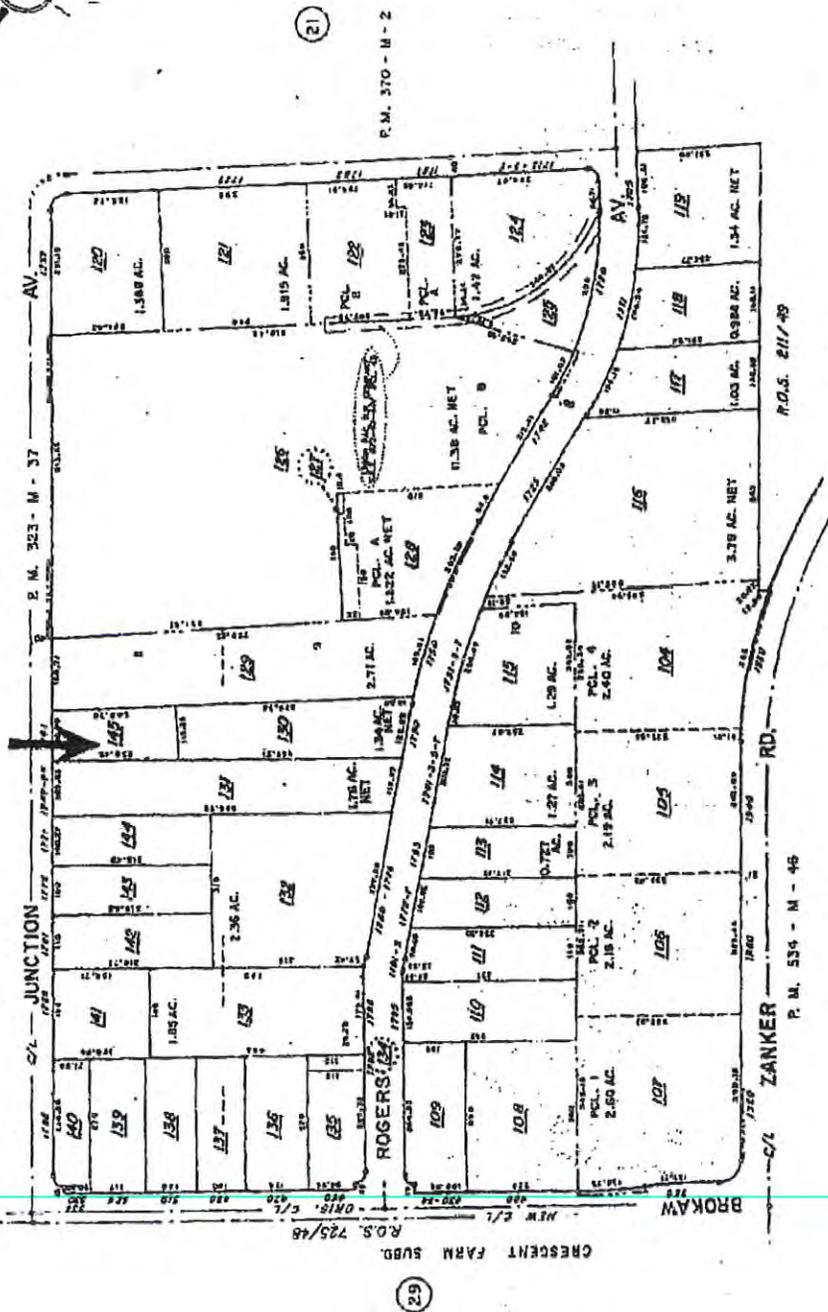
Commencing at a nail in the center line of Junction Avenue, 80 feet wide, distant thereon South 38 deg. 26' East 899.83 feet from a monument at the intersection thereof with the center line of East Brokaw Road, 60 feet wide; thence parallel with said center line of East Brokaw Road, South 51 deg. 17' 04" West, 40.00 feet to an iron pipe in the Southwesterly line of Junction Avenue, and the True Point of Beginning of the parcel of land to be described; thence continuing parallel with aid center line of East Brokaw Road, South 51 deg. 17' 04" West 250.18 feet to the intersection thereof with the Northeasterly line of that certain parcel of land conveyed to Velcon Filters, Inc., a California Corporation, by Grant Deed recorded October 22, 1970, in Book 9095, official Records, Page 524, Santa Clara County Records; thence along said Northeasterly line of that certain Parcel of land conveyed to Velcon Filters, Inc., S. 41 deg. 21' 07" E. 112.28 feet to the intersection thereof with the Southeasterly line of said certain Parcel of Land conveyed to Velcon Filters, Inc., thence along the Northeasterly prolongation of the said Southeasterly line of that certain parcel of land conveyed to Velcon Filters, Inc., North 48 deg. 40' 05" East, 244.78 feet to the intersection thereof with the said Southwesterly line of Junction Avenue; thence along said Southwesterly line of Junction Avenue, North 38 deg. 26' West, 100.90 feet to the true point of beginning.

BOOK 237 PAGE 9



OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

(8)



LAWRENCE E. STONE - ASSessor
Subdivided into (or treatment) persons 944
Compiled under S. & T. Code, Sec. 371,
Effective from Year 2001-2002

(16)

This is not a survey of the land and is inserted as a matter of information only, and while the same is compiled from information we believe to be correct, no liability is assumed by Chicago Title Company as to the correctness of said information.

(29)

10

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 25

- Frank Hamedi Subpoena Package (11-24-2015)
 - Frank Hamedi Subpoena Reissuance Cover Letter (12-4-2015)
-



EUMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

November 24, 2015

VIA PROCESS SERVER

Frank Hamedi
131 Old Tully Road
San Jose, CA 95111-1921

**SUBJECT: ADMINISTRATIVE SUBPOENA, IN THE MATTER OF FRANK HAMEDI,
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R2-2015-1012 FOR
VIOLATION OF SITE CLEANUP REQUIREMENTS ORDER 01-108, FORMER
VELCON II PROPERTY, 1761 JUNCTION AVENUE, SANTA CLARA COUNTY**

Dear Mr. Hamedi:

You are hereby served with an administrative subpoena for records and documents concerning the above-referenced administrative proceeding before the San Francisco Bay Regional Water Quality Control Board (Regional Water Board). Enclosed is a Subpoena for Records and Documents pursuant to California Water Board sections 1075 and 1080 and California Government Code sections 11450.05 et seq. and a Declaration of Paul D. Ciccarelli supporting the Subpoena for Records and Documents in the Matter of Frank Hamedi, Administrative Civil Liability Complaint No. R2-2015-1012 (Complaint).

As described in the enclosures, you are now commanded to produce papers, books, records, and documents in your possession or under your control and to respond to the requests for information in connection with the above-referenced proceeding **no later than December 14, 2015**. Specifically, the Subpoena for Records and Documents commands you to produce documents or other items that will assist the Regional Water Board Prosecution Team (Prosecution Team) to more completely determine your ability to pay the proposed liability amount of \$65,600 as set forth in the Complaint.

Production of the financial documents is required only if you are claiming inability to pay as a defense to the Complaint. If you are willing to stipulate to your ability to pay, then the Prosecution Team will withdraw the Subpoena for Records and Documents and you will no longer be obligated to produce the financial documents described therein.

If you are claiming inability to pay as a defense or are raising ability to pay as a contested issue, then produce the documents and records described in the enclosed Subpoena for Records and Documents **no later than December 14, 2015**. The documents must be sent to: Paul D. Ciccarelli, Staff Counsel, Office of Enforcement, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812-0100.

Please note that if you delay the submission of documents or evidence related to your ability to pay the proposed liability amount, the Prosecution Team will seek to bar the admission of such evidence at a hearing before the Regional Water Board. Any questions regarding this

DR. TERRY F. YOUNG, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

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

correspondence or any of the matters in the Subpoena for Records and Documents may be directed to the undersigned at (916) 322-3227.

Sincerely,



Paul D. Ciccarelli
Staff Counsel, Office of Enforcement
Attorney for the Prosecution Team

Enclosures: Declaration and Administrative Subpoena

cc: *(Sent by U.S. Mail)*

Jack Chevlen
Attorney for Discharger
5902 Deerland Court
San Jose, California 95124-6575

(Sent by electronic mail)

Advisory Team

Bruce Wolfe, Executive Officer, San Francisco Bay Regional Water Board
Bruce.Wolfe@waterboards.ca.gov

Elizabeth Wells, San Francisco Bay Regional Water Board
Elizabeth.Wells@waterboards.ca.gov

David Coupe, Office of Chief Counsel, State Water Resources Control Board
David.Coupe@waterboards.ca.gov

Prosecution Team

Dyan Whyte, Assistant Executive Officer, San Francisco Bay Regional Water Board
Dyan.Whyte@waterboards.ca.gov

Lila Tang, San Francisco Bay Regional Water Board
Lila.Tang@waterboards.ca.gov

Brian Thompson, San Francisco Bay Regional Water Board
Brian.Thompson@waterboards.ca.gov

Jack Gregg, San Francisco Bay Regional Water Board
Jack.Gregg@waterboards.ca.gov

1 PAUL CICCARELLI, ATTORNEY (SBN 296838)
2 OFFICE OF ENFORCEMENT
3 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
4 1001 I St. 16th Floor
5 P.O. Box 100
6 Sacramento, California 95812-0100
7 Telephone: (916) 322-3227
8 Facsimile: (916) 341-5896

9 Attorney for the Prosecution Team

10 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
11 SAN FRANCISCO BAY REGION

12 In the Matter of:

13 FRANK HAMEDI

14 Complaint No. R2-2015-1012

15) SUBPOENA FOR RECORDS AND
16) DOCUMENTS
17) (California Water Code, §§ 1075, 1080,
18) California Government Code, §
19) 11450.05)
20)
21)
22)
23)

24 TO: **Mr. Frank Hamedi**
25 **131 Old Tully Road**
26 **San Jose, CA 95111-1921**

27 **NOTICE:**

- 28 (X) You are served as an individual.
() You are served as (or on behalf of) the person
doing business under the fictitious name
of
() You are served on behalf of

Pursuant to the powers conferred by California Water Code Sections 1075 and 1080 and
Government Code Sections 11450.05 et seq.:

MR. FRANK HAMEDI IS COMMANDED to produce the papers, books, records and
documents in your possession or under your control described below in connection with the above-
titled proceeding by **December 14, 2015**. Documents must be sent to: Paul D. Ciccarelli, Staff

1 Counsel, Office of Enforcement, State Water Resources Control Board, P.O. Box 100, Sacramento,
2 CA 95812-0100.

3 You may seek the advice of an attorney in any matter connected with this subpoena. You
4 should consult your attorney promptly so that any problems concerning your production of
5 documents may be resolved within the time required by this subpoena.

