



7

ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway
Alameda, CA 94502-6577
(510) 567-6700
Fax (510) 337-9335

March 22, 2006

Mr. Aziz Kandahari
5196 Grayhawk Lane
Dublin, CA 94568

**Re: Fuel Leak Case #R00000023, Environmental Investigation at EZ Serve
525 West A Street, Alameda, CA**

Dear Mr. Kandahari:

Alameda County Environmental Health (ACEH) staff has recently reviewed the Workplan report dated March 17, 2006, prepared by Ms. Deborah Shulman of Delta Environmental Consultants, Inc. As you are aware, this workplan has been submitted regarding a request to relocate a well (MW-2), due to the proposed construction activities at the above referenced site. There are also two additional wells, which are being proposed for installation along with MW-2A. The proposed workplan is approved. However we request that you address the following technical comments, perform the proposed work, and send us the technical reports requested below.

TECHNICAL COMMENTS

This workplan was submitted to our office subsequent to our meeting and discussions with Mr. Kandahari. Please ensure the following items are addressed as specified below:

- Geotracker EDF Submittals - A review of the case file and the State Water Resources Control Board's (SWRCB) Geotracker website indicate that electronic copies of analytical data have not been submitted for your site. Pursuant to CCR Sections 2729 and 2729.1, beginning September 1, 2001, all analytical data, including monitoring well samples, submitted in a report to a regulatory agency as part of the LUFT program, must be transmitted electronically to the SWRCB Geotracker website via the internet. Additionally, beginning January 1, 2002, all permanent monitoring points utilized to collect groundwater samples (i.e. monitoring wells) and submitted in a report to a regulatory agency, must be surveyed (top of casing) to mean sea level and latitude and longitude accurate to within 1-meter accuracy, using NAD 83, and transmitted electronically to the SWRCB Geotracker website. Beginning July 1, 2005, electronic submittal of a complete copy of all reports is required in Geotracker (in PDF format). In order to remain in regulatory compliance, please upload all analytical data (collected on or after September 1, 2001), to the SWRCB's Geotracker database website in accordance with the above-cited regulation. Please perform the electronic submittals for applicable data and submit verification to this Agency by 3/14/2006.

TECHNICAL REPORT REQUEST

Please submit the following technical reports to Alameda County Department of Environmental Health (Attention: Amir K. Gholami):

April 22, 2006 SWI Report

These reports are being requested pursuant to California Health and Safety Code Section 25296.10. 23 CCR Sections 2652 through 2654, and 2721 through 2728 outline the responsibilities of a responsible party in response to an unauthorized release from a petroleum UST system, and require your compliance with this request.

ELECTRONIC SUBMITTAL OF REPORTS

ACEH's Environmental Cleanup Oversight Programs (LOP and SLIC) now request submission of reports in electronic form. The electronic copy is intended to replace the need for a paper copy and is expected to be used for all public information requests, regulatory review, and compliance/enforcement activities. Instructions for submission of electronic documents to the Alameda County Environmental Cleanup Oversight Program FTP site are provided on the attached "Electronic Report Upload Instructions." Submission of reports to the Alameda County FTP site is an addition to existing requirements for electronic submittal of information to the State Water Resources Control Board (SWRCB) Geotracker website. In September 2004, the SWRCB adopted regulations that require electronic submittal of information for groundwater cleanup programs. For several years, responsible parties for cleanup of leaks from underground storage tanks (USTs) have been required to submit groundwater analytical data, surveyed locations of monitoring wells, and other data to the Geotracker database over the Internet. Beginning July 1, 2005, electronic submittal of a complete copy of all reports is required in Geotracker (in PDF format). Please visit the State Water Resources Control Board for more information on these requirements (http://www.swrcb.ca.gov/ust/cleanup/electronic_reporting).

PERJURY STATEMENT

All work plans, technical reports, or technical documents submitted to ACEH must be accompanied by a cover letter from the responsible party that states, at a minimum, the following: "I declare, under penalty of perjury, that the information and/or recommendations contained in the attached document or report is true and correct to the best of my knowledge." This letter must be signed by an officer or legally authorized representative of your company. Please include a cover letter satisfying these requirements with all future reports and technical documents submitted for this fuel leak case.

PROFESSIONAL CERTIFICATION & CONCLUSIONS/RECOMMENDATIONS

The California Business and Professions Code (Sections 6735, 6835, and 7835.1) requires that work plans and technical or implementation reports containing geologic or engineering evaluations and/or judgments be performed under the direction of an appropriately registered or certified professional. For your submittal to be considered a valid technical report, you are to present site specific data, data interpretations, and recommendations prepared by an appropriately licensed professional and include the professional registration stamp, signature, and statement of professional certification. Please ensure all that all technical reports submitted for this fuel leak case meet this requirement.

UNDERGROUND STORAGE TANK CLEANUP FUND

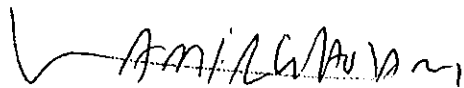
Please note that delays in investigation, later reports, or enforcement actions may result in your becoming ineligible to receive grant money from the state's Underground Storage Tank Cleanup Fund (Senate Bill 2004) to reimburse you for the cost of cleanup.

AGENCY OVERSIGHT

If it appears as though significant delays are occurring or reports are not submitted as requested, we will consider referring your case to the Regional Board or other appropriate agency, including the County District Attorney, for possible enforcement actions. California Health and Safety Code, Section 25299.76 authorizes enforcement including administrative action or monetary penalties of up to \$10,000 per day for each day of violation.

If you have any questions, please call me at (510) 567-6876.

Sincerely,



Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Ms. Deborah Shulman, Delta Environmental Consultants, Inc. 3164 Gold Camp Drive,
Suite 200, Rancho Cordova, CA 95670
A. Gholami, D. Drogos

Enclosure: ACEH Electronic Report Upload (ftp) Instructions



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2006 JUL 25 AM 11: 27

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3164 Gold Camp Drive • Suite 200
Rancho Cordova, California 95670 USA

916.638.2085 800.477.7411
Fax 916.638.8385

July 19, 2006

Steven Plunkett
Alameda County Department of Environmental Health
1131 Harbor Bay Parkway
Alameda, California
94502

Subject: Former EZ-Serve 100877

Alameda County
JUL 25 2006
Environmental Health

Dear Mr. Plunkett:

This letter is in response to the recent activity taking place at the subject site located at 525 West A Street in Hayward, CA. As you are aware, the site owner is planning on initiating construction of a working gas station. Delta would like to reassure you that we are working closely with the site owner and contractors to assure that our monitoring wells will not be disturbed during the construction process.

I met with the site owner, Aziz Kandahari, and the UST installation contractor, Tom Balch, on site on July 13, 2006. With the finalized construction plans in hand, we walked the site marking the location of the future driveway and tank pit. As we discussed in our telephone conversation the wells of concern were MW-4, MW-5, and VEAS-1. According to our markings, monitoring well MW-4 and vapor extraction well VEAS-1 will not be in the way of the excavation or the pipeline trenching. Also monitoring well MW-5 will be just outside the future driveway. However, all of the wells will most likely need to have their well boxes raised to meet the new grade. Delta will work with the general contractor during the grading process to ensure the safety of the well heads.

Delta personnel will be on site periodically throughout the construction process to confirm the wells are marked and that all involved parties are aware of the well locations. Both Mr. Kandahari and Mr. Balch have committed to working with Delta to guarantee the wells are protected throughout the construction process.

Sincerely,

Deborah Shulman
Project Geologist

cc: Aziz Kandahari, Property Owner
Tim Cook, Cook Environmental Services
Tom Balch, Balch Petroleum and Builders

A member of:



RO23

Drogos, Donna, Env. Health

Subject: RO23 - 525 W A
Entry Type: Phone call
Start: Wed 5/24/2006 11:38 AM
End: Wed 5/24/2006 11:38 AM
Duration: 0 hours

RO23 - 525 W A
05/22/06, 954a, leslie osborne, delta
Cw was amir, its been over 2 weeks has cw been assigned
916-503-1274

05/24/06, 1135a, CW is Don Hwang
& she is posting to ftp site



ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
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March 22, 2006

Mr. Aziz Kandahari
5196 Grayhawk Lane
Dublin, CA 94568

**Re: Fuel Leak Case #RO0000023, Environmental Investigation at EZ Serve
525 West A Street, Alameda, CA**

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If you have any questions, please call me at (510) 567-6876.

Sincerely,



Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Ms. Deborah Shulman, Delta Environmental Consultants, Inc. 3164 Gold Camp Drive,
Suite 200, Rancho Cordova, CA 95670
A. Gholami, D. Drogos

Enclosure: ACEH Electronic Report Upload (ftp) Instructions



2023

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Rancho Cordova, California 95670 USA

916.638.2085 800.477.7411

Fax 916.638.8385

September 2, 2004

Mr. Amir Gholami
Alameda County
Department of Environmental Health
1131 Harbor Bay Park Way
Alameda, CA 94502

Alameda County
SEP 07 2004
Environmental Health

Subject: Former EZ Serve Project Sites
Restructure Petroleum Marketing Services of CA

Dear Mr. Gholami:

The purpose of this letter is to notify the Department of Environmental Health that Restructure Petroleum Marketing Services of California has authorized Delta Environmental Consultants, Inc., (Delta) to perform environmental activities at the site listed below.

Agency Case Number.	EZ Serve No.	Address	City
3580	100877	525 West A Street	Hayward

I will be contacting you again regarding these sites as soon as Delta has received and reviewed the project files. We hope to complete our reviews by Friday, September 24, 2004. If you have any questions, please feel free to call me. My direct line is (916) 638-2765.

Sincerely,

DELTA ENVIRONMENTAL CONSULTANTS, INC.

James R. Brownell
California Registered Geologist No. 5078

cc: Jack Ceccarelli, RPMS of California

A member of:





1117 Lone Palm Avenue, Suite B
Modesto, CA 95351
www.atc-enviro.com
209.579.2221
Fax 209.579.2225

Ro 023

January 22, 2004

Alameda County

JAN 29 2004

Scott Seery, REHS
Alameda County Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

Environmental Health

Re: **Corrective Action Status Report**
Former E-Z Serve Location No. 100877
525 West A Street, Hayward, California
ATC Job No. 54.25827.2418

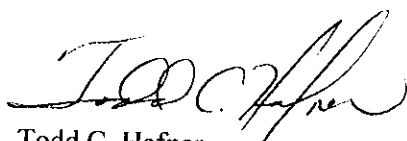
Dear Mr. Seery:

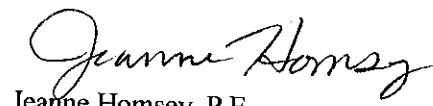
On behalf of Restructure Petroleum Marketing Services of California (RPMS-CA), ATC Associates Inc. (ATC) has prepared this letter to inform you of the status of corrective action associated with the referenced site. ATC has been conducting quarterly groundwater monitoring at the site in response to a regulatory agency directive. Due to contractual issues pertaining to RPMS-CA and the RPMS bankruptcy filing, ATC has suspended our involvement in conducting corrective action activities at the site. Consequently, groundwater monitoring was not conducted during the fourth quarter of 2003. As of this writing, ATC has not been authorized by RPMS-CA to resume work at the site. You will be notified immediately once ATC has been authorized to resume work.

If you have any questions or comments regarding this status report, please do not hesitate to contact me at 209-579-2221.

Sincerely,

ATC Associates, Inc.


Todd C. Hafner
Project Geologist


Jeanne Homsey, P.E.
CA Registered Civil Engineer No. C47410

cc: Jeff Burke, RPMS-CA



9620 Chesapeake Drive, Suite 203
San Diego, CA 92123
www.atc-enviro.com
(858) 569-0692
Fax (858) 569-0695

January 27, 2003

Jeanne Homsey
ATC Associates, Inc.
1117 Lone Palm Avenue
Suite B
Modesto, CA 95351

Alameda County

JAN 31 2003

Environmental Health

2023

Scery

**Re: Former E-Z Serve Location No. 100877, 525 West A Street, Hayward, California
Intra-company Job Transfer Notification**

Dear Mrs. Homsey:

On behalf of the ATC Associates Inc. (ATC) San Diego office, I am pleased to provide the ATC Modesto office with this intra-company job transfer notification for the above referenced site. Although it is difficult to relinquish the management of a site, the ATC San Diego office believes managing sites located within the geographical proximity to the managing office will ultimately provide the client, Restructure Petroleum Marketing Services of California (RPMS-CA), a better consulting service.

As you know, a complete transfer of the job including postage of all files will follow in a timely manner. However, I have attached the State Water Resources Control Board's response for pre-approval of correction action dated January 21, 2003 and the original pre-approval packet for your immediate review.

If you have any questions or comments regarding this site, please do not hesitate to contact me.

Sincerely,

ATC Associates, Inc.

Scott D. Meckstroth, P.E.
Senior Engineer

Enclosure

cc: Mr. David F. Charter, State Water Resources Control Board
Ms. Donna Drogos, Alameda County EHD



State Water Resources Control Board

Division of Financial Assistance

1001 I Street • Sacramento, California 95814
P.O. Box 944212 • Sacramento, California • 94244-2120
(916) 341-5652 • FAX (916) 341-5806 • www.swrcb.ca.gov/cwphome/ustcf

Winston H. Hickox
Secretary for
Environmental
Protection

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov.



Gray Davis
Governor

JAN 16 2003

Restructure Petroleum Mktg. Service
Robert K. Beard, Chief
P O Box 33087
St. Petersburg, FL 33733-8087

Alameda County
JAN 29 2003
Environmental Health

REQUEST FOR PRE-APPROVAL OF CORRECTIVE ACTION COSTS,
CLAIM NO. 2874 (requested under 8725) SITE ADDRESS: 525 A ST W, HAYWARD, CA 94541

Please note that Claim #2874 is the correct claim number for this site. Claim #8725 was removed from the Priority List and is not valid. Continued use of this claim number may delay Fund processing of pre-approvals and reimbursements.

I have reviewed your request, received on December 9, 200², for pre-approval of corrective action costs; I will place these documents in your file for future reference. I have included a copy of the "Cost Pre-Approval Request" form; please use this form in the future for requesting pre-approval of corrective action costs.

Pursuant to Section 2811.4, subdivision (c), of the Cleanup Fund regulations and based upon the materials submitted, the Cleanup Fund must deny your request for pre-approval. The proposed scope of work does not appear to be reasonable and necessary corrective action and the Corrective Action Plan (CAP) submitted does not comply with California Code of Regulation, Title 23, Chapter 16, Article 11. (Corrective Action Requirements).

Your consultant, ATC Associates, Inc. (ATC) prepared a CAP dated September 4, 2002. The CAP adequately addresses the assessment of impacts section of Section 2725, Article 11, however the CAP does not present a feasibility study to evaluate alternatives for remedying and mitigating the effects of the release. In addition, the proposed \$853,000 excavation does not appear to be cost-effective, as required by Article 11.

According to the CAP, initial site investigation began in 1986, the USTs were removed in 1990 and periodic groundwater monitoring data has been compiled since 1992. It appears that no active remediation has occurred on the site other than primary source removal (UST System), and the site is currently vacant. A cursory review of groundwater monitoring data reveals that dissolved gasoline constituents have decreased by one to two orders of magnitude over the past ten years. It also appears that the majority of the dissolved phase plume is confined to the site and immediate vicinity. Therefore, the dissolved hydrocarbon plume appears to be stable and decreasing in concentration.

California Environmental Protection Agency



Recycled Paper

Alameda County January 21, 2003

JAN 29 2003

Environmental Health

ATC recently completed pilot tests on the site to evaluate various remediation alternatives. Based on the test results, it appears vapor extraction, air sparging or groundwater extraction are not viable remedial alternatives. One can not assume, however, that a massive over-excavation project would be the only other alternative to obtain regulatory closure for the site. According to the CAP, even after over-excavation of 3,700 cubic yards (approximately 5,500 tons) of soil, it is expected that the groundwater Site-Specific Target Level for Benzene would still be exceeded, leading to possibly several more years of groundwater monitoring.

A more reasonable approach might be to continue the quarterly groundwater monitoring and collect biodegradation parameters for the site. Obviously significant natural attenuation has occurred over the past ten or more years. If it could be demonstrated that sensitive receptors are not threatened and if a reasonable prediction could be made for when water quality objectives will be met, over-excavation might be unnecessary. The Fund estimates collection of biodegradation parameters and continued monitoring for four to five years could be completed for approximately \$100,000. This would appear to be far more cost-effective than an over-excavation project that is estimated to cost \$853,000 and could well grow to \$1 Million by the time regulatory closure is achieved.

Should you or you consultant wish to discuss this project further, don't hesitate to call me at (916) 341-5652.

Sincerely,



David F. Charter, RG
Senior Engineering Geologist
Technical Review Unit
Underground Storage Tank Cleanup Fund

Enclosure

cc: Ms. Donna Drogos
Alameda County EHD
1131 Harbor Bay Pkway, 2nd Fl.
Alameda, CA 94502-6577

Scott D. Meckstroth, RCE
ATC Associates, Inc.
9620 Chesapeake Drive, Suite 203
San Diego, CA 92123



ZONE WATER AGENCY

5997 PARKSIDE DRIVE

PLEASANTON, CALIFORNIA 94588

VOICE (510) 484-2600

FAX (510) 462-3914

DRILLING PERMIT APPLICATION

FOR APPLICANT TO COMPLETE

LOCATION OF PROJECT 525 West A Street
Hayward, CA

CLIENT

Name E-2 Serve
Address P.O. Box 922021 Voice 713 684 4300
City Houston TX Zip 77292-2021

APPLICANT

Name Brown and Caldwell
Todd Miller Fax 510 937-9026
Address 3480 Buskirk Ave Voice 510 937-9010
City Pleasant Hill Zip 94523-4342

TYPE OF PROJECT

Well Construction 4gw monitoring wells Geotechnical Investigation _____
Cathodic Protection _____ General _____
Water Supply _____ Contamination _____
Monitoring X Well Destruction _____

PROPOSED WATER SUPPLY WELL USE

Domestic _____ Industrial _____ Other Monitoring
Municipal _____ Irrigation _____

DRILLING METHOD:

Mud Rotary _____ Air Rotary _____ Auger X
Cable _____ Other _____

DRILLER'S LICENSE NO. C57602720

WELL PROJECTS

Drill Hole Diameter 2 in. Maximum _____
Casing Diameter 8 in. Depth 35 ft.
Surface Seal Depth _____ ft. Number 4

GEOTECHNICAL PROJECTS

Number of Borings _____ Maximum _____
Hole Diameter _____ in. Depth _____ ft.

ESTIMATED STARTING DATE Dec 26
ESTIMATED COMPLETION DATE Dec 31

I hereby agree to comply with all requirements of this permit and Alameda County Ordinance No. 73-68.

APPLICANT'S

SIGNATURE _____ Date _____

FOR OFFICE USE

PERMIT NUMBER _____
LOCATION NUMBER _____

PERMIT CONDITIONS

Circled Permit Requirements Apply

A. GENERAL

1. A permit application should be submitted so as to arrive at the Zone 7 office five days prior to proposed starting date.
2. Submit to Zone 7 within 60 days after completion of permitted work the original Department of Water Resources Water Well Drillers Report or equivalent for well Projects, or drilling logs and location sketch for geotechnical projects.
3. Permit is void if project not begun within 90 days of approval date.

B. WATER WELLS, INCLUDING PIEZOMETERS

1. Minimum surface seal thickness is two inches of cement grout placed by tremie.
2. Minimum seal depth is 50 feet for municipal and industrial wells or 20 feet for domestic and irrigation wells unless a lesser depth is specially approved. Minimum seal depth for monitoring wells is the maximum depth practicable or 20 feet.

C. GEOTECHNICAL. Backfill bore hole with compacted cuttings or heavy bentonite and upper two feet with compacted material. In areas of known or suspected contamination, tremied cement grout shall be used in place of compacted cuttings.

D. CATHODIC. Fill hole above anode zone with concrete placed by tremie.

E. WELL DESTRUCTION. See attached.

Approved _____ Date _____



State Water Resources Control Board

Division of Clean Water Programs

1001 I Street • Sacramento, California 95814
P.O. Box 944212 • Sacramento, California • 94244-2120
(916) 341-5757 • FAX (916) 341-5806 • www.swrcb.ca.gov/cwphome/ustcf

Winston H. Hickox
Secretary for
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Gray Davis
Governor

May 2, 2002

Restructure Petroleum Mktg. Service
Robert K. Beard, Chief
P O Box 33087
St. Petersburg, FL 33733-8087

MAY 14 2002

**PRE-APPROVAL OF CORRECTIVE ACTION COSTS,
CLAIM NO. 008725, PA # 1
SITE ADDRESS: 525 A ST W, HAYWARD, CA 94541**

I have reviewed your request, received on April 23, 2002, for pre-approval of corrective action costs. I have included a copy of the "Cost Pre-Approval Request" form; please use this form in the future for requesting pre-approval of corrective action costs.

With the following provisions, the total cost pre-approved as eligible for reimbursement for completing the December 21, 2001, ATC Associates Inc. workplan approved by the Alameda County EHD (County) in their March 11, 2002 letter, is \$ 63,617; see the table below for a breakdown of costs.

Be aware that this pre-approval does not constitute a decision on reimbursement: **necessary** (as determined by the Fund) corrective action costs for action work **directed and approved by the County** will be eligible for reimbursement at costs consistent with those pre-approved in this letter. However, depending on what happens in the field, some costs may not actually be necessary.

In an effort to expedite future reimbursement requests associated with the implementation of the corrective action tasks pre-approved in this letter, we ask that the attached 'Pre-Approval Specific Reimbursement Request Form' be completed, updated and submitted with each reimbursement request. All relevant supporting documentation must also be included with each reimbursement request.

In order for future costs for corrective action to be part of the expedited reimbursement process, they must be pre-approved in writing by Fund staff.

All costs for corrective action must meet the requirements of Article 11, Chapter 16, Underground Storage Tank Regulations in order to be eligible for reimbursement.

California Environmental Protection Agency



May 2, 2002

COST PRE-APPROVAL BREAKDOWN

#	Task*	Amount Pre-Approved	Comments
1	Remedial Well Installation & Reporting	\$37,480	This cost includes all time, materials and markups associated with this task. (Installation of 1-6" Extraction Well to Approx. 35', 3 Dual Vapor/Air Sparge Wells, Well Development, Soil & GW Disposal, Prepare a detailed RBCA Risk Assessment & Reporting.) Note: All sub-contractors invoices, disposal manifests and Reports must be submitted to the Fund.
2	Vapor Extraction/Air Sparge/Groundwater Extraction Pilot Studies & Preparation of a CAP	\$26,137	This cost includes all time, materials and markups associated with this task. Conduct an 8-hour Vapor Extraction Pilot Study, an 8-hour Air Sparge Test and a 24-hour Groundwater Extraction / Aquifer Test & Preparation of a CAP. Note: All sub-contractors invoices, disposal manifests and reports must be submitted to the Fund.
TOTAL PRE-APPROVED		\$ 63,617	

* Task descriptions are the same as those identified in ATC Associates Inc.'s March 7, 2002 cost estimate.

- Only the tasks/costs reflected on the above table are pre-approved at this time. The Fund will review any tasks/costs that go beyond the pre-approved amount to be determined if the additional tasks and costs are necessary and reasonable. However, if costs exceed the above pre-approved amounts, the Fund will be unable to expedite your Reimbursement Request.
- The work products must be acceptable to the County and the Regional Water Quality Control Board.
- If a different scope of work becomes necessary, then you must request pre-approval of costs on the new scope of work.
- Although I have referred to the ATC Associates Inc. proposal in my pre-approval above, please be aware that you will be entering into a private contract: the State of California cannot compel you to sign any specific contract. This letter **pre-approves the costs** as presented in the proposal dated March 7, 2002 by ATC Associates Inc. for conducting the work approved by the County.

May 2, 2002

I also want to remind you that the Fund's regulations require that you obtain at least three bids, or a bid waiver from Fund staff, from qualified firms for all necessary future corrective action work. If you need assistance in procuring contractor and consultant services, don't hesitate to call me.

Please remember that it is still necessary to submit the actual costs of the work as explained in the Reimbursement Request Instructions to confirm that the costs are consistent with this pre-approval before you will be reimbursed. *Please insure that your consultant prepares their invoices to include the required breakdown of costs on a time and materials basis, that invoiced tasks are consistent with the original proposal, and that reasonable explanations are provided for any changes made in the scope of work or increases in the costs. When the invoices are submitted you must include copies of all:*

- subcontractor invoices,
- technical reports, when available, and
- applicable correspondence from the County.

Please call if you have any questions; I can be reached at (916) 341-5757.

Sincerely,

Sunil Ramdass.

Sunil Ramdass, Water Resources Control Engineer
Technical Review Unit
Underground Storage Tank Cleanup Fund

Enclosure

cc: Ms. Donna Drogos
Alameda County EHD
1131 Harbor Bay Pkway, 2nd Fl.
Alameda, CA 94502-6577

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

STID 3580

March 13, 2002

Mr. Andrew Long
Restructure Petroleum Marketing Services, RPMS
205 South Hoover Blvd. Suite 101
Tampa Florida 33609

2023

RE: Former EZ Serve Site at 525 West A Street, Hayward, CA

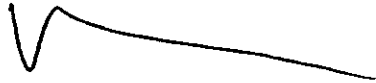
Dear Mr. Long:

I have received and reviewed "Quarterly Groundwater Monitoring Report", dated December 28 2001 submitted by Mr. Greg Vogelpohl of ATC Associates Inc. regarding the above referenced site. Please note the following comments:

- Per this report, MW-2, MW-4, MW-1 and MW-1A wells revealed the highest concentrations of the pollutants. The highest TPH was noted at MW-1A well at 21,000ppb followed by MW-2 at 20,000ppb. The highest Benzene concentrations were noted at 1000ppb within MW-1 and 880ppb in MW-2 well. The highest concentration of MTBE was detected within MW-4 at 27ppb. There are obviously some oscillations in the concentrations of some of these constituents as noted by the laboratory results.
- Per my discussion with Mr. Vogelpohl of ATC associate, performance of pilot studies have been recommended to determine the most appropriate remediation alternative including installment of vapor extraction/air sparge wells and groundwater extraction wells. Furthermore 8-hour vapor extraction pilot test, 8-hour air sparge test, and 24-hour constant rate discharge aquifer tests will be performed and incorporated in an Interim Remedial Action, IRA, plan.
- Additionally, a risk assessment is to be performed in order to establish clean up level and to submit the risk assessment along with results of the previously approved workplan regarding the above referenced site. As you are aware, the risk assessment had been requested by Madhulla Logan, formerly of our office, as an addendum to the previously submitted risk assessment dated May 9th, 1995 by Brown and Caldwell Consultants. However, per my discussion with Mr. Vogelpohl of ATC Associates Inc. However, per my discussion with Mr. Vogelpohl, you may postpone preparation of the risk assessment till the concentrations of the constituents in the plume have reduced significantly in future.
- Per figure 2 within this report, groundwater flow gradient is to the southwest at 0.007 ft/ft and to the northeast at 0.003 ft/ft. Depth to groundwater was estimated at about 15.81 to 17.91 ft.

Should you have any questions, please call me at (510) 567-6876.

Sincerely,



Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Ms. Heidi Bauer, Clear water Group Inc., 520 Third Street 3104
Oakland

Mr. Hugh Murphy, City of Hayward Hazardous Material Office, 777 B Street, Hayward, CA
94541
Files

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES

ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

STID 3580

March 13, 2002

Mr. Andrew Long
Restructure Petroleum Marketing Services, RPMS
205 South Hoover Blvd. Suite 101
Tampa Florida 33609

RE: Former EZ Serve Site at 525 West A Street, Hayward, CA

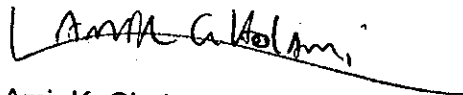
Dear Mr. Long:

I have received and reviewed "Quarterly Groundwater Monitoring Report", dated December 28 2001 submitted by Mr. Greg Vogelpohl of ATC Associates Inc. regarding the above referenced site. Please note the following comments:

- Per this report, MW-2, MW-4, MW-1 and MW-1A wells revealed the highest concentrations of the pollutants. The highest TPH was noted at MW-1A well at 21,000ppb followed by MW-2 at 20,000ppb. The highest Benzene concentrations were noted at 1000ppb within MW-1 and 880ppb in MW-2 well. The highest concentration of MTBE was detected within MW-4 at 27ppb. There are obviously some oscillations in the concentrations of some of these constituents as noted by the laboratory results.
- Per my discussion with Mr. Vogelpohl of ATC associate, performance of pilot studies have been recommended to determine the most appropriate remediation alternative including installment of vapor extraction/air sparge wells and groundwater extraction wells. Furthermore 8-hour vapor extraction pilot test, 8-hour air sparge test, and 24-hour constant rate discharge aquifer tests will be performed and incorporated in an Interim Remedial Action, IRA, plan.
- Additionally, a risk assessment is to be performed in order to establish clean up level and to submit the risk assessment along with results of the previously approved workplan regarding the above referenced site. As you are aware, the risk assessment had been requested by Madhulla Logan, formerly of our office, as an addendum to the previously submitted risk assessment dated May 9th, 1995 by Brown and Caldwell Consultants. However, per my discussion with Mr. Vogelpohl of ATC Associates Inc. However, per my discussion with Mr. Vogelpohl, you may postpone preparation of the risk assessment till the concentrations of the constituents in the plume have reduced significantly in future.
- Per figure 2 within this report, groundwater flow gradient is to the southwest at 0.007 ft/ft and to the northeast at 0.003 ft/ft. Depth to groundwater was estimated at about 15.81 to 17.91 ft.

Should you have any questions, please call me at (510) 567-6876.

Sincerely,

A handwritten signature in black ink, appearing to read "Amir K. Gholami", with a horizontal line drawn underneath it.

Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Mr. Greg Vogelpohl, ATC Associates Inc. 9620 Chesapeake Drive, Suite 203, San Diego,
CA 92123

Mr. Hugh Murphy, City of Hayward Hazardous Material Office, 777 B Street, Hayward, CA
94541

✓ Files

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES

ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

STID 3580

March 11, 2002

Mr. Andrew Long
Restructure Petroleum Marketing Services, RPMS
205 South Hoover Blvd. Suite 101
Tampa Florida 33609

RE: **Former EZ Serve Site at 525 West A Street, Hayward, CA**

Dear Mr. Long:

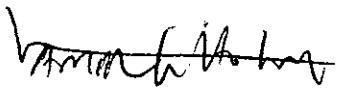
This office is in receipt of "Workplan for Remediation well Installation and Feasibility studies", dated December 21, 2001 submitted by Mr. Michael T. Davis of ATC Associates Inc. regarding the above referenced site.

Per my discussion with Mr. Vogelpohl of ATC associate, performance of pilot studies have been recommended to determine the most appropriate remediation alternative including installment of vapor extraction/air sparge wells and groundwater extraction wells. Furthermore 8-hour vapor extraction pilot test, 8-hour air sparge test, and 24-hour constant rate discharge aquifer tests will be performed and incorporated in an Interim Remedial Action, IRA, plan.

Additionally, a risk assessment is to be performed, using previous and newly gained data from the above work, in order to establish clean up level and to submit the risk assessment along with results of the previously approved workplan regarding the above referenced site. As you are aware, the risk assessment had been requested by Madhulla Logan, formerly of our office, as an addendum to the previously submitted risk assessment dated May 9th, 1995 by Brown and Caldwell Consultants. However, per my discussion with Mr. Vogelpohl of ATC Associates Inc., you may postpone preparation of the risk assessment till the concentrations of the constituents in the plume have reduced significantly in future.

Please call me at (510) 567-6876, if you have any questions.

Sincerely,



Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Mr. Greg Vogelpohl, ATC Associates Inc. 9620 Chesapeake Drive, Suite 203, San Diego,
CA 92123

Mr. Hugh Murphy, City of Hayward Hazardous Material Office, 777 B Street, Hayward, CA
94541

✓Files

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



2023

STID 3580

October 24, 2002

Mr. Andrew Long
Restructure Petroleum Marketing Services, RPMS
205 South Hoover Blvd. Suite 101
Tampa Florida 33609

ENVIRONMENTAL HEALTH SERVICES

ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

RE: Former EZ Serve Site at 525 West A Street, Hayward, CA

Dear Mr. Long:

I have received and reviewed the "Risk Based Corrective Action Report" dated September 5, 2002, "Remediation Well Installation Report" dated August 14, 2002, and "Corrective Action Plan" dated September 4, 2002 by Mr. Bryan Hill of ATC Associate Inc. concerning the above referenced site. As you are aware the "Risk Assessment" was performed to evaluate risk and establish clean up level for the contaminants, "Remediation Well Installation" was performed during feasibility studies, and the "Corrective Action Plan" was submitted to address the contamination based on the result of the studies.

Per my discussion with Mr. Hill of ATC Associate Inc., I generally concur with this workplan proposal and the excavation and use of ORC as a way to further reduce the source and promote degradation of the plume at the above referenced site. Additionally you may replace the MW-1, MW-3 thorough MW-6, and VEAS-1 wells with MW-15 thorough MW-19 due to loss of the aforementioned wells during the excavation activities. However, you should locate MW-15 about 10 feet down gradient of the source area around MW-3 outside of back fill area. Additionally grab soil and groundwater must be collected in order to further define the plume once the excavation activities are completed.

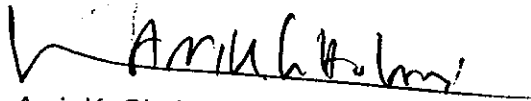
Furthermore, you should continue with the quarterly monitoring as specified within above reports.

Please be advised that this office will respond to the clean up level calculations and risk assessment after consultation with Regional Water Quality Control Board staff.

Please give me advance notice regarding your sampling schedule, so that I could be present during the sampling event.

Should you have any questions, please call me at (510) 567-6876.

Sincerely,

A handwritten signature in black ink, appearing to read "Amir K. Gholami", written over a horizontal line.

Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Mr. Bryan Hill, ATC Associates Inc. 9620 Chesapeake Drive, Suite 203, San Diego,
CA 92123
Files

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES

ENVIRONMENTAL PROTECTION

1131 Harbor Bay Parkway

Alameda, CA 94502-6577

(510) 567-6700

(510) 337-9432

STID 3580

Ms. Margaret Thompson
1675 Manzanita Ave. #120
Chico, CA 95926

RE: Property at 525 West A Street, Hayward, CA 94541

Dear Ms. Thompson:

I sent you a letter regarding the landowner notification and participation requirements. I explained about the law and its requirements. Additionally I enclosed "Sample Letter 2" and "Sample Letter 3", which had to be properly filled out by you and submitted to our office. However, the Sample Letters were not properly filled out.

Enclosed please find the sample letters. Fill them out properly and resubmit to this office.

Please call me at (510)-567-6876, if you have any questions.

Sincerely,

Amir K. Gholami, REHS
Hazardous Materials Specialist

cc: Chuck Headlee, RWQCB

Attachments: Sample letter 2 and Sample letter 3, which must be filled out by the Responsible Party and mailed to Alameda County.

Alameda County Health care Services Agency
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

"List of Landowners" form
(Sample Letter 2)

SUBJECT: CERTIFIED LIST OF RECORD FEE TITLE OWNERS FOR (Site
name and address)
(to be filled in by the primary responsible party and mailed to
Alameda County)

(Note: Fill out item 1 if there are multiple site landowners. If
you are the sole site landowner, skip item 1 and fill out item 2)

1. In accordance with section 25297.15(a) of Chapter 6.7 of
the Health & Safety Code, I, (name of primary responsible
party), certify that the following is a complete list of
current record fee title owners and their mailing addresses
for the above site:

2. In accordance with section 25297.15(a) of Chapter 6.7 of
the Health & Safety Code, I, (name of primary responsible
party), certify that I am the sole landowner for the above
site.

Sincerely,

Signature of primary responsible party

Name of primary responsible party

Alameda County Health care Services Agency
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

"Notice of Proposed Action" form
(Sample Letter 3)

SUBJECT: NOTICE OF PROPOSED ACTION SUBMITTED TO LOCAL AGENCY FOR
(site name and address)
(to be filled in by the primary responsible party and mailed to
Alameda county)

In accordance with section 25297,15(a) of Chapter 6.7 of the
Health & Safety Code, I, (name of primary responsible party),
certify that I have notified all responsible landowners of the
enclosed proposed action. Check space for applicable proposed
action(s):

- ☐ cleanup proposal (corrective action plan)
- ☐ site closure proposal
- ☐ local agency intention to make a determination that no
further action is required
- ☐ local agency intention to issue a closure letter

Sincerely,

Signature of primary responsible party

Name of primary responsible party

cc: Names and addresses of all record fee title owners

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES

ENVIRONMENTAL PROTECTION

1131 Harbor Bay Parkway, Suite 250

Alameda, CA 94502-6577

(510) 567-6700

FAX (510) 337-9335

STID 3580

October 24, 2001

Mr. Andrew Long
Restructure Petroleum Marketing Services, RPMS
205 South Hoover Blvd. Suite 101
Tampa Florida 33609

RE: Former EZ Serve Site at 525 West A Street, Hayward, CA

Dear Mr. Long:

I am in receipt of faxed copy of "Project Status" document dated October 23, 2001 submitted by Mr. Greg Vogelpohl of ATC Associates Inc. regarding the above referenced site. I understand that Ms. Bauer of Clearwater Group Inc. is no longer involved at the above referenced site.

According to my earlier discussion with Mr. Vogelpohl conversation and per previous report MW-2, MW-4, MW-1 and MW-1A wells are the most contaminated wells at the site during this investigation. The highest TPH was noted at MW-1A well at 27,000ppb followed by MW-2 at 18,000ppb. The highest Benzene concentrations were noted at 860ppb within MW-2 and 690ppb in MW-4 well. MTBE was not detected within any of the wells during this analysis.

Per this report and my discussion with Mr. Vogelpohl of ATC associate, performance of pilot studies have been recommended to determine the most appropriate remediation alternative including installment of vapor extraction/air sparge wells and groundwater extraction wells. Furthermore 8-hour vapor extraction pilot test, 8-hour air sparge test, and 24-hour constant rate discharge aquifer tests will be performed and incorporated in an Interim Remedial Action, IRA, plan.

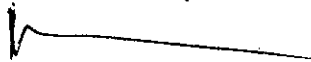
In the past I had asked that a risk assessment be performed in order to establish clean up level and to submit the risk assessment along with results of the previously approved workplan regarding the above referenced site. The risk assessment had been requested since Madhulla Logan, formerly of our office, had requested such addendum to the previously submitted risk assessment dated May 9th, 1995 by Brown and Caldwell Consultants. However, per my discussion with Mr. Vogelpohl of ATC Associates Inc. you do not need to prepare this risk assessment at this time but rather when the concentrations of the constituents in the plume have reduced significantly in the near future.

Additionally, I understand that all the generated waste on the site will be properly handled in accordance to this office and Alameda County fire Department guidelines. This includes proper handling of the previously generated waste, three 55-gallon drums, at the above referenced site.

Please inform me in advance regarding your fieldwork schedule, so that a representative of this office could be present during the field work events.

If you have any questions, please do not hesitate to call me at (510) 567-6876.

