

ATTACHMENT A

Simon Tregurtha

From: MaryBeth Heydt
Sent: Friday, September 14, 2007 11:22 AM
To: Barry W Berkett; Chris Panaitescu; Simon Tregurtha
Subject: FW: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

FYI

From: Faiz, Farimah [mailto:FFaiz@oaklandcityattorney.org]
Sent: Friday, September 14, 2007 11:40 AM
To: MaryBeth Heydt
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

I am waiting to touch base with an expert in this area of law and to talk to my clients. This will likely take place early next week at which point I will contact you.

From: MaryBeth Heydt [mailto:Heydt@ThriftyOil.com]
Sent: Friday, September 14, 2007 11:15 AM
To: Faiz, Farimah
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

Farimah, I tried to call you yesterday to discuss this but have received no response. How are we coming along with this and when can we expect a response to our comments? Thanks, MaryBeth

From: Faiz, Farimah [mailto:FFaiz@oaklandcityattorney.org]
Sent: Thursday, September 13, 2007 8:48 AM
To: MaryBeth Heydt
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

Is the encroachment for a monitoring well only or is it more extensive? And why do you need to encroach on right-of-way, can you accomplish what you need via private property?

From: MaryBeth Heydt [mailto:Heydt@ThriftyOil.com]
Sent: Thursday, September 13, 2007 7:41 AM
To: Faiz, Farimah
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

To provide you with additional information in supplement to my email yesterday, your suggestion does not work or have the same meaning as our proposed language (or something similar) since things like waiver are permitted by law and we are not willing to waive our bankruptcy protection or allow this agreement to be construed as a waiver.

It would seem to make more sense at this point to have a discussion about all of the requested changes and attempt to finalize them versus to continue emailing back and forth. As previously mentioned, this process has been going on since 2004, and time is of the essence from our standpoint and the Agency's standpoint. Thanks, MaryBeth

9/24/2007

From: Faiz, Farimah [mailto:FFaiz@oaklandcityattorney.org]
Sent: Wed 9/12/2007 1:56 PM
To: MaryBeth Heydt
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

So a change to the City's standard indemnification language that says "to the extent permitted by law" would satisfy your concerns?

From: MaryBeth Heydt [mailto:Heydt@ThriftyOil.com]
Sent: Wednesday, September 12, 2007 1:52 PM
To: Faiz, Farimah
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

Dear Farimah, the simple answer to your request for analysis regarding the prior proposed Easement Agreement is also applicable to the new proposed Indenture Agreement Paragraph 17 (which is erroneously numbered and should be Paragraph 15 as demonstrated in our mark up emailed to you earlier today) which was previously provided to you on April 26, 2006. The paragraph in question provides that Thrifty is to be responsible for obligations and/or contamination that preceded the actions that are being proposed. Thrifty and the agency wish to assess and remediate the area, but the City's demand that Thrifty indemnify it from preexisting contamination that is not caused by the proposed actions seems to be prohibited by the Order and counterproductive. We all wish to get the area cleaned. It seems logical that the City's request should deal with the problems that arise from the proposed encroachment.

Pursuant to Paragraphs 3-5 of the Bankruptcy Order, as of the Effective Date of the Order, the Debtors are permanently discharged in relation to any and all claims which arose prior to the confirmation date, and all claimants and creditors are permanently enjoined from taking any steps to pursue such claims. In this instance, the City seeks to hold the Debtor responsible for any environmental contamination which emanates or emanated from the site. Such claims are barred as a matter of law by the Bankruptcy Order.

Under the Bankruptcy Code (and hence the Plan and Confirmation Order), the term "Claim" is given the "broadest possible definition . . . to ensure that all legal obligations of the debtor, *no matter how remote or contingent*, will be able to be dealt with in the bankruptcy case." *Siegel v. Federal Home Loan Mort. Corp.*, 143 F.3d 525, 532 (9th Cir. 1998) (emphasis in original). There is clearly not a preservation of discharged claims, such as those the City is attempting to preserve via its indemnification language. Further, as held in *Gull Industries, Inc. v. John Mitchell, Inc. (In re Hanna)*, 168 B.R. 386 (9th Cir. BAP 1994), environmental claims are deemed to arise as of the date of the contamination. In this instance, the subject alleged contamination predates the discharge in this case. Thus, "so long as a prepetition triggering event had occurred, the claim was dischargeable regardless of when the claim for relief was ripe for adjudication." *Id.*

I trust that once you have reviewed the pertinent sections of the Bankruptcy Order and the broad protections it provides, you will agree to our simple change which addresses the issue by limiting the indemnity re environmental contamination to that which you are allowed by law under these circumstances (e.g. post 2/28/95).