6 **FAILURE TO COMPLY WITH THE COMMANDS OF THIS SUBPOENA WILL**
7 **SUBJECT YOU TO THE PROCEEDINGS AND PENALTIES PROVIDED BY LAW.**

8 **DEFINITIONS**

9 Definitions for industry or trade terms contained herein are to be construed broadly. Where
10 the industry or trade definition set forth herein does not coincide precisely with your definition, the
11 question, inquiry or production request should be responded to or answered by using the definition
12 which you apply and/or recognize in your usage of the term, further documenting your definition in
13 the response. Non-industry or non-trade definitions should be applied as defined herein.

14 (1) The term "COMMUNICATION" or "COMMUNICATIONS" means every disclosure,
15 transfer, exchange or transmission of information, whether oral or written and whether face to face
16 or by telecommunications, computer, mail, telecopier or otherwise.

17 (2) The terms "RELATING TO" or "RELATE TO" includes referring to, alluding to,
18 responding to, concerning, connected with, commenting on, in respect of, about, regarding,
19 discussing, showing, describing, mentioning, reflecting, analyzing, constituting, evidencing, or
20 pertaining to.

21 (3) (a) The term "DOCUMENT" means a document whose existence is known to
22 you, your employees, superiors, representatives or assigns, regardless of its location or origin,
23 including the original and all non-identical copies, whether written, printed or recorded, including,
24 with limitations, contracts, agreements, leases, receipts, invoices, payment vouchers, purchase
25 orders, books, booklets, brochures, reports, notices, announcements, minutes and other
26 communications, including inter and intra-office communications, studies, analyses, maps, charts,
27 tables, questionnaires, indices, telegrams, messages (including reports of telephone conversations
28 and conferences), tapes, letters, electronic mail, notes, records, drafts, proposals, authorizations,
negotiations, canceled checks, financial statements, deposit slips, bank drafts, books of account,

1 summaries, reports, tests, projections, studies, charts, notebooks, worksheets, recordings, calendars,
2 or other materials which are written, recorded, printed, typed, or transcribed. "DOCUMENT" also
3 means data sheets or data processing cards, tapes, films or graphic matter or materials on computer
4 magnetic diskettes or tapes, electronically or magnetically-stored data (including data stored on
5 "hard," "floppy" or "micro-floppy" disks or data stored in data base systems), photographs,
6 videotapes or any other matter of any kind or nature however produced or reproduced and each
7 copy of any of the foregoing which is not identical because of margin notations or otherwise. If any
8 such documents were, but no longer are, in your possession or control, state what disposition was
9 made of them and when.

10 (b) The term "DOCUMENT" shall also include all documents necessary to
11 interpret, translate, decode or understand any other document requested or produced. If a form of
12 document (i.e., magnetic tape) cannot be read, such form must be converted to a paper document
13 that can be read.

14 (4) The term "FRANK HAMEDI" means FRANK HAMEDI or FRANK HAMEDI-
15 FARD, its officers, employees, agents, and representatives of the foregoing.

16 (5) The term the "STATE OF CALIFORNIA" means all land within the geopolitical
17 boundaries of the State of California.

18 (6) The terms "AND" and "OR" have both conjunctive and disjunctive meanings.

19 (7) All references to a "YEAR" refer to a calendar year.

20 (8) The terms "YOU" or "YOUR" refer to FRANK HAMEDI.

21 (9) The term "FINANCIAL INSTITUTION" means all banks (FDIC insured or not),
22 credit unions, savings institutions, and any organization that facilitates financial transactions.

23 (10) The term "NON-REAL ESTATE INVESTMENTS" includes but is not limited to,
24 IRAs, investment brokers, stocks, bonds, and life insurance.

25 INSTRUCTIONS

26 i. **Unless otherwise indicated, the time period covered by this subpoena is from**
27 **January 1, 2012, to up to five days before YOUR full compliance with this subpoena. Any**
28 **documents relating to this time period are to be produced, regardless of whether the**
documents came into existence before or during this period.

1 ii. YOUR response to the subpoena should include a declaration or affidavit. It should
2 state that a diligent search for all requested DOCUMENTS has been conducted and that the affiant
3 or declarant was in charge of the search or otherwise monitored and reviewed the search
4 sufficiently to be able to represent under oath that such a search was conducted. It should be signed
5 under oath by the person most knowledgeable about the DOCUMENTS and YOUR efforts to
6 comply with the subpoena. If different people are the most knowledgeable about portions of the
7 search (e.g., one person is most knowledgeable about DOCUMENTS contained in computer media
8 and a different person is most knowledge about DOCUMENTS contained on paper) each should
9 sign an affidavit or declaration identifying the category in the request for DOCUMENTS for which
10 that person is the most knowledgeable.

11 iii. Unless otherwise indicated, for any DOCUMENT stored in a computer, including
12 all electronic mail messages, YOU should produce the DOCUMENT in the original electronic file
13 format in which it was created (e.g., Microsoft email should be provided in its original format,
14 which would have the .pst suffix, not in a tif file; spreadsheets should be in their original file form,
15 such as an Excel file and word-processed DOCUMENTS should be in their original file format,
16 such as a Word or WordPerfect file), together with instructions and all other materials necessary to
17 use or interpret the data. Electronic mail messages should be provided, even if only available on
18 backup or archive tapes or disks. Computer media should be accompanied by (a) an identification
19 of the generally available software needed to open and view the DOCUMENTS or (b) a copy of the
20 software needed to open and view the DOCUMENT. Note, however, that if a print-out from a
21 computer DOCUMENT is a non-identical copy of the electronic form in which it was created
22 (non-identical as described in the definition of "DOCUMENT," by way of example, but not
23 limitation, because it has a signature, handwritten notation, or other mark or attachment not
24 included in the computer DOCUMENT), both the electronic form in which the DOCUMENT was
25 created and the original print-out should be produced.

26 iv. For each DOCUMENT contained in an audio or video medium, YOU should
27 provide both the tape, disk or other device from which the audio or video can be played and the
28 transcript of the DOCUMENT.

1 v. For all DOCUMENTS YOU do not produce in the original, as defined in Evidence
2 Code section 255, YOU may submit copies (black and white copies if the original was in black and
3 white, color copies if the original was in color, and, if the original was in electronic format, in the
4 same electronic medium as the original) in lieu of original DOCUMENTS provided that such
5 copies are accompanied by an affidavit of an officer of THE COMPANY stating that the copies of
6 all three types of DOCUMENTS are true, correct, and complete copies of the original
7 DOCUMENTS. If there is in YOUR possession, custody or control no original, but only a copy or
8 photographic record thereof, then YOU should produce a true and legible copy of each such
9 DOCUMENT. The accompanying affidavit should state that the DOCUMENT is only a copy or
10 photographic record and not the original.

11 vi. If a DOCUMENT is responsive to this subpoena and is in YOUR control, but is not
12 in YOUR possession or custody, in addition to obtaining and producing the DOCUMENT, identify
13 the person who had possession or custody of the DOCUMENT, their telephone number and current
14 business and residence addresses.

15 vii. If any DOCUMENT subpoenaed is no longer in YOUR possession, custody, control
16 or care, YOU should provide a written statement identifying the DOCUMENT with specificity,
17 stating whether it is lost or missing, has been destroyed, has been transferred to others, or has
18 otherwise been disposed of. The written statement should also identify the person who disposed of
19 the DOCUMENT, explain the circumstances and authorization for the disposition and the
20 approximate date of the disposition of the DOCUMENT. If there are no DOCUMENTS responsive
21 to a document request, as to each such document request, YOU should include a statement to that
22 effect in the accompanying declaration or affidavit.

23 viii. DOCUMENTS provided in response to this subpoena should be complete and,
24 unless privileged, unredacted, submitted as found in YOUR files (*e.g.*, DOCUMENTS that in their
25 original condition were stapled, clipped, attached as a "post-it," or otherwise fastened together shall
26 be produced in the same form).