Sincerely,



Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Ms. Heidi Bauer, Clear water Group Inc., 520 third Street 3104
Oakland

Mr. Hugh Murphy, City of Hayward Hazardous Material Office, 777 B Street, Hayward, CA
94541
Files



5850 Oberlin Drive, Suite 106
San Diego, California 92121
www.atc-enviro.com
858.535.3009
Fax 858.535.3019

October 23, 2001

Amir K. Gholami, REHS
Hazardous Materials Specialist
Alameda County
Health Care Services Agency
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

STID
3580

OCT 30 2001

Re: Project Status, Former E-Z Serve Facility No. 100877, 525 West A. Street, Hayward, California, STID 3580, ATC Job No. 43.25827.0024

Dear Mr. Gholami:

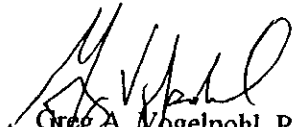
On behalf of Restructure Petroleum Marketing Services of California (RPMS-CA), ATC Associates Inc. (ATC) has prepared this letter to inform your agency that ATC will be providing environmental consulting services for the identified release of fuel hydrocarbons at the subject site. Based on the most recent quarterly groundwater monitoring event conducted during the second quarter of 2001, elevated levels of total petroleum hydrocarbons characterized as gasoline (TPHg) and benzene were detected in on-site wells MW-1A and MW-2. TPHg was detected at concentrations of 27,000 and 18,000 parts per billion (ppb) in the groundwater samples obtained from MW-1A and MW-2, respectively. Benzene was detected at concentrations of 860 and 690 ppb in the groundwater samples collected from MW-1A and MW-2, respectively. In accordance with our telephone conversation conducted on October 23, 2001 and based on the results of the most recent monitoring event, ATC recommends the performance of pilot studies to determine the most appropriate remedial alternative to address the identified groundwater impact. At a minimum, ATC recommends the installation of vapor extraction/air sparge wells and possibly a groundwater extraction well, performance of an 8-hour vapor extraction pilot study, performance of an 8-hour air sparge test, and performance of a 24-hour constant rate discharge aquifer test. The results of the remedial well installation activities and pilot studies will be incorporated into a Corrective Action Plan.

As mentioned during our recent telephone conversation, a revised risk assessment will not be prepared at this time. Once the selected active remedial alternative has sufficiently reduced fuel hydrocarbon concentrations in groundwater, a risk assessment will be performed to determine if clean-up levels have been achieved. We intend to remove the three 55-gallon drums containing purge water from the site by November 2, 2001. In the future, all purge, decontamination and development water, and soil cuttings stored in properly labeled 55-gallon drums will be removed from the site within a week of receipt of laboratory data. All 55-gallon drum labeling, storage and handling activities will be performed in accordance with Alameda County Hazardous Waste Management guidelines.

Thank you for your time and consideration regarding this matter. If you have any questions, or if you need any additional information or clarification, please contact me at (619) 892-1517.

Sincerely,

ATC Associates, Inc.



Greg A. Vogelpohl, P.E.
Senior Engineer

cc: Andrew Long, RPMS
J. Wayne Maxie, ATC Associates Inc.

 ATC Associates Inc.

5850 Oberlin Drive
Suite 106
San Diego, California 92121
Phone (858) 535-3009
Fax (858) 535-3019

Marken & Responder
10/22/01
(AG)

TO: Amir K. Gholami

COMPANY: Alameda County

FAX #: (510) 337-9335

NO. OF PAGES: 2 (includes this cover)

DATE: 10/23/01

FROM: Greg A. Vogelpohl

RE: Former E-Z Serve Facility No. 100877

Confidentiality Note: The information attached to this facsimile transmission is legally privileged and confidential and is only intended for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, be advised that any unauthorized disclosure, copying, distribution, dissemination, use or the taking of any action in reliance on this information is strictly prohibited. If you have received this transmission in error please notify ATC Associates by telephone immediately to arrange for its return.



5850 Oberlin Drive, Suite 106
San Diego, California 92121
www.atc-enviro.com
858.535.3009
Fax 858.535.3019

October 23, 2001

Amir K. Gholami, REHS
Hazardous Materials Specialist
Alameda County
Health Care Services Agency
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

Re: Project Status, Former E-Z Serve Facility No. 100877, 525 West A. Street, Hayward, California, STID 3580, ATC Job No. 43.25827.0024

Dear Mr. Gholami:

On behalf of Restructure Petroleum Marketing Services of California (RPMS-CA), ATC Associates Inc. (ATC) has prepared this letter to inform your agency that ATC will be providing environmental consulting services for the identified release of fuel hydrocarbons at the subject site. Based on the most recent quarterly groundwater monitoring event conducted during the second quarter of 2001, elevated levels of total petroleum hydrocarbons characterized as gasoline (TPHg) and benzene were detected in on-site wells MW-1A and MW-2. TPHg was detected at concentrations of 27,000 and 18,000 parts per billion (ppb) in the groundwater samples obtained from MW-1A and MW-2, respectively. Benzene was detected at concentrations of 860 and 690 ppb in the groundwater samples collected from MW-1A and MW-2, respectively. In accordance with our telephone conversation conducted on October 23, 2001 and based on the results of the most recent monitoring event, ATC recommends the performance of pilot studies to determine the most appropriate remedial alternative to address the identified groundwater impact. At a minimum, ATC recommends the installation of vapor extraction/air sparge wells and possibly a groundwater extraction well, performance of an 8-hour vapor extraction pilot study, performance of an 8-hour air sparge test, and performance of a 24-hour constant rate discharge aquifer test. The results of the remedial well installation activities and pilot studies will be incorporated into a Corrective Action Plan.

As mentioned during our recent telephone conversation, a revised risk assessment will not be prepared at this time. Once the selected active remedial alternative has sufficiently reduced fuel hydrocarbon concentrations in groundwater, a risk assessment will be performed to determine if clean-up levels have been achieved. We intend to remove the three 55-gallon drums containing purge water from the site by November 2, 2001. In the future, all purge, decontamination and development water, and soil cuttings stored in properly labeled 55-gallon drums will be removed from the site within a week of receipt of laboratory data. All 55-gallon drum labeling, storage and handling activities will be performed in accordance with Alameda County Fire Department guidelines.

Thank you for your time and consideration regarding this matter. If you have any questions, or if you need any additional information or clarification, please contact me at (619) 892-1517.

Sincerely,

ATC Associates, Inc.



Greg A. Vogelpohl, P.E.
Senior Engineer

cc: Andrew Long, RPMS
J. Wayne Maxie, ATC Associates Inc.

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



STID 3580

August 22, 2001

Mr. Andrew Long
Restructure Petroleum Marketing Services, RPMS
205 South Hoover Blvd. Suite 101
Tampa Florida 33609

ENVIRONMENTAL HEALTH SERVICES

ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

RE: Former EZ Serve Site at 525 West A Street, Hayward, CA

Dear Mr. Long:

This office is in receipt of "Second Quarter 2001 Groundwater Sampling Event" dated August 20, 2001 regarding the above referenced site by Ms. Heidi M. Bauer of Clearwater Group Inc., your consultant.

Per this report MW-2, MW-4, MW-1 and MW-1A wells are the most contaminated wells at the site during this investigation. The highest TPH was noted at MW-1A well at 27,000ppb followed by MW-2 at 18,000ppb. The highest Benzene concentrations were noted at 860ppb within MW-2 and 690ppb in MW-4 well. MTBE was not detected within any of the wells during this analysis.

As you are aware, I have previously discussed this site with Ms. Bauer, who informed me regarding a risk assessment, which had been conferred with Madhulla Logan, formerly of our office. According to Ms. Bauer, Ms. Logan had requested some addendum to the previously submitted risk assessment dated May 9th, 1995 by Brown and Caldwell Consultants. The risk assessment was to be performed in order to establish clean up level for the above referenced site. Therefor, you may submit the risk assessment along with results of the previously approved workplan regarding the above referenced site.

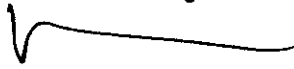
Please begin implementation of the submitted workplan as well as the risk assessment proposal as discussed previously.

Please give me advance notice regarding your sampling schedule, so that I could be present during the sampling event.

I will be looking forward to receive the result of the submitted workplan along with the risk assessment calculations.

Should you have any questions, please call me at (510) 567-6876.

Sincerely,



Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Ms. Heidi Bauer, Clear water Group Inc., 520 third Street 3104
Oakland
Mr. Hugh Murphy, City of Hayward Hazardous Material Office, 777 B Street, Hayward, CA
94541
Files

Jim LEHRMAN
Ron's Boss

ARC ASSOCIATES

RON MICHELSON

(925) 698-3729

August 20, 2001

Mr. Amir Gholami
Alameda County DHS
1131 Harbor Bay Parkway
Alameda, CA 94502

Re: Former E-Z Serve Station No. 100877 - Hayward
Second Quarter 2001 Groundwater Sampling Event

Dear Ms. Gholami,

In preparation for upcoming assessment work and to reinitiate the project's quarterly sampling event Clearwater conducted a full round of groundwater sampling for the second quarter 2001. The sampling was performed in June 2001. The results have been compiled in the attached Groundwater Monitoring Report - Second Quarter 2001. The next phase of work for this project is completion of the discrete soil and groundwater sampling event to obtain current soil and groundwater quality data in areas surrounding the source of the suspected release and in areas that remain defined laterally. If you have any questions or comments regarding our proposed scope, or if I may be of any additional assistance, please do not hesitate to call me at (510) 893-5160.

Sincerely,
Clearwater Group, Inc.

Heidi M. Bauer, RG
Senior Geologist

CLEARWATER

GROUP, INC.
Environmental Services

PLEASE ACTION
ARC ASSOCIATES
(925) 460-5300
New consultant
3580

outsourcing bill
so clear water
not giving
files

AUG 22 2001

RPMS

ADOT LOMB
(813) 986-2443

Reviewed 8/22/01

R023

REPLYING ENVIRONMENTAL

no trouble for clearance

ERIC FROM CLEARWATER
to home ROB WELSH
GOT THIS
ARC ASSOCIATES ATREARY

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



Stid 3580

January 21, 2000

Mr. Andrew Long
Restructure Petroleum Marketing Services, RPMS
205 South Hoover Blvd. Suite 101
Tampa Florida 33609

ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway
Alameda, CA 94502-6577
(510) 567-6700
(510) 337-9432

RE: Former EZ Serve Site at 525 West A Street, Hayward, CA

Dear Mr. Long:

I am in receipt of the workplan dated January 29, 1999 by Ms. Heidi M. Bauer of Clearwater Group Inc., your consultant. Thank you for the submittal of the plan and addressing the issues raised by the county in the previous communications. I reviewed and generally concur with this workplan proposal.

Additionally, I discussed this site with Ms. Bauer, who informed me regarding a risk assessment, which had been discussed with Madhulla Logan, formerly of our office. According to Ms. Bauer, Ms. Logan had requested some addendum to the previously submitted risk assessment dated May 9th, 1995 by Brown and Caldwell Consultants.

Per our discussion, this risk assessment will be performed to establish clean up level for the above referenced site. However, please be advised that Ms. Logan is no longer working in this office, but she might start working for the county on a contract basis soon.

Therefor, I will submit the risk assessment portion of this work to Madhulla, once she begins working for this office again.

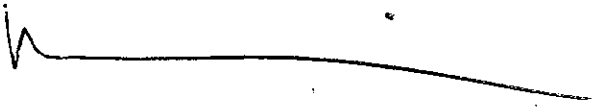
In the mean time you may begin implementation of the submitted workplan as well as the risk assessment proposal per approval by Madhulla Logan.

Please give me advance notice regarding your sampling schedule, so that I could be present during the sampling event.

I will be looking forward to receive the result of the submitted workplan.

If you have any questions, please call me at (510) 567-6876.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amir K. Gholami', followed by a long horizontal line that tapers off to the right.

Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Ms. Heidi Bauer, Clear water Group Inc., 520 third Street 3104
Oakland
Files

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



October 25, 1999

STID 3580

ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700

Mr. Brian Cobb
EZ Serbe Petroleum Marketing
10700 N I-45, Suite 500
Houston, TX 77037-1187

Ms. Margaret Thompson
1675 Manzanita Ave. #120
Chico, CA 95926

RE: Property at 525 West A Street, Hayward, CA 94541

LANDOWNER NOTIFICATION AND PARTICIPATION REQUIREMENTS

Dear Mr. Cobb and Ms. Thompson:

This letter is to inform you of new legislative requirements pertaining to cleanup and closure of sites where an unauthorized release of hazardous substance, including petroleum, has occurred from an underground storage tank (UST). Section 25297.15(a) of Ch. 6.7 of the Health & Safety Code requires the primary or active responsible party to notify all current record owners of fee title to the site of: 1) a site cleanup proposal, 2) a site closure proposal, 3) a local agency intention to make a determination that no further action is required, and 4) a local agency intention to issue a closure letter. Section 25297.15(b) requires the local agency to take all reasonable steps to accommodate responsible landowners' participation in the cleanup or site closure process and to consider their input and recommendations.

For purposes of implementing these sections, you have been identified as the primary or active responsible party. Please provide to this agency, within twenty (20) calendar days of receipt of this notice, a complete mailing list of all current record owners of fee title to the site. You may use the enclosed "list of landowners" form (sample letter 2) as a template to comply with this requirement. If the list of current record owners of fee title to the site changes, you must notify the local agency of the change within 20 calendar days from when you are notified of the change.

If you are the sole landowner, please indicate that on the landowner list form. The following notice requirements do not apply to responsible parties who are the sole landowner for the site.

LANDOWNER NOTIFICATION

Re: 525 West A Street, Hayward

October 25, 1999

Page 2 of 2

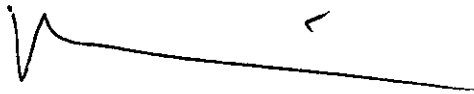
In accordance with Section 25297.15(a) of Ch. 6.7 of the Health & Safety Code, you must certify to the local agency that all current record owners of fee title to the site have been informed of the proposed action before the local agency may do any of the following:

- 1) consider a cleanup proposal (corrective action plan)
- 2) consider a site closure proposal
- 3) make a determination that no further action is required
- 4) issue a closure letter

You may use the enclosed "notice of proposed action" form (sample letter 3) as a template to comply with this requirement. Before approving a cleanup proposal or site closure proposal, determining that no further action is required, or issuing a closure letter, the local agency will take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup and site closure process and will consider all input and recommendations from any responsible landowner.

Please call me at (510) 567-6876 if you have any questions about the content of this letter.

Sincerely,



✓ Amir K. Gholami, REHS
Hazardous Materials Specialist

cc: Chuck Headlee, RWQCB

Attachments: Sample letter 2 and Sample letter 3, which must be filled out by the Responsible Party and mailed to Alameda County.

Alameda County Health care Services Agency
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

"List of Landowners" form
(Sample Letter 2)

SUBJECT: CERTIFIED LIST OF RECORD FEE TITLE OWNERS FOR (Site
name and address)
(to be filled in by the primary responsible party and mailed to
Alameda County)

(Note: Fill out item 1 if there are multiple site landowners. If
you are the sole site landowner, skip item 1 and fill out item 2)

1. In accordance with section 25297.15(a) of Chapter 6.7 of
the Health & Safety Code, I, (name of primary responsible
party), certify that the following is a complete list of
current record fee title owners and their mailing addresses
for the above site:

2. In accordance with section 25297.15(a) of Chapter 6.7 of
the Health & Safety Code, I, (name of primary responsible
party), certify that I am the sole landowner for the above
site.

Sincerely,

Signature of primary responsible party

Name of primary responsible party

Alameda County Health care Services Agency
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

**"Notice of Proposed Action" form
(Sample Letter 3)**

SUBJECT: NOTICE OF PROPOSED ACTION SUBMITTED TO LOCAL AGENCY FOR
(site name and address)
(to be filled in by the primary responsible party and mailed to
Alameda county)

In accordance with section 25297,15(a) of Chapter 6.7 of the
Health & Safety Code, I, (name of primary responsible party),
certify that I have notified all responsible landowners of the
enclosed proposed action. Check space for applicable proposed
action(s):

- ☐ cleanup proposal (corrective action plan)
- ☐ site closure proposal
- ☐ local agency intention to make a determination that no
further action is required
- ☐ local agency intention to issue a closure letter

Sincerely,

Signature of primary responsible party

Name of primary responsible party

cc: Names and addresses of all record fee title owners

AGI

TECHNOLOGIES

November 30, 1998

15,833

Ms. Madula Logan
Alameda County Health Agency
Division of Hazardous Materials
Department of Environmental Health
1131 Harbor Bay, 2nd Floor
Alameda, California 94502

Dear Ms. Logan:

**Changes to Risk Assessment
Harbert Transportation Site
19984 Meekland Avenue
Hayward, California**

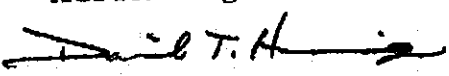
This letter provides a list of the comments to the revised AGI Technologies Report for the *Development of Risk-Based Clean-up Standards* dated September 25, 1998 for the Harbert Transportation site in Hayward, California. The report included the comments as suggested by the Department of Environmental Health. The comments incorporated into the report are as follows:

- Section 3.6, Page 12; Maximum concentration levels were used instead of average concentrations when comparing the risk-based cleanup levels to the site concentration data.
- Appendix A, Table A-3; A footnote was added to indicate that the California EPA cancer slope factor was used.
- Table 2, Summary of Groundwater Analytical Data; The latest groundwater monitoring data was added to the table.
- As suggested two additional quarters of groundwater monitoring of the groundwater wells will be completed prior to requesting closure of the site. The first additional monitoring event was conducted on November 12, 1998. The monitoring report is currently being prepared.

Hopefully this letter provides the information you requested, if you have any questions please give me a call.

Sincerely,

AGI Technologies


Daniel T. Henninger
Associate Scientist

11811 N.E. 1st Street, Suite 201
WASHINGTON

Bellevue, Washington 98005

P.O. Box 3885 (Zip 98009)
OREGON

425
Phone (206) 453-8383

FAX (206) 646-9523

JAPAN



Brown & Root Environmental

455 Fairway Drive, Suite 200
Deerfield Beach, FL 33441

June 4, 1996

(305) 570-5885
FAX: (305) 570-5974

Ms. Madhulla Logan
Alameda County Department of
Health Services
1131 Harbor Bay Parkway
Alameda, California 94502

**Subject: Notification of Groundwater Sampling Activities at E-Z Serve #100877, 525
West A Street, Alameda**

Dear Ms. Logan:

Brown & Root Environmental (BRE) will be at the referenced facility during the week ending June 15, 1996 for completion of on site groundwater sampling activities in support of the second quarter groundwater monitoring. If the agency elects to send a representative to the referenced site, BRE requests the agency confirm the arrival time of the sampling team. Information concerning the arrival time can be obtained by telephoning Anthony Gentile and in his absence William Kelly, both at (954) 570-5885.

If you should have any questions concerning this correspondence, please feel free to contact Anthony Gentile, in Deerfield Beach, at (954) 570-5885.

Sincerely,
BROWN & ROOT ENVIRONMENTAL

Anthony R. Gentile
Director of Operations

cc: W. Kelly - BRE DFB
B. Cobb - E-Z Serve

ENVIRONMENTAL
PROTECTION
96 JUN -7 PM 1:59

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, Director

DEPARTMENT OF ENVIRONMENTAL HEALTH
Environmental Protection Division
1131 Harbor Bay Parkway, #250
Alameda, CA 94502-6577
(510) 567-6700

August 3, 1995

Mr. Brian Cobb
E-Z Serve Petroleum Marketing Company
2550 North Loop West , ST 600
Houston, Texas-77292-2021

Subject: E-Z Serve, 525 West A street, Hayward, California

Dear Mr. Cobb:

I have received a copy of the risk assessment document dated May 9, 1995, prepared by Brown and Caldwell for the above referenced property. This report has been reviewed by this Department and the following issues need to be resolved before acceptance of the risk assessment:

1. As per guidelines published by the Environmental Protection Agency (EPA) and the Department of Toxic Substances Control (DTSC), the age (duration) and body weight of a child is taken to be 6 yrs and 15 kg respectively.
2. The sampling data should be analyzed to determine if it follows a log normal or a normal distribution. This is important as the calculation for the 95% UCL of the average is different for both. Also if it happens to be log normal, then the non-detects would be calculated as detection limit/log of 2. This is given in the EPA reference "supplemental guidance to the RAGS: Calculating the concentration term".
3. Is reasonable maximum exposure same as 95% UCL of average?
4. Provide more detailed information on models used for indoor air volatilization pathway and consumption of homegrown produce. Give appropriate references for model, and the source/reference from which the exposure values were obtained. Also, include a rationale as to why a particular value was chosen. Eg: a value of 0.002 was used for the soil organic carbon coefficient but no source reference or a rationale has been given for using this value. If it is a site specific measured value, then please describe the procedure used for measurement.

Please submit the corrected risk assessment to this Department within 30 days of receiving this letter. If you have any questions, call me at (510) 567-6700.

Sincerely,

Madhulla Logan

Madhulla Logan,
Hazardous Material Specialist

CC: Todd Miller, Brown and Caldwell, 3480 Buskirk Avenue,
Pleasant Hill, CA - 94523-4342

**ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY**

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, Director

DEPARTMENT OF ENVIRONMENTAL HEALTH
Environmental Protection Division
1131 Harbor Bay Parkway, #250
Alameda, CA 94502-6577
(510) 567-6700

August 3, 1995

Mr. Brian Cobb
E-Z Serve Petroleum Marketing Company
2550 North Loop West, ST 600
Houston, Texas-77292-2021

Subject: E-Z Serve, 525 West A street, Hayward, California

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Please submit the corrected risk assessment to this Department within 30 days of receiving this letter. If you have any questions, call me at (510) 567-6700.

Sincerely,

Madhulla Logan

Madhulla Logan,
Hazardous Material Specialist

CC: Todd Miller, Brown and Caldwell, 3480 Buskirk Avenue,
Pleasant Hill, CA - 94523-4342

SPL HOUSTON ENVIRONMENTAL LABORATORY

SAMPLE LOGIN CHECKLIST

DATE: 01/17/98
 LOT NO. _____

TIME: 1000

CLIENT NO. _____
 CONTRACT NO. _____

CLIENT SAMPLE NOS. _____

SPL SAMPLE NOS.: 9500721

	<u>YES</u>	<u>NO</u>
1. Is a Chain-of-Custody form present?	<u>/</u>	_____
2. Is the COC properly completed?	<u>/</u>	_____
If no, describe what is incomplete:		

If no, has the client been contacted about it?		
(Attach subsequent documentation from client about the situation)		
3. Is airbill/packing list/bill of lading with shipment?	<u>/</u>	_____
If yes, ID#: <u>HO EX</u>		
4. Is a USEPA Traffic Report present?	_____	<u>/</u>
5. Is a USEPA SAS Packing List present?	_____	<u>/</u>
6. Are custody seals present on the package?	<u>/</u>	_____
If yes, were they intact upon receipt?	<u>/</u>	_____
7. Are all samples tagged or labeled?	<u>/</u>	_____
Do the sample tags/labels match the COC?	<u>/</u>	_____
If no, has the client been contacted about it?	_____	_____
(Attach subsequent documentation from client about the situation)		
8. Do all shipping documents agree?	<u>/</u>	_____
If no, describe what is in nonconformity:		

9. Condition/temperature of shipping container:	<u>3°C</u>	<u>INTACT</u>
10. Condition/temperature of sample bottles:	<u>3°C</u>	<u>GOOD</u>
11. Sample Disposal?:	<u>SPL disposal</u>	<u>Return to client</u>

NOTES (reference item number if applicable): _____

ATTEST: BRINSON
 DELIVERED FOR RESOLUTION: REC'D _____
 RESOLVED: _____

DATE: 01/17/98
 DATE: _____
 DATE: _____



3480 Buskirk Avenue
Pleasant Hill, CA 94523-4342
P.O. Box 8045
Walnut Creek, CA 94596-1220
(510) 937-9010
FAX (510) 937-9026

ENVIRONMENTAL
PROTECTION

95 MAY 24 PM 1:10

May 23, 1995

Ms. Madhulla Logan
Hazardous Materials Specialist
Alameda County Department of Health Services
1131 Harbor Bay Parkway
Alameda, California 94502

11-1564-02

Subject: Remedial Investigation Plan
Former E-Z Serve Station #100877
525 West A Street, Hayward, California

Dear Ms. Logan:

As you requested during our telephone conversation on April 12, 1994, this letter presents E-Z Serve Petroleum Marketing Company of California's (E-Z Serve) anticipated plan for continuation of the investigation and remediation of the petroleum hydrocarbon-affected soil and groundwater beneath their 525 West A Street site in Hayward, California. Please note that the following plan is preliminary and is subject to change based on the results of future investigations and remedial actions, as well as requests for work made by the Alameda County Department of Health Services (County) or San Francisco Bay Regional Water Quality Control Board.

Proposed Plan

Brown and Caldwell, on behalf of E-Z Serve, submitted the *Risk Assessment for E-Z Serve Petroleum Marketing Company of California's Former Station #100877, Hayward, California*, to the County on May 9, 1995. Upon the County's approval of that report, E-Z Serve will begin preparation of a corrective action plan (CAP) for the remediation of affected soil and groundwater in the vicinity of the subject site. Once the County has reviewed and approved the CAP, E-Z Serve will begin preparing for the design, bid, and construction of the proposed remediation system.

The above outlined scope of work requires a great deal of interaction between the respective parties, and the successful completion of any one phase of the above presented plan may require more work than currently anticipated based on the comments made by the County

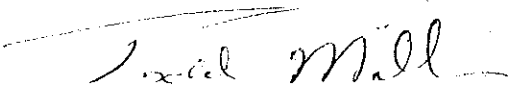
Ms. Madhulla Logan
May 23, 1995
Page 2

after reviewing the respective reports. Therefore, a specific time line has not been presented for this proposed plan.

If you have any questions regarding this issue, please do not hesitate to call me at (510) 210-2278.

Sincerely,

BROWN AND CALDWELL



Todd Miller
Project Manager

TM:jm

cc: Mr. Brian Cobb, E-Z Serve Petroleum Marketing Company of California
Mr. Jon Wactor, Luce, Forward, Hamilton & Scripps



3480 Buskirk Avenue
Pleasant Hill, CA 94523-4342
P.O. Box 8045
Walnut Creek, CA 94596-1220
(510) 937-9010
FAX (510) 937-9026

ENVIRONMENTAL
PROTECTION

95 APR -4 AM 8:15

March 31, 1995

Ms. Madhulla Logan
Hazardous Materials Specialist
Alameda County Department of Environmental Health
1131 Harbor Bay Parkway
Alameda, California 94502

1564-07/5

Subject: Workplan for Risk Evaluation
Former E-Z Serve Station #100877
525 West A Street, Hayward, California

Dear Ms. Madhulla:

Brown and Caldwell is pleased to submit this workplan to calculate the human health risks associated with the potential exposure to total petroleum hydrocarbons as gasoline (TPHg) and benzene, toluene, ethylbenzene, and xylene isomers (BTEX) identified in soil and groundwater in the vicinity of E-Z Serve Petroleum Marketing Company of California's Former Station #100877 located in Hayward, California at 525 West A Street. We will calculate the risks in accordance with the "Risk Assessment Guidance for Superfund" prepared by the United States Environmental Protection Agency (USEPA) in December 1989, using the following steps:

Data Evaluation: In this step, we evaluate the historical data base and select the data that best describes current conditions at the site. These data will be used to calculate risk. All chemicals with the appropriate toxicological data will be included. TPHg will be addressed qualitatively.

Exposure Assessment: In this step, we determine the ways that people could be exposed to the chemicals in the groundwater and soil. We will evaluate the following pathways:

- Ingestion of groundwater
- Dermal contact with groundwater while bathing
- Inhalation of groundwater while bathing
- Inhalation of groundwater entering a house through a crack in the foundation
- Ingestion of homegrown produce via irrigation
- Ingestion of soil
- Dermal contact with soil
- Inhalation of soil

Ms. Madhulla Logan
March 31, 1995
Page 2

The exposure concentration will be calculated as the 95th percent upper confidence limit of the mean; and one half the detection limit will be used for compounds not identified above the detection limit. This is the standard USEPA approach.

Toxicity Assessment: In this step, we select the toxicity values that will be used to characterize the risk. Toxicity factors for lifetime cancer and noncancer health effects will be compiled. Toxicity factors will be chosen from the following sources in order of priority (if the factor is not available in the first rank source, the second rank source will be used, and so forth):

California Cancer Potency Factors
Integrated Risk Information System (IRIS)
Health Effects Assessment Summary Tables (HEAST)

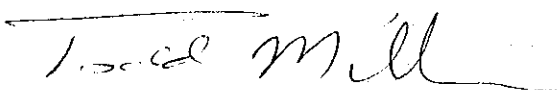
Risk Characterization: In this step, we combine information on exposure and toxicity to characterize the risk for the chemicals of concern. The risk is characterized with a numerical estimate for carcinogenic and noncarcinogenic potential health effects. We will use the standard USEPA approach.

Brown and Caldwell is anxious to complete this phase of the project and move this site further towards remediation. Therefore, we request that your comments on this workplan be submitted to us by April 7, 1995. We currently plan to submit the risk evaluation to your office within 30 days of your approval of this workplan.

If you have any questions regarding the information provided herein, please contact me at (510) 210-2278.

Very truly yours,

BROWN AND CALDWELL



Todd A. Miller
Project Manager

tm:lkg

cc: Mr. Brian Cobb, E-Z Serve Petroleum Marketing of California

B R O W N A N D
C A L D W E L L

ENVIRONMENTAL
PROTECTION

95 MAR -6 PM 4:10

March 2, 1995

Ms. Madhulla Logan
Hazardous Materials Specialist
Alameda County Department of Health Services
1131 Harbor Bay Parkway
Alameda, California 94502

11-1564-07/2

Subject: Rational for Placement of Groundwater Monitoring Wells During
Step 5 of the Phase II Site Investigation at E-Z Serve's Former
Station #100877, 525 West A Street, Hayward, California

Dear Ms. Logan:

As you requested during our telephone conversation today, this letter summarizes the rational followed to determine the placement of three of the four off-site groundwater monitoring wells installed in the vicinity of the E-Z Serve Petroleum Marketing Company of California's Former Station #100877, 525 West A Street, Hayward, California (Site) on February 6 and 7, 1995.

As described in our work plan dated September 29, 1994, one of the objectives of the Step 5, Phase II investigation was to delineate the lateral extent of the petroleum hydrocarbon affected groundwater in the vicinity of the Site. To minimize the number of groundwater monitoring wells required to be installed an in-situ groundwater investigation was conducted. In-situ sampling locations were limited to area's owned by the City of Hayward to avoid delays in the work schedule that would have been associated with attempting to obtain access to numerous private properties. To speed up the investigation and collect real-time data, the in-situ groundwater samples were analyzed by BC Analytical's on-site mobile laboratory. Samples were analyzed for the presence of total petroleum hydrocarbons as gasoline (TPHg), benzene, toluene, ethylbenzene, and xylene isomers (BTEX) following EPA Methods 8015 modified and 8020. Sample analysis time was approximately one hour for each in-situ groundwater sample collected.

In-situ groundwater samples were collected from 17 different locations in the vicinity of the Site using a Hydropunch[™] sampling device. The in-situ groundwater investigation started at locations in close proximity to the site and moved away in steps as the analytical data became available (see attached figure). For example, to the west, the investigation began at sampling location HP-3 and moved progressively westward to locations HP-4 then HP-5. The

Ms. Madhulla Logan
March 2, 1995
Page 2

investigation then moved to a different area of interest while the groundwater samples were being analyzed. Analytical results identified TPHg and BTEX in the groundwater samples collected from these three locations, therefore, the investigation was continued to the west. An additional in-situ sample was collected from location HP-9. Analytical results again identified TPHg and BTEX in the in-situ groundwater sample collected from this location. The investigation was continue further to the west, at sampling location HP-13. Analytical results did not identify TPHg or BTEX at this location. Therefore, Well MW-11 was installed at a location, in the vicinity of sample location HP-13, which was accessible by the drilling rig.

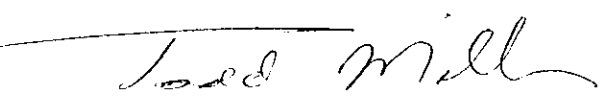
Similar practices were followed for the installation of Wells MW-12 and MW-13. Analytical results did not identify TPHg or BTEX in the in-situ groundwater samples collected from sample locations HP-10 (south of the Site) and HP-11, HP-12, HP-14, and HP-15 (north of the site). Therefore, Wells MW-12 and MW-13 were installed at locations accessible by the drilling rig, in the vicinity of sample locations HP-15 and HP-10, respectively.

Well MW-14 was installed near in-situ groundwater sampling location HP-2 (an area identified as being affected by petroleum hydrocarbon constituents) because of the unexpectedly high concentrations of TPHg and BTEX identified at this sampling location. The information collected during the installation of Well MW-14 is expected to better define subsurface conditions existing in this area and help explain the presence of exceptionally high TPHg and BTEX concentrations identified in the in-situ groundwater sample collected from location HP-2. This well is also expected to assist in future remediation activities.

Results of the groundwater samples collected from these wells will be included in the site investigation report, which will be transmitted to you later this month. If you have any additional questions or concerns regarding the site investigation and/or results, please contact me at (510) 210-2278 at your earliest convenience.

Sincerely,

BROWN AND CALDWELL



Todd Miller
Project Manager

TM:evm

cc: Mr Brian Cobb, E-Z Serve Petroleum Marketing Company of California
Mr. Jon Wactor, Luce, Forward, Hamilton and Scripps

N
1"=120'
SCALE

LEGEND	
	LOCATION OF PREVIOUSLY INSTALLED MONITORING WELL
	LOCATION OF MONITORING WELLS INSTALLED DURING THIS PHASE OF INVESTIGATION
	HYDROPUNCH GROUNDWATER SAMPLE LOCATIONS
	TOTAL PETROLEUM HYDROCARBONS AS GASOLINE IN GROUNDWATER (ug/L)
	BENZENE IN GROUNDWATER (ug/L)

Royal Avenue

HP-13 • MW-11
 $\frac{<80}{<0.5}$

ve Petroleum Marketing Company of California
 Former Station #100877
 525 West A Street, Hayward, California

In-Situ Groundwater Sample Locations

OWN AND LD WELL	DATE 2-22-95	Figure 2-2
	PROJECT 1564-07	

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873

ALCO
HAZMAT

JON K. WACTOR, PARTNER
DIRECT DIAL NUMBER (415) 395-7910

95 FEB 22 AM 9:32

February 17, 1995

Via Facsimile and U.S. Mail

Ms. Madhulla Logan
Hazardous Material Specialist
Department of Environmental Health
Alameda County Health Services Agency
1131 Harbor Bay Parkway, 2nd Floor
Alameda, CA 94502

Re: 525 West A Street, Hayward, CA

Dear Madhulla:

Thank you for your telephone call of February 16 regarding the above-referenced site. As I stated in the call, the attorneys for the property owners have requested that all drums related to the investigation of contamination in the area be removed. We have committed to remove all of the drums by February 27. They cannot be removed immediately because the laboratory must characterize the contents of the drums to allow the consultant to correctly dispose of their contents.

Sincerely,



Jon K. Wactor

of

Luce, Forward, Hamilton & Scripps

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873

JON K. WACTOR, PARTNER
DIRECT DIAL NUMBER (415) 395-7910

ALCO
HAZMAT
95 FEB 22 AM 9:58

February 17, 1995

Via Facsimile and U.S. Mail

Ms. Madhulla Logan
Hazardous Material Specialist
Department of Environmental Health
Alameda County Health Services Agency
1131 Harbor Bay Parkway, 2nd Floor
Alameda, CA 94502

Re: 525 West A Street, Hayward, CA

Dear Ms. Logan:

On February 16 we talked with Todd Miller of Brown and Caldwell about the placement of monitoring wells offsite. I understand that you and he had a misunderstanding about the timing for the installation of the wells. He was under the impression that the County had authorized him to install the wells pursuant to the workplan which you had approved. You were under the impression that the workplan did not authorize the actual installation of the wells but only authorized the taking of hydropunch samples. You wanted to review the hydropunch data and determine for yourself where the offsite wells should be placed. Mr. Miller was under the impression that the County had already approved of the well installation details as he believed that information was contained in the workplan which you had approved.

On behalf of E-Z Serve, I want to apologize for that misunderstanding. Mr. Miller will send you a copy of the hydropunch information which he generated during the investigation as well as some interpretation and a brief explanation of the reasoning for placement of the wells.

The final investigation report should be on your desk in accord with the schedule that Mr. Miller previously sent to you. I can assure that you neither E-Z Serve or its consultant, Brown & Caldwell, had any intention of confusing the issue of the installation of the wells.

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873

Ms. Madhulla Logan
February 17, 1995
Page 2

They were simply moving ahead with all deliberate speed to complete this investigation in accordance with the County's schedule.

Please call me if you have any question in this regard.

Sincerely,



Jon K. Wactor

of

Luce, Forward, Hamilton & Scripps

B R O W N A N D
C A L D W E L L

ALCO
HAZMAT
95 FEB 10 PM 1:46

February 9, 1995

Ms. Madhulla Logan
Hazardous Materials Specialist
Alameda County Department of Health Services
1131 Harbor Bay Parkway
Alameda, California 94502

11-1564-02/5

Subject: Status Update, Phase II Site Investigation Former E-Z Serve
 Station #100877, 525 West A Street, Hayward, California

Dear Ms. Logan:

This letter is to keep you apprised of the status of the ongoing off-site investigation at E-Z Serve Petroleum Marketing Company of California's Former Station #100877, located in Hayward, California at 525 West A Street.

The in-situ groundwater investigation was completed on Friday, February 3, 1995. The in-situ investigation was successful in delineating the lateral extent of the total petroleum hydrocarbon (TPH) affected groundwater.

Four groundwater monitoring wells were installed at off-site locations on February 6 and 7, 1995. Three of the four wells were installed along West A Street, Victory Drive, and Garden Street, at or near locations where TPH was not identified in the in-situ sample. The fourth well was install in Garden Street, north of the site, at a location where relatively high TPH concentrations (180 micrograms per liter) were identified in the in-situ sample.

A Draft Phase II Site Investigation Report is expected to be submitted to the client, for review, no later than March 1, 1994. A final Phase II Site Investigation Report will be forwarded to you within 10 business days following receipt of the clients comments to the draft report.

e:\ezserve\logan-2.ltr

Environmental Engineering And Consulting • Analytical Services

9616 MICRON AVENUE, P.O. BOX 13449, SACRAMENTO, CA 95813-3449
(916) 444-0123 FAX (916) 856-5277

Ms. Madhulla Logan
February 9, 1995
Page 2

If you have any questions regarding the above information, please contact me at (510) 210-2278.

Sincerely,

BROWN AND CALDWELL

A handwritten signature in cursive script, appearing to read "Todd Miller", written in dark ink.

Todd Miller
Project Manager

TM:

cc: Mr. Brian Cobb, E-Z Serve Petroleum Marketing Company of California
Mr. Jon Wactor, Luce, Forward, Hamilton & Scripps
Mr. Tom Wheeler, Brown and Caldwell

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
RICHARD T. WHITE
MICHAEL P. WALSH
J. BRITTAIN HABEGGER
VIRGINIA PALMER
TIMOTHY H. SMALLSREED
STEPHEN M. JUDSON
STEPHEN M. WILLIAMS
JONATHAN W. REDDING
BETH E. ASPEDON
THEODORA R. LEE
KRISTIN A. PACE
ROBERT F. CAMPBELL
MICHAEL M. K. SEBREE
ANTONIA L. MORE
MARIA I. LAWLESS
MATTHEW P. MATIASEVICH
PAUL B. SALVATY

FITZGERALD, ABBOTT & BEARDSLEY

ATTORNEYS AT LAW

1221 BROADWAY, 21ST FLOOR
OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

R. M. FITZGERALD 1858-1934
CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

PLEASE REPLY TO:

P. O. Box 12867
OAKLAND, CALIFORNIA 94604-2867

FACSIMILE: (510) 451-1527

February 9, 1995

VIA FACSIMILE (415) 395-7949
AND FIRST CLASS MAIL

Jon K. Wactor, Esq.
Luce, Forward, Hamilton & Scripps
100 Bush Street, 20th Floor
San Francisco, CA 94104

Re: Thomsen v. Powerine Oil Company
525 West A Street, Hayward

Dear Mr. Wactor:

In the last paragraph of my letter to you dated February 6, 1995, I warned you that any E-Z Serve "entry onto the property without an Access Agreement will be deemed an intentional trespass and treated accordingly, including notification to the District Attorney of the illegal disposal of hazardous substances on to our clients' property." In your February 7, 1995 response, you characterized this as needlessly inflating the dispute to a hostile level. We assumed that, with the corresponding offer in paragraph 4 of this same letter to address the Access Agreement issues at the pending mediation, E-Z Serve would withhold taking any further action until the Access Agreement issues were settled.