Should you have any further questions, please call me to discuss.

MaryBeth Heydt, Esq.

9/24/2007

Thrifty Oil Co.
13116 Imperial Highway
Santa Fe Springs, California 90670
(562) 921-3581 Extension 338
(562) 921-3562 Facsimile
Heydt@ThriftyOil.com

*****NOTICE*****

This e-mail transmission and all attachments, if any, may contain confidential or privileged information and is intended exclusively for the individual or entity named above. If you have received this communication in error, please notify the sender by reply transmission and delete the message without copying or disclosing it. Thank you.

From: Faiz, Farimah [mailto:FFaiz@oaklandcityattorney.org]
Sent: Wednesday, September 12, 2007 11:40 AM
To: MaryBeth Heydt
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 39)

Please provide it in writing so that I can share it with my supervisor and clients.

From: MaryBeth Heydt [mailto:Heydt@ThriftyOil.com]
Sent: Wednesday, September 12, 2007 11:45 AM
To: Faiz, Farimah
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 39)

I can discuss that with you over the phone. No problem.

From: Faiz, Farimah [mailto:FFaiz@oaklandcityattorney.org]
Sent: Wednesday, September 12, 2007 11:37 AM
To: MaryBeth Heydt
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 39)

I have discussed the matter with my supervisor and before we can sit down to discuss the issue, we need an analysis of the bankruptcy court order and its applicability to this situation. As you may be aware, granting the right to encroach on the City's right-of-way is discretionary.

Farimah

From: MaryBeth Heydt [mailto:Heydt@ThriftyOil.com]
Sent: Wednesday, September 12, 2007 11:32 AM
To: Faiz, Farimah
Subject: FW: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 39)

Dear Farimah, since this process started in 2004, we are told by the City that the form has changed and we were recently provided with a copy of the new one. In order to expedite the process, I have marked our comments on the form and attached them here for your review. If you could provide me with an

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electronic copy in Word, we would be happy to redline them for you.

To assist you in your review of the Bankruptcy Order, I am also providing you with a copy of the June 15, 1978 certificate of amendment changing the name of Orkin, Inc. to Thrifty Oil Co. .

I am happy to discuss the bankruptcy order and its applicability to this situation at your earliest convenience. I still await response to my email from yesterday regarding your availability to discuss this matter. Please advise so that we may resolve this matter and move forward with our work plan.

MaryBeth Heydt, Esq.
Thrifty Oil Co.
13116 Imperial Highway
Santa Fe Springs, California 90670
(562) 921-3581 Extension 338
(562) 921-3562 Facsimile
Heydt@ThriftyOil.com

Simon Tregurtha

From: MaryBeth Heydt
Sent: Thursday, September 13, 2007 10:30 AM
To: Chris Panaitescu; Simon Tregurtha
Cc: Barry W Berkett
Subject: FW: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

I have sent this along and also tried to call her to discuss. So far, she has insisted that all communications on this matter be in writing so she can forward them to her supervisor and others at the City.

From: MaryBeth Heydt
Sent: Thursday, September 13, 2007 11:05 AM
To: 'Faiz, Farimah'
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

I am told by our environmental department that according to the revised work plan **approved** by the ACHCS on August 07, 2007, Thrifty is required to install offsite (on streets) a total of 6 (six) borings, from which 3 (three) will be converted into monitoring wells, while the other three will be backfilled immediately after the soil samples will be collected. With respect to the location of the wells, these locations have been required / approved by the Agency, as being the most suitable (as distance and direction from the site) for plume delineation.

From: Faiz, Farimah [mailto:FFaiz@oaklandcityattorney.org]
Sent: Thursday, September 13, 2007 8:48 AM
To: MaryBeth Heydt
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

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From: MaryBeth Heydt [mailto:Heydt@ThriftyOil.com]
Sent: Wednesday, September 12, 2007 1:52 PM
To: Faiz, Farimah
Cc: Lee, Heather; Derania, Ray
Subject: RE: 3400 San Pablo Ave, Oakland, CA Comments to New Indenture Agreement (TOC 49)

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Should you have any further questions, please call me to discuss.