27 ix. Each DOCUMENT produced pursuant to this subpoena should be identified
28 according to the category in the subpoena to which it is responsive. In lieu of indicating on each
DOCUMENT the category to which it is responsive, on the date set for production, YOU may

1 instead provide an index if YOU provide it in both paper and in electronic form (such as a
2 computerized spread sheet in Excel or a Word or WordPerfect DOCUMENT set up in a table
3 format) of all DOCUMENTS YOU produce, as long as this index shows by document control
4 number the request(s) to which each DOCUMENT or group of DOCUMENTS is responsive.
5 Responsive DOCUMENTS from each person's files should be produced together, in one box or in
6 consecutive boxes, or on one disk or consecutive disks. Mark each page of a paper DOCUMENT
7 and each tangible thing containing audio, video, computer or other electronic DOCUMENTS (e.g.
8 cassette, disk, tape or CD) with corporate identification and consecutive document control numbers
9 (e.g., S.I.. 00001, S.I. CD 001, S.I. audio tape 001). Number each box of DOCUMENTS produced
10 and mark each with the name(s) of the person(s) whose files are contained therein, the requests(s)
11 to which they are responsive, and the document control numbers contained therein.

12 x. For data produced in spreadsheets or tables, include in the declaration or affidavit
13 the identification of the fields and codes and a description of the information contained in each
14 coded field.

15 xi. The document requests contained in this subpoena should be deemed to include a
16 request for all relevant DOCUMENTS in the personal files, including but not limited to files
17 contained on laptops, palm devices, home computers and home files of all YOUR officers,
18 employees, accountants, agents and representatives, including sales agents who are independent
19 contractors, and unless privileged, attorneys.

20 xii. If any DOCUMENTS are withheld from production based on a claim of privilege,
21 provide a log under oath by the affiant or declarant, which includes each DOCUMENT'S authors,
22 addressees, date, a description of each DOCUMENT, all recipients of the original, and any copies,
23 and the request(s) of this subpoena to which the DOCUMENT is responsive. Attachments to a
24 DOCUMENT should be identified as such and entered separately on the log. For each author,
25 addressee, and recipient, state the person's full name, title, and employer or firm, and denote all
26 attorneys with an asterisk. To the extent the claim of privilege relates to any employee, agent,
27 representative, or outside attorney, identify the person's name, division, and organization. Include
28 the number of pages of each DOCUMENT and in the description of the DOCUMENT, provide
sufficient information to identify its general subject matter without revealing information over

1 which a privilege is claimed. For each DOCUMENT withheld under a claim that it constitutes or
2 contains attorney work product, also state whether YOU assert that the DOCUMENT was prepared
3 in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial on which
4 the assertion is based. Submit all non-privileged portions of any responsive DOCUMENT
5 (including non-privileged or redactable attachments) for which a claim of privilege is asserted
6 (except where the only non-privileged information has already been produced in response to this
7 instruction), noting where redactions in the DOCUMENT have been made. DOCUMENTS
8 authored by outside lawyers representing YOU that were not directly or indirectly furnished to
9 YOU or any third-party, such as internal law firm memoranda, may be omitted from the log.

10 xiii. Whenever necessary to bring within the scope of this subpoena DOCUMENTS that
11 might otherwise be construed as outside its scope:

12 (a) the use of the verb in any tense shall be construed as the use of that verb in all
13 other tenses;

14 (b) the use of a word in its singular form shall be deemed to include within its use
15 the plural form as well; and

16 (c) the use of the word in its plural form shall be deemed to include within its use
17 the singular form as well.

18 xiv. Whenever responsive DOCUMENTS apply to more than one site, such
19 DOCUMENTS shall be organized by address of the site.

20 **DOCUMENTS TO BE PRODUCED**

21 This subpoena commands production of the original of each and every DOCUMENT now
22 or at any time in the possession, custody or control of you or FRANK HAMEDI without regard to
23 the person(s) by whom or for whom said DOCUMENTS were prepared, including, but not limited
24 to, all DOCUMENTS in the personal, business, or other files of all present or former officers,
25 directors, trustees, agents, employees, attorneys, and accountants of FRANK HAMEDI which
26 refers or relates to any of the following subjects:

- 27 1. Provide signed federal income and state income tax returns which were submitted to the
28 IRS and the California Franchise Tax Board for 2012, 2013, and 2014 for FRANK
HAMEDI.

- 1 2. Provide all DOCUMENTS which refer or RELATE TO every FINANCIAL INSTITUTION
- 2 with which FRANK HAMEDI does business.
- 3 3. Provide all DOCUMENTS which refer or RELATE TO the current value of any real
- 4 property owned by FRANK HAMEDI, including but not limited to, assessment records,
- 5 appraisals less than two years old, or a statement of real estate comparables from a real
- 6 estate broker.
- 7 4. Provide all DOCUMENTS which refer or RELATE TO any sales or acquisitions of real
- 8 property owned by FRANK HAMEDI.
- 9 5. Provide all DOCUMENTS which refer or RELATE TO all loans to and from FRANK
- 10 HAMEDI.
- 11 6. Provide all DOCUMENTS which refer or RELATE TO liens against any real property
- 12 owned by FRANK HAMEDI.
- 13 7. Provide all DOCUMENTS which refer or RELATE TO any credit lines to FRANK
- 14 HAMEDI.
- 15 8. Provide all DOCUMENTS which evidence, RELATE TO, or describe the financial
- 16 condition, solvency, or ability to timely pay debts.
- 17 9. Provide all DOCUMENTS which refer or RELATE TO all NON-REAL ESTATE
- 18 INVESTMENTS owned by FRANK HAMEDI.
- 19 10. Provide all DOCUMENTS which refer or RELATE TO personal property with value
- 20 greater than \$5,000 owned by FRANK HAMEDI.
- 21 11. Provide all DOCUMENTS which refer or RELATE TO all trusts in which FRANK
- 22 HAMEDI has an interest or relationship.

23
24 Given under my hand this 24th day of November 2015.

25
26 
27 Paul D. Ciccarelli
28 Staff Counsel, Office of Enforcement
State Water Resources Control Board

1 PAUL CICCARELLI, ATTORNEY (SBN 296838)
2 OFFICE OF ENFORCEMENT
3 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
4 1001 I St. 16th Floor
5 P.O. Box 100
6 Sacramento, California 95812-0100
7 Telephone: (916) 322-3227
8 Facsimile: (916) 341-5896

9 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
10 SAN FRANCISCO BAY REGION

11 In the Matter of:)

12 FRANK HAMEDI)

13 Complaint No. R2-2015-1012)

14)
15)
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23)
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DECLARATION OF
PAUL D. CICCARELLI SUPPORTING
SUBPOENA FOR RECORDS AND
DOCUMENTS

29 **I, Paul D. Ciccarelli, declare as follows:**

30 1. I am the attorney for the San Francisco Regional Water Quality Control Board (Regional
31 Water Board) Prosecution Team (Prosecution Team) in this action.

32 2. I have personal knowledge of all facts stated in this declaration and, if called as a
33 witness, could and would testify competently under oath.

34 3. The Assistant Executive Officer of the Regional Water Board issued an Administrative
35 Civil Liability Complaint for this matter on September 2, 2015. Frank Hamedì (also known as
36 Frank Hamedì-Fard), through his attorney Mr. Jack Chevlen, requested a hearing in this matter but
37 waived his right to a hearing within 90 days pursuant to California Water Code section 13323
38 subdivision (c) and requested a time extension from the original hearing date on November 18,
39 2015. A hearing on this matter is currently scheduled for January 13, 2016.

40 4. The following issue is involved in this case: Mr. Hamedì's alleged violation of Site
41 Cleanup and Requirements Order 01-108 (Order) for a proposed sixty-five thousand six hundred
42 dollars (\$65,600) (Proposed Liability) in administrative civil liability pursuant to the State Water
43 Resources Control Board Water Quality Enforcement Policy (Enforcement Policy).

1 5. Step 6 of the Enforcement Policy requires the Water Boards to consider a violator's
2 ability to pay a proposed liability amount and to consider the effect the proposed liability will have
3 on the violator's ability to continue in business. The Prosecution Team made a finding of Mr.
4 Hamedì's ability to pay the Proposed Liability in Attachment A of the Complaint using public tax
5 assessment information showing the current value of 1761 Junction Avenue, San Jose, California
6 (Site) at \$408,000. However, based on this information alone, the analysis is not representative of
7 Mr. Hamedì's actual ability to pay the proposed liability amount and the effect the proposed
8 liability will have on Mr. Hamedì's ability to continue in business.

9 6. Mr. Hamedì has in his possession or under his control additional documents that will
10 assist the Prosecution Team and the Regional Water Board to more completely determine Mr.
11 Hamedì's ability to pay the Proposed Liability and ability to continue in business.

12 7. Each document or other item described in the subpoena attached hereto is material to the
13 issues in this case and is admissible in that these documents or other items are necessary in
14 determining Mr. Hamedì's ability to pay the Proposed Liability and ability to continue in business.

15 8. Good cause exists for the production of documents or other items described in the
16 subpoena attached hereto because such evidence is probative of Mr. Hamedì's ability to pay the
17 Proposed Liability and ability to continue in business.