Our representative visited the site today. To our shock and dismay, we observed a new E-Z Serve barrel of contaminants identified as "Decon H2O" bearing the date "2/7/95." I enclose a xerox copy of our photograph of this barrel. There may well have been others which we could not see since only your client has keys to the property. This dumping not only constitutes an illegal trespass onto plaintiffs' property, but also an intentional violation of California Health and Safety Code § 25189.5. Pending execution of the Access Agreement which you have had for several

COPY

February 9, 1995

weeks now, demand is made for E-Z Serve and its consultants to cease and desist all further activity at the site and to make arrangements for proper removal and disposal of the dozens of barrels left on the site once the Access Agreement is signed and returned.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By

Richard T. White

RTW:iwm

cc: Ms. Juliette Shin
Ms. Madhulla Logan
Mr. and Mrs. Levonard Thomsen
Gil Jensen, Esq.

COPY

-1-

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 1st day of December, 1966, by and between Levonard A. Thomsen Margaret S. Thomsen, hereinafter referred to as "Lessor", and POWERINE OIL COMPANY, a California corporation, having its principal offices at 12354 Lakeland Rd., Santa Fe Springs, California, hereinafter referred to as "Lessee".

WITNESSETH:

(1) Lessor does hereby lease to the Lessee all that certain real property situated in the County of Alameda, State of California, located on the ^{NORTHWEST} ~~southwest~~ corner of "A" Street and Garden in said county, which said parcel of real property has a frontage of approximately 155 feet on "A" Street and approximately 120 feet on Garden measuring from the present property lines and which parcel of real property is described as follows: To be determined by survey, subject to approval of both Lessor and Lessee, and to be attached to and become a part of this lease. J.S.J. 2/5/7
Kuy

(2) TERM: The term of this lease shall be for twenty (20) years commencing on the 1st day of February, 1967, and terminating on the 31st day of January, 1987. J.S.J. 2/5/7
Kuy

(3) RENTAL: Lessee agrees to pay Lessor as rental for the use and occupancy of the leased property a total rental of One Hundred Fourteen Thousand and no/100 (\$14,000.00) Dollars payable in monthly installments of Four Hundred and no/100 (\$400.00) Dollars commencing on the 1st day of February, 1967 to and including the 31st day of January, 1972 Four Hundred Fifty and no/100 (\$450.00) Dollars commencing on the 1st day of February, 1972 to and including the 31st day of January, 1977. Five Hundred and no/100 (\$500.00) Dollars commencing on the 1st day of February, 1977 to and including the 31st day of January, 1982 and Five Hundred Fifty and no/100 (\$550.00) thereafter on the first day of each and every month during the term hereof. In the event of default in the payment of any installment of rent when due, then at the option of the Lessor, the entire unpaid balance shall immediately become due and payable thirty days after written notice of said default has been given to the Lessee. J.S.J. 2/5/7
Kuy

(4) FIRST RIGHT OF REFUSAL: Lessor agrees that in the event Lessor should decide to sell said real property, Lessee shall have the first refusal to buy said real property at such purchase price as is offered Lessor by a bona fide purchaser, ready, willing and able to buy and that Lessor will notify Lessee in writing, setting forth the terms and conditions of the offer of purchase; and that Lessee shall have ten (10) days thereafter within which to accept or reject the right to purchase on the specified terms.

Dec 1st 1967
Vuy

JH10271

(5) USE OF LEASED PREMISES: The Lessee shall be entitled to use the leased premises for any purpose which local zoning laws will permit, which shall include and not be limited to the construction, maintenance and operation of a retail service station. The Lessor, in negotiating this agreement, warrants, as a consideration of the Lessee executing this agreement, that said premises are adequately zoned to permit said construction, maintenance and operation of an independent service station.

The Lessee is also given the privilege of destroying and/or removing, at his obligation and expense, any and all structures presently located on said premises, at no cost to the Lessor.

(6) SIDEWALKS AND CURBING: Lessee shall have the right to break curbing and sidewalks where necessary at his expense and hereby agrees to keep all existing curbings and sidewalks in good condition and repair during the term hereof or any extension hereof.

(7) CLAIMS: Lessee shall, at all times, pay any and all claims, mechanic's and materialman's liens and any charges or costs of any kind that may be asserted or enforced against the leased premises by reason of any work ordered to be done, or done by or for the Lessee for, on, or pertinent to said leased property; should any claim or lien remain due and unpaid for thirty (30) days, the Lessor may, at their option and without liability to inquire into the correctness or validity of the same, remit and pay the same, together with any penalties added thereto and upon such assumption or payment by the Lessor, the lien assumed or paid shall immediately thereafter become due and payable by the Lessee to the Lessor as additional rental hereunder.

(8) NOTICES: Any notices contemplated or required by the provisions of this lease shall be given by either party to the other by depositing the same, by Registered Mail, in the United States Post Office, postage pre-paid, and addressed to the other party to whom the notice is sent at the address herein given or at such other address as said party may from time to time indicate by written notice served as in this paragraph set forth on the other, or the same may be personally served.

(9) LIABILITY: Lessor shall not be liable to Lessee or to any other person or persons whatsoever for any loss or damage to persons or property arising from or out of, or by reason of the occupancy of the leased premises, or the adjoining premises, or the streets fronting thereon, by Lessee, his sub-tenants or assignees, employees, patrons, or otherwise, and Lessee agrees to carry public liability and property damage insurance and to name Lessor as co-insured thereon in the minimum sum of TWO HUNDRED THOUSAND AND 00/100 (\$200,000.00) DOLLARS for injury to any person and FIVE HUNDRED THOUSAND AND 00/100 (\$500,000.00) DOLLARS for injury to two or more persons, and FIVE THOUSAND AND 00/100

(\$5,000.00) DOLLARS for injury or damage to property, and to furnish Lessor with a certificate of such insurance.

(10) ASSIGNABILITY: Lessee shall have the right to assign this lease in whole or in part without the written consent of Lessor, provided however, that undersigned Lessee shall remain responsible and liable for the fulfillment of the conditions of this lease agreement.

(11) SUB-LEASING: Lessee may sub-lease the leased premises, but such sub-leasing shall not release the Lessee hereunder of any obligation herein and no notice herein required to be given by Lessor to Lessee shall be required to be given to such sub-lessee by Lessors. All provisions and covenants herein contained shall continue in full force and effect as to Lessee and Lessor herein.

(12) DEFAULT: Should any of the rent herein reserved be due and unpaid, or should the Lessee vacate or abandon said premises or should the Lessee be in default in any other condition of this lease, the Lessor may, upon notice as herein provided and without Lessee's correction or curing of such default, at its option and without demand re-enter and take possession of said premises and remove all persons therefrom, and should the Lessor elect to re-enter and take possession of said premises under any one or more of the provisions described in this paragraph, said Lessor may, at his option, either terminate this lease and recover from the Lessee all damages caused by any breach hereof, by the Lessee, including unpaid rentals and all reasonable attorney's fees and court costs which the Lessor may be required to incur in recovering possession of said premises or in collecting unpaid rentals or damages, or Lessor may terminate this lease and hold all equipment, installations and leasehold improvements of Lessee as liquidated damages. For any default Lessor shall give to Lessee written notice to cure or correct said default, and in the event of Lessee's failure to correct or cure said default within thirty (30) days after receipt of said notice, then in that event Lessor shall have the right and option to declare a default hereunder and proceed as in this paragraph provided, without further or other notice or demand.

(13) TAXES: As a further consideration for the execution hereof by Lessor and as additional rental hereunder, Lessee shall and does hereby agree to pay any and all taxes, real and personal, general or special, that may be levied or assessed against the leased premises for and during the term hereof or any extensions or renewals hereof, and to pay the same when due and before delinquency; if any such taxes or assessments be not so paid, the Lessor shall have the right to pay the same, together with any interest or penalties

TH10273

accruing thereon and, if so paid, the same shall immediately become due and payable by Lessee to Lessor as additional rent. Lessee further agrees to pay all general and special or personal property taxes levied or assessed against merchandise, stock-in-trade or other personal property or improvements of the Lessee kept or stored upon the leased premises or the business of Lessee thereon, and any licenses or other taxes, whether city, county, state or federal, levied or assessed against the business of the Lessee.

(14) OPERATION: Lessee shall conduct his business on the premises in compliance with all the applicable laws, ordinances and regulations of appropriate governmental authorities.

(15) SUCCESSORS: All of the terms, conditions and covenants hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators or assigns of the respective parties hereto.

(16) UTILITIES: Lessee shall pay all utility, water, gas, telephone, electric and power bills delivered to the leased premises before the same shall become delinquent, during the term hereof.

(17) RESTORATION OF POSSESSION: Upon the expiration hereof, or any extension or renewal hereof, Lessee shall peacefully surrender the leased premises to Lessor. Lessee further agrees that at the expiration of the term of this lease or any extension or renewal thereof, Lessee shall within thirty (30) days after such termination, remove from the leased premises all fixtures or improvements situated thereon and in the event of Lessee's failure to so do, Lessor shall have the right and option to enter upon the demised premises and remove the same at Lessee's expense, provided, further, however, that upon receipt of written notice for the Lessor permitting Lessee to do so, Lessee shall have the right and option to leave all said fixtures and improvements on the leased premises, which shall then become the property of Lessor. In the event that such improvements are removed by such Lessee, or otherwise, Lessee shall fill in all excavations caused by such removal.

(18) HOLDING OVER: If the Lessee shall hold over on the expiration hereof with or without the consent of Lessor, such holding over shall constitute a month-to-month tenancy only at the rental herein provided and upon the terms and conditions herein stated and not a renewal or extension hereof.

TH10274

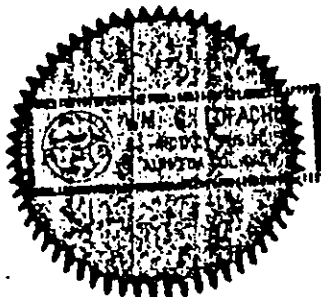
IN WITNESS WHEREOF, the parties hereto have set their hands
and seals the day and year first above written.

Leonard A. Thomsen
By Margaret S. Thomsen
"Lessor"

POWERINE OIL COMPANY

W. R. Rellies
President
Harry R. Rothchild
Vice President
"Lessee"

State of California }
County of Alameda }



—ACKNOWLEDGMENT—General

On this 1st day of December A.D. 1966 before me,
Wm. G. Rothchild a Notary Public in and for the said
County and State, residing therein, duly commissioned and sworn, personally appeared
Leonard A. Thomsen and Margaret S. Thomsen

known to me to be the person whose name is subscribed to the within
instrument, and acknowledged to me that they executed the same.
In Witness Whereof, I have hereunto set my hand and official seal the day and
year in this Certificate first above written.

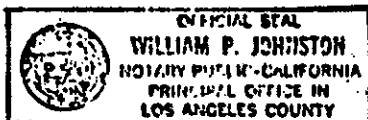
Wm. G. Rothchild
Notary Public in and for said County and State of California.

STATE OF CALIFORNIA
COUNTY OF Los Angeles

ON December 1, 1966
before me, the undersigned, a Notary Public in and for said State, personally appeared
H. S. Rothchild known to me to be the

STATE OF CALIFORNIA
COUNTY OF Los Angeles

ON December 1, 1966
before me, the undersigned, a Notary Public in and for said State, personally appeared
Harry R. Rothchild known to me to be the
President
of the Powerine Oil Company
the Corporation that executed the within instrument, known to me to be the person who
executed the within instrument, on behalf of the Corporation, therein named, and acknowledged
to me that such Corporation executed the same.



WILLIAM P. JOHNSTON
My Commission Expires Feb. 24, 1969

WITNESS my hand and official seal.

William P. Johnston

NAME TYPED OR PRINTED
Notary Public in and for said State.

C. WOODROW BATES

P.O. BOX 292, BERKELEY, CALIFORNIA
TELEPHONE THOMAS 2-2007

January 18, 1967

LEGAL DESCRIPTION

Property at the northwest corner of "A" Street and Garden Avenue, Alameda County, California.

Beginning at a point on the northern line of "A" Street, otherwise known as County Road No. 1536, which point is distant South $74^{\circ} 56' 51''$ East 1743.22 feet from the point of intersection of the center line of Garden Avenue with the center line of Sunset Boulevard, as said Avenue and Boulevard are shown on the map of "Hayward Acres" Eden Township, Alameda County, California May 1915, filed June 13, 1915, in the office of the County Recorder of Alameda County, running thence along center line of said Garden Avenue North $26^{\circ} 56' 41''$ West 64.48 feet; thence South $45^{\circ} 16'$ West 56.77 feet to the True Point of Beginning; thence South $85^{\circ} 16'$ West 123.54 feet; thence North $24^{\circ} 54' 51''$ West 104 feet; thence North $81^{\circ} 43' 28''$ East 149.03 feet to the western line of Garden Avenue; thence along said western line South $26^{\circ} 56' 51''$ East 84.23 feet; thence along a curve to the right having a radius of 20 feet on arc length of 3.17 feet to the True Point of Beginning.

APPROVED:

Levonard A. Thomsen

Margaret S. Thomsen

"Lessor"

APPROVED:

POWERINE OIL COMPANY

By *[Signature]*
President

By *[Signature]*
Vice President

"Lessee"

RECEIVED

PPS - DVP

JAN 23, 1967

☐ SALES ☐ PERS ☐ TRANS
☐ ACCT ☐ SUPPLY ☐ LAB
☐ EXP ☐ FINANCE ☐ PROG
☐ OFF ☐ ADVERT ☐ FILE

TH10276

SETTLEMENT AGREEMENT

THIS AGREEMENT is executed as of September 16, 1977, by and between AUTOTRONIC SYSTEMS, INC., a Delaware corporation (hereinafter "ASI") and POWERINE OIL COMPANY, a California corporation (hereinafter "POC"), who agree as follows:

1. RECITALS.

This Agreement is executed with reference to and in contemplation of the following facts:

(a) Disputes.

Several disputes and reciprocal claims have arisen and exist between the parties hereto, some of which are the subject of pending litigation described in subsection 1(b) below. It is the parties' desire and intention to effect a final settlement and resolution of all existing disputes and claims, regardless of their nature or basis.

(b) Pending Civil Action.

On or about October 4, 1974, ASI caused civil action No. C-74-2121 to be commenced in the United States District Court for the Northern District of California.

2. TRANSFERS OF SIX STATIONS.

(a) Assignments.

Concurrently with the execution of this Agreement, POC shall execute, acknowledge and deliver to ASI, ~~five~~ ^{seven} Assignment(s) of Lease, in form and content as set forth on Exhibits A-1, A-2, A-3, ^{A-4, A-6,} S-3 and S-6 attached hereto;

RV:cg
narbi

94 and 122); and, said invoices shall be payable, by ASI, within thirty (30) days after receipt;

(e) Transfer of Improvements.

Concurrently with the execution of this Agreement, POC shall execute, acknowledge and deliver to ASI, six Quitclaim Deed(s) in form and content as set forth respectively on Exhibits Q-1, Q-2, Q-3, Q-4, Q-5 and Q-6. It is understood that the property described therein (hereinafter "The Improvements") is being conveyed to ASI in as "as is" physical condition. ASI shall not record any of said Quitclaim Deed(s) without first executing, acknowledging and delivering, to an escrow holder designated by POC, a quitclaim deed conveying The Improvements back to POC, which quitclaim deed shall be effective and recordable upon expiration of the lease to ASI, without ASI having exercised its option to purchase or extend. All sales taxes, use taxes or other taxes imposed in connection with the transfer of The Improvements shall be borne by POC, who shall indemnify ASI from all loss, expense or liability in connection therewith.

(f) Title Policies.

On or before December 31, 1977, POC shall, at its own expense, cause to be issued to ASI, six ALTA extended coverage owner's leasehold policies of title insurance (with Indorsement No. 107.5), naming ASI as insured lessee, and describing the leasehold estates, The Improvements and all options to purchase as being free and clear of any defect in the title, as hereinafter defined in subsection 3(e). Each policy shall be in an

amount equal to at least the sum of the remaining rent reserved under the lease agreement plus POC's book value of The Improvements being transferred.

3. WARRANTIES, GUARANTIES, NOTICES, DAMAGES AND INDEMNIFICATION.

(a) Warranties.

POC warrants and represents that:

- (i) Each of the leases being assigned (hereinafter "Assigned Leases") by Exhibits A-1, A-2 ~~and A-4 and A-6~~ A-3¹ is valid, in full force and effect and free from any default or breach on the part of any party;
- (ii) Each of the leases being assigned (hereinafter "Assigned Subleases") by Exhibits S-3 and S-6 is valid, in full force and effect and free from any default or breach on the part of any party. POC forthwith shall pay to ASI all security deposits heretofore paid to POC by any of the lessees under the Assigned Subleases;
- (iii) POC has the right, ability and capacity to assign the Assigned Leases and the Assigned Subleases to ASI, and to execute Exhibits ~~L-1~~ ~~4~~ L-5 and ~~L-6~~ (hereinafter "the Land Leases");
- (iv) All options to renew or extend contained in the Assigned Leases either have been exercised or are exerciseable;
- (v) None of the terms or provisions of the Assigned Leases or the Assigned Subleases has been amended, revised, cancelled, modified or changed, except as specified in the Amendment

the parties are unable to make such mutually satisfactory arrangements, then, as to each of the six stations, within 60 days after the execution of this Agreement, ASI shall give POC at least 15 days written notice of the date on which ASI shall take possession of that particular station. It is contemplated that certain personal property not being conveyed by Exhibits Q-1, Q-2, Q-3, Q-4, Q-5 and Q-6 will be removed by POC, including gasoline dispensers, remote control consoles, token counters and adding machines. POC's removal of such personal property shall be accomplished prior to the date specified for the taking of possession; however, POC shall operate each of the six stations, for its own account prior to such dates.

(b) Trade Names.

Neither ASI nor POC shall conduct any sales operation of any of the six stations under the trade name of the other, or of any entity affiliated with the other. Prior to commencement of any sales operations, ASI shall remove, cover or obliterate POC's trade name, or that of its affiliates, wherever they may appear on the premises..

(c) Gasoline Inventory.

Upon transfer of possession as provided above, ASI and POC mutually shall inventory all gasoline stored in the tanks of the particular station. ASI shall purchase the gasoline according to usual credit and billing procedures, at POC's wholesale delivered price.

(d) Warranties and Representations.

ASI acknowledges that although POC has provided

demands, actions, causes of action and rights which POC may have against any or all of them, excepting and reserving only open book account obligations owing for the purchase, by ASI, of gasoline.

(b) Release by ASI.

ASI, for itself, and on behalf of its successors-in-interest and assigns, hereby fully and forever releases, acquits and discharges POC, its successors-in-interest, officers, directors, shareholders, agents, employees, assigns, subsidiaries, parent corporations, sister corporations, affiliates, partners, co-venturers, attorneys and each of them, of and from any and all liabilities, claims, demands, actions, causes of action and rights which ASI may have against any or all of them.

(c) Mutual Special Releases.

Without limiting the generality of the foregoing releases, POC and ASI, for themselves and on behalf of their respective successors-in-interest and assigns, hereby fully and forever release, acquit and discharge all persons, firms, associations, trusts, corporations and entities (including, without limitation, each other), their respective heirs, successors-in-interest, officers, directors, shareholders, agents, employees, assigns, subsidiaries, parent corporations, sister corporations, affiliates, partners, co-venturers, trustees, trustors, beneficiaries, attorneys and each of them, of and from any and all liabilities, claims, demands, actions, causes of action and rights which either of them may now or hereafter have against any or

RRB *ra*

all of such persons, firms, associations, trusts, corporations and entities arising out of any of the following: (i) the facts recited in subsections 1(a) and 1(b) above; (ii) the civil action described in subsection 1(b) above, and the facts alleged in the pleadings and documents filed therein; (iii) the disputes and claims referred to in subsection 1(a) above; and, (iv) any aspect of the past business affairs and relationships of and between POC and ASI (excepting and reserving open book account obligations for the purchase, by ASI, of gasoline).

(d) Mutual Waiver of Statutory Rights.

POC and ASI each hereby waive all rights which may exist under Section 1542 of the Civil Code of the State of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

(e) Warranty Against Assignment.

POC and ASI each represent and warrant that it has not heretofore assigned, transferred, or purported to assign or transfer, (and covenants that it will not assign, transfer or purport to assign or transfer), to any person or entity, any liability, claim, demand, action, cause of action or right which is hereby released and discharged; and, POC and ASI respectively shall indemnify each person and entity released and discharged by them according to the provisions of subsections 8(a) through 8(c) above, and their respective heirs, successors-in-interest, officers, directors, shareholders, agents,

employees, assigns, subsidiaries, parent corporations, sister corporations, affiliates, partners, co-venturers, trustees, trustors, beneficiaries, attorneys and each of them, and shall hold them harmless, from and against:

(i) any liability, claim, demand, action, cause of action or right assigned or transferred contrary to the foregoing warranty; and, (ii) any and all loss, expense or liability arising directly or indirectly out of any breach by them of the foregoing warranty.

(f) Interpretation of Release.

Notwithstanding anything herein set forth to the contrary, no provision of subsections 8(a) through 8(e) shall constitute, or be construed as, a release or discharge of: (i) any obligation to supply gasoline; (ii) any obligations under the terms and provisions of this Agreement; (iii) any claims or causes of action based on events or transactions occurring after execution of this Agreement; or, (iv) any open book account obligations for the purchase, by ASI, of gasoline.

(g) Affiliates' Releases.

Concurrently with the execution of this Agreement, ASI shall execute and deliver to POC a Mutual Release in form and content as set forth on Exhibit R attached hereto. Within thirty (30) days after execution of this Agreement, POC shall cause the Exhibit R Mutual Release to be executed by each of the following persons and entities (herein POC's "affiliates") and delivered to ASI:

Coin-Op Gasoline Associates

GLR 1974 Trust

GLR III Trust

Hawaiian Self-Service
Industrial Development Associates
Master Trust of HRR's Children Dated 12/4/72
Master Trust of PBR's Children Dated 12/4/72
P.B.R. 1972 Trust
Perpetual Income Equities
Powerine Copper Company
Retail Gasoline Affiliates
Harry R. Rothschild
Peter B. Rothschild
Harry S. Rothschild
Rothschild Industries
Rothschild Oil Company
Reliable Retail Associates
Investment Holdings, Inc.
Pan Nova, Inc.
Consumers Gasoline

POC shall indemnify ASI, its successors-in-interest, officers, directors, shareholders, agents, employees, assigns, subsidiaries, parent corporations, sister corporations, affiliates, partners, co-venturers, attorneys and each of them, and shall hold them harmless from and against any and all loss, expense, and/or liability arising out of the assertion or enforcement, by any of POC's affiliates, of any of the liabilities, claims, demands, actions, causes of action or rights which are described by the Exhibit R Mutual Release.

9. RESOLUTION OF LITIGATION.

POC and ASI forthwith shall do all things necessary to dismiss the civil action described in subsection 1(b) above,

with prejudice, as to all defendants and counter-defendants. Each party thereto shall bear its own costs. POC and ASI hereby authorize and instruct their respective attorneys to execute and file with the court, a stipulation in form and content as set forth on Exhibit X attached hereto.

10. WAIVER OF RIGHT TO ADMINISTRATIVE RELIEF.

ASI hereby waives any right which it may have to demand or receive any relief or recovery from or through the Federal Energy Administration arising out of any events or transactions occurring prior to the execution of this Agreement. In the event POC makes any refund to ASI as the result of any events or transactions occurring prior to the execution of this Agreement, ASI shall:

- (a) Repay such refund to POC, after first deducting therefrom any sums which the Federal Energy Administration, or other governmental agency, expressly requires ASI to pass through or refund to its customers;
- (b) Make a good faith effort, within the law, to contest any such pass through or refund requirement by pursuing all reasonable administrative remedies available to it; and,
- (c) Consult and cooperate with POC in connection with ASI's efforts to contest such pass through or refund requirement.

11. DOCUMENT RELEASE.

Concurrently with execution of this Agreement, ASI shall execute and deliver to POC an Authorization For Release Of Documents in form and content as set forth on Exhibit Y attached hereto. Nothing contained in this Agreement shall

constitute or be construed as a waiver of the attorney-client privilege; and, compliance with the terms and provisions of this Agreement shall not require a waiver of same, it being understood that ASI hereafter shall assert the attorney-client privilege where applicable.

12. ESCROW.

In order to effect the provisions of this Agreement, it may be incorporated, by reference, into escrow instructions executed jointly by POC and ASI.

13. FURTHER ASSURANCE.

POC and ASI each shall hereafter execute all documents (including, without limitation, further authorizations regarding release of documents) and do all acts necessary, convenient or desirable, in the reasonable opinion of the other party, to effect the provisions of this Agreement.

14. SUCCESSORS.

The provisions of this Agreement shall be deemed to obligate, extend to and inure to the benefit of the successors-in-interest, assigns, transferees, grantees and indemnitees of POC and ASI.

15. CALIFORNIA LAW.

This Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced and governed by and under the applicable laws of that State and the applicable laws of the United States.

16. INTEGRATION.

This Agreement and the documents attached hereto as exhibits (after full execution, acknowledgment and delivery) collectively memorialize and constitute the entire agreement and understanding between the parties, and supersede and

replace all prior negotiations, proposed agreements and agreements, whether written or unwritten. POC and ASI each acknowledge that neither the other party, nor any agent or attorney of the other party, has made any promise, representation or warranty whatsoever, which is not expressly contained or mentioned in this Agreement; and, POC and ASI each further acknowledge that it has not executed this Agreement in reliance upon any collateral promise, representation or warranty, or in reliance upon any belief as to any fact not expressly mentioned in this Agreement.

17. ATTORNEYS' FEES.

In the event litigation is commenced to enforce any of the provisions of this Agreement, to recover damages for breach of any of the provisions of this Agreement, or to obtain declaratory relief in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees.

18. INTERPRETATION.

Wherever the context so requires: the singular number shall include the plural; the plural shall include the singular; and, the masculine gender shall include the feminine and neuter genders.

19. CAPTIONS.

The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon its interpretation.

20. SEVERANCE.

If any provision of this Agreement is held to be illegal or invalid, by a court or agency of competent jurisdiction, such provision shall be deemed to be severed and deleted;

and, neither such provision, nor its severance and deletion, shall affect the validity of the remaining provisions. In the event the validity or enforceability of this Agreement is challenged by anyone not a party hereto, ASI and POC jointly shall resist the challenge through appropriate judicial or administrative proceedings, and shall thereby defend its validity. The attorneys' fees and costs reasonably incurred in connection with the resistance and defense shall be borne equally by ASI and POC.

21. EXHIBITS.

Each of the Exhibits attached to this Agreement is incorporated herein by reference.

22. EXECUTION.

This Agreement shall be executed by Ralph Becker (President) and William F. Burke (Vice-President) on behalf of POC, and by James E. Sadler (President) and Frank W. Weathers (Secretary) on behalf of ASI. Within ninety (90) days after execution of this Agreement, ASI and POC shall deliver to each other a certified copy of a valid resolution of their respective Boards of Directors, ratifying this Agreement.

AUTOTRONIC SYSTEMS, INC.,
a Delaware corporation

By James E. Sadler President
By Frank W. Weathers Secretary

(SEAL)

POWERINE OIL COMPANY,
a California corporation

By Ralph Becker President
By William F. Burke Vice President

(SEAL)

It is understood that Exhibits AB-4, AB-6, L-4 and L-6 have been deleted and replaced by Exhibits A-4 and A-6.

ASSIGNMENT OF LEASE

(Station No. 77)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, POWERINE OIL COMPANY, a California Corporation, (hereinafter "Assignor") hereby transfers, assigns and sets over unto AUTOTRONIC SYSTEMS, INC., a Delaware corporation (hereinafter "Assignee"), effective from and as of the date hereof, all of Assignor's right, title and interest, as the lessee in, to and under that certain Lease dated December 1, 1966, by and between Levonard A. Thomsen and Margaret S. Thomsen, as Lessor and Powerine Oil Company, as Lessee, concerning those certain premises described on Exhibit A-1A attached hereto and incorporated herein by reference.

Dated: _____

POWERINE OIL COMPANY (Assignor)

By _____

By _____

EXHIBIT--DO NOT SIGN

ACCEPTANCE OF ASSIGNMENT AND ASSUMPTION OF LIABILITY

FOR AND IN CONSIDERATION of the foregoing Assignment of Lease, and effective from and as of the date on which Assignee takes physical possession of the leased premises, Assignee, for itself and its successors-in-interest and assigns, hereby accepts the foregoing Assignment and assumes and

RV:cg
narbi

POC 0018

agrees fully and faithfully to keep and perform all of the terms, provisions and conditions to be performed under said Lease on the part of the lessee.

Dated: _____

AUTOTRONIC SYSTEMS, INC.
a Delaware corporation (assignee)

By _____

By _____

EXHIBIT--DO NOT SIGN

TO 449 C
(Corporation)

STATE OF CALIFORNIA
COUNTY OF _____ } SS.

On _____
State, personally appeared _____ before me, the undersigned, a Notary Public in and for said
known to me to be the _____ President, and _____
known to me to be _____ Secretary of the corporation that executed the within Instrument,
known to me to be the persons who executed the within
Instrument on behalf of the corporation therein named, and
acknowledged to me that such corporation executed the within
instrument pursuant to its by-laws or a resolution of its board
of directors.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed) _____

(This area for official notarial seal)

Beginning at a point on the northern line of "A" Street, otherwise known as County Road No. 1536, which point is distant South $26^{\circ}56'51''$ East 1293.22 feet from the point of intersection of the center line of Garden Avenue with the center line of Sunset Boulevard, as said Avenue and Boulevard are shown on the map of "Hayward Acres, Eden Township, Alameda County, California May 1915," filed June 3, 1915, in the office of the County Recorder of Alameda County; running thence along center line of said Garden Avenue North $26^{\circ}56'41''$ West 6.48 feet; thence South $85^{\circ}16'$ West 56.77 feet to the True Point of Beginning; thence South $85^{\circ}16'$ West 123.54 feet; thence North $26^{\circ}56'51''$ West 104 Feet; thence North $81^{\circ}43'28''$ East 149.83 feet to the western line of Garden Avenue; thence along said western line South $26^{\circ}56'51''$ East 84.23 feet; thence along a curve to the right having a radius of 20 feet an arc length of 39.17 feet to the True Point of Beginning.

November 8, 1977

RECEIVED
NOV 8 1977
REAL ESTATE

Powerine Oil Company
12354 Lakeland Road
Santa Fe Springs, CA 90670

Autotronics Systems, Inc.
c/o Powerine Oil Company
12354 Lakeland Road
Santa Fe Springs, CA 90670

Gentlemen:

We refer to the Lease dated December 1, 1966 by and between the undersigned, Levonard A. Thomsen and Margaret A. Thomson, as Lessor, and Powerine Oil Company, a California corporation, as Lessee, covering certain real property in Alameda County on the southeast corner of "A" Street and Garden Street (the "Lease").

Please be advised that the Lessee under the Lease is in default with respect to the following matters:

1. The monthly rental payment due on or before November 1, 1977 was not paid when due.

2. We are advised and believe that the Lessee may be committing waste on the premises by materially changing or destroying the improvements on the premises without our consent.

3. We have not been supplied with certificates of insurance as required by paragraph 9 of the Lease for any of the period since February 1, 1968.

4. The Lessee has erected or caused to be erected a sign on the premises which is in violation of the zoning codes of the County of Alameda in that it is located too close to the property line of the premises, its height exceeds the permissible height and its size exceeds the permissible size.

Demand is hereby made that each of the foregoing defaults be corrected or cured forthwith.

Yours, very truly,

Levonard A. Thomsen
Levonard A. Thomsen

Margaret A. Thomsen
Margaret A. Thomsen

cc: Autotronics Systems, Inc.
#1 Green Plaza #300
Houston, Texas 77046

A 000164

TO: Powerine Oil Company
12354 Lakeland Road
Santa Fe Springs, CA 90670

Autotronics Systems, Inc.
c/o Powerine Oil Company
12354 Lakeland Road
Santa Fe Springs, CA 90670

NOTICE OF TERMINATION OF LEASE

We refer to (a) the Lease dated December 1, 1966 by and between the undersigned, Levonard A. Thomsen and Margaret A. Thomsen, as Lessor, and Powerine Oil Company, a California corporation, as Lessee, covering certain real property in Alameda County on the northwest corner of "A" Street and Garden Street (the "lease"); (b) our notice to cure default, dated November 8, 1977, sent to you by registered mail and received by you on November 14, 1977; and (c) your response dated November 17, 1977, particularly paragraph 4, where you indicate your refusal to cure the breach of lease as to the sign, which sign you continue to maintain, and which sign is, contrary to your response, still in violation of Code.

NOTICE IS HEREBY GIVEN that, more than thirty days having transpired since your receipt on November 14, 1977 of our notice to cure this breach, and you having failed and refused to cure it, we hereby elect to terminate the Lease.

NOTICE IS HEREBY FURTHER GIVEN that the Lease is hereby

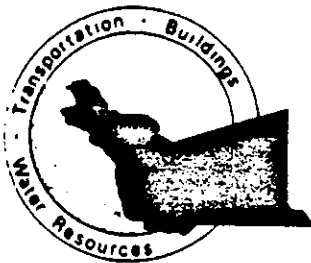
terminated, and you are required to deliver up possession of the premises to the undersigned forthwith.

DATED: December 15, 1977

Levonard A. Thomsen

Margaret A. Thomsen

cc: Autotronics Systems, Inc.
#1 Greenway Plaza, #300
Houston, Texas 77046



COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY

399 Elmhurst Street • Hayward, CA 94544
(415) 881-6423

BUILDING INSPECTION DEPARTMENT

11127
RECEIVED
JUN 8 1978
REAL ESTATE
RECEIVED
MAY 28 1978
CONSTRUCTION DEPT.

May 25, 1978

Autotronic Systems Inc.
4550 Post Oak Place Drive
Suite 100
Houston, Texas 77027

RE: Signs located at 525 West "A"
Street, Hayward, California

ATTN: Mr. J. R. Mitcheel
Director of Construction

Dear Sir:

I inspected the freestanding sign located at the subject address on May 23, 1978. All corrections had been made and I finalled your Permit.

Your prompt attention to this matter is greatly appreciated.

Very truly yours,

VICTOR L. TAUGHER
BUILDING OFFICIAL

BY 
Ray L. Upton
Building Inspector

VLT:RLU:kab

A 000088

Autotronic Systems, Inc.

4550 POST OAK PLACE DRIVE/SUITE 100/HOUSTON, TEXAS 77027/(713) 622-4404

July 20, 1978

Levonard A. Thomsen and
Margaret A. Thomsen
Route 1, Box 72
Willows, California 95989

Re: ASI Location 171-04
525 West "A" Street
Hayward, California 94541

Gentlemen:

In answer to Mr. Lopachuk's telephone call of July 18, 1978 in your behalf pertaining to the comprehensive general liability insurance required on the location captioned above, we would like to inform you that replacement insurance is in force at this time.

The new policy is effective July 1, 1978, and issued through Insurance Company of the State of Pennsylvania, Policy #GLA3431071 with limits of \$1 million, Combined Single Limit. You will note that this coverage exceeds the required coverage according to the terms of our Lease with you, and that Insurance Company of the State of Pennsylvania is a wholly subsidiary of American International Group. American International Group carries a Best's Key Rating Guide rating of AA:AAAAA.

Your certificate evidencing the coverage above is being mailed to you at this time from our agent. Please do not hesitate to contact the undersigned if you do not receive your replacement insurance timely.

Very truly yours,

Joan Birt
Real Estate Coordinator

JB/mm

A 000085

POWERINE Oil Company

12354 Lakeland Road, Santa Fe Springs, California 90670 (213) 944-6111
(213) 944-9861



The West's Largest
Independent Refinery
And Marketing Chain
2-11

February 16, 1978

Mr. and Mrs. Levonard A. Thomsen
Route 1, Box 72
Willows, California 95988

Re: Station #77
525 West "A" Street
Hayward, California

Dear Mr. and Mrs. Thomsen:

With regard to the above location, thank you for submitting the bona fide offer to purchase.

However, after careful consideration, it has been determined that since we have a lease already in effect with you, we are electing not to make an offer for the purchase of this property.

Very truly yours,

POWERINE OIL COMPANY

William C. Stewart
Director of Real Estate

WCS/vb

CERTIFIED MAIL/
RETURN RECEIPT REQUESTED

cc:

Mrs. Joyce Sadeer

A 000116

When recorded mail to;

E-Z Serve of California, Inc.
P. O. Box 3550
Ontario, CA. 91761

201235

ASSIGNMENT OF LEASE

FOR A VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, AUTOTRONIC SYSTEMS, INC. (Assignor), a Delaware corporation, hereby assigns and transfers to E-Z SERVE, INC. (Assignee), a Delaware corporation, all of its right, title and interest in and to that certain Lease dated December 1, 1966 between Leonard A. Thomsen and Margaret S. Thomsen, as Lessor and Autotronic Systems, Inc., as Lessee, covering the following described property:

TRACT 10 FEL-118 (ASI# 171-04) 525 West "A" Street, Hayward, California

A Lease Agreement dated December 1, 1966 between Leonard A. Thomsen and Margaret S. Thomsen, as "Lessor", and Powerine Oil Company, as "Lessee", covering a parcel of real property in Alameda County, California, more particularly described in said Lease Agreement as evidenced by a Memorandum of Lease dated January 26, 1967 and recorded as Instrument #AZ14352 in Reel 1917, Image 72 of the Official Records of Alameda County, California, and said Lease Agreement was assigned by an Assignment of Lease dated September 16, 1977 from Powerine Oil Company to Autotronic Systems, Inc. and recorded as Instrument #78-021742 in Reel 5249, Image 343 of said county records,

together with its right, title and interest in and to the buildings, improvements and fixtures located thereon.

Assignee agrees to and does hereby accept the assignment and expressly assumes and agrees to keep, perform, and fulfill all the terms, covenants, conditions, and obligations required to be kept, performed, and fulfilled by Assignor as the Lessee thereunder, and to defend and indemnify Assignor from and against, any failure thereof.

This agreement shall be binding on and inure to the benefit of the parties hereto, their successors in interest, and assigns.

EXECUTED this 16th day of January, 1985.

ATTEST:

Ron Stimile
Secretary

AUTOTRONIC SYSTEMS, INC.

By: Thomas A. Lyons
President
(Assignor) *TS*

ATTEST:

William C. Orr
Secretary

E-Z SERVE, INC.