MaryBeth Heydt, Esq.
Thrifty Oil Co.
13116 Imperial Highway

9/24/2007

20 04

ALAMEDA COUNTY ENVIRONMENTAL HEALTH DEPARTMENT
Division of Environmental Protection

1131 HARBOR BAY PARKWAY, SUITE 250
ALAMEDA, CA 94502-6577
Telephone (510) 567-6700 FAX (510) 337-9335

FACSIMILE COVER SHEET

To: Richard Blackmer (Equipose)

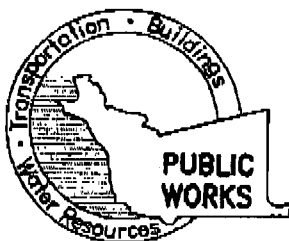
From: Steven Plunkett (ACEH)

Date: 8/15/07

Notes: Richard, here are the well survey request forms.

Thanks

[Signature]



COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY
WATER RESOURCES SECTION
399 Elmhurst Street, Hayward, CA 94544-1395
James Yoo PH: (510) 670-6633 FAX: (510) 782-1939
FOR GENERAL DRILLING PERMIT INFO:
www.acgov.org/pwa/wells

WELL COMPLETION REPORT RELEASE AGREEMENT—AGENCY

(Government and Regulatory Agencies and their Authorized Agents)

Project No/ Site Address. FUEL LEAK CASE NO. R000000004
3400 SAN PABLO AVENUE City OAKLAND

Township, Range, and Section _____ Radius 1.0 MILE
(Must include entire study area and a map that shows the area of interest.)

Under California Water Code Section 13752, the agency named below requests permission from Department of Water Resources to inspect or copy, or for our authorized agent named below to inspect or copy, Well Completion Reports filed pursuant to Section 13751 to (check one):

- Make a study, or,
 Perform an environmental cleanup study associated with an unauthorized release of a contaminant within a distance of 2 miles.

In accordance with Section 13752, information obtained from these reports shall be kept confidential and shall not be disseminated, published, or made available for inspection by the public without written authorization from the owner(s) of the well(s). The information shall be used only for the purpose of conducting the study. Copies obtained shall be stamped **CONFIDENTIAL** and shall be kept in a restricted file accessible only to agency staff or the authorized agent.

RICHARD W. BLACKMER
Authorized Agent

401 N. EL CAMINO REAL #107
Address

SAN CLEMENTE, CA 92672
City, State, and Zip Code

RW Blackmer
Signature

PRINCIPAL ENGINEER
Title

Telephone 949-366-0266

Fax 949-366-0281

Date 8/15/2007

E-mail rwblackmer@EquipoiseCorp.com

Alameda County Environmental Health
Government or Regulatory Agency

1131 Harbor Bay Parkway
Address

Alameda, CA 94502
City, State, and Zip Code

Steven Plunkett
Signature

Hazardous Materials Specialist
Title

Telephone () 510-383-1767

Fax () 510-357-9335

Date 8/15/07

E-mail steven.plunkett@acg.org

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF WATER RESOURCES

CENTRAL DISTRICT

3251 S Street
Sacramento, CA 95818
(916) 227-7632
(916) 227-7600 (Fax)

NORTHERN DISTRICT

2440 Main Street
Red Bluff, CA 96080
(530) 529-7300
(530) 529-7322 (Fax)

SAN JOAQUIN DISTRICT

3374 E. Shields Ave Ste A7
Fresno, CA 93726
(559) 230-3300
(559) 230-3301 (Fax)

SOUTHERN DISTRICT

770 Fairmont Avenue
Glendale, CA 91203
(818) 500-1645 ext. 233
(818) 543-4604 (Fax)

**WELL COMPLETION REPORT RELEASE REQUEST AND CONFIDENTIALITY AGREEMENT
REGULATORY-RELATED ENVIRONMENTAL CLEANUP STUDY**

Well Completion Reports associated with wells located within two miles of an area affected or potentially affected by a known unauthorized release of a contaminant will be made available upon request to any person performing an environmental cleanup study associated with the unauthorized release, if the study is conducted pursuant to a regulatory agency order (Water Code Section 13752).