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

20 Date: 11/24/15



Paul D. Ciccarelli
Staff Counsel, Office of Enforcement
State Water Resources Control Board



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

December 4, 2015

**VIA OVERNIGHT MAIL AND
U.S. FIRST CLASS MAIL**

Frank Hamedi
131 Old Tully Road
San Jose, CA 95111-1921

Frank Hamedi
1093 Petroni Way
San Jose, CA 95120-3142

Email: info@envirosoiltech.com

SUBJECT: REISSUANCE OF ADMINISTRATIVE SUBPOENA, IN THE MATTER OF FRANK HAMEDI, ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R2-2015-1012 FOR VIOLATION OF SITE CLEANUP REQUIREMENTS ORDER 01-108, FORMER VELCON II PROPERTY, 1761 JUNCTION AVENUE, SANTA CLARA COUNTY

Dear Mr. Hamedi:

On November 24, 2015, the enclosed administrative Subpoena for Records and Documents concerning the above-referenced administrative proceeding before the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) was issued for personal service through a process server, Ace Attorney Service, Inc. The Subpoena for Records and Documents was issued to you personally because your attorney, Mr. Jack Chevlen, informed the Regional Water Board Prosecution Team (Prosecution Team) that he was not authorized to accept service on your behalf. Mr. Chevlen was copied on the original issuance of the Subpoena for Records and Documents.

Because the process server was unable to effectuate personal service after repeated attempts, you are hereby served via overnight mail and electronic mail. Mr. Chevlen is also copied on this correspondence.

Enclosed is a Subpoena for Records and Documents pursuant to California Water Board sections 1075 and 1080 and California Government Code sections 11450.05 et seq. and a Declaration of Paul D. Ciccarelli supporting the Subpoena for Records and Documents in the Matter of Frank Hamedi, Administrative Civil Liability Complaint No. R2-2015-1012 (Complaint).

As described in the enclosures, you are now commanded to produce papers, books, records, and documents in your possession or under your control and to respond to the requests for information in connection with the above-referenced proceeding **no later than December 14, 2015**. Specifically, the Subpoena for Records and Documents commands you to produce documents or other items that will assist the Prosecution Team to more completely determine your ability to pay the proposed liability amount of \$65,600 as set forth in the Complaint.

DR. TERRY F. YOUNG, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

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

Production of the financial documents is required only if you are claiming inability to pay as a defense to the Complaint. If you are willing to stipulate to your ability to pay, then the Prosecution Team will withdraw the Subpoena for Records and Documents and you will no longer be obligated to produce the financial documents described therein.

If you are claiming inability to pay as a defense or are raising ability to pay as a contested issue, then produce the documents and records described in the enclosed Subpoena for Records and Documents **no later than December 14, 2015**. The documents must be sent to: Paul D. Ciccarelli, Staff Counsel, Office of Enforcement, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812-0100.

Please note that if you delay the submission of documents or evidence related to your ability to pay the proposed liability amount, the Prosecution Team will seek to bar the admission of such evidence at a hearing before the Regional Water Board. Any questions regarding this correspondence or any of the matters in the Subpoena for Records and Documents may be directed to the undersigned at (916) 322-3227.

Sincerely,



Paul D. Ciccarelli
Staff Counsel, Office of Enforcement
Attorney for the Prosecution Team

Enclosures: Cover Letter, Declaration and Administrative Subpoena sent on November 24, 2015.

(Sent by electronic mail w/ enclosures)

Discharger

Jack Chevlen, Attorney for Discharger
jackchevlen@comcast.net

(Sent by electronic mail w/o enclosures)

Advisory Team

Bruce Wolfe, Executive Officer, San Francisco Bay Regional Water Board
Bruce.Wolfe@waterboards.ca.gov

Elizabeth Wells, San Francisco Bay Regional Water Board
Elizabeth.Wells@waterboards.ca.gov

David Coupe, Office of Chief Counsel, State Water Resources Control Board
David.Coupe@waterboards.ca.gov

Marnie Ajello, Office of Chief Counsel, State Water Resources Control Board
Marnie.Ajello@waterboards.ca.gov

Prosecution Team

Dyan Whyte, Assistant Executive Officer, San Francisco Bay Regional Water Board
Dyan.Whyte@waterboards.ca.gov

Lila Tang, San Francisco Bay Regional Water Board
Lila.Tang@waterboards.ca.gov

Brian Thompson, San Francisco Bay Regional Water Board
Brian.Thompson@waterboards.ca.gov

Jack Gregg, San Francisco Bay Regional Water Board
Jack.Gregg@waterboards.ca.gov

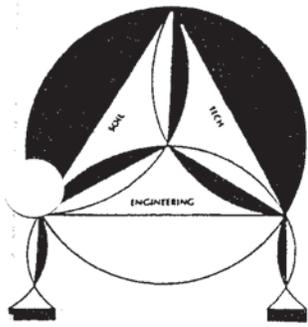
ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 26

- 2008 Hamedi Business letter 450 Montague Expressway, Milpitas
- 2004 Hamedi Business letter 15595 Washington Ave., San Lorenzo
- 2007 Hamedi Business letter 290 Keyes Street, San Jose.



ENVIRO SOIL TECH CONSULTANTS

Environmental & Geotechnical Consultants

131 TULLY ROAD, SAN JOSE, CALIFORNIA 95111

Tel: (408) 297-1500

Fax: (408) 292-2116

October 20, 2008

File No. 9-08-818-GI

Mr. Manou Movassate

MVA Construction
83 Santiago Avenue
Atherton, CA 94027

**SUBJECT: SOIL AND GROUNDWATER INVESTIGATION
AT THE PROPERTY**

Located at 450 Montague Expressway in
Milpitas, California

Dear Mr. Movassate:

A Phase I environmental assessment of the property located at 450 Montague Expressway was conducted by AEI Environmental Consultants in August 2008, California. That investigation identified past uses of the property that could have created potential environmental issues that could affect the value of the property. Based on those findings, AEI recommended that a Phase II investigation be conducted to determine whether the property is impacted by hazardous substances that were used and stored at the property by the previous owner.

Enviro Soil Tech Consultants (ESTC) was retained to perform the investigation. Field work was conducted in September, and the results are presented in this report. We drilled seven exploratory borings, from which we collected nine soil samples and five water samples for laboratory analysis. The samples were analyzed for volatile organic

hydrocarbons (including solvents such as chlorinated hydrocarbons), volatile aromatic hydrocarbons (such as benzene and toluene), and Total Petroleum Hydrocarbons (gasoline, diesel fuel, and motor oil). The water samples were also analyzed for various metals that can be hazardous at elevated concentrations.

Solvents were detected in seven of the nine soil samples and three of the five water samples. The only boring in which solvents were not detected in either soil or groundwater was B-7. No Benzene, Toluene, Ethylbenzene, or Xylenes (BTEX) was detected in any of the water samples, but toluene was reported in three soil samples. The laboratory detected hydrocarbons in the motor oil range in five soil samples, hydrocarbons in the gasoline range in one soil sample, and hydrocarbons in the gasoline range in one groundwater sample. Except for chlorinated hydrocarbons, concentrations were minimal.

Two metals were detected in some of the water samples (nickel and vanadium) and three metals were detected in all of the samples (barium, copper, and molybdenum). The concentrations ranged from a few parts per billion up to about 15 parts per billion, except for barium, which is present at concentrations of approximately 150 ppb. All of these are likely within natural ranges and pose no threat to public health.

The results support the notion that degreasing solvents have been released to subsurface soil at the site. The solvents have percolated downward at least 10 feet and come into contact with groundwater, except perhaps in the vicinity of boring B-6, where solvents were detected only in the soil. It does not appear that gasoline, diesel, or motor oil was released to the environment, although some hydrocarbons (probably solvents or related chemicals) in the gasoline and motor oil ranges were detected in a few samples.

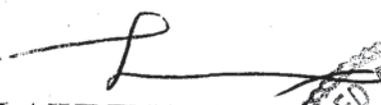
File No. 9-08-818-GI
October 20, 2008

If you have any questions or require additional information, please feel free to contact our office at (408) 297-1500 or via email at info@envirosoiltech.com.

Sincerely,

ENVIRO SOIL TECH CONSULTANTS


FRANK HAMEDI-FARD
GENERAL MANAGER


LAWRENCE KOO
C. E. #34928




VICTOR B. CHERVEN, Ph. D.
P. G. #3475

File No. 12-99-702-SI

September 20, 2004

File No. 12-99-702-SI

Mr. Mehdi Mohammadian
Cal Gas
15595 Washington Avenue
San Lorenzo, California 94580

**SUBJECT: PROPOSED WORK PLAN FOR SOIL AND
GROUNDWATER INVESTIGATION
FOR THE PROPERTY**

Located at 15595 Washington Avenue, in
San Lorenzo, California

Dear Mr. Mohammadian:

Enclosed is the proposed work plan for soil and groundwater investigation for the subject property located at 15595 Washington Avenue, in San Lorenzo, California.

This proposed work plan has been prepared in accordance to the request of Mr. Barney Chan with Alameda County Health Care Services Agency-Environmental Health Services (ACHCSA-EHS) in a letter dated August 6, 2004.

If you have any questions or require additional information, please feel free to contact our office at (408) 297-1500.

Sincerely,

ENVIRO SOIL TECH CONSULTANTS

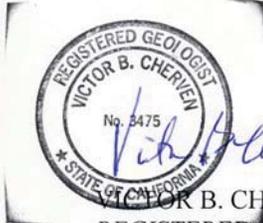
VICTOR B. CHERVEN, Ph.D.
REGISTERED GEOLOGIST #3475

LAWRENCE KOO, P. E.
C. E. #34928

FRANK HAMEDI-FARD
GENERAL MANAGER

File No. 12-99-702-SI

If you have any questions or require additional information, please feel free to contact our office at (408) 297-1500.