By: Paul (S)
Title
Vice Pres. (Assignee)

STATE OF TEXAS

S

COUNTY OF EDGAR

S

ON THIS 16th day of January, in the year 1985, before me, a Notary Public of said State, duly commissioned and sworn, personally appeared Thomas A. Lyons, known to me to be the President of the corpo-

Law Office of
CARL B. LEVERENZ
515 WALL STREET
CHICO, CALIFORNIA 95928
TELEPHONE (916) 895 1821

LEASE AGREEMENT

THIS LEASE, made between LEVONARD A. THOMSEN and MARGARET S. THOMSEN, husband and wife, hereinafter referred to as Lessors, and E-Z SERVE OF CALIFORNIA, INC., a California corporation, hereinafter referred to as Lessee, provides as follows:

RECITALS

1. Lessors are the owners of the premises described below and desire to lease the premises to Lessee.

2. Lessee desires to lease the premises for the purpose of conducting a retail gasoline and convenience store business.

3. The parties desire to enter into a lease agreement defining their rights, duties and liabilities relating to the premises.

In consideration of the mutual covenants contained herein, the parties agree as follows:

SECTION ONE

SUBJECT AND PURPOSE

Lessors leases the real property located in the County of Alameda, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, to Lessee, for Lessee's use as a retail gasoline and convenience store business.

1 event of nonpayment, Lessors shall have all the rights and
2 remedies as herein provided for failure to pay rent, in-
3 cluding an award of reasonable attorney's fees and costs.
4

5 SECTION FOUR

6 ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

7 A. All alterations, additions and improvements on or
8 in the demised premises at the commencement of the term, or
9 that may be erected or installed during the term, shall become
10 part of the demised premises and the sole property of Lessors,
11 except that all moveable trade fixtures installed by Lessee
12 shall be and remain the property of Lessee.

13 B. Lessee may, at its own expense, make any alterations,
14 additions or improvements in and to the demised premises as
15 long as prior written approval of the Lessors is obtained.

16 SECTION FIVE

17 REPAIRS

18 Lessee shall, at all times during this lease, and at
19 its own cost and expense, repair, replace and maintain, in
20 a good, safe and substantial condition, all improvements,
21 additions and alterations on the demised premises, and shall
22 use all reasonable precaution to prevent waste, damage or
23 injury to the demised premises Lessee shall be responsible
24 for all windows, awnings and normal maintenance thereof.

25 SECTION SIX

26 TAXES

Lessee shall be responsible for all real property taxes

Law Office of
CARL B. LEVERENZ
515 WALL STREET
CHICO, CALIFORNIA 95928
TELEPHONE (916) 895 1621

Law Office of
CARL B. LEVERENZ
515 WALL STREET
CHICO, CALIFORNIA 95928
TELEPHONE (916) 893-1421

1 the amount of one million dollars, with Lessors named as an
2 additional insured.

3
4 SECTION TEN

5 UNLAWFUL OR DANGEROUS ACTIVITY

6 Lessee shall neither use nor occupy the demised premises,
7 or any part thereof, for any unlawful, disreputable, or ultra-
8 hazardous business purpose, nor operate or conduct its business
9 in a manner constituting a nuisance of any kind. Lessee
10 shall immediately, on discovery of any unlawful, disreputable
11 or ultrahazardous use, take action to halt such activity.

12 SECTION ELEVEN

13 INDEMNITY

14 Lessee shall indemnify Lessors against all expenses,
15 liabilities and claims of every kind, including reasonable
16 attorney's fees, by or on behalf of any person or entity
17 arising out of either (1) a failure by Lessee to perform any
18 of the terms or conditions of this lease; (2) any injury or
19 damage happening on or about the demised premises caused by
20 Lessee; (3) failure by Lessee to comply with any law of any
21 governmental authority; or (4) any mechanic's lien or security
22 interest filed against the demised premises or equipment,
23 materials, or alterations of buildings or improvements thereon
24 due to the conduct of Lessee.

25 In the event of a default of this lease, or in the event
26 any dispute concerning this lease arises between the parties,
the prevailing party in any legal action shall be entitled

1
2 for all expenses of the reletting, for the altera-
3 tions and repairs made, and for the difference
4 between the rent received by Lessors under the new
5 lease agreement and the rent installments that are
6 due for the same period under this lease.

7 (b) Lessors shall have the right, but shall not be
8 required, to apply the rent received from re-
9 letting the premises (1) to reduce the indebted-
10 ness of Lessee to Lessors under the lease, not
11 including indebtedness for rent; (2) to expenses
12 of the reletting and alterations and repairs made;
13 (3) to rent due under this lease; or (4) to
14 payment of future rent under this lease as it
15 becomes due.

16 If the new Lessee does not pay a rent installment
17 promptly to Lessors, and the rent installment has been
18 credited in advance of payment to the indebtedness of Lessee
19 other than rent, or if rentals from the new lessee have been
20 otherwise applied by Lessors as provided for herein, and
21 during any rent installment period are less than the rent
22 payable for the corresponding installment period under this
23 lease, Lessee shall pay Lessors the deficiency, separately
24 for each rent installment deficiency period, and before the
25 end of that period. Lessors may at any time after a reletting,
26 terminate the lease for the breach on which Lessors had
based the re-entry and subsequently relet the premises.

(5) After re-entry, Lessors may procure the appoint-
ment of a receiver to take possession and collect rents and
profits of the business of Lessee, and if necessary, to
collect the rents and profits. The receiver may carry on
the business of Lessee and take possession of the personal
property used in the business of Lessee, including inventory,

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515 WALL STREET
CHICO, CALIFORNIA 95928
TELEPHONE (916) 893 1821

1 also to show the premises to prospective buyers. At any
2 time within one (1) year prior to expiration of the term,
3 Lessors may show the premises to persons wishing to rent the
4 premises at reasonable times and with approval of Lessee.

5 SECTION SIXTEEN

6 EASEMENTS, AGREEMENTS, OR ENCUMBRANCES

7 The parties shall be bound by all existing easements,
8 agreements and encumbrances of record relating to the
9 demised premises, and Lessors shall not be liable to Lessee
10 for any damages resulting from any action taken by a holder
11 of an interest pursuant to the rights of that holder there-
12 under.

13 SECTION SEVENTEEN

14 QUIET ENJOYMENT

15 Lessors warrants that Lessee shall be granted peaceable
16 and quiet enjoyment of the demised premises free from any
17 eviction or interference by Lessors if Lessee pays the rent
18 and other charges provided herein, and otherwise fully and
19 punctually performs the terms and conditions imposed on
20 Lessee.

21 SECTION EIGHTEEN

22 LIABILITY OF LESSOR

23 Lessee shall be in exclusive control and possession of
24 the demised premises, and Lessors shall not be liable for
25 any injury or damages to any property or to any person on or
26 about the demised premises, nor for any injury or damage to

1 reserved herein, but no such assignment, subletting,
2 occupancy, or collection shall be deemed a waiver of any
3 agreement or condition hereof, or the acceptance of the
4 assignee, transferee, subtenant or occupant as lessee.
5 Lessee shall continue to be liable hereunder in accordance
6 with the terms and conditions of this lease and shall not be
7 released from the performance of the terms and conditions
8 hereof. The consent by Lessors to an assignment, mortgage,
9 pledge or transfer shall not be construed to relieve Lessee
10 from obtaining the express written consent of Lessors to any
11 future transfer of interest.

12 SECTION TWENTY-THREE

13 OPTION TO RENEW

14 Lessors grant to Lessee an option to renew this lease
15 for a FIVE (5) year period after expiration of the original
16 term of this lease, at a rental continuing on the same basis
17 as the rental provided for in this lease, with all other
18 terms and conditions of the renewal lease to be the same as
19 those contained herein. To exercise this option, Lessee
20 must give Lessors written notice of the intention to do so
21 at least three (3) months before this lease expires.

22 SECTION TWENTY-FOUR

23 SURRENDER OF POSSESSION

24 Lessee shall, on the last day of the term, or on
25 earlier termination and forfeiture of the lease, peaceably
26 and quietly surrender and deliver the demised premises to

Law Office of

CARL B. LEVERENZ

515 WALL STREET

CHICO, CALIFORNIA 95928

TELEPHONE (916) 893-1621

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lease at Chico, California, this 20 day of JAN.,

1987. 7th day.

Levonard A. Thomsen
LEVONARD A. THOMSEN

Margaret S. Thomsen
MARGARET S. THOMSEN

Address:

Rt. 1- Box 72
WILLOWS, CA. 95988

LESSORS

E-Z SERVE OF CALIFORNIA, INC.,
a California corporation

By M. James Peyer
Vice President

Address:

316 S. Bon View Avenue

Ontario, CA 91761

LESSEE

#1-35

UNDERGROUND STORAGE TANK UNAUTHORIZED RELEASE (LEAK)/CONTAMINATION SITE REPORT										
HAS STATE OFFICE OF EMERGENCY SERVICES REPORT BEEN FILED? ☒ YES ☐ NO		STATE TANK ID -								
REPORT DATE 12/1/86		LOCAL CASE #		REGIONAL BOARD CASE #		US EPA ID # CAD 981661648				
REPORTED BY	NAME OF INDIVIDUAL FILING REPORT MICHAEL T. BURKMASTER		PHONE (714) 984-1261		SIGNATURE <i>Michael T. Burkmaster</i>					
	REPRESENTING ☐ LOCAL AGENCY ☐ OTHER ☒ OWNER/OPERATOR		COMPANY OR AGENCY NAME E-Z SERVE OF CALIFORNIA, INC.							
	ADDRESS 316 S. BON VIEW		CITY ONTARIO		STATE CA		ZIP 91761			
RESPONSE - BIF PARTY	NAME E-Z SERVE		CONTACT PERSON BURKMASTER		PHONE (714) 984-1261					
	ADDRESS 316 S. BON VIEW		CITY ONTARIO		STATE CA		ZIP 91761			
SITE LOCATION	FACILITY NAME (IF APPLICABLE) E-Z SERVE #1235 (MOBILE)		OPERATOR E-Z SERVE		PHONE (714) 984-1261					
	ADDRESS ~~316 S. BON VIEW~~ 525 W. A'		CITY ~~ONTARIO~~ HAYWARD		COUNTY ALAMEDA		ZIP 94541			
	CROSS STREET GARDEN		TYPE OF AREA ☒ COMMERCIAL ☐ INDUSTRIAL ☐ RESIDENTIAL ☐ RURAL ☐ OTHER		TYPE OF BUSINESS ☒ RETAIL FUEL STATION ☐ UNKNOWN ☐ OTHER					
IMPLEMENTING AGENCIES	LOCAL AGENCY HAYWARD		AGENCY NAME FIRE DEPT.		CONTACT PERSON SUSANNE LARSON		PHONE (415) 784-8693			
	REGIONAL BOARD									
SUBSTANCE INVOLVED	TSCD									
	CAS # (ATTACH EXTRA SHEET IF NEEDED)		NAME REGULAR GASOLINE		QUANTITY LOST (GALLONS) 4,000 ☐ UNKNOWN					
	(1)									
DISCOVERY/ABATEMENT	DATE DISCOVERED 11/17/86		HOW DISCOVERED ☒ INVENTORY CONTROL ☐ SUBSURFACE MONITORING							
	DATE DISCHARGE BEGAN M M D D Y Y ☒ UNKNOWN		TANK REMOVAL ☐ NUISANCE CONDITIONS ☐ OTHER:							
	HAS DISCHARGE BEEN STOPPED? ☐ YES ☐ NO IF YES, DATE M M D D Y Y		METHOD USED TO STOP DISCHARGE (CHECK ALL THAT APPLY) ☐ REMOVE CONTENTS ☐ REPLACE TANK ☐ CLOSE TANK ☐ REPAIR TANK ☒ REPAIR PIPING ☐ CHANGE PROCEDURES ☒ OTHER SUSPEND SALES							
SOURCE/CAUSE	SOURCE(S) OF DISCHARGE ☐ TANK LEAK ☐ UNKNOWN ☒ PIPING LEAK		TANKS ONLY/CAPACITY AGE ☐ YRS. ☐ UNKNOWN MATERIAL ☐ STEEL ☐ FIBERGLASS ☐ OTHER		CAUSE(S) ☐ OVERFILL ☒ CORROSION ☐ RUPTURE/FAILURE ☐ SPILL ☐ UNKNOWN ☐ OTHER					
	OTHER (SPECIFY)									
RESOURCES AFFECTED/AT RISK	RESOURCES AFFECTED		YES		NO		THREATENED		UNKNOWN	
	AIR (VAPOR)		☐		☐		☐		☒	
	SOIL (VADOSE ZONE)		☐		☐		☐		☒	
GROUNDWATER		☐		☐		☐		☒		
SURFACE WATER OR STORM DRAIN		☐		☐		☐		☒		
BUILDING OR UTILITY VAULT		☐		☐		☐		☒		
OTHER (SPECIFY)		☐		☐		☐		☐		
GROUNDWATER BASIN NAME		☒ UNKNOWN								
COMMENTS	WATER SUPPLIES AFFECTED		YES		NO		THREATENED		UNKNOWN	
	PUBLIC DRINKING WATER		☐		☐		☐		☒	
PRIVATE DRINKING WATER		☐		☐		☐		☒		
INDUSTRIAL		☐		☐		☐		☒		
AGRICULTURAL		☐		☐		☐		☒		
OTHER (SPECIFY)		☐		☐		☐		☐		
COMMENTS: CONVERSE ENVIRONMENTAL CONSULTANTS WILL BEGIN INVESTIGATION 12/16/86										

COMPLETE AND ATTACH A CLEANUP TRACKING REPORT IF ANY CLEANUP WORK OR PLANNING HAS STARTED

45C 08 (10/85)

POC 0460

388

County of Alameda - Building Inspector

999 Birchwood Lane, Hayward, CA 94540 (510-885-8883)

SECTOR'S ORIGINAL

THIS APPLICATION, WHEN VALIDATED, IS YOUR PERMIT.

Expires ☒ 1 Year; ☐ 2 Years; ☐ 3 Years

Inspection Request: 881-8884

PART 1 - APPLICANT TO FILL IN

BE/AML - VALIDATE HERE

1. BUILDING ADDRESS: 525 W 4th A CITY: Hayward

2. BETWEEN CROSS STS.

3. APPLICANT: ☐ OWNER ☒ CONTRACTOR Redwood Engineering

4. OWNER'S NAME: WAL MUSEO ADDRESS: 205 E 16th ST CITY: San Jose STATE: CA ZIP: 95128

5. CONTRACTOR'S NAME: Redwood Engineering ADDRESS: 525 W 4th A CITY: Hayward STATE: CA ZIP: 94540

6. ADVERTISER OR EMPLOYER NAME: _____ PHONE: _____

7. ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

PERMIT NO: 7603 A *173.00DATE: 4/15/94 7603

8. TRACT: _____ BLOCK: _____ LOT: _____

9. BOOK: 732 BLOCK: 16 PARCEL: 21-3

10. PARCEL MAP: _____ PARCEL: _____

VI. DESCRIPTION OF WORK TO BE DONE

11. DESCRIBE NEW BUILDING: Service Station

12. DESCRIBE EXISTING BUILDING: Service Station

13. DESCRIBE ADDITION: _____

14. DESCRIBE ALTERATION OR REPAIR WORK OR A PORTION: Replace three product lines

15. DESCRIBE ALTERATION OR REPAIR WORK OR A PORTION: Replace three product lines

PART 2 - ELECTRICAL PLUMBING MECHANICAL

ELECTRICAL SERVICE											
NO.	DESCRIPTION	NO.	DESCRIPTION	NO.	DESCRIPTION	NO.	DESCRIPTION	NO.	DESCRIPTION	NO.	DESCRIPTION
1	100	1	100	1	100	1	100	1	100	1	100
2	100	2	100	2	100	2	100	2	100	2	100
3	100	3	100	3	100	3	100	3	100	3	100
4	100	4	100	4	100	4	100	4	100	4	100
5	100	5	100	5	100	5	100	5	100	5	100
6	100	6	100	6	100	6	100	6	100	6	100
7	100	7	100	7	100	7	100	7	100	7	100
8	100	8	100	8	100	8	100	8	100	8	100
9	100	9	100	9	100	9	100	9	100	9	100
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13	100	13	100	13	100	13	100	13	100	13	100
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17	100	17	100	17	100	17	100	17	100	17	100
18	100	18	100	18	100	18	100	18	100	18	100
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20	100	20	100	20	100	20	100	20	100	20	100
21	100	21	100	21	100	21	100	21	100	21	100
22	100	22	100	22	100	22	100	22	100	22	100
23	100	23	100	23	100	23	100	23	100	23	100
24	100	24	100	24	100	24	100	24	100	24	100
25	100	25	100	25	100	25	100	25	100	25	100
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32	100	32	100	32	100	32	100	32	100	32	100
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37	100	37	100	37	100	37	100	37	100	37	100
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82	100	82	100	82	100	82	100	82	100	82	100
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85	100	85	100	85	100	85	100	85	100	85	100
86	100	86	100	86	100	86	100	86	100	86	100
87	100	87	100	87	100	87	100	87	100	87	100
88	100	88	100	88	100	88	100	88	100	88	100
89	100	89	100	89	100	89	100	89	100	89	100
90	100	90	100	90	100	90	100	90	100	90	100
91	100	91	100	91	100	91	100	91	100	91	100
92	100	92	100	92	100	92	100	92	100	92	100
93	100	93	100	93	100	93	100	93	100	93	100
94	100	94	100	94	100	94	100	94	100	94	100
95	100	95	100	95	100	95	100	95	100	95	100
96	100	96	100	96	100	96	100	96	100	96	100
97	100	97	100	97	100	97	100	97	100	97	100
98	100	98	100	98	100	98	100	98	100	98	100
99	100	99	100	99	100	99	100	99	100	99	100
100	100	100	100	100	100	100	100	100	100	100	100

FOR MOTOR GENERATOR SETS
ADD 50% TO TOTAL

ITEM	NO	FEE	ITEM	NO	FEE	ITEM	NO	FEE
1	100		14	100		75	100	
2	100		15	100		76	100	
3	100		16	100		77	100	
4	100		17	100		78	100	
5	100		18	100		79	100	
6	100		19	100		80	100	
7	100		20	100		81	100	
8	100		21	100		82	100	
9	100		22	100		83	100	
10	100		23	100		84	100	
11	100		24	100		85	100	
12	100		25	100		86	100	
13	100		26	100		87	100	
14	100		27	100		88	100	
15	100		28	100		89	100	
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17	100		30	100		91	100	
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19	100		32	100		93	100	
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21	100		34	100		95	100	
22	100		35	100		96	100	
23	100		36	100		97	100	
24	100		37	100		98	100	
25	100		38	100		99	100	
26	100		39	100		100	100	
27	100		40	100				
28	100		41	100				
29	100		42	100				
30	100		43	100				
31	100		44	100				
32	100		45	100				
33	100		46	100				
34	100		47	100				
35	100		48	100				
36	100		49	100				
37	100		50	100				
38	100		51	100				
39	100		52	100				
40	100		53	100				
41	100		54	100				
42	100		55	100				
43	100		56	100				
44	100		57	100				
45	100		58	100				
46	100		59	100				
47	100		60	100				
48	100		61	100				
49	100		62	100				
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75	100		88	100				
76	100		89	100				
77	100		90	100				
78	100		91	100				
79	100		92	100				
80	100		93	100				
81	100		94	100				
82	100		95	100				
83	100		96	100				
84	100		97	100				
85	100		98	100				
86	100		99	100				
87	100		100	100				

Citation Rank(R)
Slip Copy R 1 OF 1
1986 WL 25522 (Cal.St.Wat.Res.Bd.)

Database Mode
CAENV-ADMI P

In the Matter of the Petition of
JOHN STUART, DOING BUSINESS AS STUART PETROLEUM
ORDER NO. WQ 86-15
September 18, 1986

For Review of Cleanup and Abatement Order Dated February 11, 1986, California Regional Water Quality Control Board, Central Valley Region. Our File No. A-424.

BY THE BOARD:

On February 11, 1986, the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Board), using the authority delegated to him by the Regional Board, issued a cleanup and abatement order. The order concerned underground contamination caused by gasoline which the Executive Officer believed had come from a service station in Glenville (Kern County) known as Jerry's Automotive. The order directed the property owner, Paul Arnold, the lessee John Stuart doing business as Stuart Petroleum, and the operators and sublessees Jerry L. and Patricia M. Pitts, to begin taking remedial action and set up a schedule for compliance and reporting. Among the actions required by the order were providing alternative drinking water supplies, investigating the extent of the problem, and undertaking both immediate and long-term cleanup.

On March 10, 1986, the State Water Resources Control Board (State Board) received a petition from John Stuart doing business as Stuart Petroleum seeking review of the cleanup and abatement order. On July 10, 1986, the State Board received a request for stay and on August 1, 1986, the State Board received points and authorities and a declaration supporting that request. Because this order deals with the merits of the petition, the stay request will not be discussed.

I. BACKGROUND

In July 1985, the Kern County Health Department discovered gasoline contamination of a water well near the Glenville Shopping Center Complex. Water wells within a 1/4 mile radius of the shopping center were subsequently sampled and eight wells were found to contain contaminants originating from gasoline. Two wells were found to contain several inches of gasoline.

Jerry's Automotive is at the corner of State Highway 155 and Dunlap Road in the Glenville Shopping Center Complex. Gasoline has been stored in underground tanks for retail sale at this location for several years.

II. CONTENTIONS AND FINDINGS

Petitioner has made the following major contentions in support of his request that the cleanup and abatement order not be applied to him. [FN1]

1. Contention: There is insufficient evidence that the underground tanks at the gasoline station are the source of the ground water pollution.

EXHIBIT

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Finding: The City of Glenville is a small community in a rural setting. There is only this one gasoline station in town and no other apparent gasoline sources near the station. Wells in the immediate vicinity of the station and downgradient from the station have become contaminated with gasoline. Solely on this basis it is reasonable to conclude that the gasoline station is the source of the pollution.

In October 1985, Kern County Health Department retained IT Corporation (IT) to investigate the presence of gasoline in ground water in Glenville. A draft ground water contamination assessment was released in May 1986 (Project No. 240030). The technical approach to accomplish the study objectives included the following field activities:

- a. Performing soil borings to investigate vadose zone characteristics and to locate possible sources of gasoline constituents in the ground water system.
 - b. Performing a vapor probe survey to estimate the boundary of the free product plume.
 - c. Ground water sampling of wells to investigate ground water quality at the site.
 - d. Surveying well casing elevations and measuring water level elevations to determine hydraulic gradients and ground water flow directions.
- All of these activities have provided information which is consistent with the finding that the underground tanks at the service station are the source of ground water pollution.

The soil samples from borings around the gasoline tanks showed high concentrations of benzene, ethyl benzene, toluene, and xylene (BETX) which is considered evidence of gasoline contamination. The vapor probe survey also found high hydrocarbon concentrations in the vicinity of the underground gasoline tanks.

Current water level measurements indicate a radial flow direction from the area of the underground tanks towards the southeast and southwest. Dissolved BETX has been found in a number of wells downgradient from the tanks and consistent with the anticipated flow direction.

The petitioner has presented a number of arguments which should be addressed. It was pointed out that Kern County identified five possible sources of gasoline in the area: the CALTRANS facility, the Glenville Fire Department, the Kern County maintenance yard, the Shopping Center gas station and three abandoned tanks. A site visit established that the CALTRANS facility and the Kern County maintenance yard are not logical candidates because they are too far from the polluted wells. In addition, the Fire Department is at least 40 feet downgradient from most of the pollution. There are what appear to be some abandoned underground tanks very near the gas station. However, soil probe analysis showed no significant pollution near the abandoned tank and engineers visiting the site have made the subjective observation that the free product found in surrounding wells was fresh gasoline. Consequently, all of the other known potential sources can be reasonably excluded from consideration.

The petitioner claims that an attempt by Kern County to chemically correlate the free product in wells with gasoline in the service station tanks provided evidence that the underground tanks were not the source of pollution. This study is not particularly reliable. Different batches of gasoline vary in chemical composition. Furthermore, the composition of gasoline will change

after moving through a soil column and contacting ground water. Consequently, the composition differences found are not unexpected.

Another contention made by the discharger is that one of the wells (Well No. 6) containing free product is upgradient from the underground tanks. Water level elevations taken in April 1986 show that Well No. 6 is actually hydraulically downgradient from the tanks. This condition may change at other times depending on pumping rates of surrounding wells and Well No. 6, but free product from the tanks can reach Well No. 6.

The final point raised by the petitioner on this issue is their assertion that the underground tanks do not leak. Several Petrotite leak detection tests were run on the tanks. These tests did not detect any leakage. While the results of these tests must certainly be considered in determining whether the tanks are the source of pollution, we find that such results are not sufficient to offset the evidence pointing the other way. It should be noted that this type of leak detection test can generate inaccurate results if proper procedures are not followed or if incorrect calculation of the temperature compensation occurs. There is also the possibility that the existing tanks or interconnecting piping may have leaked in the past and were subsequently repaired. A final possibility is that the pollution was caused by spills and not by leakage. According to County officials, at least one major spill incident has occurred at the station.

2. Contention: Petitioner, as lessee and sublessor of the property, is not responsible for any contamination which might have originated on the property.

Finding: Petitioner contends that neither the terms of the leases nor the legal doctrine of strict liability make him responsible for what happens on the property. He is mistaken on both counts.

Water Code Section 13304 contains the following language:

'Any person who . . . has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state . . . shall, upon order of the regional board, clean up such waste or abate the effects thereof' [FN2]

The key question in assigning responsibility for the cleanup and abatement of this gasoline spill is whether petitioner caused or permitted it. There is no evidence in the record that petitioner caused the contamination. However, in our view, he did permit it.

In Order No. WQ 84-6, we held that 'permitting' something to happen included failing to take action when 'the ability to obviate the condition' existed. We reached a similar conclusion in Order No. WQ 86-2. The question is whether, under the lease between Arnold and the petitioner and the sublease between the petitioner and Pitts, petitioner was in a position to prevent the leak or spill if he had known about it. [FN3] In other words, did petitioner have the legal power to stop the contamination?

It is not the province of this Board to assign rights and duties between various third parties based on their mutual contractual obligations. Those issues must be decided elsewhere. However, we are obliged to examine the two leases in this case to determine whether there is a threshold of responsibility to the public which can be imposed on the petitioner.

On January 11, 1984, the petitioner leased the property from Paul Arnold for one year with an option for another, at \$250 per month plus a percentage of

Slip Copy

PAGE 6

State Water Resources Control Board
State of California
Slip Copy, 1986 WL 25522 (Cal.St.Wat.Res.Bd.)
END OF DOCUMENT

Citation
Slip Copy
1987 WL 54552 (Cal.St.Wat.Res.Bd.)

Rank(R)
R 2 OF 2

Database Mode
CAENV-ADMI P

In the Matter of the Petition of
PRUDENTIAL INSURANCE COMPANY OF AMERICA
ORDER NO. WQ 87-6
June 18, 1987

For Review of Order No. 86-90 of the California Regional Water Quality Control Board, San Francisco Bay Region. Our File No. A-460 .

BY THE BOARD:

On November 19, 1986, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) issued waste discharge requirements to Micro Power Systems, Inc., Fairchild Semiconductor Corporation, and Prudential Realty Group. [FN1] At issue was the cleanup of volatile organic chemicals found in the soil and ground water under a site used to manufacture, test, and assemble semiconductors. The site, located in the City of Santa Clara, is owned by Prudential and leased to Micro Power. Fairchild was the tenant immediately before Micro Power. All three businesses were named as dischargers in the Regional Board order and were required to perform various tasks according to a time schedule.

On December 12, 1986, Prudential filed a timely petition asking that its duties under the waste discharge requirements be distinguished from those of the other two dischargers.

I. BACKGROUND

Prudential leased the site to Fairchild Semiconductor for ten years beginning in 1975. In March 1982, subsurface investigations detected low levels of volatile organic compounds in the soil and ground water beneath the site. A 1983 study concluded that the source of the contamination was off-site and upgradient. Other evidence places the source on-site. In December 1983, Prudential and Fairchild cancelled the remaining portion of the lease but Fairchild agreed to continue to be responsible for conducting the investigation on the site and to accept full liability for any cleanup. Prudential agreed to guarantee Fairchild full access to the property so that it could do what was necessary to handle the investigation and cleanup.

The following February, Prudential leased the property to Micro Power (which already held the lease on the adjoining parcel) for five years. The lease places the burden on Micro Power to comply with all hazardous waste and other laws and very specifically requires Micro Power to cooperate with Fairchild in Fairchild's effort to clean up the existing problem. So far as we can determine, that cooperative effort has worked well for the last three years.

Prudential is included in the Regional Board order merely because of its ownership of the property. There is no evidence that Prudential has ever contributed directly to the discharge.

II. CONTENTION AND FINDINGS

EXHIBIT

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PAGE 1

Citation Rank(R)
Slip Copy R 2 OF 2
1989 WL 66561 (Cal.St.Wat.Res.Bd.)

Database Mode
CAENV-ADMI P

In the Matter of the Petition of
MR. AND MRS. WILLIAM R. SCHMIDL AND
MR. AND MRS. RUSSELL P. SCHMIDL
ORDER NO. WQ 89-1
January 19, 1989

For Review of Cleanup and Abatement Order No. 88-701 of the California
Regional Water Quality Control Board, Central Valley Region. Our File No. A-
532.

BY THE BOARD:

On February 5, 1988, the California Regional Water Quality Control Board,
Central Valley Region (Regional Board) issued a Cleanup and Abatement Order
No. 88-701) naming Tom De Kellis, d.b.a. Bowles Flying Service as the
primarily responsible party and the two Schmidl couples--who own the land--as
secondarily responsible parties. On March 1, 1988, the Schmidls filed a timely
but incomplete petition for review of the Regional Board Order. The Petition
was later supplemented and thereafter found to be complete on July 28, 1988.

De Kellis operates Bowles Flying Service, an aerial pesticide spraying business in Live Oak. The facility consists of crop dusters, an airstrip and maintenance buildings that are located on land owned by Mr. and Mrs. William R. Schmidl and Mr. and Mrs. Russell P. Schmidl. It has been owned and run by De Kellis, since 1977, when he bought the business from Thomas R. Bowles. The Schmidls bought the land from Thomas R. Bowles ten years after transfer of the business to De Kellis, in March 1987.

As part of the crop-dusting operation, before 1987, De Kellis washed the aircraft exteriors and pesticide tanks on an asphalt and gravel wash area on the property. Before 1981, the rinse water, which contains pesticide residue, was allowed to flow from the wash pad through a ditch tributary to Morrison Slough and on to the Sutter Bypass. In 1981, De Kellis constructed an impoundment to contain the rinse water. Based on analysis of samples from the impoundment, the Regional Board notified De Kellis by letter of December 3, 1985 that the surface impoundment is subject to the Toxic Pits Cleanup Act (TPCA). [FN1] The Regional Board's initial determinations showed 25,800 ppm copper in the soil beneath the impoundment.

On June 4, 1987, De Kellis informed the Regional Board that he had bulldozed over the impoundment and that while aircraft exteriors were still being washed at the facility, tanks were not. Also, a berm had been constructed to direct rinse water back to the wash area. Further Regional Board sampling and analysis in September, 1987, revealed the presence of the pesticides thiobencarb, simazine, molinate, and diuron in a commercial-use well on the property. The area has a high water table and the well may be acting as a conduit for pesticide movement to deeper groundwater, thus creating or threatening a condition of nuisance and pollution. Residences within one-

des that "facilities developed for handling pesticide reuse waters shall not allow percolation to underlying soils or ground waters". Pesticide handling practices at Bowles Flying Service may also have affected the beneficial uses of Morrison Slough, which include irrigation, stock watering, and industrial and domestic supply. The beneficial uses of the Sutter Bypass include agricultural supply, recreation, and fish and wildlife habitat.

The Executive Officer issued Cleanup and Abatement Order No. 88-701 on February 5, 1988 requiring De Kellis to: (1) provide information regarding its business ownership history; (2) provide a sampling and analysis work plan; (3) implement the approved work plan; (4) provide a site mitigation plan; and (5) implement the approved mitigation plan. Deadlines were imposed for each required task.

In addition to the tasks required of De Kellis, the Regional Board ordered that within 60 days of notice to the Schmidls that De Kellis has failed to perform under the Order, the Schmidls shall commence performance of all tasks. It is this part of the Order to which the Schmidls object.

II. CONTENTIONS AND FINDINGS

Contention: Petitioner's sole contention is that, as the landowner, it had no involvement with causing the pollution on the land, and, therefore, should not be held responsible. In support, Petitioner cites Assembly Bill 924 and Senate Bill 245.

Finding: The Board has in the past upheld Regional Board findings of responsibility on the part of landowners. In Vallco Park, Ltd, Order No. WQ 86-18, the Board pointed out that "[t]he ultimate responsibility for the condition of the land is with its owner". The initial responsibility for cleanup is with the operator, but according to Vallco, it is appropriate to look to the owner to assure cleanup in the event the operator fails in its obligation. See also, Stinnis-Western Chemical Corp. (1986) Order No. WQ 86-16; J.N.J. Sales and Services, Inc. (1988) Order No. WQ 88-8. Similarly, the Board has found it appropriate to name landowners as responsible parties--subject to the lessee/discharger's primary duty--to comply with waste discharge requirements. Southern California Edison Co (1986) Order No. WQ 86-11; U.S. Forest Service (1987) Order No. WQ 87-5. Again, in the latter two cases, the Board pointed out that while the user/discharger bears primary responsibility for compliance with the Regional Board orders, the landowner must assume ultimate responsibility. These recent orders are consistent with longstanding interpretations as to who is a discharger under the Porter-Cologne Water Quality Control Act and its predecessors. 26 Ops.Cal. Atty. Gen. 88.

In the instant case, the Regional Board's order places primary cleanup and abatement responsibility on De Kellis's shoulders and specifically requires the Schmidls to assume the burden only upon his failure to perform. This is in accord with the State Board's prior decisions.

In this Petition, the Schmidls assert that AB-924 and SB-245 support its position. Assembly Bill 924 was enacted as an urgency statute on February 18, 1988 (Chapter 12, Statutes of 1988) and made part of the State Hazardous Substance Account provisions known as the "State Superfund" statute which is

Citation Rank(R)
Slip Copy R 1 OF 1
1986 WL 25527 (Cal.St.Wat.Res.Bd.)

Database Mode
CAENV-ADMI P

In the Matter of the Petition of
VALLCO PARK, LTD.
ORDER NO. WQ 86-18
December 18, 1986

For Review of Orders Nos. 86-48 and 86-49 of the California Regional Water Quality Control Board, San Francisco Bay Region. Our File No. A-441.

BY THE BOARD:

On June 18, 1986, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) adopted Orders Nos. 86-48 and 86-49. These orders established waste discharge requirements (site cleanup requirements) for two properties in Cupertino, Santa Clara County. The subjects of Order No. 86-48 were Siemens Components, Inc., a manufacturer of semiconductors, and the landowner, Vallco Park, Ltd., the petitioner. Order No. 86-49 was issued to petitioner as the landowner and to Intersil, Inc., also a semiconductor manufacturer. The petitioner objected to its inclusion in both orders and filed a timely petition on July 18, 1986.

I. BACKGROUND

The petitioner owns a parcel of land in an industrial park in Cupertino. In 1970, petitioner leased a portion of the parcel to Intersil, Inc. for a term of twenty years. In 1974 petitioner leased another part of the land to Siemens Components, Inc. for sixteen years with an option for another ten. In each lease the tenant agreed to various conditions including a provision that the premises could not be used in violation of the 'laws, ordinances, regulations or rules of any public authority.' The landlord's remedy for a breach of the lease is to declare it in default and proceed to either arbitration or litigation.

Groundwater under both sites has been found to be polluted with organic solvents commonly used in the electronics industry, but the extent of the pollution has not been defined. The waste discharge requirements adopted by the Regional Board require investigation activities and cleanup. [FN1] The lessees are undertaking the required actions.

II. CONTENTION AND FINDING

Contention: Petitioner raises only one issue. Petitioner contends that the waste discharge requirements should not name Vallco Park, Ltd. as a discharger. Petitioner contends that any actual discharge was caused by the tenants and that investigation and cleanup should be their responsibility.

Finding: We have dealt with this issue previously in Orders Nos. WQ 86-11 and 86-15. In those orders, we concluded that it was appropriate to name the landowner in waste discharge requirements and site cleanups even though no day-to-day control of the property was exercised by a lessee. The ultimate responsibility for the condition of the land is with its owner. Accordingly,

we find the Regional Board action naming the petitioner in its cleanup requirements to be reasonable. Petitioner argues that the lessee alone is responsible for the discharge and is in fact conducting the cleanup. In such a situation, petitioner contends that, by being named, it could be liable if cleanup fails. We agree with the latter point. If the lessee fails to clean up the Regional Board should, as between the landowner and the public, place responsibility on the landowner. Naming the landowner in the requirements assures such responsibility.

Of course, it should be noted that the lessees have assumed primary responsibility and are in fact carrying out the cleanup activities. Given this state of affairs, the Regional Board should continue to look to the lessees regarding cleanup and only involve the landowner if the lessees fail to comply with the orders.

III. SUMMARY AND CONCLUSION

It is proper to name a landowner as a discharger in site cleanup requirements.

IV. ORDER

The petition is denied.

FN1 We must again remind the Regional Board that issuance of cleanup and abatement orders in accordance with Water Code Section 13304, rather than issuance of waste discharge requirements, is the appropriate means to require cleanup actions. See Order No. WQ-86-8 at page 32.

State Water Resources Control Board
State of California
Slip Copy, 1986 WL 25527 (Cal.St.Wat.Res.Bd.)
END OF DOCUMENT



3480 Buskirk Avenue
Pleasant Hill, CA 94523-4342
P.O. Box 8045
Walnut Creek, CA 94596-1220
(510) 937-9010
FAX (510) 937-9026

HAZMAT
55 FEB -6 PM 4:01

February 1, 1995

Ms. Madhulla Logan
Hazardous Materials Specialist
Department of Environmental Protection
Hazardous Materials Division
Alameda County Department of Health Services
1311 Harbor Bay Parkway, Suite 250
Alameda, California 94502

1-1564-02/5

Subject: Request Amendment to September 29, 1994 Technical Report for Former
E-Z Serve Station #100877, 525 West A Street, Hayward, California

Dear Ms. Logan

As we discussed in our telephone conversation today, Brown and Caldwell requests the September 29, 1994 Technical Report, discussing the proposed work at the subject station, be modified to reflect recent changes in the status of the site.

As you are aware, Brown and Caldwell was notified last month that E-Z Serve Management Company (E-Z Serve) and it's representatives are no longer allowed access to the site due to the lack of an access agreement between E-Z Serve and the current land owner. Mr. Jon Wactor, legal council for E-Z Serve, is working to rectify this problem as quickly as possible. Mr. Wactor has scheduled a meeting between E-Z Serve and the current land owner for February 21, 1995 to discuss this problem. Until an access agreement is put in place, E-Z Serve and/or it's representatives can not access the property.

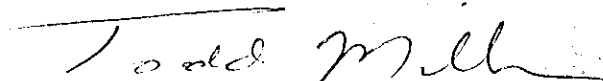
Item No. 3 of Brown and Caldwell's September 29, 1994, Technical Report proposed conducting an investigation of on-site and nearby off-site underground utilities to assess the potential for local utilities to act as conduits for migration of petroleum hydrocarbons. This proposed task was in response to the Regional Water Quality Board's (RWQCBs) request that E-Z Serve "conduct a survey on streets adjacent to the site to determine whether utility lines are acting as a conduit for plume migration." Since the RWQCBs request does not include investigating "on-site utility lines" and because Brown and Caldwell cannot access the site to conduct an on-site survey, we request that the utility survey be limited to off-site locations adjacent to, and nearby, the property boundary of the site. It is my understanding, based on our telephone conversation this amendment to the work plan is acceptable to your department.