Requests must be made on the form below, signed and submitted to the appropriate DWR District Office. Please provide the township, range, and section of the property where the study is to be conducted. Attach a map or a sketch with a north arrow, and provide as much identifying information requested below as possible; additional paper may be attached if necessary.

By signing below, the requester acknowledges and agrees that, in compliance with Section 13752, the information obtained from these reports will be kept confidential and will not be disseminated, published, or made available for inspection by the public. Copies obtained must be stamped **CONFIDENTIAL** and kept in a restricted file accessible only to authorized personnel. These reports must not be used for any purpose other than for the purpose of conducting the environmental cleanup study.

Project Name: Thrifty Oil #49 County: ALAMEDA
 Street Address: 3400 SAN PABLO AVENUE City: OAKLAND
 Township, Range, and Section: _____ Radius: 1 MILE
 (Include entire study area and a map that shows the area of interest.) (maximum 2 miles)

EQUIPOISE CORPORATION ALAMEDA COUNTY ENVIRONMENTAL HEALTH
 Requester's Company Regulatory Agency Name
RICK BLACKMER MR. STEVEN PLUNKETT
 Requester's Name (please print) Agency Contact Name (please print)
140N. EL CAMINO REAL, Ste 107 1131 HARBOR BAY PARKWAY, Ste. 250
 Address Address
SAN CLEMENTE, CA 92672 ALAMEDA, CA 94502-6577
 City, State, and Zip Code City, State, and Zip Code
 Signature: [Signature] Signature: [Signature]
 Title: PRINCIPAL ENGINEER Title: Hazardous Materials Specialist
 Telephone: (949) 366-0266 Telephone: (510) 383-1767
 FAX: (949) 366-0281 FAX: (510) 337-9335
 Date: 8/15/2007 Date: 8/15/07
 E-mail: rwblackmer@ E-mail: Steven.plunkett@acgov.org

EquiposeCorp.com



LEVINE-FRICKE
ENGINEERS, HYDROGEOLOGISTS & APPLIED SCIENTISTS

SHELLIE FLETCHER
SENIOR STAFF GEOTECHNICAL ENGINEER

1900 POWELL STREET, 12TH FLOOR
EMERYVILLE, CA 94608
(510) 652-4500
FAX (510) 652-2246

Other Offices: Irvine, CA; Sacramento/Roseville, CA;
Tallahassee, FL; Honolulu, HI

LOWNEY ASSOCIATES
Environmental/Geotechnical/Engineering Services

Mountain View

Fairfield

Oakland

San Ramon

Fullerton

A TRC Company

Ron L. Helm, C.E.G., R.E.A. II
President

405 Clyde Avenue
Mountain View, CA 94043-2209

T: 650.967.2365 Ext. 106
F: 650.967.2785
C: 415.850.3145
E: rhelm@lowney.com

WALTER S. HALLANAN, III
PRINCIPAL

HALLANAN & COMPANY
REAL ESTATE / PROJECT MANAGEMENT
CONSULTING SERVICES
241 TAMALPAIS AVE., MILL VALLEY, CA 94941
(415) 388-6432 TEL (415) 388-6434 FAX
whallanan@comcast.net

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
 B. Received by (Printed Name) **T. KEMP** C. Date of Delivery
 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

RECEIVED MAR 14 2003

3. Service Type Express Mail Return Receipt for Merchandise
 Certified Mail Registered Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes No

2. Article Number **7001 2510 0007 1997 3910** 102595-02-M-1035
 (Transfer from service lat) Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DAN KACH
OLYMPIAN OIL
260 MICHELLE DR.
SO. S.F. CA 94080

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
 B. Received by (Printed Name) C. Date of Delivery
 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type Express Mail Return Receipt for Merchandise
 Certified Mail Registered Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes No

2. Article Number **7001 2510 0007 1997 3910** 95-02-M-1035
 (Transfer) PS Form 3811, August 2001

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

EDMUND
PAM HOPKINS
2000 WAKE AVE, MAIL STOP #59
OAKLAND, CA 94612

Alameda County
MAY 21 2003
Environmental Health