Victor B. Cherven
VICTOR B. CHERVEN, Ph.D.
REGISTERED GEOLOGIST #3475

Frank Hamedi-Fard
FRANK HAMEDI-FARD
GENERAL MANAGER

Sincerely,

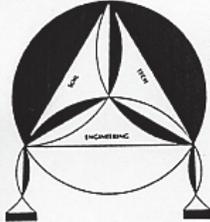
ENVIRO SOIL TECH CONSULTANTS

Lawrence Koo
LAWRENCE KOO, P. E.
C. E. #34928



ENVIRO SOIL TECH CONSULTANTS

2



ENVIRO SOIL TECH CONSULTANTS

Environmental & Geotechnical Consultants
131 TULLY ROAD, SAN JOSE, CALIFORNIA 95111
Tel: (408) 297-1500 Fax: (408) 292-2116

September 25, 2007

File No. 5-97-654-ST

Mr. Cuong Chon Huynh
Pete's Stop
290 Keyes Street
San Jose, California 95112

**SUBJECT: VAPOR EXTRACTION SYSTEM OPERATION
SUMMARY REPORT FOR THE PROPERTY**
Located at 290 Keyes Street, in
San Jose, California

REFERENCE: BAAQMD'S Application #14303, Plant #17673

Dear Mr. Huynh:

Enviro Soil Tech Consultants (ESTC) has prepared this VAPOR-EXTRACTION SYSTEM OPERATION SUMMARY REPORT for a vapor-extraction system (VES) installed at the subject site. The installation and operation of the VES are part of an ongoing subsurface environmental investigation and treatment of hydrocarbon-bearing soil and groundwater. ESTC performed the Source Test in accordance with all applicable Bay Area Air Quality Management District (BAAQMD) guidelines.

ESTC applied for an Authority to Construct/Permit to Operate from the BAAQMD, and notified the BAAQMD of the dates of the Source Test, and performed the Source Tests on May 19, 22 and 31, 2006. A SOURCE TEST REPORT was submitted to BAAQMD in June 2006. Results of the Source Test indicated that vapor-extraction system was operating well within permit guidelines set by the BAAQMD. Correspondences with the BAAQMD, including a copy of the permit issued by the BAAQMD for the site, are attached. The general vicinity around the site is shown on Figure 1, Site Location Map. Figure 2 shows the site layout, as well as pertinent site features. The vapor-extraction system is connected to six vapor-extraction wells (STVW-1 through STVW-6) and monitoring wells STMW-1, STMW-4 and STMW-6 through STMW-13.

VAPOR-EXTRACTION SYSTEM OPERATION

An internal combustion (I.C.) engine is being used to extract and treat hydrocarbon-bearing vapor from the groundwater-monitoring wells, the vapor-extraction wells, and groundwater-recover well. A layout of the I.C. engine, along with plan, side, and end view, is shown on Plate VET-1. A Process Diagram of the I.C. Engine is shown on VET-2. The height of the exhaust stack is approximately fifteen feet above the ground. Vacuum, flow rate, and temperature readings are monitored and recorded influent to an effluent from the I.C. engine.

On May 19, 22 and 31, 2006, daily one set of influent and effluent vapor samples were collected. For these vapor samples, ESTC initiated a chain of custody and it accompanied the vapor samples to Entech Analytical Labs, Inc. (state-certified laboratory) in Santa Clara, California. Chain-of-custody protocol was followed throughout field and laboratory procedures. The samples were analyzed for Benzene,

Toluene, Ethylbenzene, Total Xylenes isomers (BTEX) and Methyl Tertiary Butyl Ether (MTBE), by modified Environmental Protection Agency (EPA) method 8020, and for total petroleum hydrocarbon reported as gasoline (TPHg) by modified EPA method 8015. Chain of Custody and the results of laboratory analyses of vapor samples are attached. Results of laboratory analysis are summarized in the Table 1.

Weekly visit made to the site for equipment maintenance and switch the intake vapor pipe for most efficiency and productivity of soil vapor extraction. One monthly set of influent and effluent vapor samples was collected from each month the VES was operational. For all vapor samples, a Chain-of-Custody was initiated and accompanied the vapor samples to State-certified laboratory. Chain-of-Custody protocol was followed throughout field and laboratory procedures. The samples were analyzed for BTEX isomers plus MTBE, by modified Environmental Protection Agency (EPA) method 8015, and for total petroleum hydrocarbons reported as gasoline (TPHg) by modified EPA method 8020 (or 8021). Chain-of-Custody and the results of laboratory analyses of vapor samples are attached. Results of laboratory analysis are summarized in Table 2.

VES HYDROCARBON MASS EXTRACTION RATES

Results of laboratory analysis of vapor samples collected during the VES operation at this site are being used for these calculations. The average concentration of Total Petroleum Hydrocarbons as gasoline (TPHg) detected in influent vapor samples was 1,226.7 mg/m³, and the average of Benzene concentration was reported 1.27 mg/m³. The mass extraction rates are calculated from the flow rate of vapor influent to the system and the concentration of hydrocarbons in the influent vapor stream. The vapor extraction rate was measured initially at 10-15 cubic feet per minute (CFM), but later increased to approximately 50 CFM when this vapor sample was collected. The mass extraction rate for TPHg is calculated as follows:

$$\frac{1,226.7 \text{ mg TPHg}}{1 \text{ m}^3 \text{ air}} \times \frac{1 \text{ g}}{1000 \text{ mg}} \times \frac{1 \text{ lb}}{454 \text{ g}} \times \frac{0.0283 \text{ m}^3}{1 \text{ ft}^3} \times \frac{50 \text{ ft}^3}{1 \text{ min}} \times \frac{1440 \text{ min.}}{1 \text{ day}}$$
$$= \frac{5.51 \text{ lbs TPHg}}{\text{day}}$$

Similarly, the mass extraction rate for Benzene is calculated as follows:

$$\frac{1.27 \text{ mg Benzene}}{1 \text{ m}^3 \text{ air}} \times \frac{1 \text{ g}}{1000 \text{ mg}} \times \frac{1 \text{ lb}}{454 \text{ g}} \times \frac{0.0283 \text{ m}^3}{1 \text{ ft}^3} \times \frac{50 \text{ ft}^3}{1 \text{ min}} \times \frac{1440 \text{ min.}}{1 \text{ day}}$$
$$= \frac{0.0057 \text{ lbs Benzene}}{\text{day}}$$

EMISSION RATES

Emission flow rates are calculated using the engine displacement of 300 cubic inches for a four-stroke engine. With the I.C. engine operating at 1,000 revolutions per minute (RPM), the flow rate for that time was calculated as follows:

$$\frac{1,000 \text{ rpm}}{2} \times \frac{300 \text{ in}^3}{1 \text{ rpm}} \times \frac{1 \text{ ft}^3}{1,728 \text{ in}^3} = 86.8 \text{ CFM}$$

Effluent mass discharge rates are determined using the calculated vapor flow rate and the effluent vapor sample laboratory analysis results taken just after the influent vapor sample was collected. Using the average emission rate, the effluent TPH mass discharge rate is calculated as follows:

$$\frac{20 \text{ mg TPHg}}{1 \text{ m}^3 \text{ air}} \times \frac{1 \text{ g}}{1000 \text{ mg}} \times \frac{1 \text{ lb}}{454 \text{ g}} \times \frac{0.0283 \text{ m}^3}{1 \text{ ft}^3} \times \frac{86.8 \text{ ft}^3}{1 \text{ min}} \times \frac{1440 \text{ min.}}{1 \text{ day}}$$
$$= \frac{0.156 \text{ lbs TPHg}}{\text{day}}$$

Similarly, the mass discharge rate for Benzene is calculated as follows:

$$\frac{0.5 \text{ mg Benzene}}{1 \text{ m}^3 \text{ air}} \times \frac{1 \text{ g}}{1000 \text{ mg}} \times \frac{1 \text{ lb}}{454 \text{ g}} \times \frac{0.0283 \text{ m}^3}{1 \text{ ft}^3} \times \frac{86.8 \text{ ft}^3}{1 \text{ min}} \times \frac{1440 \text{ min.}}{1 \text{ day}}$$
$$= \frac{0.0039 \text{ lbs Benzene}}{\text{day}}$$

This mass was calculated based on non-detected sample results of <0.5 mg/m³.

DESTRUCTION EFFICIENCY

The destruction efficiency is the mass extraction take minus the effluent rate, divided by the mass extraction rate.

$$\text{Destruction Efficiency} = \frac{\text{Influent Rate} - \text{Effluent Rate}}{\text{Influent Rate}}$$

The destruction efficiency for TPHg was calculated as follows, using the average analytical results from samples collected on February 24, June 15 and July 16, 2007:

$$\frac{5.51 \text{ lb} - 0.156}{5.51 \text{ lb}} = \mathbf{97.2\% \text{ for TPHg}}$$

The emission and destruction efficiency calculations indicate that the remediation system is operating well within the TPHg requirements as stipulated in the BAAQMD's permit.

Typically with continued system operation, the petroleum hydrocarbon levels in influent vapor are expected to decrease. However, at this site the concentrations temporarily increased as oxygen levels increased, as this allowed for a reduction in dilution air to the remediation equipment. As this happens, the extraction flow-rate was increased to a maximum of approximately 86.8 CFM. Hydrocarbons concentrations then, as expected, gradually decreased after several months of system operation.

The I.C.E. was shut down at the end of November 2006 to allow the groundwater extraction to create cone of depression and more screen be available for soil vapor extraction. The I.C.E. equipment was restarted mid-February of 2007.