Ms. Madhulla Logan
February 1, 1995
Page 2

If you have any questions or comments please contact me at (510) 210-2278 at your earliest convenience.

Sincerely

BROWN AND CALDWELL



Todd Miller
Project Manager

TM:evm

cc: Mr. Brian Cobb, E-Z Serve Management Company
Mr. Jon Wactor, Luce, Forward, Hamilton & Scripps
Mr. Tom Wheeler, Brown and Caldwell

**BROWN AND
CALDWELL**

Post Office Box 8045
Walnut Creek, California 94596-1220
3480 Buskirk Avenue
Pleasant Hill, California 94523-4342
(510) 937-9010 • FAX (510) 937-9026

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FAX TRANSMITTAL COVER SHEET**PLEASE DELIVER THE FOLLOWING PAGES TO:**

Name: Madhulla Logan Company: Alameda County Dept. of Health
City: Alameda FAX No: 510-337-9335

THIS TRANSMITTAL IS BEING SENT FROM:

Name/User ID: Todd Miller/5254 Date: January 24, 1995
Job #: 1564-02 Return originals: Yes X No
Stamp: Yes X No

SPECIAL INSTRUCTIONS/REMARKS:

NUMBER OF PAGES BEING TRANSMITTED, INCLUDING COVER SHEET: 2

**Brown and Caldwell**

3480 Buskirk Avenue
Pleasant Hill, CA 94523-4342
P.O. Box 8045
Walnut Creek, CA 94596-1220
(510) 937-9010
FAX (510) 937-9026

January 24, 1995

Ms. Madhulla Logan
Hazardous Materials Specialist
Alameda County Department of Health Services
1131 Harbor Bay Parkway
Alameda, California 94502

11-1564-02/5

Subject: Schedule for Off-site Investigation at the Former E-Z Serve
Station #100877, 525 West A Street, Hayward

Dear Ms. Logan:

As we discussed in our telephone conversation earlier today, I am forwarding to you Brown and Caldwell's revised schedule for the off-site groundwater investigation at the subject facility. We anticipate the investigation taking approximately 4 to 5 days. The work to be completed as part of this investigation was presented in our September 29, 1994 Technical Report to you. We propose the following revised schedule for this investigation:

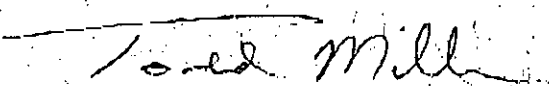
Off-site underground utility investigation	February 2, 1995
Off-site in-situ groundwater investigation	February 2 and 3, 1995
Groundwater monitoring well installation	February 6 and 7, 1995

This investigation, which was originally scheduled for mid January, has been rescheduled due to problems in obtaining the appropriate permits and the availability of the subcontractors necessary to complete the work. It is my understanding, based on our conversation earlier today, that this proposed schedule meets with your approval.

If you have any questions regarding this schedule, please contact me at your earliest convenience at (510) 210-2278.

Sincerely,

BROWN AND CALDWELL


Todd Miller
Project Manager

TM:evm

cc: Mr. Brian Cobb, E-Z Serve Management Company
Mr. Jon K. Wactor, Luce, Forward, Hamilton, & Scripps
Mr. Rick Rohrer, City of Hayward

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
MICHAEL P. WALSH
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ANTONIA L. MORE
MARIA I. LAWLESS
JULIA LYNN NYE
MATTHEW P. MATIASSEVICH

FITZGERALD, ABBOTT & BEARDSLEY

ATTORNEYS AT LAW

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OAKLAND, CALIFORNIA 94612-9535

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CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

TELECOPIER: (510) 451-1527

ALCO
HAZMAT

95 FEB -1 PM 3:36

COPY

January 31, 1995

Jon K. Wactor, Esq.
Luce, Forward, Hamilton & Scripps
100 Bush Street, 20th Floor
San Francisco, CA 94104

Re: Thomsen v. E-Z Serve

Dear Mr. Wactor:

On at least two prior occasions I have warned you about the consequences of E-Serve's failure to abate the nuisance described in the October 12, 1994 notice from Alameda County. I have requested that E-Z Serve comply with the demand of Alameda County and abate the nuisance which was created during E-Z Serve's occupancy of the property and prior to its relinquishment of possession in November. I informed you of the pendency of the abatement hearing on January 25, 1995, and the requirement that E-Z Serve respond. Consistent with E-Z Serve's abrogation of its legal responsibilities in every other area, E-Z Serve refused to take any action.

The January 25, 1995 hearing proceeded in E-Z Serve's absence. I am enclosing a copy of Order No. NPO-0034 adopted at the hearing. You will note that the containers on the property are being removed, together with removal of litter and trash and cutting of remaining overgrown vegetation and weeds. Many of those containers have been knocked over, undoubtedly releasing the contents back into the already contaminated soil. You will note further that this abatement must be accomplished no later than February 27, 1995.

Demand is hereby made upon E-Z Serve to mitigate damages and itself undertake to abate the nuisance without exception. E-Z Serve's continued silence and inaction will only serve to

exacerbate problems at the site and substantially increase E-Z
Serve's damage exposure.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By

Richard T. White

RTW:lm

Enclosure

cc: Ms. Juliett Shin
Ms. Madhulla Logan
Mr. and Mrs. Levonard Thomsen
Gil Jensen, Esq.

FILED 1/30/95
ORDER NO. NPO-0034 OF
THE COUNTY OF ALAMEDA NEIGHBORHOOD PRESERVATION ORDINANCE
ENFORCEMENT OFFICER

ADOPTED AT THE HEARING OF JANUARY 25, 1995
CONCERNING MARGARET & L.A. THOMSEN
C/O JONATHAN REDDING, ATTORNEY
1221 BROADWAY, 21ST FLOOR, OAKLAND, CA 94612

WHEREAS the County of Alameda adopted Ordinance No. 0-89.40, the Neighborhood Preservation Ordinance, on May 16, 1989, and said ordinance identifies certain public nuisance conditions and provides for their abatement; and

WHEREAS the County of Alameda received a complaint on August 11, 1994 alleging a violation of the Neighborhood Preservation Ordinance on the property located at 525 W. A Street, Hayward, 0432-0016-026-03,

Owner(s): Margaret & L.A. Thomsen

To Wit: 1) Containers;
2) Overgrown vegetation and weeds; and
3) Litter and trash.

WHEREAS the County of Alameda verified the existence of said violation and attempted unsuccessfully to cause the owner/occupant to abate the violation; and

WHEREAS the Enforcement Officer did hold an administrative hearing on said violation at the hour of 1:30 p.m. on the 25th day of January, 1995, in the Auditorium of the County of Alameda Public Works Building, 399 Elmhurst Street, Hayward, California; and

WHEREAS it satisfactorily appears from affidavits on file that proper notice of said hearing was given in all respects as required by law; and

WHEREAS this process has been reviewed in accordance with the provisions of the California Environmental Quality Act and has been found to be categorically exempt, class 21, example a; and

WHEREAS a Pre-Hearing Report was submitted identifying public nuisance conditions and recommending the finding of violation; and

WHEREAS the owner/occupant did not appear at said hearing to present testimony under oath on their behalf; and

WHEREAS the Enforcement Officer did hear and consider all said reports, recommendations and testimony as hereinabove set forth; Now Therefore

BE IT RESOLVED that the Enforcement officer finds that:

(a) The following violations of the Neighborhood Preservation Ordinance exist:

- 1) Containers;
- 2) Overgrown vegetation and weeds; and
- 3) Litter and trash.

BE IT RESOLVED that the Enforcement Officer orders that:

(b) The method(s) of abatement are as follows:

- 1) Remove the containers;
- 2) Cut and remove the overgrown vegetation and weeds; and
- 3) Remove the litter and trash.

(c) Abatement shall commence as follows:

- 1) Effective date: January 27, 1995
- 2) Effective date: January 27, 1995
- 3) Effective date: January 27, 1995

(d) Abatement shall be completed no later than:

- 1) February 27, 1995
- 2) February 27, 1995
- 3) February 27, 1995

Pursuant to Section 3-303.5 APPEAL PROCEDURE, HEARING BY BOARD OF SUPERVISORS, the owner(s) may appeal to the County of Alameda Board of Supervisors the Enforcement Officer's findings and order by filling an appeal with the Clerk of the Board within seven (7) days from the date of service of the Enforcement Officer's decision.

STEPHEN F. RICHARDS
COUNTY OF ALAMEDA NEIGHBORHOOD PRESERVATION ORDINANCE
ENFORCEMENT OFFICER

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873

JON K. WACTOR, PARTNER
DIRECT DIAL NUMBER (415) 395-7910

January 26, 1995

Via Facsimile and U.S. Mail

Ms. Madhulla Logan
Hazardous Material Specialist
Department of Environmental Health
Alameda County Health Services Agency
1131 Harbor Bay Parkway, 2nd Floor
Alameda, CA 94502

Re: 525 West A Street, Hayward, CA

Dear Ms. Logan:

I am writing to confirm our conversation yesterday regarding the investigative work now being performed by Brown & Root related to contamination previously discovered at the 515 West A Street site in Hayward. As I mentioned in our conversation, the parties to the private litigation regarding the contamination have scheduled a mediation session to discuss and attempt to reach agreement on all outstanding issues related to the litigation. One of the issues that will be discussed at that mediation is the desire for access to the site for the purposes of completing the investigation and remediation under your auspices. I mentioned to you that the mediation was tentatively scheduled for the 15th of February. In fact, by letter I received from the mediator yesterday, the final date that has been chosen is February 21. Thus, the substantive discussion among the parties regarding various issues, including access will occur on that day. I trust that will not cause you any concern because Brown & Caldwell is proceeding with the offsite investigation pursuant to the workplan which you previously approved.

Please call me if you have any questions in that regard.

Sincerely,



Jon K. Wactor
of

Luce, Forward, Hamilton & Scripps

cc: Todd Miller, Brown & Caldwell

exacerbate problems at the site and substantially increase E-Z Serve's damage exposure.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By

Richard T. White

RTW:lm

Enclosure

cc: Ms. Juliett Shin
Ms. Madhulla Logan
Mr. and Mrs. Levonard Thomsen
Gil Jensen, Esq.

ALCO
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1/30/95
ORDER NO. NPO-0034 OF 95 FEB -1 PM 3:36
THE COUNTY OF ALAMEDA NEIGHBORHOOD PRESERVATION ORDINANCE
ENFORCEMENT OFFICER

ADOPTED AT THE HEARING OF JANUARY 25, 1995
CONCERNING MARGARET & L.A. THOMSEN
C/O JONATHAN REDDING, ATTORNEY
1221 BROADWAY, 21ST FLOOR, OAKLAND, CA 94612

WHEREAS the County of Alameda adopted Ordinance No. 0-89.40, the Neighborhood Preservation Ordinance, on May 16, 1989, and said ordinance identifies certain public nuisance conditions and provides for their abatement; and

WHEREAS the County of Alameda received a complaint on August 11, 1994 alleging a violation of the Neighborhood Preservation Ordinance on the property located at 525 W. A Street, Hayward, 0432-0016-026-03,

Owner(s): Margaret & L.A. Thomsen

To Wit: 1) Containers;
2) Overgrown vegetation and weeds; and
3) Litter and trash.

WHEREAS the County of Alameda verified the existence of said violation and attempted unsuccessfully to cause the owner/occupant to abate the violation; and

WHEREAS the Enforcement Officer did hold an administrative hearing on said violation at the hour of 1:30 p.m. on the 25th day of January, 1995, in the Auditorium of the County of Alameda Public Works Building, 399 Elmhurst Street, Hayward, California; and

WHEREAS it satisfactorily appears from affidavits on file that proper notice of said hearing was given in all respects as required by law; and

WHEREAS this process has been reviewed in accordance with the provisions of the California Environmental Quality Act and has been found to be categorically exempt, class 21, example a; and

WHEREAS a Pre-Hearing Report was submitted identifying public nuisance conditions and recommending the finding of violation; and

WHEREAS the owner/occupant did not appear at said hearing to present testimony under oath on their behalf; and

WHEREAS the Enforcement Officer did hear and consider all said reports, recommendations and testimony as hereinabove set forth; Now Therefore

BE IT RESOLVED that the Enforcement officer finds that:

(a) The following violations of the Neighborhood Preservation Ordinance exist:

- 1) Containers;
- 2) Overgrown vegetation and weeds; and
- 3) Litter and trash.

BE IT RESOLVED that the Enforcement Officer orders that:

(b) The method(s) of abatement are as follows:

- 1) Remove the containers;
- 2) Cut and remove the overgrown vegetation and weeds; and
- 3) Remove the litter and trash.

(c) Abatement shall commence as follows:

- 1) Effective date: January 27, 1995
- 2) Effective date: January 27, 1995
- 3) Effective date: January 27, 1995

(d) Abatement shall be completed no later than:

- 1) February 27, 1995
- 2) February 27, 1995
- 3) February 27, 1995

Pursuant to Section 3-303.5 APPEAL PROCEDURE, HEARING BY BOARD OF SUPERVISORS, the owner(s) may appeal to the County of Alameda Board of Supervisors the Enforcement Officer's findings and order by filling an appeal with the Clerk of the Board within seven (7) days from the date of service of the Enforcement Officer's decision.

STEPHEN F. RICHARDS
COUNTY OF ALAMEDA NEIGHBORHOOD PRESERVATION ORDINANCE
ENFORCEMENT OFFICER

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
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MARIA I. LAWLESS
JULIA LYNN NYE
MATTHEW P. MATIASSEVICH

FITZGERALD, ABBOTT & BEARDSLEY

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OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

R. M. FITZGERALD 1858-1934
CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

TELECOPIER: (510) 451-1527

January 6, 1995

COPY

Jon K. Wactor, Esq.
Roger Sampson, Esq.
Luce, Forward, Hamilton & Scripps
100 Bush Street, 20th Floor
San Francisco, California 94104

Re: Thomsen v. Powerine, et al.

Dear Counsel:

We are still awaiting your execution and return of the Access Agreement which we sent to you last month. E-Z Serve will need access to the property in order to perform the required investigations and thus should expedite this process.

On a separate subject, E-Z Serve has failed to abate the nuisance which it created on the property. I am enclosing a copy of Notice of Administrative Hearing on Abatement of Nuisance. On behalf of plaintiffs, we again demand that E-Z Serve abate, without exception, the nuisance as set forth in the Notice. It is imperative that this occur immediately in order to obviate the need for this hearing.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By

Richard T. White

RTW:mga
Enclosure

cc: Ms. Juliette Shin
Ms. Madhulla Logan
Mr. and Mrs. Levonard Thomsen

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95 JAN -9 PM 3:36

ALAMEDA COUNTY PLANNING DEPARTMENT

• Development Planning • Housing & Community Development • Policy Planning & Research • Zoning Administration & Enforcement

399 Elmhurst Street, Hayward, CA 94544 (510) 670-5400 FAX (510) 785-8793

January 4, 1995

Fitzgerald, Abbott & Beardsley
Attn: Jonathan Redding, Attorney at Law
Re: Margaret & L.A. Thomsen
1221 Broadway, 21st Floor
Oakland, CA 94612

NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE

This is a notice of hearing before the Enforcement Officer to ascertain whether certain property situated in the County of Alameda, State of California, known and designated as 525 W. A Street, Hayward, in said County, and more particularly described as parcel number 0432-0016-026-13 constitutes a public nuisance subject to abatement by the rehabilitation of such property or by the repair, removal or demolition and removal of buildings situated thereon. If said property, in whole or part, is found to constitute a public nuisance as defined in this ordinance and if the same is not promptly abated by the owner, such nuisance may be abated by the County of Alameda, in which case the cost of such rehabilitation, repair, removal or demolition and removal will be assessed upon such property and such costs, together with interest thereon, will constitute a lien upon such property until paid; in addition, you may be cited for violation of the provisions of the County Ordinances and subject to a fine.

Said alleged conditions consist of the following: Overgrown weeds and vegetation and containers.

The method of abatement: Cut and remove the weeds and vegetation and remove the containers (oil drums).

All persons having an interest in said matters may attend the hearing and their testimony and evidence will be heard and given due consideration.

Dated this _____

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • POUNDED 1873
100 BUSH STREET, 20TH FLOOR • SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE (415) 395-7900 • FACSIMILE (415) 395-7949

FACSIMILE DOCUMENT

DATE: January 27, 1995
TO: Gil Jensen
FIRM: Alameda County District Attorney's Office
CITY, STATE: Oakland, CA 94621-1934
FAX TELEPHONE NUMBER: 510-569-0505
CONFIRMING NUMBER: 510-569-9281
FROM: Jon Wactor PHONE: 415-395-7910
TRANSMITTING: PAGES
ADDITIONAL COMMENTS OR INSTRUCTIONS: Please see attached.

PRIVILEGED AND CONFIDENTIAL - All information transmitted hereby is intended only for the use of the addressee(s) named above. If the sender of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and return the original message to us.

TIME/DATE TRANSMITTED BY OPERATOR: _____

IF YOU DO NOT RECEIVE THE ENTIRE FAX, CALL (415) 395-7900, DURING THE HOURS OF 8:30 a.m. AND 6:00 p.m.

~~~~~  
(TO BE COMPLETED BY SENDER)

~~~~~  
(TO BE COMPLETED BY OPERATOR)

ATTORNEY: Jon Wactor
97298/77602/00100
(USER/CLIENT/MATTER NUMBER)

TIME: _____
DATE: _____
OPERATOR: _____
FAX TELEPHONE NO: 510-569-0505
CONFIRMING NUMBER: 510-569-9281
RECIPIENT'S NAME: Gil Jensen
PAGES TRANSMITTED:

24:2 11 18 NOV 95

IVH2VH
COPY

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873

JON K. WAGNER, PARTNER
DIRECT DIAL NUMBER (415) 395-7910

January 27, 1995

Via Facsimile and U.S. Mail

Gil Jensen, Esq.
Alameda County District
Attorney's Office
Consumer and Environmental
Protection Division
7677 Oakport Street, Suite 400
Oakland, CA 94621-1934

Re: 525 West A Street, Hayward, CA - Former Service Station Site

Dear Mr. Jensen:

I am writing to update you on the status of the investigation at this property. E-Z Serve's consultant, Brown & Caldwell, has been in contact with Madhulla Logan of Alameda County. Ms. Logan is acting as the project manager for Alameda County on this matter. I wanted to confirm to you that Brown & Caldwell will commence and complete field work under the supervision of Ms. Logan on schedule as E-Z Serve has intended. With regard to your question about the need for onsite access to complete the investigation, it is my understanding that the workplan which was approved by Alameda County only called for offsite investigation because the onsite investigation of soil and groundwater has been completed. Thus, the suggestions made by counsel for the landowners that E-Z Serve was intending to disregard the legal request for submittal of the technical report issued by the California Regional Water Quality Control Board for the San Francisco Bay Region had no basis whatsoever. E-Z Serve intends to completely cooperate with all interested government agencies in resolving this matter to their satisfaction.

Also, as I mentioned in our telephone conversation, there is private litigation ongoing among the owners of the property and all three oil companies which at one time operated the property as a filling station. This litigation basically concerns indemnity of

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873

Gil Jensen, Esq.
January 27, 1995
Page 2

various parties and cleanup of the property and any offsite impact. Mediation of those issues has been scheduled for February 21. If you are interested, I will provide you with an update on the status after that mediation.

Sincerely,



Jon K. Wactor

of

Luce, Forward, Hamilton & Scripps

JKW/vsd

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873

100 BUSH STREET, 20TH FLOOR • SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE (415) 395-7900 • FACSIMILE (415) 395-7949

FACSIMILE DOCUMENT

DATE: January 18, 1995

TO: Madhulla Logan

FIRM: Alameda County Health Services

CITY, STATE: Alameda, CA

FAX TELEPHONE NUMBER: 510.337.9335

CONFIRMING NUMBER: 510.567.6764

FROM: Jon Wactor PHONE: 415.395.7910

TRANSMITTING 3 PAGES

ADDITIONAL COMMENTS OR INSTRUCTIONS: Please see attached.

PRIVILEGED AND CONFIDENTIAL - All information transmitted hereby is intended only for the use of the addressee(s) named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and return the original message to us.

TIME/DATE TRANSMITTED BY OPERATOR: _____

IF YOU DO NOT RECEIVE THE ENTIRE FAX, CALL (415) 395-7900, DURING THE HOURS OF 8:30 a.m. AND 6:00 p.m.

(TO BE COMPLETED BY SENDER)

(TO BE COMPLETED BY OPERATOR)

ATTORNEY: Jon Wactor97298/17785/00062

(USER/CLIENT/MATTER NUMBER)

TIME: _____

DATE: _____

OPERATOR: _____

FAX TELEPHONE NO: 510.337.9335CONFIRMING NUMBER: 510.567.6764RECIPIENT'S NAME: Madhulla LoganPAGES TRANSMITTED: 3

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873

JON K. WACTOR, PARTNER

DIRECT DIAL NUMBER (415) 395-7910

January 18, 1995

Via Facsimile and U.S. Mail

Ms. Madhulla Logan
Hazardous Material Specialist
Department of Environmental Health
Alameda County Health Services Agency
1131 Harbor Bay Parkway, 2nd Floor
Alameda, CA 94502

Re: 525 West A Street, Hayward, CA

Dear Ms. Logan:

Thank you for sending me your letter of December 1, 1994 addressed to Todd Miller of Brown & Caldwell. As you know, Mr. Miller is the project manager for E-Z Serve on the investigation of the 525 West A Street site. It is my understanding from your December 1 letter that you approved the Brown & Caldwell workplan for additional site assessment.

After talking with you earlier today, I called Mr. Miller and learned the following which I want to pass on to you:

1. The workplan which you approved in your December 1 letter for the additional characterization of contaminants emanating from the site does not require Brown & Caldwell to enter onto the property owned by the Thompsons. Thus, the on-site access issue raised by legal counsel for the landowners is not an impediment to E-Z Serve's completion of the approved workplan.
2. Access to the property will be necessary to comply with on-going quarterly monitoring requirements in 1995. The next quarterly monitoring report must be submitted for the first quarter of 1995. Brown & Caldwell anticipates taking samples of the on-site wells in March of 1995. Thus we have until that time to work out access issues. We would appreciate your efforts to convince the landowners that it is best for all concerned if E-Z Serve's consultant,

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873

January 18, 1995

Page 2

Brown & Caldwell, has access to the site to continue to monitor the on-site wells.

3. Mr. Miller informed me that Brown & Caldwell has not delayed implementing the workplan. In fact, it has applied for and received all necessary permits for installation of the borings and groundwater monitoring wells. The only permit which has not been yet physically received by Brown & Caldwell is the encroachment permit from the City of Hayward. However Mr. Miller believes that permit will be received by Brown & Caldwell no later than next week. Brown & Caldwell intends to begin investigation of the off-site contaminants, per the approved workplan, as soon as that encroachment permit has been received. He estimates that field work will commence prior to February 1, 1995 which is actually ahead of schedule.
4. The screening risk assessment will be performed once data has been collected from the borings and wells which will be place in the very near future. Mr. Miller will contact you within the next few days to begin working on receiving your approval to Brown & Caldwell's exposure scenario assumptions, parameters, general methods and models.

E-Z Serve appreciates the assistance that you are providing in resolving this problem and intends to continue moving forward to resolve the problem in a reasonable manner. Please feel free to call me with any other issues that arise.

Sincerely,



Jon K. Wactor

of
Luce, Forward, Hamilton & Scripps

JKW/vsd

cc: Todd Miller, Brown & Caldwell

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, Assistant Agency Director

DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Division
80 Swan Way, Rm. 200
Oakland, CA 94621
(510) 271-4320

January 18, 1995

Mr. Brian Cobb, Environmental Manager
E-Z Serve Management Company
2550 N. Loop West, Ste. 600
Houston, TX-77292

Sub: E-Z Serve, 525 West A Street, Hayward, California

Dear Mr. Cobb:

This Department received a copy of the letter dated January 13, 1995, from Richard White of Fitzgerald, Abbot and Beardsley, who represent the Thomsens, owners of the real property referenced above. According to this letter, no final decisions have yet been made on the access agreement between E-Z Serve and the Thomsens.

As a reminder, the workplan approval letter dated December 1, 1994 states that field work should be implemented within 60 days (i.e., by February 1, 1995). To this date, this Department has not received any information from you regarding difficulties in developing an access agreement. Please respond as to how field investigations, agreed upon in the June 1994 public hearing, will be initiated by February 1, 1995 if no decisions have yet been made on the access agreement. If you have any questions, call me at (510) 567-6700.

Yours Sincerely,

Madhulla Logan
Hazardous Material Specialist

CC: Jon K. Wactor, Luce, Forward, Hamilton and Scripps
Edward Lambert, General Counsel, E-Z Serve
Thomsens
Richard T. White, Fitzgerald, Abbott and Beardsley
Jonathan Redding, Fitzgerald, Abbott and Beardsley

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873

AG
STW JJS

JON K. WACTOR, PARTNER
DIRECT DIAL NUMBER (415) 395-7910

January 18, 1995

Via Facsimile and U.S. Mail

Ms. Madhulla Logan
Hazardous Material Specialist
Department of Environmental Health
Alameda County Health Services Agency
1131 Harbor Bay Parkway, 2nd Floor
Alameda, CA 94502

Re: 525 West A Street, Hayward, CA

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LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873

January 18, 1995

Page 2

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E-Z Serve appreciates the assistance that you are providing in resolving this problem and intends to continue moving forward to resolve the problem in a reasonable manner. Please feel free to call me with any other issues that arise.

Sincerely,



Jon K. Wactor

of

Luce, Forward, Hamilton & Scripps

JKW/vsd

cc: Todd Miller, Brown & Caldwell

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, Assistant Agency Director

DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Division
80 Swan Way, Rm. 200
Oakland, CA 94621
(510) 271-4320

January 18, 1995

Mr. Brian Cobb, Environmental Manager
E-Z Serve Management Company
2550 N. Loop West, Ste. 600
Houston, TX-77292

Sub: E-Z Serve, 525 West A Street, Hayward, California

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Yours Sincerely,

Madhulla Logan
Hazardous Material Specialist

CC: Jon K. Wactor, Luce, Forward, Hamilton and Scripps
Edward Lambert, General Counsel, E-Z Serve
Thomsens
Richard T. White, Fitzgerald, Abbott and Beardsley
Jonathan Redding, Fitzgerald, Abbott and Beardsley

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
MICHAEL P. WALSH
J. BRITTAIN HABEGGER
VIRGINIA PALMER
TIMOTHY H. SMALLSREED
STEPHEN M. JUDSON
STEPHEN M. WILLIAMS
JONATHAN W. REDDING
BETH E. ASPEDON
THEODORA R. LEE
KRISTIN A. PACE
ROBERT F. CAMPBELL
MICHAEL M. K. SEBREE
ANTONIA L. MORE
MARIA I. LAWLESS
JULIA LYNN NYE
MATTHEW P. MATIASSEVICH

FITZGERALD, ABBOTT & BEARDSLEY

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1221 BROADWAY, 21ST FLOOR

OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

R. M. FITZGERALD 1856-1934
CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963
ALBION HAZMAT
TELECOPIER: (510) 451-1527

95 JAN 18 AM 7:59

January 13, 1995

Jon K. Wactor, Esq.
Luce, Forward, Hamilton & Scripps
100 Bush Street, 20th Floor
San Francisco, CA 94104

Re: Thomsen v. E-Z Serve

Dear Mr. Wactor:

This is in response to your letter dated January 11, 1995, on the subjects of the requirement for immediate weed abatement by E-Z Serve and the refusal of E-Z Serve to execute an access agreement.

As we have previously communicated, E-Z Serve did not relinquish possession of the property until our receipt of your letter dated November 15, 1994. E-Z Serve disputed the termination of possession at all times before then. Indeed, E-Z Serve continued to exclusively occupy the property and pay rent pursuant to the leases through November 30, 1994. Since the October 12, 1994, letter from the Alameda County Planning Department concerned conditions occurring during your client's sole occupancy of the property, it is your client alone which is obligated to abate the nuisance.

The form of access agreement which we forwarded to you on December 5, 1994, is a generic form which we have regularly used in conjunction with similar cases involving major oil companies, including Chevron, Unocal and Texaco, among others. When you returned the initial version with your handwritten annotations (copy enclosed), we revised the form to include all but a handful of your suggested changes and sent it back to you on December 9, 1994 (copy enclosed). Now fully one month later when E-Z Serve is required to gain access to plaintiffs' property to abate the weed nuisance and to perform the investigations required by the Alameda County Health Care Services Agency, we learn for the first time that apparently even the form of access agreement which you agreed was acceptable is now suddenly unacceptable.

COPY

January 13, 1995

By carbon copy of this letter, I am informing the regulatory authorities that the Thomsens object to any effort by E-Z Serve to parlay its unreasonable refusal to execute a standard form of access agreement into an excuse for further delays and nonperformance of its investigation and remediation obligations. Contrary to the assertions in your letter, you are well aware that E-Z Serve has been offered complete access to the property. E-Z Serve is not expected to take on any responsibilities of the Thomsens, only E-Z Serve's own responsibilities. That E-Z Serve believes it should be afforded access without a corresponding obligation to protect and indemnify the Thomsens against the actions of E-Z Serve is short-sighted, irrational and unprecedented, especially since E-Z Serve relinquished its right to possession.

We urge you to recommend that E-Z Serve reconsider its position and instead to execute and return the access agreement without further unnecessary delay.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By

Richard T. White

RTW:iwm

Enclosures: Draft Access Agreement with Wactor
annotations (12/5/94)
Revised Access Agreement (12/9/94)

cc: Ms. Juliett Shin
Ms. Mahulla Logan
Mr. and Mrs. Levonard Thomsen
Gil Jensen, Esq.

COPY

ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
DEPARTMENT OF ENVIRONMENTAL HEALTH
ENVIRONMENTAL PROTECTION
EAST GROUP

--MEMORANDUM--

DATE: January 17, 1995
TO: All Environmental Health Staff
FROM: Don Atkinson-Adams
SUBJECT: Theft in the office

.....
This memo is to let everyone know that security in the office should be tighter. Due to my negligence (I left my wallet unattended) my wallet was stolen from my cubicle on Friday, January 13 sometime between 12:30 and 1:10pm.

1- It was a black, eelskin bill fold and may have been discarded by the thief shortly after they removed the credit cards. Please watch for it.

2- Does anyone remember seeing a stranger in the building between 12:30 and 1:10 on Friday? Please call me at 3-6734 if you have any information.

A short tale of what happened on Friday.

Around 12:15 to 12:30 I went out to my car to get some files and could not get back in the door. Fortunately Russ Handzus and Illy Buenavista were just returning from lunch and had a swipe card to open the door. I resolved to put my swipe card in my wallet immediately and I did so when I returned to my desk. I then went out the back door again to see if my swipe card would work. I waited about 3 to 5 minutes for the door to relock and finally gave up as the light remained green and the door would not relock. As I walked in the back door I replaced the swipe card in my wallet and zipped my wallet into the front pocket of my down vest. I returned to my desk and slipped my vest off and hung it over the back of my desk chair. Soon after, I got up to make a photocopy or to check my mail slot and left my vest and wallet unattended on the back of my chair. At 5:20 when I got up to go home I discovered that my wallet was not in my vest. I looked around my desk area and checked a few locations around the office in hopes that I may have absentmindedly misplaced the wallet. It wasn't until I called the credit card companies (2 cards) and learned of the two fraudulent charges that I knew that the wallet had been stolen and not just misplaced.

-wallet taken- 12:30 to 1:00

-first charge- \$123- at a local drug store at 1:21pm

-second charge- \$1- at a gas station 1:45pm (they checked to see if the card was ok)

A:\theft SO THE MORAL OF THE TALE: BE CAREFUL AND ATTENTIVE !



3480 Buskirk Avenue
Pleasant Hill, CA 94523-4342
P.O. Box 8045
Walnut Creek, CA 94596-1220
(510) 937-9010
FAX (510) 937-9026

ALCO
HAZMAT

94 DEC -7 PM 4: 28

December 2, 1994

Ms. Madhulla Logan
Hazardous Materials Specialist
Alameda County Department of Environmental Health
1311 Harbor Bay Pkwy., Second Floor
Alameda, California 95402

11-1564-03/1

Subject: Application for Well Construction Permit

Dear Ms. Logan:

Enclosed is an application for a well construction permit. The proposed wells will be installed in accordance with the approved work plan.

If you have any questions regarding the installation of these wells, please contact me at (510) 210-2278.

Very truly yours,

BROWN AND CALDWELL

Todd Miller
Project Manager

TM:evm
Enclosures

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, Assistant Agency Director

DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Division
80 Swan Way, Rm. 200
Oakland, CA 94621
(510) 271-4320

December 1, 1994

Todd Miller
Brown and Caldwell
3480 Buskirk Avenue
Pleasant Hill, CA - 94523.

Sub: 525 West A street, Hayward, CA

Dear Mr. Miller:

I am in receipt of a technical document dated September 29, 1994 documenting the scope of work to be done for the above referenced site. This document has been reviewed and is acceptable by this Department.

As this scope of work involves conducting a risk assessment, prior agreement should be made with this Department as to the exposure scenario's, assumptions, exposure parameters, and general methods/models that will be used in this risk assessment.

The work plan should be implemented within 60 days and this Department should be notified at least 3 days in advance of any field activities. If you have any questions, please call me at (510) 567-6764.

Sincerely,

Madhulla Logan
Hazardous Material Specialist



Brown and Caldwell

3480 Buskirk Avenue
Pleasant Hill, CA 94523-4342
P.O. Box 8045
Walnut Creek, CA 94596-1220
(510) 937-9010
FAX (510) 937-9026

November 29, 1994

Ms. Madhulla Logan
Hazardous Materials Specialist
Alameda County Department of Environmental Health
1311 Harbor Bay Pkwy., Second Floor
Alameda, CA 95402

11-1564-04/1

Subject: Transmittal of Second Quarter 1994
Quarterly Groundwater Monitoring Report

Dear Ms. Logan:

At the request of Mr. Brian Cobb of E-Z Serve Management Company, Brown and Caldwell is forwarding to you the Quarterly Groundwater Monitoring Report for the second quarter of 1994. The enclosed report was prepared by Associated Soils Analysis, Inc. for E-Z Serve Management Company.

If you have any questions regarding the enclosed letter report, please do not hesitate to contact Mr. Cobb or me. I can be reached at (510) 210-2278.

Very truly yours,

BROWN AND CALDWELL

Todd Miller
Project Manager

TM:evm
Enclosure

ALCO
HAZMAT
9410731 PM 11:08



Brown and Caldwell

3480 Buskirk Avenue
Pleasant Hill, CA 94523-4342
P.O. Box 8045
Walnut Creek, CA 94596-1220
(510) 937-9010
FAX (510) 937-9026

ALCO
HAZMAT

94 NOV 17 PM 2:54

November 16, 1994

Ms. Madhulla Logan
Hazardous Materials Specialist
Alameda County Department of Environmental Health
1311 Harbor Bay Parkway, Second Floor
Alameda, California 94502

11-1564-07/1

Subject: Technical Report for E-Z Serve Management Company's Former
Station #100877, 525 West A Street, Hayward, California

Dear Ms. Logan:

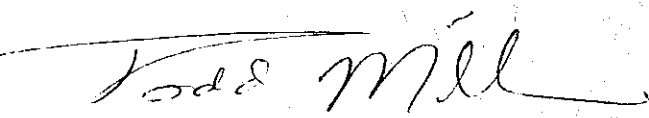
On September 29, 1994, Brown and Caldwell submitted to your department a technical report for conducting an off-site investigation at the Former E-Z Serve Station #100877, located in Hayward, California, at 525 West A Street. Based on our September 30, 1994, telephone conversation regarding this report, it was my understanding that you would be reviewing the report and submitting your comments to Brown and Caldwell by October 21, 1994. We have yet to receive your comments.

Brown and Caldwell is planning on beginning the proposed field work on or about December 19, 1994. We would appreciate receiving your comments on this work plan as soon as possible, so that we may incorporate your comments into the planned work.

If you have any questions regarding the September 29, 1994 Technical Report, please contact me at your earliest convenience.

Sincerely,

BROWN AND CALDWELL


Todd Miller
Project Manager

TM:evm

cc: Brian Cobb, E-Z Serve Management Company
John Reeves, E-Z Serve Management Company



Brown and Caldwell

3480 Buskirk Avenue
Pleasant Hill, CA 94523-4342
P.O. Box 8045
Walnut Creek, CA 94596-1220
(510) 937-9010
FAX (510) 937-9026

ALCO
HAZMAT

94 SEP 13 PM 1:45

September 7, 1994

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Department of Environmental Health
80 Swan Way, Room 200
Oakland, California 94612

11-1564-01

Subject: E-Z Serve Station #100877, 525 West "A" Street, Hayward, California

Dear Ms. Shin:

I would like to take this opportunity to inform you that Brown and Caldwell is the new consultant for E-Z Serve Management Company (E-Z Serve), replacing Hydro Environmental Technologies, Inc. Brown and Caldwell will continue with the investigation and remediation activities currently planned for the site. The work to be conducted at this site is of high priority to both E-Z Serve and Brown and Caldwell and will be conducted accordingly.

I will contact you within the next few days to discuss with you the status of the subject site, and Brown and Caldwell's plans for continued work towards closure of this site. If you have any questions regarding Brown and Caldwell, our ability to perform the proposed work, or the scheduling of future activities, please do not hesitate to call me at the phone number listed on the enclosed business card.

Very truly yours,

BROWN AND CALDWELL

Todd Miller
Project Manager

TM:evm
Enclosure

cc: Brian Cobb, E-Z Serve
Thomas Wheeler, Brown and Caldwell

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

In Re The Property Known As :	)	Notice of Official Action
E-Z Serve Site	)	By the San Francisco Bay
525 West "A" Street	)	Regional Water Quality
Hayward, CA 94541	)	Control Board

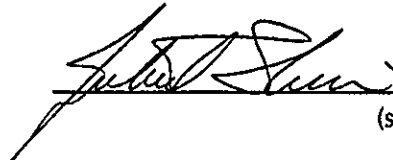
Dear Sirs:

The attached Official Notice of Request for Technical Reports pursuant to Water Code Section 13267(b) has been forwarded to this office for legal service, and oversight. As the Agency responsible for enforcing the terms of this Official Action, all communication should continue to be directed to this office. Please make arrangements to comply by calling me at (510) 567-6763 to coordinate all future activities.

Failure to comply could result in liability for civil or administrative penalties of up to \$1000 per day of delinquency.

I Juliet Shin, do hereby certify
that I served E-Z Serve Mgmt. Co. with a copy of the
attached Notice of Official Action by the Regional Board by
certified mailer # 2 773 036 316.

Dated: 8/30/94


(signature)

cc: Gil Jensen, Alameda County District Attorney's Office
files (omemik5)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

2101 WEBSTER STREET, SUITE 300

OAKLAND, CA 94612

(510) 286-1235



Aug. 26, 1994

E-Z Serve Mgmt. Co.
(Contact: Brian Cobb)
P.O. Box 922021
Houston, Texas 77292-2021

L.A. & Margaret Thompsen
P.O. Box 16290
Houston Texas 77222

RE: Legal Request for Submittal of a Technical Report Resulting
from the Alameda County Department of Environmental Health's
Enforcement Panel Meeting of June 21, 1994.

Dear Sirs:

It has been brought to my attention by Regional Board staff that a condition of soil and ground water pollution exists on your property from an underground storage tank release. The Alameda County Department of Environmental Health (ACHD) staff have requested technical reports from you to fulfill your obligations per California Code of Regulations, Title 23, Waters, Chapter 16, Underground Storage Tank Regulations, Article 11, Corrective Action Requirements. It is my understanding that ACHD staff were unsuccessful in eliciting your co-operation in resolving these issues through normal correspondence.