SUMMARY

This VAPOR-EXTRACTION SYSTEM OPERATION SUMMARY REPORT has summarized activities and findings from Vapor-Extraction System Operation. Results in the SUMMARY REPORT indicated that vapor-extraction system has operated well within permit guidelines set by the BAAQMD. The I.C.E. portion of soil and groundwater clean-up at this site has operated as expected.

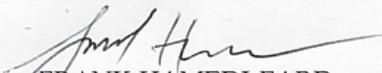
ESTC understands that a copy of this report will be submitted to BAAQMD and Regional Water Quality Control Board-San Francisco Bay Region (RWQCB-SFBR).

File No. 5-97-654-ST
September 25, 2007

If you have any questions or require additional information, please feel free to contact our office at (408) 297-1500 or via email at info@envirosoiltech.com.

Sincerely,

ENVIRO SOIL TECH CONSULTANTS


FRANK HAMEDI-FARD
GENERAL MANAGER


LAWRENCE KOO, P.E.
C. E. #34928



ENVIRO SOIL TECH CONSULTANTS

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 27

- 1984 Soil Tech Engineering Business Incorporation record

[Home \(/\)](#) > [U.S. \(/BusinessDirectory.aspx\)](#) > [California \(/California/BusinessDirectory.aspx\)](#) > [San Jose \(/California/San-Jose/BusinessDirectory.aspx\)](#)

SOIL TECH ENGINEERING, INC.

Archived Record San Jose, CA

Soil Tech Engineering, Inc. filed as an Articles of Incorporation in the State of California and is no longer active. This corporate entity was filed approximately thirty-one years ago on Thursday, April 26, 1984 , according to public records filed with California Secretary of State.

[Learn More](#)

D&B Reports Available for Soil Tech Engineering, Inc.

People

[Frank Hamedi-Fard \(/California/San-Jose/frank-hamedi-fard/41020297.aspx\)](#)

Frank no longer holds any active roles.

Previous roles include:

President

No other companies found for Frank

Corporate Records

California Secretary of State	
Filing Type:	Articles of Incorporation
Status:	Inactive
State:	California
State ID:	01245318
Date Filed:	Thursday, April 26, 1984
Registered Agent	Frank Hamedi-Fard

Locations & Mailing Addresses

1761 Junction Ave San Jose, CA 95112 (/California/San-Jose/1761-Junction-Ave-San-Jose-CA-95112-a20874477.aspx)

Source



California Secretary of State
Data last refreshed on Tuesday, December 15, 2015

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ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 28

- Hamedi Water Board Communications 2011-2015

ACL complaint R2-2015-1012 Hamedi, 1761 Junction Avenue, San Jose, Santa Clara County
Key communications between 3/17/11 and 9/2/15: 10 letters and 7 emails.

Date	Description
3/17/11 letter	RWQCB (RWB) notified Mr. Hamedi of intent to revoke secondarily responsible status for completion of Tasks 2 and 3. Comments due by 4/28/11.
8/5/11 letter	RWB provided a draft deed restriction and asked for a response by 8/29/11.
9/15/11 letter	RWB responded to Mr. Hamedi's request for RWB actions.
10/13/11 letter	RWB comments on draft deed restriction. Required resubmittal by 10/30/11.
2/5/14 letter	RWB Executive Officer revoked secondarily responsible status Tasks C. 2 and 3. Required submittal of an acceptable deed restriction by 4/8/14.
5/29/14 email	RWB asked Mr. Hamedi if he intends to submit the draft deed restriction
8/14/14 letter	Notice of violation for failure to submit an acceptable deed restriction noting that the deed restriction is 128 days late and fine is up to \$5000/day.
10/3/14 letter	RWB conditionally approved the draft deed restriction if certain changes are made and requiring recordation made by 12/2/14. Mr. Hamedi never responded.
1/5/15 email	RWB email stating that two additional changes to the draft deed restriction were necessary.
3/27/15 letter	RWB rescinded the conditional approval of the draft deed restriction and required submittal of an acceptable draft by 4/7/15. The required changes were to remove language that would allow residential or other sensitive use if allowed by a local agency; and, to remove language that would require notifications to the RWB by someone other than the property owner.
4/15/15 email	Mr. Hamedi said he would sign the document if two changes were made (phone call. RWB emailed approval of the two changes and instructions for next steps.
4/22/15 email	RWB informed Mr. Hamedi that the deadline for compliance had passed and recommending that he send the signed deed restriction to the RWB before the matter goes to enforcement.
6/3/15 to 6/5/15 emails	RWB informed Mr. Hamedi that the Enforcement Unit was now managing his case and reiterated the requirement for a signed draft deed restriction.
6/16/15 email	RWB reiterated the requirement signed deed restriction using the language agreed upon with RWB staff on April 15, 2015, by June 26, 2015.
6/25/15 email	RWB informed Mr. Hamedi that the language added to the deed restriction was unacceptable giving him until July 3 to correct it.
7/20/15 letter	RWB informed Mr. Cheflen of the history of RWB communications to Mr. Hamedi seeking compliance with Tasks C.2 and C.3 of Order 01-108. Reiterated the requirement to submit a draft deed restriction.
9/2/15 letter	Administrative Civil Liability Complaint issued to Mr. Hamedi

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 29

- Response to Request for Board Action Letter 9-15-11



Matthew Rodriguez
Secretary for
Environmental Protection

California Regional Water Quality Control Board

San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • FAX (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>



Edmund G. Brown Jr.
Governor

Date: September 15, 2011
File: 43S0346 (dib)

Mr. Frank Hamedi
Soil Tech Engineering
131 Tully Road
San Jose, CA 95111
[info@envirosoiltech.com]

SUBJECT: Response to Request for Board Action regarding 1761 Junction Avenue, San Jose, Santa Clara County

Dear Mr. Hamedi:

This letter responds to the August 29, 2011, letter (Letter) submitted by your attorney requesting Water Board actions for the 1761 Junction Avenue parcel. The Letter requests two specific Board actions. As explained below, we intend to initiate one of the requested actions immediately and may initiate the other action depending on the results.

Background

This parcel is one of two parcels that make up the Velcon Filters site (Site). The Site is subject to Site Cleanup Requirements in Order No. 01-108 (the Order). The Order sets cleanup standards for the site (assuming continued commercial/industrial land use) and requires a deed restriction for both parcels. A deed restriction was recently recorded for the second parcel. You submitted a draft deed restriction for the 1761 Junction Avenue parcel, as required by the Order.

We are reviewing the draft deed restriction and will respond in a separate letter with any comments regarding the draft deed restriction.

Currently, an expanded pilot test of enhanced in-situ bioremediation is being conducted at the site. A number of injection wells, soil vapor monitoring wells and new groundwater monitoring wells have been installed on 1761 Junction Avenue to implement the expanded pilot test, with your permission. Groundwater conditions in the pilot test area which extend across the length of the property are in flux due to the effects of bioremediation. Ongoing monitoring of groundwater and soil vapor conditions is being done pursuant to Water Board requirements.

Requested actions

The Letter requests that the Water Board: 1) revise the Order to provide updated cleanup standards and other provisions, and 2) order Velcon Filters to conduct a vapor intrusion evaluation on the property including soil gas and indoor air analysis. This request is based on a concern about potential human health risks from vapor intrusion into the building at 1761 Junction Avenue.

Water Board response

Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 60 years

We agree that additional work is needed at the Site to fully evaluate the vapor intrusion concern. This concern was previously addressed by Velcon, which performed soil gas sampling at various Site locations and prepared a site-specific risk assessment. The site-specific risk assessment concluded that vapor intrusion did not pose a potential threat to human health. However, new information about the vapor intrusion concern at VOC sites calls that conclusion into question. We have learned that soil gas samples taken adjacent to buildings tend to underestimate sub-slab soil gas concentrations and therefore the likelihood of vapor intrusion into the building. Also, empirical data from USEPA suggest that attenuation factors between sub-slab soil gas and indoor air are often much lower than those predicted by modeling, especially when model inputs include fine-grain soils. Therefore, we intend to require additional work to evaluate the vapor intrusion concern at the Site. This requirement will be part of a separate letter, to be sent shortly.

However, we conclude that it is premature to revise the Order now. Apart from the vapor intrusion aspects, very little has changed in how the Water Board regulates sites with this type of VOC contamination. Groundwater cleanup standards are still set at the drinking water maximum contaminant levels (MCLs) in areas with potable groundwater. We will consider revising the Order following completion of the vapor intrusion evaluation. We will provide an opportunity for all interested parties to comment on the vapor intrusion evaluation report and appropriate next steps.

If you have any questions, please contact David Barr of my staff at (510) 622-2313, or via e-mail at dbarr@waterboards.ca.gov.

Sincerely,

A handwritten signature in cursive script that reads "Stephen Hill" with a small "for" written below it.

Digitally signed by Stephen Hill
Date: 2011.09.15 12:40:42
-07'00'

Bruce H. Wolfe
Executive Officer

cc: Mailing List

Mailing List

Velcon Filters, Inc.
3320 Camels Ridge lane
Colorado Springs, Co. 80904
Attn: Mr. Dave Taylor
[dtaylor@velcon.com]

Dennis Maslonkowski
TRC Solutions
1590 Solano Way, Suite A
Concord, CA 94520
[dmaslonkowski@trcsolutions.com]

George Cook
Santa Clara Valley Water District
[gcook@valleywater.org]

Lucien and Jean Taylor
675 Arrowood Court
Los Altos, CA 94022

Bill Bartlett
Triad Tool and Engineering, Inc.
1750 Rogers Ave.
San Jose, CA 95112

Cindy Hamilton
Hamilton & Hamilton
1419 N. 10th St.
San Jose, CA 95112

Jenifer Beatty
LFR-Levine Fricke
4190 Douglas Boulevard, Suite 200
Granite Bay, CA 95746-9

Brian Hannon
McGrane Greenfield LLP
40 South Market Street, 7th floor
San Jose, CA 95113

Gary Grimm
Law Offices of Gary J. Grimm
[gjgrimm@mindspring.com]

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 30

- Velcon Property Deed Restriction deadline Email 6-5-15

Gregg, Jack@Waterboards

From: Gregg, Jack@Waterboards
Sent: Friday, June 05, 2015 4:31 PM
To: info@envirosoiltech.com
Subject: RE: Velcon Property Deed Restriction - June 5, 2015 deadline

Mks. Nguyen - Thanks for responding to my email. I look forward to talking to Mr. Hamedi as soon as possible while our staff considers options for resolving this case. Since Mr. Hamedi is returning next Wednesday, I will expect to hear from him by the close of business next Thursday. If he is not able to reach me during my normal business hours (8am-4:30pm), he should leave me a voicemail with contact information (e.g., cell phone) and the best times to reach him. Jack Gregg

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2437

From: info@envirosoiltech.com [<mailto:info@envirosoiltech.com>]
Sent: Friday, June 05, 2015 10:05 AM
To: Gregg, Jack@Waterboards
Subject: RE: Velcon Property Deed Restriction - June 5, 2015 deadline

Good Morning Mr. Gregg,

My name is Dianna Nguyen, and I work for ESTC. Our office had received your email and phone message. Mr. Hamedi is out of the area until Wednesday but his schedule for Wednesday is already tied up and probably won't be able to get back to you until maybe sometime in the afternoon. Unfortunately, his cell is receiving any calls and we can't get through to him. If it is very urgent, his attorney is Mr. Jack Chevlen, and his phone number is 408-369-8000, or if you can wait until Wednesday afternoon, he will return your call.

Sincerely,
ESTC
Dianna Nguyen
Tel: 408-297-1500
Email: info@envirosoiltech.com

----- Original Message -----

Subject: Velcon Property Deed Restriction - June 5, 2015 deadline
From: "Gregg, Jack@Waterboards" <Jack.Gregg@Waterboards.ca.gov>
Date: Wed, June 03, 2015 1:19 pm
To: Frank Hamedi <info@envirosoiltech.com>

Mr. Hamedi – I left you a voicemail today at (408) 297-1500 and am following up with this email. As you know, Regional Water Board Order No. 01-108 requires that deed restriction be recorded by you on your property. Staff in our Toxic Cleanup Division have referred this issue to the Water Board's Enforcement Section. As a courtesy, we want to talk to you to confirm that you understand the consequences of ignoring a requirement of Board Order No. 01-108. Those consequences were listed in the Notice of Violation sent to you on August 14, 2014. At this time, communications on this matter should come directly to me at the phone number or email address below.

If you have questions about this matter or substantive information that may inform our enforcement file review, you need to contact me by 4pm on this Friday, June 5, 2015.

As we move forward with reviewing your file, we want to make sure we have the best contact information for you. At present we have your contact information as: Frank Hamedi, 131 Old Tully Road, San Jose, CA 95111, *Email:* info@envirosoiltech.com, *Phone:* (408) 297-1500. Please let us know if there are better ways to contact you.

Jack H. Gregg, PhD, PG
Engineering Geologist, Enforcement Unit
San Francisco Bay Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2437

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 31

- Individual Inability to Pay Form

Ability to Pay ~ Individual, Sole Proprietorship

California State Water Resources Control Board, Office of Enforcement

Name of Discharger _____

Name of Spouse _____

Address of Discharger _____

County of Residence _____

This form requests information regarding your financial status. The data will be used to evaluate your ability to pay for environmental clean-up or penalties.

Failure to provide this information may result in denial of your claim of inability to pay.

Certification

Under penalties of perjury, I declare that this statement and the attachments are true, correct, and complete to the best of my knowledge and belief. I further understand that I will be subject to prosecution by the California Attorney General to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

Signature

Date

1. Income:

(1) Tax Status: If you are married and filing separately, please submit the last 3 years of signed federal and state income tax returns for yourself and your spouse. Otherwise, submit the last 3 years of your tax returns.

(2) Active Military: If you or your spouse has been or is on active duty and have received combat pay, please send the W2 statements for the last 3 years.

2. Financial Institutions: Banks (insured by FDIC or not), Credit Unions, Savings Institutions, and any organization that facilitates your or your spouse's financial transactions. Include any overseas financial institutions.

Provide the following information for every institution with which you do business.

(1) Financial Institution #1 Name on the account (yours, your spouse, both) _____

(1.1) Institution Name, Full Mailing Address

(1.2) For this institution, provide monthly summary statements the institution issues for the past 24 months. Each summary statement must list all accounts (savings, checking, credit line, loans) and the balance for each account.

(2) Financial Institution #2 Name on the account (yours, your spouse, both) _____

(2.1) Name, Full Mailing Address

(2.2) For this institution, provide monthly summary statements the institution issues for the past 24 months. Each summary statement must list all accounts (savings, checking, credit line, loans) and the balance for each account.

(3) Financial Institution #3 Name on the account (yours, your spouse, both) _____

(3.1) Name, Full Mailing Address

(3.2) For this institution, provide monthly summary statements the institution issues for the past 24 months. Each summary statement must list all accounts (savings, checking, credit line, loans) and the balance for each account.

(4) Use additional paper and this format if you or your spouse use more than three financial institutions.

3. Real Estate:

Identify all Real Estate Properties in which you or your spouse have at least some financial interest.

Type of Property : Choose one type for each property you list:

- | | |
|---|--------------------------------|
| Primary Residence (PR) | Secondary Residence (SR) |
| Investment Property such as rental (IP) | Business (non-agriculture) (B) |
| Agriculture (A) | |

(1) Property #1 Name as it appears on the deed: _____

(1.1) Type of Property: _____

(1.2) Type of Financial Interest you or your spouse have (e.g. owner, partner): _____

(1.3) Percent of the Property owned by you or your spouse: _____%

(1.4) Property #1 Address and Assessor Parcel Number

(1.5) Submit Fair Market Value, either an appraisal less than 2 years old or a statement of real estate comparables from a real estate broker.

(1.6) If there is a mortgage submit a copy of the latest mortgage statement for this property.

(1.7) If there is a lien submit a copy of the latest statement of any lien against this property.

(2) Property #2 Name as it appears on the deed: _____

(2.1) Type of Property: _____

(2.2) Type of Financial Interest you or your spouse have (e.g. owner, partner): _____

(2.3) Percent of the Property owned by you or your spouse: _____%

(2.4) Property #2 Address and Assessor Parcel Number

(2.5) Submit Fair Market Value, either an appraisal less than 2 years old or a statement of real estate comparables from a real estate broker.

(2.6) If there is a mortgage submit a copy of the latest mortgage statement for this property.

(2.7) If there is a lien submit a copy of the latest statement of any lien against this property.

(3) Use additional paper and this format if you or your spouse have financial interest in more than two properties.

4. Investments, Non-Real Estate:

Identify all non-real estate investments (IRAs, Investment Brokers, Stocks, Bonds, Life Insurance, etc.) owned by you or your spouse.

(1) Investment #1: Name of the owner (you, your spouse, both) _____

(1.1) Name, Full Mailing Address, Account Number

(1.2) Submit a copy of the most recent statement, highlight the surrender cash value.

(2) Investment #2: Name of the owner (you, your spouse, both) _____

(2.1) Name, Full Mailing Address, Account Number

(2.2) Submit a copy of the most recent statement, highlight the surrender cash value.

(3) Investment #3: Name of the owner (you, your spouse, both) _____

(3.1) Name, Full Mailing Address, Account Number

(3.2) Submit a copy of the most recent statement, highlight the cash value.

(4) Investment #4: Name of the owner (you, your spouse, both) _____

(4.1) Name, Full Mailing Address, Account Number

(4.2) Submit a copy of the most recent statement, highlight the cash value.

(5) Use additional paper and this format if you or your spouse own more than four investments.

5. Personal Property, Vehicles:

List all vehicles owned by you or your spouse.

Vehicles to Commute or Conduct Business

(1) Vehicle #1 This is the vehicle used for commuting or business.

Make, Model, Year: _____

Fair Market Value: \$_____

Submit documentation of Fair Market Value (e.g. Kelley Blue Book Quote)

Remaining principal of the vehicle loan \$_____

Submit a copy of your latest car payment with the remaining principal stated.

(2) Vehicle #2 This is the vehicle your spouse uses for commuting or business.

Make, Model, Year: _____

Fair Market Value: \$_____

Submit documentation of Fair Market Value (e.g. Kelley Blue Book Quote)

Remaining principal of the vehicle loan \$_____

Submit a copy of your latest car payment with the remaining principal stated.

If your family uses more than two vehicles for work or business, use this format on additional paper.

Vehicles for Other Uses (Cars, Trucks, Motorcycles, Motor Homes, Travel Trailers, Boats, Airplanes)

(1) Vehicle #1 This is a vehicle you or your spouse own for other purposes.