A Pre-Enforcement Review Panel was held at the ACHD Offices on June 21, 1994, attended by Kevin Graves, of my staff. Information submitted at that meeting, and follow up submittals received pursuant to that meeting, have established that you are Responsible Parties pursuant to Section 13304 of the California Water Code. Therefore, pursuant to the Regional Board's authority under Section 13267(b) of the California Water Code, you are hereby required to submit a technical report to address soil and ground water pollution by October 4, 1994. The information provided at the hearing, and in follow up submittals, is inconclusive as to the legal responsibilities of Powerine Oil Company and Autotronic Systems, Inc. as Responsible Parties as of this date. The inclusion of Powerine Oil Company and Autotronic Systems, Inc. as Responsible Parties is therefore deferred. This action is without prejudice and should be taken neither as a finding of nonresponsibility or responsibility.

The technical report should specifically address the following numbered items:

Enforcement Panel Meeting
Page 3 of 3

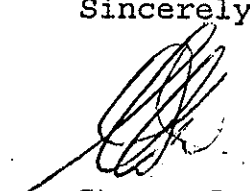
All proposed work should adhere to the requirements articulated in The Tri-Regional Board Staff Recommendations for the Preliminary Evaluation and Investigation of Underground Storage Tank Sites - 8/10/90 and Article 11 of Title 23, Waters, California Code of Regulations.

I am hereby transmitting this request for a technical report to ACHD for service and continued case handling. You should be aware that failure on your part to submit the requested technical report, ~~or a submittal received after the date specified in this request~~ may result in fines up to \$1,000 per day of delinquency. Your response to this technical report request should be sent to Juliet Shin, at ACHD. Please inform Juliet Shin at least three working days in advance of all field activities.

Please be advised that this is a formal request for technical reports pursuant to California Water Code Section 13267(b). Any extensions of the stated deadlines, or modifications of the required tasks, must be confirmed in writing by either this agency or the Alameda County Department of Environmental Health, Hazardous Materials Division.

If you have any questions regarding the contents of this letter, please contact Juliet Shin, of ACHD, at (510) 567-6763.

Sincerely,



Steven R. Ritchie
Executive Officer

cc: Gil Jensen, Alameda County District Attorney's Office,
Consumer & Environmental Protection Division.

Juliet Shin, Hazardous Materials Specialist, ACHD.

Jon K. Wactor, Luce, Forward, Hamilton & Scripps
100 Bush St., 20th Flr., S.F., CA 94104

Gretchen R. Stroud, Cooley Godward, Five Palo Alto Square,
4th Flr., Palo Alto, CA 94306-2155

Jonathan Redding, Fitzgerald, Abbott & Beardsley,
1221 Broadway, 21st Flr., Oakland, CA 94612-1837

Coralie Kupfer, Rodi, Pollock, Pettker, Galbraith & Phillips
801 South Grand Ave., Ste 400, Los Angeles, CA 90017



Z 773 036 316

Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to BRIAN COBB, E-Z Serve Mgmt. Co.	
Street and No. P.O. Box 922021	
P.O., State and ZIP Code Houston, Texas 77292-2021	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to: **JMS #35895 PH 2**

4a. Article Number **P 029 244 652**

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery **JUN 10 1994**

8. Addressee's Address (Only if requested and fee is paid)

5. Signature (Addressee)

6. Signature (Agent) *[Signature]*

I also wish to receive the following services (for an extra fee):

- ☐ Addressee's Address
- ☐ Restricted Delivery

Consult postmaster for fee.

Thank you for using Return Receipt Service.

PS Form 3811, December 1991 *U.S. GPO: 1993-352-714

DOMESTIC RETURN RECEIPT

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to: **JMS #3580**

L.A. & Margaret Thompson
P.O. Box 16290
Houston TX 77222

4a. Article Number **P 029 244 654**

4b. Service Type
☒ Registered ☐ Insured
☐ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery **JUN 10 1994**

8. Addressee's Address (Only if requested and fee is paid)

5. Signature (Addressee)

6. Signature (Agent) *[Signature]*

Thank you for using Return Receipt Service.

PS Form 3811, December 1991 *U.S. GPO: 1993-352-714

DOMESTIC RETURN RECEIPT

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a.
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- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: JMS #3580

E-Z Serve Mgmt. Co.
Attn: Brian Cobb
P.O. Box 922021
Houston TX 77292-2021

4a. Article Number

P 029 244 653

4b. Service Type

☐ Registered	☐ Insured
☒ Certified	☐ COD
☐ Express Mail	☐ Return Receipt for Merchandise

7. Date of Delivery

11 3 JUN 1994

5. Signature (Addressee)

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

PS Form 3811, December 1991

U.S. GPO: 1993-352-714

DOMESTIC RETURN RECEIPT

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

In Re The Property Known As :	)	Notice of Official Action
E-Z Serve Site	)	By the San Francisco Bay
525 West "A" Street	)	Regional Water Quality
Hayward, CA 94541	)	Control Board

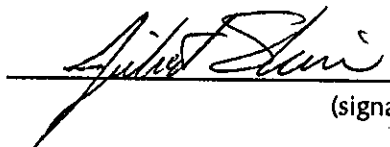
Dear Sirs:

The attached Official Notice of Request for Technical Reports pursuant to Water Code Section 13267(b) has been forwarded to this office for legal service, and oversight. As the Agency responsible for enforcing the terms of this Official Action, all communication should continue to be directed to this office. Please make arrangements to comply by calling me at (510) 567-6763 to coordinate all future activities.

Failure to comply could result in liability for civil or administrative penalties of up to \$1000 per day of delinquency.

I Juliet Shin, do hereby certify
that I served L.A. & Margaret Thompson with a copy of the
attached Notice of Official Action by the Regional Board by
certified mailer # 2 773 036 315.

Dated: 8/30/94


(signature)

cc: Gil Jensen, Alameda County District Attorney's Office
files (omernik5)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

2101 WEBSTER STREET, SUITE 500

OAKLAND, CA 94612

(510) 286-1255



Aug. 26, 1994

E-Z Serve Mgmt. Co.
(Contact: Brian Cobb)
P.O. Box 922021
Houston, Texas 77292-2021

L.A. & Margaret Thompson
P.O. Box 16290
Houston Texas 77222

RE: Legal Request for Submittal of a Technical Report Resulting
from the Alameda County Department of Environmental Health's
Enforcement Panel Meeting of June 21, 1994.

Dear Sirs:

It has been brought to my attention by Regional Board staff that a condition of soil and ground water pollution exists on your property from an underground storage tank release. The Alameda County Department of Environmental Health (ACHD) staff have requested technical reports from you to fulfill your obligations per California Code of Regulations, Title 23, Waters, Chapter 16, Underground Storage Tank Regulations, Article 11, Corrective Action Requirements. It is my understanding that ACHD staff were unsuccessful in eliciting your co-operation in resolving these issues through normal correspondence.

A Pre-Enforcement Review Panel was held at the ACHD Offices on June 21, 1994, attended by Kevin Graves, of my staff. Information submitted at that meeting, and follow up submittals received pursuant to that meeting, have established that you are Responsible Parties pursuant to Section 13304 of the California Water Code. Therefore, pursuant to the Regional Board's authority under Section 13267(b) of the California Water Code, you are hereby required to submit a technical report to address soil and ground water pollution by October 4, 1994. The information provided at the hearing, and in follow up submittals, is inconclusive as to the legal responsibilities of Powerine Oil Company and Autotronic Systems, Inc. as Responsible Parties as of this date. The inclusion of Powerine Oil Company and Autotronic Systems, Inc. as Responsible Parties is therefore deferred. This action is without prejudice and should be taken neither as a finding of nonresponsibility or responsibility.

The technical report should specifically address the following numbered items:

Enforcement Panel Meeting
Page 3 of 3

All proposed work should adhere to the requirements articulated in The Tri-Regional Board Staff Recommendations for the Preliminary Evaluation and Investigation of Underground Storage Tank Sites - 8/10/90 and Article 11 of Title 23, Waters, California Code of Regulations.

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Sincerely,



Steven R. Ritchie
Executive Officer

cc: Gil Jensen, Alameda County District Attorney's Office,
Consumer & Environmental Protection Division.

Juliet Shin, Hazardous Materials Specialist, ACHD.

Jon K. Wactor, Luce, Forward, Hamilton & Scripps
100 Bush St., 20th Flr., S.F., CA 94104

Gretchen R. Stroud, Cooley Godward, Five Palo Alto Square,
4th Flr., Palo Alto, CA 94306-2155

Jonathan Redding, Fitzgerald, Abbott & Beardsley,
1221 Broadway, 21st Flr., Oakland, CA 94612-1837

Coralie Kupfer, Rodi, Pollock, Pettker, Galbraith & Phillips
801 South Grand Ave., Ste 400, Los Angeles, CA 90017

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

In Re The Property Known As :	)	Notice of Official Action
E-Z Serve Site	)	By the San Francisco Bay
525 West "A" Street	)	Regional Water Quality
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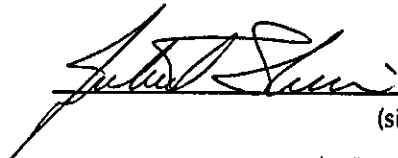
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I Juliet Shin, do hereby certify
that I served E-Z Serve Mgmt. Co. with a copy of the
attached Notice of Official Action by the Regional Board by
certified mailer # 2 773 036 316.

Dated: 8/30/94


(signature)

cc: Gil Jensen, Alameda County District Attorney's Office
files (omerniks)

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

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E-Z Serve Site	)	By the San Francisco Bay
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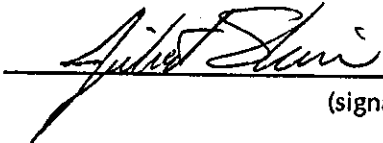
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Dated: 8/30/94


(signature)

cc: Gil Jensen, Alameda County District Attorney's Office
files (omerniks)

1994.08-30 15:35
510 337 9335
ALAMEDA CO EHS HAZ-OPS

COM No.	REMOTE STATION	START TIME	DURATION	PAGES	RESULT	USER ID	REMARKS
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7499402046

STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

2101 WEBSTER STREET, SUITE 500

OAKLAND, CA 94612

(510) 284-1255

PETE WILSON, Governor



Aug. 26, 1994

E-Z Serve Mgmt. Co.
(Contact: Brian Cobb)
P.O. Box 922021
Houston, Texas 77292-2021

L.A. & Margaret Thompson
P.O. Box 16290
Houston Texas 77222

Post-It™ brand fax transmittal memo 7671

of pages 3

To <i>John Turner</i>	From <i>Juliet Shinn</i>
Co.	Co.
Dept.	Phone #
Fax # <i>510-521-5078</i>	Fax #

RE: Legal Request for Submittal of a Technical Report Resulting from the Alameda County Department of Environmental Health's Enforcement Panel Meeting of June 21, 1994.

Dear Sirs:

It has been brought to my attention by Regional Board staff that a condition of soil and ground water pollution exists on your property from an underground storage tank release. The Alameda County Department of Environmental Health (ACHD) staff have requested technical reports from you to fulfill your obligations per California Code of Regulations, Title 23, Waters, Chapter 16, Underground Storage Tank Regulations, Article 11, Corrective Action Requirements. It is my understanding that ACHD staff were unsuccessful in eliciting your co-operation in resolving these issues through normal correspondence.

A Pre-Enforcement Review Panel was held at the ACHD Offices on June 21, 1994, attended by Kevin Graves, of my staff. Information submitted at that meeting, and follow up submittals received pursuant to that meeting, have established that you are Responsible Parties pursuant to Section 13304 of the California Water Code. Therefore, pursuant to the Regional Board's authority under Section 13267(b) of the California Water Code, you are hereby required to submit a technical report to address soil and

1994.08-30 15:37
510 337 9335
ALAMEDA CO EHS HAZ-OPS

COM No.	REMOTE STATION	START TIME	DURATION	PAGES	RESULT	USER ID	REMARKS
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7499402046

Enforcement Panel Meeting

Page 2 of 3

- 1) A proposal to delineate the vertical and lateral extent and severity of soil and ground water contamination resulting from the site. Delineation of the plume must incorporate the installation of additional permanent monitoring wells, although hydropunches/temporary wells may be used as a screening tool;
- 2) A proposal to contain all of the ground water contaminant plume, both on and off site, from further migration;
- 3) A proposal to conduct a survey on streets adjacent to the site to determine whether utility lines are acting as a conduit for plume migration;
- 4) A proposal to conduct a survey for any nearby domestic/irrigation or industrial wells potentially impacted by the site or influencing the migration of the site's contaminant plume. Converse Environmental's June 30, 1988 report identified at least one domestic/irrigation well fairly close to the site (the exact location was not given);
- 5) A proposal to conduct a Risk Assessment to determine whether releases from the site are creating a potential human-health threat to neighboring sites. For example, the adjacent property to the north is occupied by residents of a trailer park. This office is concerned with potential vapor inhalation at the site, since the site is not paved.
- 6) There is information to indicate that contaminated excavated soil from the site was placed back into the excavation pits in 1990. The remediation of this soil must be addressed by the air sparging/vapor extraction remediation system, proposed and approved in March 1994. As stipulated in the County's March 25, 1994 letter, close attention shall be given to studying this remediation system, from the onset of its operation, to assure that the air sparging activity will not influence further plume migration off site.

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
MICHAEL P. WALSH
J. BRITTAIN HABEGGER
VIRGINIA PALMER
TIMOTHY H. SMALLSREED
STEPHEN M. JUDSON
STEPHEN M. WILLIAMS
JONATHAN W. REDDING
BETH E. ASPEDON
THEODORA R. LEE
KRISTIN A. PACE
ROBERT F. CAMPBELL
MICHAEL M. K. SEBREE
ANTONIA L. MORE
MARIA I. LAWLESS
JULIA LYNN NYE
MATTHEW P. MATIASSEVICH

FITZGERALD, ABBOTT & BEARDSLEY

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1221 BROADWAY, 21ST FLOOR
OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

R. M. FITZGERALD 1858-1934
CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

TELECOPIER: (510) 451-1527

August 10, 1994

Ms. Juliet Shin, HazMat Specialist
Alameda County Health Care Services
1131 Harbor Bay Parkway
Alameda, California 94502

Gil Jensen, Esq.
County of Alameda
Senior Deputy District Attorney
7677 Oakport Street, Suite 400
Oakland, CA 94621

Re 525 West A Street, Hayward, CA

Dear Ms. Shin and Mr. Jensen:

This responds to a letter dated July 21, 1994, from Ms. Gretchen Stroud, Attorney for Autotronic Systems ("Autotronic"), regarding the petroleum contamination at 525 West A Street, Hayward, California ("Property").

Ms. Stroud's July 21, 1994, letter asserts that Autotronic should not be named as a responsible party for "permitting" the 1986 petroleum release on the Property, pursuant to In The Matter Of John Stuart, d.b.a. Stuart Petroleum (September 18, 1986), Water Board Order No. WQ 86-15 ("Stuart Petroleum"). Stuart Petroleum holds that anyone with the legal power to stop contamination "permits" it within the meaning of Water Code § 13304. The Property owners, Mr. and Mrs. Thomsen, have asserted that Autotronic must be named as a responsible party because Autotronic had the legal power, under a lease arrangement which obligated Autotronic to maintain the premises, to stop contamination from a 4,000 gallon release of gasoline that occurred during the lease period.

Ms. Stroud's rationale to dispute Autotronic's responsibility for the contamination is that Autotronic did not have the legal power to stop the contamination. Ms. Stroud asserts in her July 21, 1994, letter that the release occurred after "Autotronic assigned its leasehold interest in the site" to E-Z Serve and

August 10, 1994

"surrendered possession at the same time, cutting off all connection with the site," thereby "divesting itself of all benefits and burdens of the lease" two years prior to the occurrence of the release. This argument ignores established California law that a mere assignment of a leasehold interest does not relieve the assignor of ultimate responsibility, or the legal power, to assure performance of the lease obligations.

It is basic contract law that a lessee may generally assign its rights in a lease, and delegate its duties thereunder, but may not thereby avoid its obligation to assure the performance of those duties absent a novation. See, e.g., Bank of America v. Moore (1937) 18 Cal.App.2d 522, 525 (both clause in lease stating that lease would be void unless assignee agreed in writing to carry its burdens, and a provision in assignment agreement that the assignee "hereby accepts, assumes and agrees to perform all of the terms" of the lease, created a privity of contract relationship between the lessor and assignee which bound the assignee to that bargain despite any attempts to quit the premises); Lopizich v. Salter (1920) 45 Cal.App. 446, 448-450 (where the assignee of a lease expressly covenants to assume the obligations of a lease, its obligation to the landlord is identical with that of the original lessee, and it cannot relieve itself of that liability by merely assigning that lease to another); Chase v. Oehlke (1919) 43 Cal.App. 435, 437-438 (where the assignee of a lease expressly covenants to assume the obligations thereunder, its obligation to the landlord is identical with that of the original lessee); Winter v. Knapp (1928) 90 Cal.App. 75, 77 ("It is a settled principle of law in this State that the original lessee of an assigned lease is liable on the lease executed by him unless excused from doing so by some legal, binding acquittance on the part of the owner.")

Ms. Stroud's July 21, 1994, letter attempts to assert that there is contrary authority to this well settled principle of law by the following citation to Witkin contained in Stuart Petroleum:

"[The petitioner] confuses the legal distinction between the assignment of a lease where the lessee divests himself of all further benefits and burdens and a sublease where the lessee wears two hats and no direct contract exists between the lessor and sublessee." Stuart Petroleum, p. 4.

A careful reading of the Stuart Petroleum opinion reveals, however, that the Water Board was instead simply confirming that a party who

Ms. Juliet Shin
Gil Jensen, Esq.
Page 3

August 10, 1994

enters into a privity of contract relationship cannot divest himself or herself of the obligations thereunder simply by assigning the rights, and delegating the duties, to another. The Water Board clearly recognized, in citing to Witkin, that a lessee can be relieved of its further obligations under a lease assignment only where the lessee additionally divests himself of all further burdens of the lease by some legal, binding acquittance on the part of the owner. See Winter v. Knapp, supra. The Water Board was not suggesting that such divestiture occurred automatically by the mere assignment of one's rights, and the delegation of one's duties, under a lease.

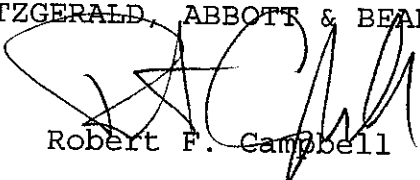
Autotronic does not dispute that the subject lease required assignees to assume the obligations of the lease, that Autotronic expressly assumed those obligations in the written assignment agreement, that the Thomsens did not excuse Autotronic from its obligations under the subject lease or that the petroleum release occurred during the period of the subject lease. Because Autotronic had a continuing obligation under the subject lease to stop the contamination, it had the consequent legal power to do so. Autotronic must therefore be named as a responsible party under Stuart Petroleum.

If you have any questions or comments, please do not hesitate to call.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By


Robert F. Campbell

RFC:tf

cc: Clients
Jonathan W. Redding, Esq.

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
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R. M. FITZGERALD 1858-1934
CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

TELECOPIER: (510) 451-1527

August 4, 1994

Jon Wactor, Esq.
Luce, Forward, Hamilton & Scripps
100 Bush Street 20th Floor
San Francisco, California 94104

Re: Thomsen v. Powerine Oil Company

Dear Jon:

This letter responds to your letter of July 22, 1994 to Ms. Shin. It appears that you have misunderstood the nature of Alameda County's enforcement panel review hearing. Rather, the enforcement panel proceedings are a separate matter initiated by the County and the District Attorney in response to E-Z Serve's continuous and notorious failure to comply with the Court's orders and demands for progress on site characterization and cleanup. Accordingly, the stipulation has no relevance.

Your predecessor, Mr. Cain, was present at the June 21, 1994, enforcement hearing, he was well aware of the nature of these proceedings initiated by the District Attorney, and of E-Z Serve's necessity to timely respond pursuant to the District Attorney's request on or before July 20, 1994. Notwithstanding E-Z Serve's failure to protect its interests, we have no objection to E-Z filing a late response. That decision, however, is not before the court or the parties.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By

Jonathan W. Redding

JWR:tf

cc: Juliet Shin
Gil Jensen

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873 ~~ALSO~~ ~~HAZMAT~~

JON K. WACTOR, Esq.
PARTNER
DIRECT DIAL NUMBER (415) 395-7900

94 AUG -4 PH 4:10

August 3, 1994

Juliette Shin
County of Alameda
Health Care Services
1131 Harbor Bay Parkway
Suite 250
Alameda, CA 94502

Dear Ms. Shin:

Thank you for speaking with me on Tuesday, August 2, 1994, regarding the plans of your agency concerning the issuance of a letter to the property owners and to EZ Serve Marketing Company of California regarding efforts to investigate and clean up the contamination discovered on the property. I understand that your agency has not determined that Powerine or Autotronics are not responsible parties for this matter and that your agency will consider evidence that any one wants to bring forward to show that those entities (or any others) are responsible parties for the contamination. The only conclusion that you have is ~~that~~ you have not seen evidence one way or the other.

It is EZ Serve's belief that the contamination of the property predated EZ Serve's operations there. As you know, these issues are currently being litigated in the California Superior Court in Alameda County. Thus, the statements made by counsel for Thomsen and Powerine/Autotronics are attempts to get around the jurisdiction of the Superior Court by bringing them up in your agency in an informal, incomplete and biased manner.

I understand that your agency has no interest in becoming involved in the litigation over these matters and that its only desire is to move quickly forward with the investigation and.

1 week

Juliette Shin
August 3, 1994
Page 2

cleanup of the contamination problem. EZ Serve shares those goals with you and has no desire to draw your agency into the litigation.

Sincerely,



Jon K. Wactor
of
Luce, Forward, Hamilton & Scripps

JKW/jw

Alameda County Department of Environmental Health
Hazardous Materials Division
80 Swan Way, Rm. 200, Oakland, CA 94621
Ph: 510-271-4320

BILLING FOR SERVICES

STID# 3580

A. Site Name E-2 SERV / POWERLINE - Thompson Gas Phone _____
Site Address 525 W "A" St, Hayward. 94541
(if no address, description of area) Number Street City Zip
Prior Business Name _____ Prior Owner's Name _____

B. Service Requestor Raydon D. Shippay Legal Eagle 451-5650
Contact Person Company Name Phone
Billing Address 1430 Franklin St, Oakland, 94612
Number Street City Zip

Category of Service	
..... Site Search	#Hours <u>2</u> x \$ <u>90⁰⁰</u> / Hr \$ <u>180</u> (Whole Hours Only)
..... File Search	#Copies _____ x \$ _____ / Copy \$ _____
☒ Other <u>Copy Serv.</u>	Other _____ x \$ _____ \$ _____
TOTAL CHARGE: \$ <u>180</u>	

REMARKS: _____

You will receive an invoice in accordance with Article 11 of Chapter 6, Title 3 of the Ordinance Code of Alameda County

Service Requestor ANDREW J. DALE Andrew J. Dale Date 7/28/94
printed name signature
HazMat Specialist Juliette D. Blake Juliette D. Blake Date 7-28-94
printed name signature

Alameda County Department of Environmental Health
Hazardous Materials Division
80 Swan Way, Rm. 200, Oakland, CA 94621
Ph: 510-271-4320

BILLING FOR SERVICES

SHD# 3580

A. Site Name E-Z Serve Phone _____
Site Address 525 West "A" Street
(If no address, description of area) Number Street City Zip
Prior Business Name unknown Prior Owner's Name _____

B. Service Requestor Mary Bergman Aetna (916) 638-6548
Contact Person Company Name Phone
Billing Address P.O. Box 13310 Sacramento CA 95813-3310
Number Street City Zip

Category of Service	
☒ Site Search	#Hours <u>1</u> x \$ <u>75.⁰⁰</u> /Hr \$ <u>75.⁰⁰</u> (Whole Hours Only)
☐ File Search	#Copies _____ x \$ <u>1.⁰⁰</u> /Copy \$ <u>73.⁰⁰</u>
☐ Other _____	_____ x \$ _____ \$ <u>—</u>
Other _____	
TOTAL CHARGE: \$ <u>148.⁰⁰</u>	

REMARKS: Site search and copies made. Client to be billed. Upon receipt of bill, copies will be mailed.

You will receive an invoice in accordance with Article 11 of Chapter 6, Title 3 of the Ordinance Code of Alameda County

Service Requestor Mary Bergman printed name signature Date 6/20/94
HazMat Specialist Kevin Tinsley printed name signature Date 6-20-94

LUCE, FORWARD, HAMILTON & SCRIPPS

ATTORNEYS AT LAW • FOUNDED 1873

JON K. WACTOR
DIRECT DIAL NUMBER 415 395-7910

94 JUL 25 PM 2:26

July 22, 1994

Juliet Shin
Alameda County Health Agency,
Division of Hazardous Materials
1131 Harbor Bay Parkway, 2nd Floor
Alameda, CA 94502

Re: 525 West A Street, Hayward, CA

Dear Ms. Shin:

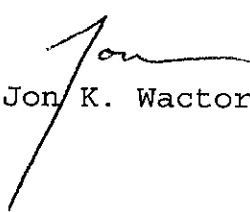
This law firm was substituted as counsel for E-Z Serve Marketing Company of California (E-Z Serve) effective on Friday July 22, 1994 in a lawsuit pending in Alameda County Superior Court, Thomsen v. Powerine, et al. The parties and the court in that case have agreed to a 30 day stay of proceeding to allow us to familiarize ourselves with the matter so that we may adequately respond. Enclosed is a copy of the substitution of Counsel and the Stipulation for a Stay.

On Friday July 22 I received by US Mail a document sent to you by other counsel in the case. After reviewing the document, I conclude that your agency might be expecting some type of filing by E-Z Serve. We are unaware of the requirement and will not be able to respond until we have fully digested the case documents. I would appreciate your patience in this matter.

I was under the impression that the other counsel in the case agreed to a "global" stay, which would obviously include the filing they have made to you.

I called you office on Friday afternoon but was unable to reach you. Please call me at 415.395.7910 and let me know what your agency expects from E-Z Serve in this matter. Thank you.

Sincerely,


Jon K. Wactor

JKW/dmh 3483

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, Assistant Agency Director

August 3, 1994

E-Z Serve Mgmt. Co.
(Contact: Brian Cobb)
P.O. Box 922021
Houston, Texas 77292-2021

L.A. & Margaret Thompson
P.O. Box 16290
Houston Texas 77222

DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Division
80 Swan Way, Rm. 200
Oakland, CA 94621
(510) 271-4320

RE: Legal Request for Submittal of a Technical Report Resulting
from the Alameda County Department of Environmental Health's
Enforcement Panel Meeting of June 21, 1994.

Dear Sirs:

It has been brought to my attention by Regional Board staff that a condition of soil and ground water pollution exists on your property from an underground storage tank release. The Alameda County Department of Environmental Health (ACHD) staff have requested technical reports from you to fulfill your obligations per California Code of Regulations, Title 23, Waters, Chapter 16, Underground Storage Tank Regulations, Article 11, Corrective Action Requirements. It is my understanding that ACHD staff were unsuccessful in eliciting your co-operation in resolving these issues through normal correspondence.

A Pre-Enforcement Review Panel was held at the ACHD Offices on June 21, 1994, attended by Kevin Graves, of my staff. Information submitted at that meeting, and follow up submittals received pursuant to that meeting, have established that you are Responsible Parties pursuant to Section 13304 of the California Water Code. Therefore, pursuant to the Regional Board's authority under Section 13267(b) of the California Water Code, you are hereby required to submit a technical report to address soil and ground water pollution by October 4, 1994. The information provided at the hearing, and in follow up submittals, is inconclusive as to the legal responsibilities of Powerine Oil Company and Autotronic Systems, Inc. as Responsible Parties as of this date. The inclusion of Powerine Oil Company and Autotronic Systems, Inc. as Responsible Parties is therefore deferred. This action is without prejudice and should be taken neither as a finding of nonresponsibility or responsibility.

The technical report should specifically address the following numbered items:

- 1) A proposal to delineate the vertical and lateral extent and severity of soil and ground water contamination resulting from the site. Delineation of the plume must incorporate the installation of additional permanent monitoring wells, although hydropunches/temporary wells may be used as a screening tool;
- 2) A proposal to contain **all** of the ground water contaminant plume, both on and off site, from further migration;
- 3) A proposal to conduct a survey on streets adjacent to the site to determine whether utility lines are acting as a conduit for plume migration;
- 4) A proposal to conduct a survey for any nearby domestic/irrigation or industrial wells potentially impacted by the site or influencing the migration of the site's contaminant plume. Converse Environmental's June 30, 1988 report identified at least one domestic/irrigation well fairly close to the site (the exact location was not given);
- 5) A proposal to conduct a Risk Assessment to determine whether releases from the site are creating a potential human-health threat to neighboring sites. For example, the adjacent property to the north is occupied by residents of a trailer park. This office is concerned with potential vapor inhalation at the site, since the site is not paved.
- 6) There is information to indicate that contaminated excavated soil from the site was placed back into the excavation pits in 1990. The remediation of this soil must be addressed by the air sparging/vapor extraction remediation system, proposed and approved in March 1994. As stipulated in the County's March 25, 1994 letter, close attention shall be given to studying this remediation system, from the onset of its operation, to assure that the air sparging activity will not influence further plume migration off site. Quarterly status reports addressing the effectiveness of this remediation system shall be submitted to this office;
- 7) Following the delineation of soil and ground water contamination off site, a proposal to remediate the off-site contamination will be required. Additionally, if the proposed air sparging/ vapor extraction system does not effectively remediate soil and ground water contamination on site, another more effective remediation proposal will be required; and
- 8) A timetable for the above required work shall be included in the technical report.

All proposed work should adhere to the requirements articulated in The Tri-Regional Board Staff Recommendations for the Preliminary Evaluation and Investigation of Underground Storage Tank Sites - 8/10/90 and Article 11 of Title 23, Waters, California Code of Regulations.

I am hereby transmitting this request for a technical report to ACHD for service and continued case handling. You should be aware that failure on your part to submit the requested technical report, or a submittal received after the date specified in this request may result in fines up to \$1,000 per day of delinquency. Your response to this technical report request should be sent to Juliet Shin, at ACHD. Please inform Juliet Shin at least three working days in advance of all field activities.

Please be advised that this is a formal request for technical reports pursuant to California Water Code Section 13267(b). Any extensions of the stated deadlines, or modifications of the required tasks, must be confirmed in writing by either this agency or the Alameda County Department of Environmental Health, Hazardous Materials Division.

If you have any questions regarding the contents of this letter, please contact Juliet Shin, of ACHD, at (510) 567-6763.

Sincerely,

Steven R. Ritchie
Executive Officer

cc: Gil Jensen, Alameda County District Attorney's Office,
Consumer & Environmental Protection Division.

Juliet Shin, Hazardous Materials Specialist, ACHD.

Jon K. Wactor, Luce, Forward, Hamilton & Scripps
100 Bush St., 20th Flr., S.F., CA 94104

Gretchen R. Stroud, Cooley Godward, Five Palo Alto Square,
4th Flr., Palo Alto, CA 94306-2155

Jonathan Redding, Fitzgerald, Abbott & Beardsley,
1221 Broadway, 21st Flr., Oakland, CA 94612-1837

Coralie Kupfer, Rodi, Pollock, Pettker, Galbraith & Phillips
801 South Grand Ave., Ste 400, Los Angeles, CA 90017

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619 550-6000
Boulder, CO
303 546-4000

GRETCHEN R. STROUD
Direct: (415) 843-5036
Internet: stroudgr@cge.com

July 21, 1994

Juliet Shin
Alameda County Health Agency
Division of Hazardous Materials
Department of Environmental Health
1131 Harbor Bay Pkwy, Second Floor
Alameda, CA 94502

Gil Jensen, Esq.
County of Alameda
Senior Deputy District Attorney
7677 Oakport Street, Suite 400
Oakland, CA 94621

Re: 525 West "A" Street, Hayward, California

Dear Ms. Shin and Mr. Jensen:

We write in response to the legal arguments made in Jonathan Redding's letter dated July 20, 1994 concerning the 525 West "A" Street, Hayward, California site (the "Site").

Levonard and Margaret Thomsen own the Site. In 1967, they leased the Site to Powerine Oil Company ("Powerine"). Powerine, in turn, assigned its interest in the lease of the Site to Autotronic Systems, Inc. ("Autotronic") in 1977. Autotronic then assigned its interest in the lease to and surrendered possession of the Site to E-Z Serve, Inc. in January 1985. The first reported discharge of petroleum on the property occurred in November 1986.

Mr. Redding, on behalf of Mr. and Mrs. Thomsen, the owners of the Site, argues that Autotronic Systems, Inc. ("Autotronic") should be named as a responsible party based on the authority of *In the Matter of John Stuart, dba Stuart Petroleum* (September 18, 1986), Board Order No. WQ 86-15 ("*Stuart Petroleum*"). The theory espoused in Mr. Redding's letter is that Autotronic somehow "permitted" the November 1986 discharge of petroleum as E-Z Serve's assignee.

Stuart Petroleum, however, expressly distinguishes between the situation where a lessee subleases property, as did the petitioner in the *Stuart Petroleum* matter, and where a lessee assigns its leasehold interest, as did Autotronic with respect to the Site. The State Board cited Bernard Witkin with approval, stating that the petitioner "confuses the legal distinction between

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Gil Jensen, Esq.
Juliet Shin
July 21, 1994
Page 2

the assignment of a lease where the lessee divests himself of all further benefits and burdens and a sublease where the lessee wears two hats and no direct contract exists between the lessor and the sublessee." *Stuart Petroleum* at 4.

Autotronic assigned its leasehold interest in the Site in January 1985, divesting itself of all benefits and burdens of the lease, and surrendered possession at the same time, cutting off all connection with the Site nearly two years before the first reported release of gasoline occurred. As such, there is no basis on which to name Autotronic as a responsible party.

Very truly yours,

COOLEY GODWARD CASTRO
HUDDLESON & TATUM

Gretchen R. Stroud

Gretchen R. Stroud

GRS:dm

cc: Jonathan Redding, Esq.
Coralie Kupfer, Esq.
Roger Sampson, Esq.

20767409

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
MICHAEL P. WALSH
J. BRITTAIN HABEGGER
VIRGINIA PALMER
TIMOTHY H. SMALLSREED
STEPHEN M. JUDSON
STEPHEN M. WILLIAMS
JONATHAN W. REDDING
BETH E. ASPEDON
THEODORA R. LEE
KRISTIN A. PACE
ROBERT F. CAMPBELL
MICHAEL M. K. SEBREE
ANTONIA L. MORE
MARIA I. LAWLESS
JULIA LYNN NYE
MATTHEW P. MATIASEVICH

FITZGERALD, ABBOTT & BEARDSLEY

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1221 BROADWAY, 21ST FLOOR

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R. M. FITZGERALD 1858-1934
CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

TELECOPIER: (510) 451-1527

July 20, 1994

Gil Jensen, Esq.
County of Alameda
Senior Deputy District Attorney
7677 Oakport Street, Suite 400
Oakland, CA 94621

Juliet Shin, HazMat Specialist
Alameda County Health Care Services
1131 Harbor Bay Parkway
Alameda, CA 94502

Dear Mr. Jensen and Ms. Shin:

We represent Levonard and Margaret Thomsen (the "Thomsens"), owners of the property located at 525 West A Street, Hayward, California (the "Property").

This letter sets forth our position and legal authority why E-Z Serve Petroleum Marketing Company of California and its subsidiary, parent and affiliated companies (collectively, "E-Z Serve"), Powerine Oil Company ("Powerine") and Autotronic Systems, Inc. ("Autotronic") should be named as responsible parties for the contamination on the Property. The Thomsens admit that, as owners of the Property, they must be named as responsible parties as well. This letter also sets forth our position and legal authority as to why E-Z Serve, Powerine and Autotronic should be named as primarily responsible for the cleanup, and the Thomsens should be named as secondarily responsible for the cleanup.

I. INTRODUCTION

As set forth below, E-Z Serve was the cause of at least a 4,000 gallon release of gasoline on the Property which occurred in, or about, November, 1986, from a corroded pipeline in an underground storage tank system that was owned, operated and controlled by E-Z Serve. In the nearly eight years since the release was discovered and reported by E-Z Serve, E-Z Serve has

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done little to investigate the extent of the contamination and has done nothing to clean it up. The contamination has migrated off-site in the soil and groundwater, compounding the problem and exposing, or threatening to expose, adjacent residential communities to the contamination, particularly benzene, a known carcinogen, which may be volatilizing up through the soil. The contamination represents an imminent and substantial endangerment to the public. And, the Regional Water Quality Control Board ("Regional Board"), the Alameda County Health Services Agency ("County") and the District Attorney's office have found it necessary to become actively involved in the cleanup process to ensure that remediation proceeds effectively and with all deliberate speed.

It is clear from its own documents that E-Z Serve caused the contamination and should be named as a responsible party. In addition, Powerine and Autotronic should be named as responsible parties because they both share ultimate responsibility for the cleanup of that contamination. Specifically, the release occurred during the period of a long-term lease between the Thomsens and Powerine that had been assigned by Powerine to Autotronic and by Autotronic to E-Z Serve. The lease itself, the respective assignment and the law are clear that the assignment did not relieve either Powerine or Autotronic of their obligations to guarantee the cleanup of any contamination that occurred during the period of that long-term lease.

The decisions of the State Water Resources Control Board ("Board"), which are set forth below, are clear that any persons with an obligation to perform or guarantee cleanup should be named as responsible parties for the cleanup because they have the legal power to clean it up. It would therefore be an abuse of discretion for the Regional Board and/or the County not to name Powerine and Autotronic as responsible parties.

The Thomsens are the Property owners. We recognize that although they did not cause the contamination, the law establishes that they should be named as a responsible party as well.

The decisions of the Board, which are set forth below, have further recognized that the obligations of parties who have caused the contamination, and the obligations of those who have not caused the contamination but merely have legal responsibility for the cleanup, are not co-equal. Specifically, any party which actually caused the contamination should have the primary obligation to clean up the contamination. In contrast, any party that merely has

July 20, 1994

legal responsibility for the cleanup (e.g., through ownership of the property), should be only secondarily obligated -- i.e., obligated to stand merely as a guarantor -- so long as it appears that cleanup can proceed well without their participation.

E-Z Serve has given a verbal commitment to the Regional Board, the County and the District Attorney's Office that it can and will proceed well with the cleanup. Although this commitment has been hollow so far, the Regional Board and/or the County nevertheless has the discretion to name the Thomsens as secondarily liable for the cleanup.

It is proper and equitable and it will serve the public interest for the Regional Board and/or the County to exercise its discretion to find that the Thomsens are secondarily liable and the oil companies are jointly and severally liable as primary responsible parties in this matter. First, the Thomsens are an elderly couple, living in a trailer park on a fixed income, and they have insufficient resources to attempt to remove and remediate the contamination on their own. If they are required to make a financial contribution to the cleanup, it will bankrupt them. Despite this fact, they have acted in the public interest to use every means available to them to force E-Z Serve to clean up the mess it has caused. Naming the Thomsens as secondarily liable will send a strong public policy message of encouragement to innocent property owners, like the Thomsens, that such efforts will be rewarded.