Make, Model, Year: _____

Fair Market Value: \$_____

Submit documentation of Fair Market Value (Blue Book Quote)

Remaining principal of the vehicle loan \$_____

Submit a copy of your latest car payment with the remaining principal stated.

If your family owns more than one vehicle for other purposes, use this format on additional paper.

6. Personal Property, High Market Value Items

List personal property owned by you or your spouse with value greater than \$5,000; e.g. antiques, jewelry.

(1) Personal Property #1:

Property Type and Approximate Fair Market Value: _____

If there is an outstanding loan for this property, submit a copy of the loan balance statement.

(2) Personal Property #2:

Property Type and Approximate Fair Market Value: _____

If there is an outstanding loan for this property, submit a copy of the loan balance statement.

(3) Personal Property #3:

Property Type and Approximate Fair Market Value: _____

If there is an outstanding loan for this property, submit a copy of the loan balance statement.

(4) Personal Property #4:

Property Type and Approximate Fair Market Value: _____

If there is an outstanding loan for this property, submit a copy of the loan balance statement.

(5) Personal Property #5:

Property Type and Approximate Fair Market Value: _____

If there is an outstanding loan for this property, submit a copy of the loan balance statement.

(6) Personal Property #6:

Property Type and Approximate Fair Market Value: _____

If there is an outstanding loan for this property, submit a copy of the loan balance statement.

(7) Personal Property #7:

Property Type and Approximate Fair Market Value: _____

If there is an outstanding loan for this property, submit a copy of the loan balance statement.

(8) Use additional paper and this format if you or your spouse have more than 7 items to list.

7. Trusts:

Identify the trusts in which you or your spouse have an interest.

If you or your spouse have an interest in more than two trusts, use this format on additional paper.

Trust #1: (1) Name of Trust: _____

(2) Provide a copy of the most recent trust document.

(3) What is your relationship to this trust?

(4) Type of Trust, (e.g., revocable, irrevocable, simple, complex) _____

(5) Name and Address of Creator of the trust:

(6) Properties in the trust: Use Property Types in Question 2.

(6.1) Property #1: Property Type _____

(6.1.1) Address and Assessor Parcel Number

(6.1.2) Submit a document which provides the fair market value of the property.

(6.1.3) Submit the most recent mortgage statement providing the remaining balance.

(6.2) Property #2: Property Type _____

(6.2.1) Address and Assessor Parcel Number

(6.2.2) Submit a document which provides the fair market value of the property.

(6.2.3) Submit the most recent mortgage statement providing the remaining balance.

(6.3) Use additional paper and this format if there are more than two properties in this trust.

Continue Trust #1 on next page.

Trust #1 (con't)

(7) Name and Address of each Trustee:

(7.1) Trustee #1: Name – Mailing Address

(7.2) Trustee #2: Name – Mailing Address

(7.3) Trustee #3: Name – Mailing Address

(7.4) Use additional paper and this format if there are more than three trustees for this trust.

(8) Name and Address of every Beneficiary in this trust.

(8.1) Beneficiary #1: Name – Mailing Address

(8.2) Beneficiary #2: Name – Mailing Address

(8.3) Beneficiary #3: Name – Mailing Address

(8.4) Use additional paper and this format if there are more than three beneficiaries in this trust.

(9) What is the annual income you or your spouse receive from this trust? \$ _____

Trust #2 is on the next page.

Trust #2: (1) Name of Trust: _____

(2) Provide a copy of the most recent trust document.

(3) What is your relationship to this trust?

(4) Type of Trust, (e.g., revocable, irrevocable, simple, complex) _____

(5) Name and Address of Creator of the trust:

(6) Properties in the trust: Use Property Types in Question 2.

(6.1) Property #1: Property Type _____

(6.1.1) Address and Assessor Parcel Number

(6.1.2) Submit a document which provides the fair market value of the property.

(6.1.3) Submit the most recent mortgage statement providing the remaining balance.

(6.2) Property #2: Property Type _____

(6.2.1) Address and Assessor Parcel Number

(6.2.2) Submit a document which provides the fair market value of the property.

(6.2.3) Submit the most recent mortgage statement providing the remaining balance.

(6.3) Use additional paper and this format if there are more than two properties in this trust.

Continue Trust #2 on next page.

Trust #2 (con't)

(7) Name and Address of each Trustee:

(7.1) Trustee #1: Name – Mailing Address

(7.2) Trustee #2: Name – Mailing Address

(7.3) Trustee #3: Name – Mailing Address

(7.4) Use additional paper and this format if there are more than two trustees for this trust.

(8) Name and Address of every Beneficiary in this trust.

(8.1) Beneficiary #1: Name – Mailing Address

(8.2) Beneficiary #2: Name – Mailing Address

(8.3) Beneficiary #3: Name – Mailing Address

(8.4) Use additional paper and this format if there are more than three beneficiaries in this trust.

(9) What is the annual income you or your spouse receive from this trust? \$ _____

8. Credit Rating

Please provide your current credit rating statements from:

- (1) Experian
- (2) TransUnion
- (3) Equifax

9. Other Considerations

(1) If you or your spouse have overseas accounts, please submit a copy of the most recent statement from each institution.

(2) If you or your spouse are owed money, whether you are a creditor to a friend or business contact, for each loan, supply the following information:

(2.1) Name of Debtor: _____

(2.2) Amount of Debt Remaining: \$ _____

(2.3) Monthly Payment made to You: \$ _____

(3) If you or your spouse are planning to sell real estate properties in the next 12 months, identify the property from your list of properties given in Question 3, Real Estate, and from the properties identified in Question 7, Trusts, for which you or your spouse are grantors.

(3.1) Property to Sell #1 _____

(3.2) Property to Sell #2 _____

If needed, use additional paper to list more properties.

(4) If you or your spouse have properties that are being held by another person on your behalf, provide the following information for each such property:

Name(s) as it(they) appears on the deed:

(4.1) Type of Property (PR, SR, IP, B, A see definitions in Question 3): _____

(4.2) Type of Financial Interest you or your spouse have (e.g. owner, partner): _____

(4.3) Percent of the Property owned by you or your spouse: _____%

(4.4) Property Address and Assessor Parcel Number

(4.5) Submit Fair Market Value, either an appraisal less than 2 years old or a statement of real estate comparables from a real estate broker.

(4.6) If there is a mortgage submit a copy of the latest mortgage statement for this property.

(4.7) If there is a lien submit a copy of the latest statement of any lien against this property.

(5) If you or your spouse receive federal, state, or county financial assistance, please provide the following information for each source of financial assistance:

(5.1) Formal Name of the Program: _____

(5.2) Reason(s) for receiving the Assistance: _____

(5.3) Monthly amount you or your spouse receive from this assistance: \$ _____

(5.4) Number of Months assistance was received in the past year.

(5.5) Submit documentation from the Program.

(6) If there is a suit or judgment pending against you or your spouse, please describe and estimate the monetary impact of this to your family and business. Supply documentation.

(7) If you or your spouse have unpaid obligations, such as taxes owed or overdue child support, please provide the following information for each obligation.

(7.1) Obligation #1, Name of Creditor _____

(7.2) Type of Obligation _____

(7.3) Amount of Outstanding Obligation \$ _____

(7.4) Submit documentation.

(8) If you have reason, not yet covered in this data request, to expect that your or your spouse's financial situation will significantly change next year, please describe and provide an estimate of the monetary impact. That is, if there are special circumstances impacting your ability to pay the penalty next year, please describe the circumstances and provide documentation of the monetary impact to you.

ACL Complaint R2-2015-1012

Mr. Frank Hamedi

Exhibit Provided by Hard Copy and Electronically

Exhibit 32

- • OnTrac Package Delivery Confirmations

Ciccarelli, Paul@Waterboards

From: Neal, Barbara@Waterboards
Sent: Monday, December 07, 2015 6:44 AM
To: Ciccarelli, Paul@Waterboards
Subject: FW: OnTrac Package Delivery Confirmation: D10010864756809

FYI

-----Original Message-----

From: Info DoNotReply [<mailto:webcustomerservice@ontrac.com>]
Sent: Saturday, December 05, 2015 2:08 PM
To: Neal, Barbara@Waterboards
Subject: OnTrac Package Delivery Confirmation: D10010864756809

Hello,

This is an automated email response from OnTrac. The package tracking number D10010864756809 has been confirmed as delivered.

Delivery Name : N/A
POD Signature : hamdi
Delivery Time : Dec 5 2015 2:07PM
Status Code : DELIVERED
Reference : HAMEDI

For more information please visit us at our website at <http://www.ontrac.com> or call us at 800-334-5000.
Thank you for using OnTrac!

Ciccarelli, Paul@Waterboards

From: Neal, Barbara@Waterboards
Sent: Monday, December 07, 2015 6:45 AM
To: Ciccarelli, Paul@Waterboards
Subject: FW: OnTrac Package Delivery Confirmation: D10010864757451

FYI

-----Original Message-----

From: Info DoNotReply [<mailto:webcustomerservice@ontrac.com>]
Sent: Saturday, December 05, 2015 10:00 AM
To: Neal, Barbara@Waterboards
Subject: OnTrac Package Delivery Confirmation: D10010864757451

Hello,

This is an automated email response from OnTrac. The package tracking number D10010864757451 has been confirmed as delivered.

Delivery Name : N/A
POD Signature : rosemary
Delivery Time : Dec 5 2015 9:59AM
Status Code : DELIVERED
Reference : HAMED!

For more information please visit us at our website at <http://www.ontrac.com> or call us at 800-334-5000.
Thank you for using OnTrac!