The opposite message will be sent if, instead, the Thomsens are named as primarily responsible. Innocent property owners, like the Thomsens, will be discouraged from taking an activist role. Such assistance has proven to be in the public interest and critically important in getting these sites cleaned up. For example, between June, 1990 and late 1992, there was absolutely no progress on this site until the Thomsens retained counsel to compel compliance by E-Z Serve with the law. Naming the Thomsens as secondarily responsible will also deprive E-Z Serve of the opportunity to finger-point to the Thomsens and to complain that they are not doing "their share" as an excuse for further delay.

Powerline and Autotronic must be named as responsible parties, even if they merely sit as guarantors and take no active role in the cleanup. E-Z Serve's "commitment" to clean up the contamination has proven hollow. E-Z Serve documented a 4,000 gallon release of gasoline from a corroded pipeline in November,

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1986. It is now eight years later, and E-Z Serve's only excuse for its failure to comply with the County's numerous requests to submit an approved work plan, and commence free product removal, has been to blame the inexperience and the unrealistic expectations of the County. E-Z Serve has purportedly expressed a commitment to clean up the contamination for many years. Yet, E-Z Serve has responded to the County's numerous requests simply by developing a dismal history of delay, misperformance and noncompliance.

Certainly, the Regional Board has the power to seek injunctive relief and impose penalties if E-Z Serve fails to comply with the Regional Board's directives. But, these actions would strain already limited resources, and the present overriding public interest of immediate cleanup would be delayed. By naming Powerine and Autotronic as responsible parties (even if only secondarily liable), additional force would be brought to bear upon E-Z Serve to proceed with cleanup. It also would provide an immediate alternative to effectuate cleanup if E-Z Serve continues its pattern of delay. The Thomsens unfortunately lack sufficient resources to proceed with cleanup and cannot provide this assurance. In contrast, Dun & Bradstreet indicates that Powerine, e.g., is a major corporation with 320 employees and annual sales approaching \$200,000,000.00. Naming Powerine and Autotronic as responsible parties will further assure a prompt and effective cleanup.

Designating Powerine and Autotronic as primarily liable parties will not be inequitable. As set forth below, Powerine and Autotronic voluntarily and expressly assumed ultimate responsibility for the contamination in the subject lease with the Thomsens. Naming Powerine and Autotronic as guarantors of E-Z Serve's performance in response to any cleanup requests will not place upon them any greater burden than they have already contractually assumed. Nor will naming Autotronic and Powerine as responsible parties in any way establish, between the parties, their relative liabilities for the contamination. That issue is presently before the court, and Powerine and Autotronic may seek contribution from E-Z Serve, for any costs they may incur, in that forum. This available remedy underscores the appropriateness of naming Powerine and Autotronic as responsible parties.

The sole concern of the County and the Regional Board is to assure that all persons who are legally responsible for the contamination are included as responsible parties to assure that cleanup proceeds promptly and effectively. It is the role of the courts alone to determine how the parties ultimately share those

costs. The failure of the Regional Board and/or the County to name all properly responsible parties would be an abuse of discretion.

II. FACTUAL SUMMARY

Powerine entered into a 20-year lease for the Property, which commenced February 1, 1967, and continued until January 31, 1987 ("1967 Lease"). A copy of this lease is attached hereto as **Exhibit "A."** Shortly after entering into the 1967 Lease, Powerine demolished a residential dwelling on the Property and constructed a gasoline service station in its place. There is no evidence that the Property had ever been used as a gasoline service station or for the use or storage of hazardous substances prior to 1967. The Thomsens have never used or operated a service station on the Property and have never used or stored hazardous substances thereon.

The 1967 Lease (§ 14) required the lessee to comply with all laws. The 1967 Lease (§§ 5 and 9) further required the lessee to be responsible for any claims asserted against the premises, and to be responsible for any property damage arising out of the use or occupancy of the premises by the lessee or any assignee. The lessee was thereby required to "maintain" the premises.

In addition, paragraph (10) of the 1967 Lease provided expressly that the lessee (Powerine) would remain responsible to fulfill the conditions of the 1967 Lease in the event of an assignment of the 1967 Lease:

"(10) ASSIGNABILITY: Lessee shall have the right to assign this lease without the written consent of Lessor, provided however, that undersigned lessee shall remain responsible and liable for the fulfillment of the conditions of this lease agreement." (Emphasis added.)

And, § (15) of the 1967 Lease provided that any persons to whom rights were assigned under the 1967 Lease would become bound to perform the terms and conditions of that lease:

"(15) SUCCESSORS: All of the terms, conditions and covenants hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators and assigns of the respective parties hereto."

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Finally, ¶ 12 of the 1967 Lease provided that the lessor in the event of a breach of the 1967 Lease could terminate the 1967 Lease by re-entering and taking possession:

"(12) DEFAULT: . . . should the Lessor elect to re-enter and take possession of said premises . . . Lessor may . . . terminate this lease . . ."

On, or about, September 16, 1977, Powerine assigned its rights and delegated its duties, under the 1967 Lease to Autotronic. This assignment occurred pursuant to a settlement of certain business litigation between Powerine and Autotronic, which settlement agreement is attached hereto as **Exhibit "B."** The settlement agreement enclosed assignment documents for the 1967 Lease (Exhibits A-1 and A-1A thereto). The assignment documents contained a provision designated "Acceptance Of Assignment And Assumption Of Liability" which provided, in pertinent part, that:

". . . Assignee [Autotronic], for itself and its successors-in-interest and assigns, hereby accepts the foregoing assignment and assumes and agrees fully and faithfully to keep and perform all of the terms, provisions and conditions to be performed under said Lease on the part of the Lessee."

The Thomsens did not relieve Powerine of its obligations arising under the 1967 Lease at the time of, or after, the assignment.

By letter dated November 8, 1977, the Thomsens notified Powerine and Autotronic of a default of the 1967 lease due to a sign problem. A copy of that letter is attached hereto as **Exhibit "C."** By notice dated December 15, 1977, the Thomsens notified Autotronic that the Thomsens intended to terminate the 1967 Lease because of an uncured breach of the 1967 Lease. A copy of that notice is attached hereto as **Exhibit "D."** That notice was sent by the Thomsens because a sign maintained on the premises by Powerine and/or Autotronic was non-conforming to current zoning regulations.

Despite this notice, the Thomsens never re-entered and took possession of the Property. Rather, Powerine and/or Autotronic subsequently cured the breach. This cure is reflected in a letter dated May 25, 1978, from the County of Alameda Public Works Agency, Building Inspection Department, to Autotronic, confirming that the freestanding sign on the Property now conformed to the zoning

July 20, 1994

requirements and that a permit had been issued. A copy of the May 25, 1978 letter is attached hereto as **Exhibit "E."**

Both Autotronic and Powerine subsequently confirmed in writing the continued validity of the 1967 Lease. See, July 20, 1978, letter from Autotronic to the Thomsens confirming the validity of the 1967 Lease. A copy of said letter is attached hereto as **Exhibit "F."** See also, February 16, 1978, letter from William C. Stewart, Director of Real Estate, Powerine, to the Thomsens stating that "we already have a lease in effect with you." A copy of that letter is attached hereto as **Exhibit "G."** These letters affirm the original positions of Powerine and Autotronic, and completely contradict the current position by Powerine and E-Z Serve that the 1967 Lease was terminated in 1977.

In addition, the subsequent conduct of Autotronic further affirms that the 1967 lease did not terminate in 1977. As discussed below, Autotronic assigned its rights under the 1967 Lease to E-Z Serve on, or about, January 16, 1985. A copy is attached hereto as **Exhibit "H."** Clearly, if the 1967 Lease had been terminated in 1977, Autotronic would have had no interest to assign to E-Z Serve. Such assignment by Autotronic to E-Z Serve is plain, objective evidence that the parties to the 1967 Lease understood that 1967 Lease had not terminated in 1977. Moreover, E-Z Serve entered into a new lease with the Thomsens immediately upon the termination of the 1967 Lease. A copy of this lease is attached hereto as **Exhibit "I."** It is clear that all parties deemed the 1967 Lease to be in full force and effect until its natural expiration in 1987.

The 1985 assignment of the 1967 Lease to E-Z Serve provided, in the pertinent part, that the

"Assignee agrees to and does hereby accept the assignment and agrees to keep, perform and fulfill all the terms, covenants, conditions, and obligations required to be kept, performed and fulfilled by Assignor as the Lessee thereunder, and to defend and indemnify Assignor from and against, any failure thereof.

The Thomsens did not relieve Autotronic of its obligations arising under the 1967 Lease at the time of, or after, the assignment.

On, or about, November 11, 1986, E-Z Serve discovered that a 4,000 gallon leak of regular gasoline had occurred from a corroded

July 20, 1994

pipeline on the Property. See Underground Storage Tank Unauthorized Release (Leak)/Contamination Report ("Leak Report"), filed by Michael J. Buckmaster, E-Z Serve, dated December 11, 1986. A copy of this leak report is attached as **Exhibit "J."** The Leak Report states that the pipe was repaired.

On January 31, 1987, approximately three (3) months after the 4,000 gallon release was discovered, the 1967 Lease expired.

The underground storage tank system was removed by E-Z Serve in, or about, 1990. There has been limited investigation of the nature and the extent of the contamination, and it has been determined that there is extensive groundwater and soil contamination, including floating free product, and that such contamination has and is moving off-site into residential areas. It is believed that benzene in the gasoline may be volatilizing through the soil exposing individuals in the residential areas to benzene which has been identified as a chemical known to the State to cause cancer. E-Z Serve has provided no warnings to such individuals regarding such exposures.

Subsurface investigations have indicated that there may have been releases of petroleum on the Property in addition to the 4,000 gallon release in 1986, including releases of diesel from a tank installed by Autotronic in 1980. Moreover, building permits attached as **Exhibit "K"** show that repairs may have occurred to the tank system prior to the assignment to E-Z Serve. There appear to be hot-spots of contamination beneath the pumps islands and in the underground storage tank area on the Property which indicate that releases, in addition to the documented 4,000 gallon pipeline release which occurred on the Property, may also have occurred. Accordingly, we believe it is advisable and equitable to name all the oil companies which owned and operated tanks on the property prior to E-Z Serve's operation of the service station.

III. LEGAL ANALYSIS AND AUTHORITY

A. E-Z Serve May Be Properly Named As A Responsible Party For The Contamination Because It Operated The Tanks When The Release Was Discovered

Any person who had "control" over an underground storage tank at the time of an unauthorized release may be named as a responsible party by the Regional Board. Pursuant to the California Underground Storage Tank Regulations, a "responsible

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party," subject to any order issued pursuant to the Porter-Cologne Water Quality Control Act, Water Code § 13000 et seq., includes:

"Any person who had or has control over an underground storage tank at the time of or following an unauthorized release of a hazardous substance,"

and

"Any person who owns or operates an underground storage tank used for the storage of any hazardous substance. See 23 C.C.R. § 2720.

"Operator" is defined as

"any person in control of, or having responsibility for, the daily operation of an underground storage tank system." See 23 C.C.R. § 2611.

23 C.C.R. § 2721(b)(1) provides that:

"(b) Responsible parties shall take corrective action in compliance with . . .

"(1) all applicable waste discharge requirements or order issued pursuant to Division 7, commencing with section 13000 of the Porter Cologne Water Quality Control Act (Water Code)."

23 C.C.R. §§ 2270, 2271 and 2611 were promulgated under the authority of Health and Safety Code § 25299.77.

Because E-Z Serve had control over the underground storage tank system at the time of and following the unauthorized release of the 4,000 gallons of regular gasoline on the Property, and E-Z Serve operated the underground storage tanks at the time of the unauthorized release, E-Z Serve may be named by the Regional Board as a responsible party.

B. Powerine And Autotronic May Be Named As Responsible Parties Because They Had The Legal Power To Stop Contamination

1. Powerine's Responsibility To Fulfill The Conditions Of The Lease Continued After The Assignment To Autotronic

July 20, 1994

As discussed above, Powerine entered into the 1967 Lease with the Thomsens, covenanting that it would comply with all laws and maintain the Property. Powerine further covenanted that it would

"remain responsible and liable for the fulfillment of the conditions of this lease agreement"

in the event of an assignment to a third party. Thus, by expressly assuming a continuing obligation under the lease, without a subsequent release from the Thomsens, Powerine's responsibility to assure fulfillment of the terms and conditions of the lease continued despite the assignment to Autotronic.

Notwithstanding express assumption of a continuing obligation under the 1967 Lease in the event of an assignment, Powerine's responsibilities under the 1967 Lease would have continued, after the assignment, simply as a result of having expressly agreed to undertake those responsibilities in the 1967 Lease. See Brosnan v. Kramer (1901) 135 Cal. 36, 39; Samuals v. Ottinger (1915) 169 Cal. 209, 211-212; Winter v. Knapp (1928) 90 Cal.App. 75, 77 ("It is the settled principal of law in this state that the original lessee of an assigned lease is liable on the lease executed by him unless excused from so doing by some legal, binding acquittance on the part of the owner."); Kendall v. Earnest Pestana, Inc. (1985) 40 Cal.3d 438, 500; Superior Motels, Inc. v. Rinn Motor Hotels, Inc. (1987) 195 Cal.App.3d 1032, 1054; American Law Institute, Restatement 2d, Property (Landlord & Tenant), §16.1.

2. Autotronic's Responsibility To Fulfill The Conditions Of The Lease Continued After The Assignment To E-Z Serve

As discussed, Powerine assigned the 1967 Lease to Autotronic in 1977. The 1967 Lease expressly provided that the lease would

"be binding upon and [] inure to the benefit of the . . . assigns of the respective parties hereto."

In addition, at the time of the assignment, Autotronic expressly

"assume[d] and agree[d] fully and faithfully to keep and perform all of the terms, provisions and conditions to be performed under [the 1967] Lease on the part of the Lessee."

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By assuming such obligations, Autotronic entered into a privity of contract relationship with the Thomsens, such that the subsequent lease assignment to E-Z Serve did not relieve Autotronic of ultimate responsibility to guaranty performance under the 1967 Lease. See, for example, Bank of America v. Moore (1937) 18 Cal.App.2d 522, 525 (clause stating that assignee "hereby accepts, assumes and agrees to perform all of the terms" of the lease, created a privity of contract relationship between lessor and sublessee which bound the assignee to perform under the lease irrespective of any subsequent assignments.) See also Realty & Rebuilding Co. v. Rea (1920) 184 Cal. 565, 570 (Privity of contract relationship created between lessor and sublessee by lease term alone.)

3. Powerine And Autotronic Are "Responsible Parties" Because Their Responsibilities Under The 1967 Lease Gave Them The Legal Power To Stop The Contamination

Pursuant to Water Code § 13304, as interpreted by the State Water Resources Control Board ("Board"), any person with the legal power to stop contamination "permits" it and may be named as a responsible party. Section 13304 provides in the pertinent part that

"Any person . . . who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste . . ."

The Board has held that anyone with the "legal power" to stop contamination "permits" it, within the meaning of Water Code § 13304, and may be named as a responsible party by the Regional Board. See, for example, In The Matter of John Stuart, d.b.a. Stuart Petroleum (September 18, 1986), Board Order No. WQ 86-15 ("Stuart Petroleum"). A copy of this Order is enclosed as **Exhibit "L."**

In Stuart Petroleum, the Board cited prior Board Orders Nos. WQ 84-6 and WQ 86-2, which establish the rule that "permitting" something to happen includes failing to take action when "the ability to obviate the action" existed. The Board

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reasoned in Stuart Petroleum that because a lessee's obligations under a lease, to "comply with all laws" and to "maintain the premises," gave it the legal power to stop the contamination, the lessee had "permitted" the contamination. The Board rejected the lessee's assertion that, because it had subleased the premises and because there was no evidence that it had caused the contamination, it had no obligation to clean up the contamination. The Board, citing Glen R. Sewell Sheet Metal, Inc. v. Loverde (1969) 70 Cal.2d 666, 672, concluded that unless excused by the property owner, "parties to a lease will not be permitted to create a hiatus in their respective duties of compliance." Thus, merely subleasing the premises did not relieve the lessee of its ultimate responsibility to guaranty compliance with the lease obligations or obviate its legal power to do so. The Board further concluded that because the lessee had "permitted" the contamination, it was irrelevant that there was no evidence in the record that the lessee had actually caused the contamination.

Following from Stuart Petroleum, it is established that the ultimate responsibility of Powerine and Autotronic to comply with all laws and maintain the premises under the 1967 Lease, which was in force at the time of the discovery of the pipeline leak on the Property, gave them the legal power to clean up that contamination. Therefore, both Powerine and Autotronic should be named as responsible parties by the Regional Board for the cleanup of the contamination on the Property.

C. The Thomsens Should Be Named As Secondly Responsible Parties By The Regional Board

Under certain circumstances, it is proper to name persons who are responsible parties as having "secondary" responsibility for complying with cleanup requests. The rule developed by the Board is that (1) where a responsible party did not cause the contamination and (2) it is apparent that the site investigation and cleanup will proceed well without such responsible party's participation, such responsible party may be "secondarily liable" under a cleanup order -- i.e., such person will only be responsible to comply with the requirements of the cleanup order if those parties which are primarily responsible fail to comply. See Vallco Park (1986) Board Order No. WQ 86-18; Prudential Insurance (1987) Board Order No. 87-6; Schmidt (1989) Board Order No. WQ 89-1; Board Policy Memorandum dated January 18, 1989. Copies of these Orders and the January 18, 1989, Policy Memorandum are attached as **Exhibit "M."**

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There is no evidence in the record that the Thomsens caused the contamination. In fact, the Thomsens never occupied the Property or operated the service station, or stored or used hazardous materials, on the Property. They therefore could not have caused the contamination. E-Z Serve has adequate financial resources to effectuate cleanup, and has given its pledge that it intends to comply with all directives of the responsible agencies. It is thereby apparent that E-Z Serve can comply with the cleanup requirements of the responsible agencies. In contrast, the Thomsens do not have the financial ability to participate in the cleanup. Therefore, in consideration of the equities involved, the Regional Board should exercise its discretion to name the Thomsens as merely secondarily liable parties in its cleanup requests.

Similarly, Powerine and Autotronic are responsible parties for the contamination because of the documented 4,000 gallon release occurred during the 1967 Lease. Both Powerine and Autotronic have ultimate responsibility to guaranty cleanup of that contamination under that lease. By failing to exercise that legal power, they "permitted" the contamination making them responsible parties for its cleanup now. However, although there is some evidence that Powerine and Autotronic may be responsible for other releases of contamination on the Property, there is no direct evidence that they actually caused this release. E-Z Serve most certainly has the ability to investigate and remediate the contamination, but its commitment to do so is questionable.

E-Z Serve's attempt to blame the unreasonable expectations and inexperience of the County belies credulity. In order to assure that cleanup proceeds, the Regional Board should exercise its discretion to name Powerine and Autotronic as primarily responsible parties in its cleanup requests, although for enforcement purposes, the County may consider these entities simply as guarantors in the event E-Z Serve fails to cleanup the property. If it becomes apparent that E-Z Serve will not meet its obligations, Powerine and Autotronic can be immediately compelled to step in and proceed with cleanup.

All issues with regard to the ultimate liability of the Thomsens, Powerine, Autotronic and E-Z Serve, are now being litigated. A decision of the Regional Board to name all parties as responsible for the contamination will not affect the ultimate determination of liability by the courts. A party can seek contribution for any costs that should have been properly incurred by another party. See, e.g., Slater v. Pacific American Oil Company (1931) 212 Cal. 648, 654; California Orange Co. v.

Gil Jensen, Esq.
Juliet Shin

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July 20, 1994

Riverside Portland Cement Co. (1920) 50 Cal.App. 522, 526;
Carlotta, Ltd. v. County of Ventura (1970) 47 Cal.App.3d 931,
938-940; Griffith v. Kerrigan (1952) 109 Cal.App.2d 637, 640.
Rather, naming all the oil companies as primarily responsible and
the Thomsens as secondarily liable, will simply serve to assure
that the removal and remediation of the contamination occurs
without further delay. Achieving such a result will serve a great
public interest.

IV. CONCLUSION

Because Powerine and Autotronic had the legal power to stop
the contamination and had "control" over the tank system at the
time of the discovery of the corroded pipeline and the consequent
unauthorized release of 4,000 gallons of regular gasoline, we
request that both Powerine and Autotronic, in addition to E-Z
Serve, be named as responsible parties on the County's cleanup and
abatement order. The Regional Board has the discretion to name the
Thomsens secondarily liable responsible parties as long as it
appears that cleanup will proceed without their participation. We
also request that the Thomsens be named as secondarily liable
responsible parties because they did not cause the contamination
and do not have the financial resources to participate in cleanup,
and in recognition of their role to effectuate cleanup.

Thank you for your time and attention to this matter. If you
have any questions or comments, please do not hesitate to call.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By

Jonathan Redding
Jonathan W. Redding by *Laura Lee*

JWR:jlh
cc: Clients
Opposing Counsel

COOLEY GODWARD

COOLEY GODWARD CASTRO HUDDLESON & TATUM

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July 20, 1994

VIA FEDERAL EXPRESS

GRETCHEN R. STROUD
Direct: (415) 843-5036
Internet: stroudgr@cgc.com

Juliet Shin
Alameda County Health Agency
Division of Hazardous Materials
Department of Environmental Health
1131 Harbor Bay Pkwy, 2nd Floor
Alameda, CA 94502

Re: 525 West "A" Street, Hayward

Dear Ms. Shin:

We write in response to your request for information at the June 21, 1994 Pre-Enforcement Review Panel for the site at 525 West "A" Street, Hayward (the "Site"). We represent Autotronic Systems, Inc. ("Autotronic") with respect to the Site. The following is our best response to the information requested on June 21.

I. E-Z Serve Corporate Structure

The best information we have concerning E-Z Serve's corporate structure is that provided by E-Z Serve in response to one of Autotronic's interrogatories. E-Z Serve stated that E-Z Serve Petroleum Marketing Company of California, Inc. ("E-Z Serve") was formerly known as E-Z Serve, Inc. and Harken Marketing Company of California.

II. Transfer of Site From Autotronic To E-Z Serve

Autotronic obtained an interest in the site through an assignment of the existing lease on September 16, 1977 by Powerine Oil Company ("Powerine"). Powerine has already provided you with copies of the documentation relevant to this transaction.

On January 3, 1985, Autotronic entered into an agreement with E-Z Serve, Inc. which set forth the means by which Autotronic would transfer its interest in the site to E-Z Serve. A copy of the Agreement is enclosed. Although paragraph 3.02 gave E-Z Serve the right to investigate the property, Autotronic's files contain no records reflecting the performance of these tests. Autotronic's files also contain no notice from E-Z Serve regarding environmental concerns, as provided in paragraph 3.02.

Juliet Shin
July 20, 1994
Page 2

Autotronic and E-Z Serve executed a Bill of Sale and Assignment of Lease for the Site on January 16, 1985. Copies of these documents are included. You will notice that the Bill of Sale conveyed to E-Z Serve all of Autotronic's interest in the tanks and gasoline dispensing equipment on the Site. Similarly, in the Assignment of Lease, Autotronic transferred all of its right, title and interest in the lease to E-Z Serve.

III. Condition of Property at Time of Transfer

Autotronic's records contain no information regarding tank tightness tests performed or any spills or releases occurring during its possession of the Site. The Autotronic manager with responsibility for operations at the Site has no recollection of any spills or releases occurring at the Site.

Autotronic's records contain information that, shortly after Autotronic obtained an interest in the Site in 1977, Autotronic remodelled the "doghouse" where the gas station attendant sat, changed the sign and added a diesel tank and associated piping. There is no indication that any of this work was done as a result of leaks, releases or spills.

Although the Thomsens have asserted that Autotronic replaced pipelines at the Site in 1981 as a result of a leak, Autotronic's records contain no information that reflect this work.

Autotronic simply is not responsible and has no association with the 1986 release of petroleum hydrocarbons or the subsequent releases at the Site. Autotronic assigned all of its lease rights to E-Z Serve in 1985 and at the same time transferred all of its right, title and interest in the gasoline dispensing equipment at the Site to E-Z Serve. There is no evidence that any release occurred during E-Z Serve's occupancy of the Site. In addition, Autotronic has had no contact with the Site whatsoever since it assigned its interest to E-Z Serve in January 1985.

Please contact me if you have any questions about the information provided in this letter.

Very truly yours,

COOLEY GODWARD CASTRO
HUDDLESON & TATUM

Gretchen R. Stroud

Gretchen R. Stroud

COOLEY GODWARD

COOLEY GODWARD CASTRO HUDDLESON & TATUM

Juliet Shin
July 20, 1994
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GRS:dm

Enclosures

cc: (w/out enclosures and via U.S. mail)
Harold D. Mallory, Esq.
Coralie Kupfer, Esq.
Jonathan Redding, Esq.
Ralph Sampson, Esq.

20766431

AGREEMENT

THIS AGREEMENT is entered into the 3rd day of January, 1985 by and between AUTOTRONIC SYSTEMS, INC., a Delaware corporation, (hereinafter called "Seller"), and E-Z SERVE, INC., a Delaware corporation, (hereinafter called "Buyer"). For and in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I PURCHASE AND SALE

1.01 Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase from Seller, the following described property:

(i) The leased premises (hereinafter called the "Leased Tracts") described in Exhibit "A" attached hereto and made a part hereof, including the improvements and fixtures located thereon which are owned by Seller (said Leased Tracts hereinafter sometimes individually called a "Tract");

(ii) The personal property (excluding inventories of motor fuel and merchandise) which is owned by Seller and located upon each Tract, more particularly described separately for each Tract in Exhibit "A" attached hereto and made a part hereof (hereinafter called the "Personal Property"); and,

(iii) The inventory of motor fuel in storage and merchandise maintained on each Tract on the date of closing (hereinafter called the "Inventories").

ARTICLE II PURCHASE PRICE

2.01 Buyer shall pay to Seller for each Tract and the Personal Property located thereon purchased hereunder the respective purchase price set out for each Tract on said Exhibit "A". The total purchase price for all Tracts listed on said Exhibit "A" and the Personal Property located thereon is Two Hundred and Fifteen Thousand, Four Hundred and Fifty-Seven and No/100 Dollars (\$215,457.00), not including Inventories. Buyer shall pay to Seller for the Inventories purchased hereunder an amount equal to Seller's cost of the Inventories on the date of closing determined in accordance with the provisions of paragraph 4.05.

Initial CB
Date 1/10/85

2 in full compliance with all applicable federal, state and local environmental requirements. Seller shall provide Buyer with documentation of the nature of the work, repairs or replacements which were done.

Initial TAL
Date 01-11-85

2.02 Immediately after Buyer signs and returns this Agreement to Seller Buyer will tender to Seller, Buyer's check in the amount of ten percent (10%) of the purchase price of each Tract, as earnest money.

ARTICLE III AGREEMENTS OF SELLER

Initial CB
Date 1/10/85

Initial TAL
Date 01-11-85

3.01 Within thirty (30) days after the date Seller receives this Agreement signed by Buyer, Seller shall, at Buyer's expense, in accordance with HEATH-PETROTITE testing standards, have conducted tests of the underground gasoline storage tanks and piping on each Leased Tract for leakage and make available to Buyer the results of said tests. Any tanks and/or piping failing such tests shall, at Seller's expense, prior to the date of closing, be repaired or replaced. Repaired and replaced tanks and piping, if any, shall be tested at Seller's expense, and the results thereof made available to Buyer. optio

3.02 Seller grants to Buyer and its employees and representatives, effective with the date of this Agreement and continuing for a period of thirty (30) days, the right to enter upon each Tract and make, or cause to be made, at Buyer's expense, such surveys, investigations, engineering tests, or any other tests it may desire; provided however, any such surveys, investigations and tests shall not disrupt, hinder or interfere with Seller's continuous and orderly operation of its service station located upon any said Tract without Seller's prior written consent. If any such surveys, investigations or tests are made for a particular Tract and in Buyer's reasonable opinion, any fact, circumstance, condition or environmental concern exists which is unacceptable to Buyer, Buyer shall, prior to the expiration of said thirty (30) days, give Seller written notice pointing out any objections. Buyer shall be deemed to have approved with respect to each Tract any fact, circumstance, condition or environmental concern, which is, or reasonably could have been, discovered by the making of any survey, investigation or test permitted under this paragraph, whether or not Buyer actually makes any such survey, investigation or test with respect to any such Tract, unless Buyer notifies Seller of its objection to such fact, circumstance, condition or environmental concern within said thirty (30) day period. If any such objection to a particular Tract is not cured within twenty-five (25) days from Seller's receipt of notice of such objection or, if any said objection can not be cured within twenty-five (25) days and corrective action is not commenced within said twenty-five (25) days, Buyer may, at its option, and as its sole remedy, terminate this Agreement with respect to such Tract by giving Seller written notice of termination within ten (10) days from the expiration of said twenty-five (25) day period. If Buyer does not so notify Seller of termination within said ten (10) day period, Buyer shall be deemed to have approved any said objection not so cured.

Initial KJ
Date 1/10/85

Initial TAL
Date 1-11-85

3 that Seller has made all payments required to be made by it pursuant to the leases being assigned and is not in default or breach of any of the provisions of said leases; that Seller is not aware of any pending or threatened claims or litigation affecting the use of any Tract or the exercise of any of its rights under said leases;

3.03 If at the time of closing any Tract, the applicable Personal Property is not in substantially the same condition and state of repair as it now exists, except for normal wear and tear, Buyer may, at its option, terminate this Agreement with respect to any such Tract by giving written notice of termination to Seller.

3.04 Prior to the date of closing, Seller warrants to Buyer the following:

(i) That unconditional lessor approval has been received, where required, to assign each lease herein described;

(ii) That all leases being assigned are in good standing;³ and

(iii) That the Personal Property located on the Leased Tracts is free of liens created by Seller.

ARTICLE IV CLOSING

4.01 The closing of the sale and purchase contemplated herein shall be held separately for each Tract promptly after all conditions to closing have been met with respect to such Tract in accordance with the terms and provisions of this Agreement. Notwithstanding anything contained herein to the contrary, if for any reason the sale and purchase of any particular Tract is not closed on or before February 18, 1985, Seller may, at any time thereafter, terminate this Agreement as to any such Tract by giving written notice of termination to Buyer.

4.02 At the closing of the purchase of a Tract, Buyer shall deliver to Seller in immediately available funds an amount equal to the purchase price for said Tract and Personal Property located hereon set forth in said Exhibit "A", plus the amount necessary to reimburse Seller for any deposits and/or advance rentals paid by Seller with respect to such Tract, less the earnest money deposited hereunder applicable to such Tract.

4.03 At the Closing of the purchase of a Tract, Seller shall:

(i) Deliver to Buyer the following:

(a) an Assignment of said Lease Tract in the form attached hereto as Schedule "B"; and

(b) a Bill of Sale in the form attached hereto as Exhibit "C" conveying to Buyer all of the Inventories and Personal Property located thereon; and

(ii) Deliver to Buyer immediate and exclusive possession of the Tract and Personal Property purchased hereunder.

4.04 All real and personal property taxes and all rentals due with respect to each Tract shall be prorated to the closing thereof. All sales, use, transfer and similar taxes relating to said transaction, if any, shall be borne by and shall be the responsibility of Buyer. Seller and Buyer have not engaged the services of a real estate broker with respect to this transaction. Except as otherwise provided herein, each party shall pay its own expenses incidental to the preparation and carrying out of this Agreement.

4.05 Promptly after Buyer receives possession of a Tract and the Personal Property located thereon being purchased hereunder, representatives of Seller and Buyer shall jointly conduct and complete a physical inventory of the Inventories and determine Seller's cost therefor. Buyer shall promptly pay to Seller within three (3) days the price so determined for said Inventories, and shall reimburse Seller for the amount of any federal and state motor fuel and other taxes paid by Seller, or which Seller is obligated to pay with respect to motor fuel purchased by Buyer as Inventories.

Initial SV
Date 1/10/95

Initial TAL
Date 1-11-95

4.06 Within ^{sixty (60)} ~~thirty (30)~~ days after Buyer receives possession of a Tract, Buyer shall remove and destroy all branded identification of Autotronic Systems, Inc., at said Tract.

ARTICLE V MISCELLANEOUS

5.01 Except as otherwise provided herein, all notices, requests, demands and other communications required or authorized hereunder shall be in writing and shall be deemed given when mailed, certified or registered mail, return receipt requested, postage prepaid, addressed to Autotronic Systems, Inc. at P. O. Box 20267, San Antonio, Texas 78220, Attention: Manager, Real Estate Department, and to Buyer at E-Z Serve, Inc. P.O. Box 3579, Abilene, Texas 79604, Attention: John Hemphill, Vice President - Legal. Either party may change its address by giving the other party written notice of the new address in the manner set forth above.

5.02 Buyer agrees to defend, indemnify and hold Seller harmless from and against any claim, demand, damage, cause of action, expense (including but not limited to attorney fees), or any other liability whatsoever arising out of, resulting from or in any manner connected with an environmental incident or concern relating to each Tract purchased hereunder, regardless of when or how said incident or concern was created, caused or arose, which incident or concern was, or reasonably could have been, revealed by any survey, investigation or test permitted under paragraphs 3.01 and 3.02 hereof. In no event shall Seller be liable to Buyer or any other party for indirect, special, consequential or punitive damages of any kind or character from any cause whatsoever.

5.10 This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS HEREOF this Agreement has been executed by the parties hereto on the day and year first above written. If this Agreement is not signed by Buyer and returned to Seller within fifteen (15) days from the date of this Agreement, Seller may consider this Agreement null and void.

ATTEST:

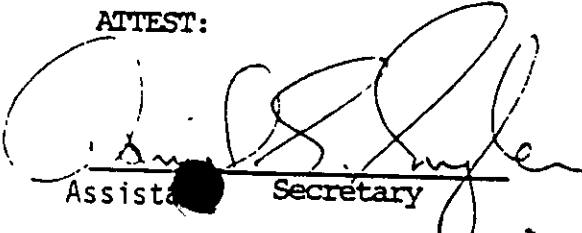
E-Z SERVE, INC.


Secretary

By: 
Title
Vice Pres. (Buyer)

ATTEST:

AUTOTRONIC SYSTEMS, INC.


Assistant Secretary

By: Thomas A. Lyons
President
(Seller) ^{RW} _{et}

EXHIBIT "A"
TO AN AGREEMENT BETWEEN AUTOTRONIC SYSTEMS, INC.
AND E-Z SERVE, INC.

DESCRIPTION OF PERSONAL PROPERTY

TRACT 1 FSL-79 (ASI# 054-04) Lease Purchase Price: \$19,587.00

A Land Lease dated January 31, 1970 between Harry M. and Lilly Hallaian, Husband and Wife, and Leon M. and Ruby Hallaian, Husband and Wife, as "Lessor" and Autotronic Systems, Inc., a Delaware corporation, as "Lessee" covering a parcel of real property located in the City of Fresno, County of Fresno, State of California, the address of said premises being 5217 N. Blackstone Avenue and more particularly described in said Land Lease, as evidenced in a Memorandum of Lease recorded in Book 5772, Page 499 of the Official Records, Fresno County, California and a Notice of Lease recorded in Book 5952, Page 833 of said county records and subject to restrictive covenants contained in that certain lease dated September 26, 1963, between Harry M. Hallaian, et ux, et al, as Lessors, and Thomas F. Hinds, as Lessee, recorded January 10, 1964 in Book 4950, Page 212 of the Official Records, Fresno County, California.

The following personal property is located on said Tract 1:

<u>QUANTITY</u>	<u>DESCRIPTION</u>
15	hoses
3	dual 1150 Tokheim dispensers
9	single 1150 Tokheim dispensers
1	canopy
1	booth
1	Tokheim Mens II readout
1	shed
1	price sign (without the
	identification panels)
3	10,000 gallon tanks

TRACT 2 FSL-13 (ASI# 084-04) Lease Purchase Price: \$19,587.00

A Land Lease dated December 15, 1970 between Richard H. Bridgman and Jeanette M. Bridgman, as "Lessor" and Autotronic Systems, Inc., a Delaware corporation, as "Lessee" covering a parcel of real property located in the City of Manteca, County of San Joaquin, State of California, the address of said premises being 1012 West Yosemite and more particularly described in said Land Lease, as evidenced in a Memorandum of Ground Lease recorded in Book 3490, Page 28 of the Official Records, San Joaquin County, California and a Notice of Lease recorded in Book 3567, Page 218 of said county records, subject to a non-exclusive easement and right-of-way for ingress and egress for pedestrians and vehicles, as disclosed by Memorandum of Lease dated February 23, 1962 and recorded June 11, 1962 in Book 2560, Page 37 of the Official Records, San Joaquin County, California; and said parcel of real property was conveyed by deed dated November 6, 1984 from Richard H. Bridgman, Jr., as heir of Richard H. Bridgman and Jeanette M. Bridgman

to Ken W. Hafer and Alice A. Hafer, husband and wife and said deed was recorded as instrument Number 84079182 on November 26, 1984 in the Official Records, San Joaquin County, California.

The following personal property is located on said Tract 2:

<u>QUANTITY</u>	<u>DESCRIPTION</u>
14	hoses
10	single 1150 Tokheim dispensers
2	dual 1150 Tokheim dispensers
1	canopy
1	booth
14	402 console readout
1	shed
2	price signs (without the identification panels)
3	10,000 gallon tanks

TRACT 3 FSL-80 (ASI# 058-04) Lease Purchase Price: \$19,587.00

A Land Lease dated May 6, 1970 between Wells Fargo Bank, Executor of Estate of Robinson H. Mower, deceased, as "Lessor", and Autotronic Systems, Inc., as "Lessee", covering certain property in Alameda County, California, more particularly described in said Land Lease, which Land Lease was amended by Agreement dated June 10, 1970 between Wells Fargo Bank, as Trustee of the Testamentary Trust set forth in the Last Will and Testament of Robinson H. Mower, deceased, and Elizabeth K. Mower, widow, and Autotronic Systems, Inc. and is evidence of record by a Memorandum of Lease dated May 6, 1970, recorded in Book 171, page 73304, records of Alameda County, California and Notice of Lease recorded in Book 72, page 32389 of said county.

The following personal property is located on said Tract 3:

<u>QUANTITY</u>	<u>DESCRIPTION</u>
8	hoses
4	dual 1150 Tokheim dispensers
1	canopy
1	booth
8	402 console readout
1	price sign (without identification panels)
3	10,000 gallon tanks

TRACT 4 FSL-111 (ASI# 109-04) Lease Purchase Price: \$19,587.00

A Lease Agreement dated March 1, 1972 between Greenway Corporation, as "Lessor", and Autotronic Systems, Inc., as "Lessee" covering certain property in San Diego County, California, described in said Lease Agreement, which Lease Agreement was assigned by an Assignment of Lease and Agreement dated March 1, 1972 from Greenway Corporation and Autotronic Systems, Inc.

to The National Shawmut Bank of Boston (now Shawmut Bank of Boston, N.A.) and W. B. Wadland (now C. W. Cash), as Trustees under an Indenture of Mortgage and Deed of Trust from Greenway Corporation dated March 1, 1972; and said parcel of real property being more particularly described as follows:

PARCEL 1:

That portion of the Northeast Quarter of the Northwest Quarter of the Southeast Quarter of Section 25, Township 9 South, Range 4 West, San Bernardino Meridian, in the County of San Diego, State of California, according to United States Government Survey approved June 11, 1880, described as follows:

Beginning at the Northeast corner of said Northeast Quarter of the Northwest Quarter of the Southeast Quarter; thence along the North line of said Southeast Quarter North $89^{\circ} 20'$ West, 131.49 feet; thence South $10^{\circ} 47'$ East 45 feet to the Northeast corner of the tract of land conveyed to William S. Baber, et ux, by deed recorded in Book 3558, page 282 of Official Records; thence North $89^{\circ} 20'$ West along the North line of said Baber land, 130.30 feet to the Southeast corner of a parcel of land conveyed to George J. Reuter, et ux, by deed recorded June 3, 1953 as Instrument No. 76258 and the True Point of Beginning; thence along the Easterly line of Reuter's land North $01^{\circ} 18' 50''$ East, 22 feet to the Northeast corner thereof; thence along the Northerly line of said land South $82^{\circ} 04' 50''$ West 75.56 feet (Record - South $81^{\circ} 40' 50''$ West 75.46 feet) to the Northwest corner thereof; thence along the West line of said land and along the West line of a parcel of land conveyed to George J. Reuter, et ux, by deed recorded December 14, 1951, in Book 4319, page 427 of Official Records, South $10^{\circ} 17'$ East 157.92 feet to the Northwest corner of a parcel of land conveyed to Vincent D. O'Hearn; by deed recorded September 20, 1950 in Book 3785, page 193 of Official Records; thence along the Northerly line of said land South $89^{\circ} 20'$ East, 41.28 feet to a line which bears South $01^{\circ} 19' 40''$ West, from the True Point of Beginning; thence North $01^{\circ} 19' 40''$ East, 144.01 feet to the True Point of Beginning;

PARCEL 1A:

An easement for road purposes over a strip of land 15 feet in width, over that portion of the Northeast Quarter of the Northwest Quarter of the Southeast Quarter of Section 25, Township 9 South, Range 4 West, San Bernardino Meridian, in the County of San Diego, State of California, according to United States Government Survey, approved June 11, 1880, described as follows:

Beginning at a point in the North line of said Northeast Quarter of the Northwest Quarter of the Southeast Quarter, distant North $89^{\circ} 20'$ West 131.49 feet from the Northeast corner of said Northeast Quarter of the Northwest Quarter of the Southeast Quarter; thence continuing along said North line, North $89^{\circ} 20'$

West 77.40 feet to an angle point in the Northerly boundary of the easement as described under Parcel 2 of Deed to Richard C. Fredberg, et ux recorded February 25, 1960 as Instrument No. 38333 of Official Records; thence along the boundary of said easement, South 82° 04' 50" West (Record - South 81° 40' 50" West) 119.43 feet; thence South 10° 47' East 15.01 feet to the Northwest corner of Parcel 1 above, thence along the Northerly line of said Parcel 1 and its Easterly prolongation North 82° 04' 50" East 75.36 feet (Record - North 81° 40' 50" East) 117.60 feet; thence South 89° 20' East 79.26 feet to a point which bears South 10° 47' East 15.30 feet from the Point of Beginning; thence North 10° 47' West 15.30 feet to the Point of Beginning,

EXCEPTING therefrom that portion thereof lying within Mission Road; and

PARCEL 2

A portion of the Northeast Quarter of the Northwest Quarter of the Southeast Quarter of Section 25, Township 9 South, Range 4 West, San Bernardino Meridian, in the County of San Diego, State of California according to United States Government Survey approved June 11, 1880, described as follows:

Beginning at the Northeast corner of said Northeast Quarter of the Northwest Quarter of the Southeast Quarter; thence along the North line of said Northeast Quarter of the Northwest Quarter of the Southeast Quarter, North 89° 20' West 131.49 feet; thence South 10° 47' East 45 feet to the True Point of Beginning; thence South 10° 47' East 146.92 feet; thence North 89° 20' West 202.41 feet; thence North 10° 47' West 146.92 feet; thence South 89° 20' East 202.41 feet to the True Point of Beginning,

EXCEPTING therefrom that portion lying within the above described Parcel 1;

excluding that portion of said property conveyed by Autotronic Systems, Inc. to the County of San Diego, California by a Quitclaim Deed dated November 14, 1984 and more particularly described as follows:

That portion of Section 25, Township 9 South, Range 4 West, San Bernardino Meridian, in the County of San Diego, State of California, conveyed to Greenway Corporation in Parcel 2 of deed recorded June 29, 1972, in the Recorder's Office of said County at File/Page Number 167399, lying Easterly of a line that is 51.00 feet Westerly of and parallel with the centerline of Mission Road CHC1-C on file in the Office of the County Engineer of said county;

and subject to an easement dated March 24, 1981 from Douglas G. Kramlich to San Diego Gas & Electric Company for installation of electrical and communication facilities concerning the following described real property:

That portion of the Northeast Quarter of the Northwest Quarter of the Southeast Quarter of Section 25, Township 9 South, Range 4 West, San Bernardino Meridian, described in Parcel 1 of a Deed recorded February 13, 1973 at Recorder's File/Page No. 039011 of Official Records of said County of San Diego,

The easement in the aforesaid lands shall be 6.00 feet in width, being 3.00 feet measured at right angles on each side of the following described center line:

Commencing at the Northeast corner of said Northwest Quarter of the Southeast Quarter of Section 25, said corner bears South 89° 20' 00" East from the Northwest corner thereof; thence leaving said Northeast corner South 83° 33' 38" West, 173.00 feet to the TRUE POINT OF BEGINNING of the center line herein described; thence from said TRUE POINT OF BEGINNING South 84° 00' 16" West, 162.90 feet,

EXCEPTING from the above described easement any portions thereof not lying within the above described lands of the Grantor therein named.

The following personal property is located on said Tract 4:

<u>QUANTITY</u>	<u>DESCRIPTION</u>
10	hoses
2	single 1150 Tokheim dispensers
4	dual 1150 Tokheim dispensers
1	canopy
1	booth
10	402 console readout
1	price sign
	(without identification panel)
3	10,000 gallon tanks

TRACT 5 FSL-120 (ASI# 007-26) Lease Purchase Price: \$19,587.00

A Land Lease dated April 15, 1971 between Clifford M. Miller and Joan L. Miller, joint tenants, as "Lessor", and Autotronic Systems, Inc., as "Lessee" covering certain property in Clark County, Nevada, more particularly described in said Land Lease; as evidenced in a Memorandum of Lease recorded as Instrument #116669 in Book 146 of the Official Records, Clark County, Nevada and a Notice of Lease recorded as Instrument #158138 in Book 198 of said county records.

The following personal property is located on said Tract 5:

<u>QUANTITY</u>	<u>DESCRIPTION</u>
12	hoses
1	dual 1150 Tokheim dispensers
10	single 1150 Tokheim dispensers

1	canopy
1	booth
1	Tokheim Mems II readout
1	shed
1	price sign (without
	identification panels)
3	10,000 gallon tanks

TRACT 6 FSL-112 (ASI# 098-04) Lease Purchase Price: \$19,587.00

A Land Lease dated May 14, 1971 between Le Roy Garner and Madeline I. Garner, his wife, as joint tenants to an undivided one-half ($\frac{1}{2}$) interest and Elmer J. Nevis, as surviving joint tenant to an undivided one-half ($\frac{1}{2}$) interest, as "Lessor", and Autotronic Systems, Inc., as "Lessee", covering certain property in Placer County, California, more particularly described in said Land Lease, as evidenced in a Memorandum of Lease recorded in Volume 1371, Pages 511-513, of the Official Records of Placer County, California and a Notice of Lease recorded in Volume 1402, Page 515 of said county records; subject to an easement for overhang of power lines and incidents thereto as conveyed to the City of Roseville by Deed recorded December 8, 1961 in Book 900, Page 900, Official Records of Placer County, California; and Elmer J. Nevis' interest in said property was conveyed by a quitclaim deed dated October 21, 1971 to Raymond C. Lieser and Marjorie S. Lieser, as joint tenants, and said deed was recorded as Instrument #23625 in Volume 1381, Page 11 of the Official Records of Placer County, California.

The following personal property is located on said Tract 6:

<u>QUANTITY</u>	<u>DESCRIPTION</u>
14	hoses
2	dual 1150 Tokheim dispensers
10	single 1150 Tokheim dispensers
1	canopy
1	booth
14	402 console readout
1	shed
1	price sign (without identification
	panels)
3	10,000 gallon tanks

TRACT 7 FSL-119 (ASI# 006-26) Lease Purchase Price: \$19,587.00

A Lease Agreement dated January 24, 1972 between Greenway Corporation, as "Lessor", and Autotronic Systems, Inc., as "Lessee", covering a parcel of real property in Clark County, Nevada, described in said Lease Agreement, which Lease Agreement was assigned by an Assignment of Lease and Agreement dated January 24, 1972 from Greenway Corporation and Autotronic Systems, Inc. to American General Bond Fund, Inc., and said parcel of real property being more particularly described as follows:

real property in San Bernardino County, California, more particularly described in said Lease Agreement, which Lease Agreement was assigned by an Assignment of Lease and Agreement dated March 1, 1972 from Greenway Corporation and Autotronic Systems, Inc. to The National Shawmut Bank of Boston (now Shawmut Bank of Boston, N.A.) and W. B. Wadland (now C. W. Cash), as Trustees under an Indenture of Mortgage and Deed of Trust from Greenway Corporation dated March 1, 1972; and said parcel of real property being more particularly described as follows:

All that certain real property located in the City of San Bernardino, County of San Bernardino, State of California, described as follows:

The South 194 feet of the West 194 feet of Lot 90, TOWN OF RIALTO, AND ADJOINING SUBDIVISION, as per plat recorded in Book 4 of Maps, Page 11, records of said County,

EXCEPTING that portion of above described property conveyed to the City of San Bernardino by deed recorded in Book 4197, Page 398, Official Records, and in Book 4545, Page 223, Official Records,

and subject to an easement for the construction, maintenance and operation of electric lines and telephone lines and cables and incidental purposes, granted to California Electric Power Company and recorded May 7, 1958 in Book 4503, Page 318, Official Records of San Bernardino County, California.

The following personal property is located on said Tract 8:

<u>QUANTITY</u>	<u>DESCRIPTION</u>
14	hoses
2	dual 1150 Tokheim dispensers
10	single 1150 Tokheim dispensers
1	canopy
1	booth
14	402 console readout
1	shed
1	price sign (without identification panels)
3	10,000 gallon tanks

TRACT 9 FSL-108 (ASI# 060-04) Lease Purchase Price: \$19,587.00

A Land Lease dated July 28, 1970 between John C. Mabee, as "Lessor", and Autotronic Systems, Inc., a Delaware corporation, as "Lessee", covering a parcel of real property located in San Diego County, California, and more particularly described in said Land Lease, as evidenced in a Memorandum of Lease recorded in Book 1971, File/Page No. 12662 of the Official Records, San Diego County, California and a Notice of Lease recorded in Book 1971, File/Page No. 107914 of said county records; and subject to the following:

TRACT 11 FSL-116 (ASI# 126-04)

Lease

Purchase Price: \$19,587.00

A Lease Agreement dated March 1, 1972 between Greenway Corporation, as "Lessor", and Autotronic Systems, Inc., as "Lessee", covering certain property in San Bernardino County, California, described in said Lease Agreement, which Lease Agreement was assigned by an Assignment of Lease and Agreement dated March 1, 1972 from Greenway Corporation and Autotronic Systems, Inc. to The National Shawmut Bank of Boston (now Shawmut Bank of Boston, N.A.) and W. B. Wadland, (now C. W. Cash) as Trustees under an Indenture of Mortgage and Deed of Trust from Greenway Corporation dated March 1, 1972; and said parcel of real property being more particularly described as follows:

Lot 1 of Tract Number 3277, in the County of San Bernardino, State of California, as per plat recorded in Book 45 of Maps, Page 4, of the Official Records of San Bernardino County, California,

and subject to an easement and right-of-way for the construction, maintenance and operation of electric lines, for the transmission of electricity, and for telephone and other communication purposes, upon, over, along and across all division property lines (except such lines as coincide with boundary lines of streets and alleys), which are shown on the recorded map, as granted to California Electric Power Company, by deed recorded March 13, 1956 in Book 3884, Page 270 of the Official Records of San Bernardino County, California.

The following personal property is located on said Tract 11:

QUANTITY

DESCRIPTION

14	hoses
2	dual 1150 Tokheim dispensers
10	single 1150 Tokheim dispensers
1	canopy
1	booth
14	402 console readout
1	price sign (without identification panels)
3	10,000 gallon tanks

EXHIBIT "B"
TO AN AGREEMENT BETWEEN AUTOTRONIC SYSTEMS, INC.
AND E-Z SERVE, INC.

ASSIGNMENT OF LEASE

FOR A VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, AUTOTRONIC SYSTEMS, INC. (Assignor), a Delaware corporation, hereby assigns and transfers to _____ (Assignee), all of its right, title and interest in and to that certain Lease dated _____ as Lessor and Autotronic Systems, Inc., as Lessee, covering the following described property:

together with its right, title and interest in and to the buildings, improvements and fixtures located thereon.

Assignee agrees to and does hereby accept the assignment and expressly assumes and agrees to keep, perform, and fulfill all the terms, covenants, conditions, and obligations required to be kept, performed, and fulfilled by Assignor as the Lessee thereunder, and to defend and indemnify Assignor from and against, any failure thereof.

This agreement shall be binding on and inure to the benefit of the parties hereto, their successors in interest, and assigns.

EXECUTED this _____ day of _____, 1985.

ATTEST:

AUTOTRONIC SYSTEMS, INC.

Secretary

By: _____
President
(Assignor)

ATTEST:

Secretary

By: _____
Title
(Assignee)

(ADD APPROPRIATE ACKNOWLEDGEMENTS)

A 000026

EXHIBIT "C"
TO AN AGREEMENT BETWEEN AUTOTRONIC SYSTEMS, INC.
AND E-Z SERVE, INC.

BILL OF SALE

AUTOTRONIC SYSTEMS, INC., Seller, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, sells and conveys to _____ Buyer, all of Seller's right, title and interest in and to the personal property located on the tracts indicated below, including, but not limited to the following described personal property:

TRACT 1: (ADDRESS)

QUANTITY

DESCRIPTION

TRACT 2: (ADDRESS)

QUANTITY

DESCRIPTION

together with all other personal property and equipment, whether similar to the above or not, located at each of said tracts and owned by Seller, including the Inventories as such term is defined in and same is determined in accordance with an Agreement between Seller and Buyer dated _____.

All items are sold AS IS AND WITH ALL FAULTS, and there are no warranties of any kind whatsoever, either express or implied, which extend beyond the foregoing including, but not limited to, the condition or quality of the property and equipment or the fitness of such property for a particular use or purpose.

EXECUTED this _____ day of _____, 1985.

ATTEST:

AUTOTRONIC SYSTEMS, INC.

Secretary

By _____
President

(ADD APPROPRIATE ACKNOWLEDGEMENTS)

A 000027

BILL OF SALE

AUTOTRONIC SYSTEMS, INC., Seller, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, sells and conveys to E-Z SERVE, INC., Buyer, all of Seller's right, title and interest in and to the personal property located on the tract indicated below, including, but not limited to the following described personal property:

TRACT 10 FSL-118 (ASI# 171-04) 525 West "A" Street, Hayward, California

QUANTITY

DESCRIPTION

12	hoses
1	dual 1150 Tokheim dispenser
10	single 1150 Tokheim dispensers
1	canopy
1	booth
1	Tokheim Mems II reader
1	price sign (without identification panels)
4	10,000 gallon tanks

together with all other personal property and equipment, whether similar to the above or not, located at said tract and owned by Seller, including the Inventories as such term is defined in and same is determined in accordance with an Agreement between Seller and Buyer dated January 3, 1985.

All items are sold AS IS AND WITH ALL FAULTS, and there are no warranties of any kind whatsoever, either express or implied, which extend beyond the foregoing including, but not limited to, the condition or quality of the property and equipment or the fitness of such property for a

ASSIGNMENT OF LEASE

FOR A VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, AUTOTRONIC SYSTEMS, INC. (Assignor), a Delaware corporation, hereby assigns and transfers to E-Z SERVE, INC. (Assignee), a Delaware corporation, all of its right, title and interest in and to that certain Lease dated December 1, 1966 between Levonard A. Thomsen and Margaret S. Thomsen, as Lessor and Autotronic Systems, Inc., as Lessee, covering the following described property:

TRACT 10 FSL-118 (ASI# 171-04) 525 West "A" Street, Hayward, California

A Lease Agreement dated December 1, 1966 between Levonard A. Thomsen and Margaret S. Thomsen, as "Lessor", and Powerine Oil Company, as "Lessee", covering a parcel of real property in Alameda County, California, more particularly described in said Lease Agreement as evidenced by a Memorandum of Lease dated January 26, 1967 and recorded as Instrument #AZ14352 in Reel 1917, Image 72 of the Official Records of Alameda County, California, and said Lease Agreement was assigned by an Assignment of Lease dated September 16, 1977 from Powerine Oil Company to Autotronic Systems, Inc. and recorded as Instrument #78-021742 in Reel 5249, Image 343 of said county records,

together with its right, title and interest in and to the buildings, improvements and fixtures located thereon.

Assignee agrees to and does hereby accept the assignment and expressly assumes and agrees to keep, perform, and fulfill all the terms, covenants, conditions, and obligations required to be kept, performed, and fulfilled by Assignor as the Lessee thereunder, and to defend and indemnify Assignor from and against, any failure thereof.

~~This assignment shall be binding on and inure to the benefit of the~~

ration that executed the within instrument , known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires: 4-1-87

Paulette M. Walton

Notary Public

Notary's Name Printed:

Paulette M. Walton

STATE OF TEXAS

§

§

COUNTY OF TAYLOR

§

ON THIS 10 day of January in the year 1985, before me, a Notary Public of said State, duly commissioned and sworn, personally appeared Roland C. Orr known to me to be the Vice President of the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

James P. Bowers, PE
R. William Rudolph, Jr., PE

ALCO
HAZMAT

94 JUL -6 PM 4:27

July 1, 1994
SCI 447.053

Ms. Juliet Shin
Alameda County
Health Care Services Agency
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94704

Transmittal
Pertinent Information
525 West A Street
Hayward, California

Dear Ms. Shin:

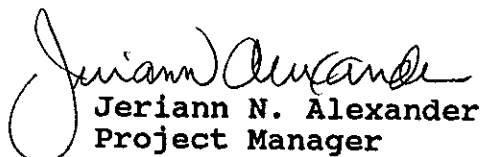
This letter transmits copies of several documents contained in our files for the referenced site. Additionally, enclosed are copies of plates presented at the review panel meeting and a copy of a chronology of events associated with the history of service station improvements. A list of documents is included herein.

Regarding the attached Triple J Construction invoice, you will notice that there are no units associated with the backfill materials. Apparently, RMC Lonestar supplied Triple J with materials for the project, as there was a Preliminary Notice of Lien filed by RMC. RMC reportedly sells backfill material by the cubic yard. As such, it appears that the quantity delivered to the site in 1992 represents about 1/2 of the total volume of the pit assuming pit dimensions of 24'w x 45'l x 20'd.

If you have any questions, or if you would like to review our files, please call.

Sincerely,

Subsurface Consultants, Inc.


Jeriann N. Alexander
Project Manager

JNA:clh

cc: Jonathan Redding, Fitzgerald, Abbott & Beardsley (letter & plates only)

■ Subsurface Consultants, Inc.

171 12th Street • Suite 201 • Oakland, California 94607 • Telephone 510-268-0461 • FAX 510-268-0137

Ms. Juliet Shin
Alameda County Health Care Services Agency
SCI 447.053
July 5, 1994
Page 2

Attachments: Site Plan Showing Groundwater Contaminants
Parcel Map Showing Proposed Well Locations
Chronology of Pertinent Events
E-Z Serve Internal Memo, December 3, 1986
ACHCSA letter to E-Z Serve, May 15, 1987
Converse letter to RWQCB, June 11, 1987
Converse Phase II Report, June 30, 1988
Converse letter to E-Z Serve, July 1, 1988
Harken letter to ACHCSA, August 7, 1990
ACHCSA letter to Harken, November 27, 1990
Triple J Construction Invoice, February 27, 1992

ALCO
HAZMAT

94 JUL -6 PM 4:27

E-Z SERVE of California, Inc.

OFFICE ADDRESS: 316 SOUTH BON VIEW AVENUE
MAIL ADDRESS: P.O. BOX 3550
ONTARIO, CALIFORNIA 91761
(714) 984-1261

TO: TOM JONES

DECEMBER 3, 1986

FROM: MIKE BUCKMASTER *MB*

MEB/M/86:347

REFERENCE: STATION #1235 - HAYWARD

Inventory reconciliation indicates that we have lost approximately 4,000 gallons of regular gasoline through a leak in the product line at our Hayward service station.

I have notified the local agency of this release, and arranged for our investigation to be conducted by Converse Environmental Consultants.

The financial impact of this leak cannot be determined at this point. I will keep you apprised as this project progresses.

MEB/bas

cc: Jim Pryor
Sharon Stout

Converse Environmental Consultants California

101 Howard Street, Suite A
San Francisco, California 94105

Telephone 415 543-7295



June 11, 1987
86-44-361-03

Mr. Greg Zentner
Regional Water Quality Control Board
1111 Jackson Street
Oakland, California

Subject: Site Assessment of E-Z Serve Station
525 West "A" Street
Hayward, California

Dear Mr. Zentner:

In accordance with our Phase II work with E-Z Serve of California at 525 West "A" Street in Hayward, California, we are doing a site assessment to determine the extent of the contaminated plume. Phase I work included an investigation of soil and groundwater contamination summarized in a report by Converse titled "Fuel Leak Assessment", dated March 13, 1987, a copy of which we forwarded to your office.

For Phase II, we plan to install three additional wells on the site, shown on the attached drawing as M1, M2 and M3. These 2-inch diameter wells will be approximately 30 feet in depth and are located on the property boundary. They will be used to better estimate the extent of the contamination plume off-site. The well elevations will be accurately surveyed and water levels measured to estimate the local hydraulic gradient of the site.

We plan to install the three monitoring wells June 18-19, 1987. Well permits have already been applied for through the Alameda County Flood Control and Water Conservation District. This current phase of work will be concluded on or about August 1, 1987. Data acquired from Phase II will be used to develop the Remedial Action Plan for the completion of site clean-up.

JUN 16 '87 12:24 CONVERSE NORTHERN CALIFORNIA

P.4

86-44-361-03
Mr. Greg Zentner
Regional Water Quality Control Board
June 11, 1987
Page Two

If you have any questions concerning the contents of this letter, please do not hesitate to call this office.

Very truly yours,

CONVERSE ENVIRONMENTAL CONSULTANTS CALIFORNIA

Muriel Jennings Waller
Project Manager

JLGL.13

Enclosure

cc: Mike Buckmaster, E-Z Serve of California
✓ Rafat A. Shahid, Alameda County Health Care Services
Agency

ALAMEDA COUNTY
HEALTH CARE SERVICE

DAVID J. KEARS AGENCY
~~XXXXXXXXXXXX~~ Agency Director



470-27th Street, Third Floor
Oakland, California 94612
(415)874-7237

0500

May 15, 1987

E.Z. Service of California
P.O. Box 3550
Ontario, CA 91761

Dear Sir:

We are in receipt of your report from Converse Environmental Consultant of California, concerning the fuel leak report for station No. 1235, 525 West "A" Street, Hayward.

The determination that soil contamination exceeds 1000 ppm on site requires under Sec. 66328(d), Title 22, California Administrative Code, that you submit a written plan of correction, which states the actions to be taken and the expected dates of completion. As stated in the report, RWQCB is to set target clean-up levels, please send us copies of any correspondence with RWQCB or other agencies involved with this site clean-up.

If you have any questions, please contact Edgar B. Howell, III, Senior Hazardous Materials Specialist, at (415) 874-7237.

Sincerely,

Rafat A. Shahid

Rafat A. Shahid, Chief,
Hazardous Materials Program

RAS:mnc

cc: John D. Gallinatti, CECC
Dwight Hoenig, DOHS
RWQCB
Eden Consolidated Fire District
Jerry Winn, Dir. Dept. of Environmental Health

*Received 5/21
Read 5/26*

X

July 1, 1988
86-44-361-03



Mr. Michael Buckmaster
Manager of Technical Services
E-Z Serve of California
316 South Bon View Avenue
Ontario, California 91761

Subject: Completion Report for Phase II Investigation
E-Z Serve Station
Hayward, California

Dear Mr. Buckmaster:

Enclosed is the Completion Report for Phase II Investigation of the E-Z Serve site in Hayward, California. This investigation was conducted under the direction of Mr. John Gallinatti, California Registered Geologist. Unfortunately, Mr. Gallinatti has left Converse, causing the delay in completing this report. As of this date, I have taken over as California Registered Geologist for the project, and I am fully informed of site conditions. In this role, I can assist Muriel J. Waller in advising you on regulatory negotiations and technical options for further work which may be required at this site.

Attached is a summary of regulatory requirements to anticipate for this site. In reviewing this case, I conclude you will need to continue investigations and undertake certain soil/groundwater clean-up at this site. The extent, schedule and cost of these activities will be negotiable with regulatory agencies of jurisdiction. These negotiations should begin as soon as convenient to the parties involved.

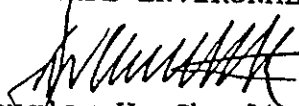
I would like to meet you to discuss this case at your earliest convenience. I will call you the week of July 4, 1988, to set up this meeting.

86-44-361-03
Mr. Michael Buckmaster
E-Z Serve of California
July 1, 1988
Page 2

My apologies for the delays in getting this report to you,
but I personally assure you that future work on this project
is completed in a timely fashion.

Very truly yours,

CONVERSE ENVIRONMENTAL CONSULTANTS CALIFORNIA


Douglas W. Charlton
Vice President

DWC:ald

Enclosures

SUMMARY OF GENERAL REQUIREMENTS

Bay Area Regional Water Quality Control Board Guidelines for Addressing Fuel Leaks (1985)

GENERAL

1. Estimate the quantity leaked to the environment

Comment: Inestimable based on available historic and physical information.

PROBLEM ASSESSMENT

1. Define the lateral and vertical extent of soil contamination.

Comment: Actionable soil contamination appears restricted to the area near boring B-2.

2. Define the lateral and vertical extent (zero line) of groundwater contamination.

Comment: Groundwater contamination exists in all 6 wells drilled to date, all of which are onsite. The contamination probably extends offsite, requiring further investigation.

3. Define the depth to second groundwater.

Comment: There is not reason to proceed with this level of investigation at this time.

4. Prepare a Remediation Plan which will describe technically and economically feasible technologies for cleaning up soil and ground water, including projected clean-up levels, costs, schedules and activities for each proposed technology.

Comment: A Draft Remediation Plan will be prepared for review and discussion with EZ-Serve, with a deliverable date to EZ-Serve of July 29, 1988.

HARKEN
MARKETING

August 7, 1990

Ms. Pamela Evans
Hazardous Materials Specialist
Alameda County Health Care
Services Agency
P. O. Box 28924
Oakland, CA 94612

RE: HMC LOCATION #100877
525 WEST A STREET
HAYWARD, CA

Dear Ms. Evans:

In response to your July 12, 1990 letter regarding the subject location, Harken Marketing Company is in the process of preparing an environmental assessment plan at the site and currently proposes the following:

- 1) Line the existing tank excavation with visqueen and replace the contaminated soil back into the hole until the extent of additional soil contamination can be determined and a remediation plan developed.
- 2) Remove the underground piping and sample in appropriate areas to determine the presence, if any, of additional soil contamination.
- 3) Sample and laboratory analyze the six monitoring wells currently installed on site to determine the impact to the existing groundwater.

Harken Marketing is currently completing plans for a new tank installation at the site and will forward them to your department for review prior to any installation work proceeds.

Please contact me should you have any further questions.

Sincerely,



Paul R. Martin
Environmental Director

PRM/cad

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



RECEIVED DEC - 3 1990
Stout

November 27, 1990

Chuck Collins
Harken Marketing
P.O. Box 5657
Riverside CA 92517-9933

DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

#100817

RE: Contamination at BP Station, 525 W. A St., Hayward CA 94541

Dear Mr. Collins:

I have reviewed the analysis results of the soil samples taken August 24 from the former pump and piping area at the A St. site. Fuel constituent levels (TPHg, TPHd, and BTEX) found in this area and previously in the former tank pit require further investigation and remediation. As was stated in the last correspondence from this office, you are required to submit a workplan no later than January 15, 1991, that addresses the following issues:

1. How contaminated stockpiled soil will be remediated and/or disposed of
2. The manner in which the full lateral and vertical extent of contamination will be defined and remediated
3. Hydrogeologic conditions and the manner in which possible groundwater contamination, on and offsite, will be investigated

In your last correspondence, you stated your intention to sample the six monitoring wells at the site. Please supply this office with the geologist's/engineer's report of the well locations and well construction data, as well as the complete sampling and analysis history for each well. This information must be submitted no later than December 15, 1990. Also required by that date are copies of the Hazardous Waste Manifests for the removed tanks signed by a representative of the treatment facility that received them. You may contact me with any questions at (415)271-4320.

Sincerely,

Pamela J. Evans

Pamela J. Evans
Hazardous Materials Specialist

*Call John Johns
at Triple J,*

c: Richard Hiett, Regional Water Quality Control Board

JUN

TRIPLE J CONSTRUCTION

February 27, 1992

E-Z SERVE
10700 North Freeway
Suite 500
Houston, Texas 77037
ATTENTION: Paul or Amy

JOBSITE: #100877
525 West 'A' Street
Hayward, California 94541

INVOICE DATE: February 25, 1992
INVOICE NUMBER: #92-257
PURCHASE ORDER: #Verbal

Backfill tank hole. Remove some existing material in excavation. Re-compact bring in backfill material. Place and compact. Grade to existing and clean site up. Leave fence on site.

BACKFILL MATERIAL 406 @ 8.11-----	\$3,292.66
SALES TAX 7.25%-----	238.72
SUB-LET EQUIPMENT-----	1,650.00
15% MARK-UP-----	778.00
LABOR 2 MEN @ 2 DAYS-----	770.00
TOTAL AMOUNT NOW DUE-----	<u>\$6,729.38</u>

Thank you,

John J Jones
TRIPLE J CONSTRUCTION

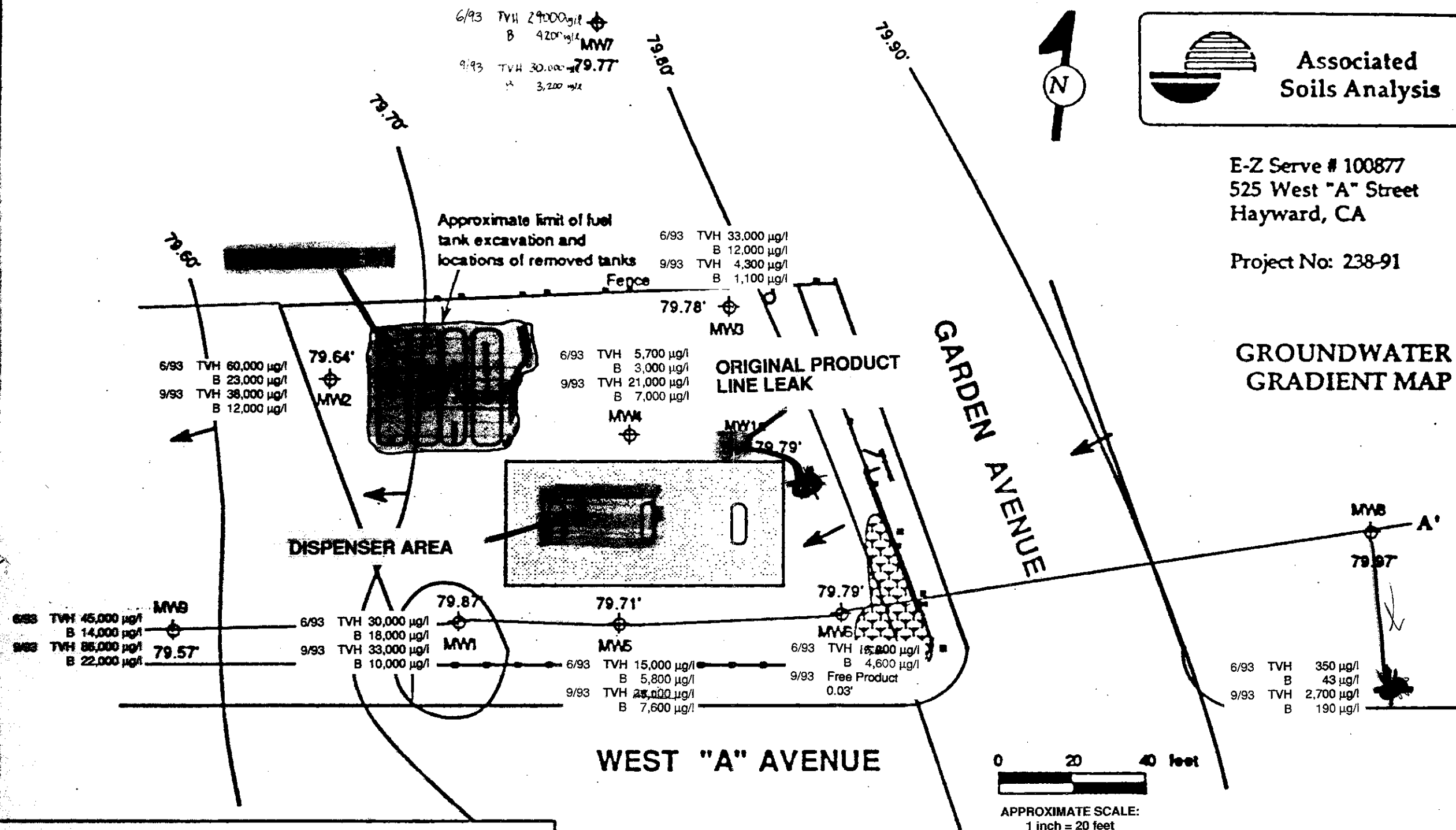
JOHN J. JONES
1232 Fairview Ave.
Tulare, CA 93274 (209) 686-6203
License A569970



E-Z Serve # 100877
525 West "A" Street
Hayward, CA

Project No: 238-91

GROUNDWATER GRADIENT MAP



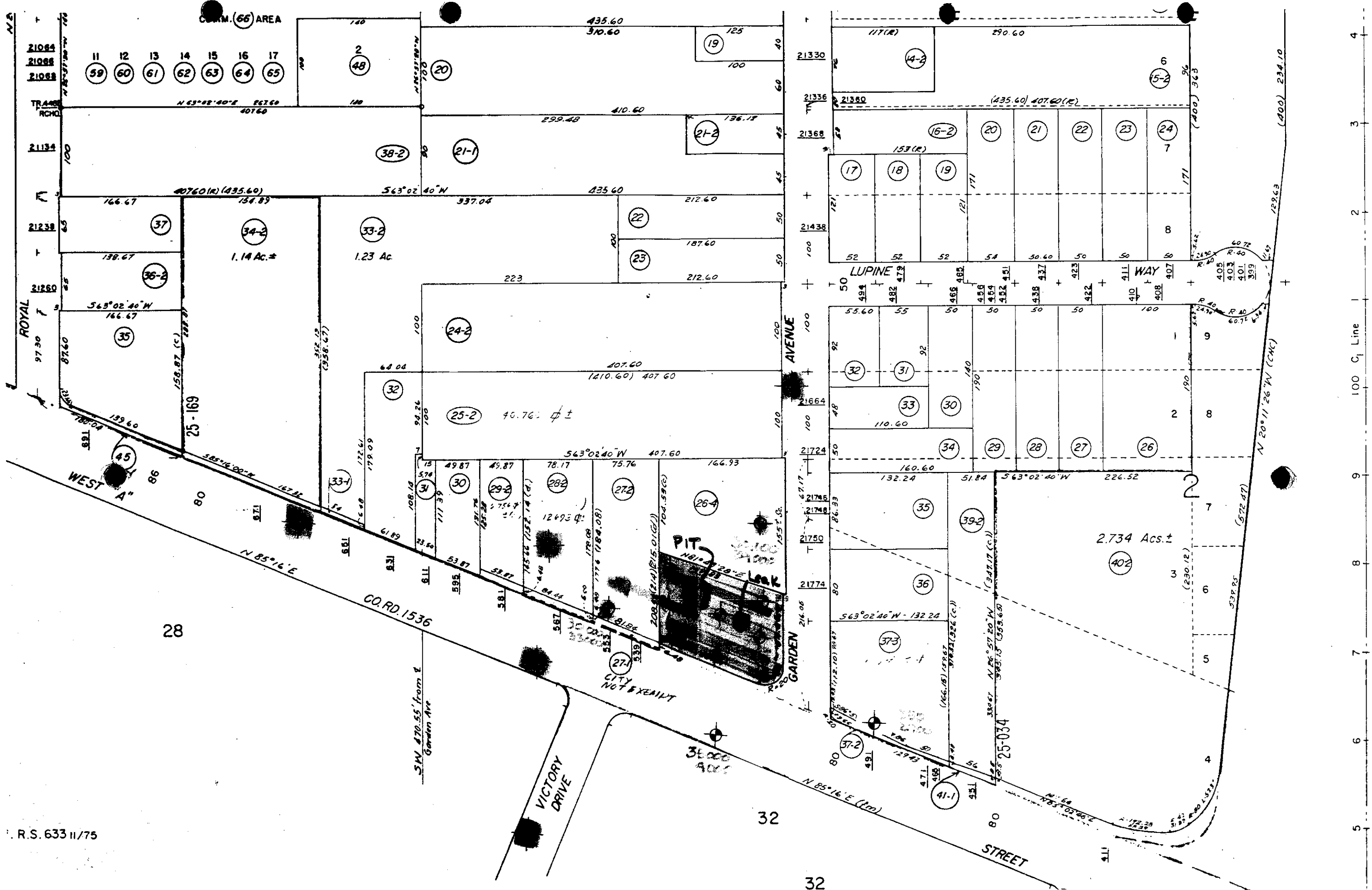
EXPLANATION

- MW1** Approximate location of groundwater monitoring wells installed by Associated Soils Analysis, Inc. (1-6 drilled on January 28-29, 1992; 7-10 drilled June 21-22, 1993)
- Approximate location of groundwater monitoring wells destroyed or reconstructed by Associated Soils Analysis, Inc. on January 28, 1992
- Approximate location of partially removed fuel islands beneath canopy

EXPLANATION (Continued)

- A — A'** Line of cross section
- Line of equal groundwater elevation and direction of flow

MW10
79.72'
 6/93 TVH 35,000 µg/l
 B 980 µg/l
 9/93 TVH 4,000 µg/l
 B 230 µg/l



RODI-POLLOCK

JOHN D. CAHILL
JOHN D. PETTKER
THOMAS P. PHILLIPS
CHRISTOPHER ROLIN
WILLIAM R. CHRISTIAN
HENRY P. PRAMOV, JR.
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JOHN S. CHA
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SCOTT E. ADAMSON
ROBYN K. JOHNSON

RODI, POLLOCK, PETTKER, GALBRAITH & PHILLIPS
A LAW CORPORATION

801 SOUTH GRAND AVENUE
SUITE 400
LOS ANGELES, CALIFORNIA 90017
TEL: [213] 895-4900

ALCO
HIAZMAT
94 JUL -6 PM 1:39

KARL B. RODI [1908-1982]
DANIEL C. BOND [1942-1977]
PAUL E. SCHWAB [1896-1973]

OF COUNSEL
JOHN P. POLLOCK
JAMES M. GALBRAITH
M. GLENN GILBERT
MARGARET ROSENTHAL

TELECOPIERS
[213] 895-4921
[213] 895-4922
[213] 895-4750

OUR FILE NUMBER

3311-E9

June 27, 1994

Juliette Shin
Alameda County Health Care Department
800 Swan Way, Room 200
Oakland, California 94621

Re: 525 West "A" Street
Hayward, California
Pre-Enforcement Review Panel

Dear Ms. Shin:

It was a pleasure meeting you last Tuesday at the pre-enforcement review panel.

Enclosed are copies of the following documents to supplement my letter to you of June 21, 1994:

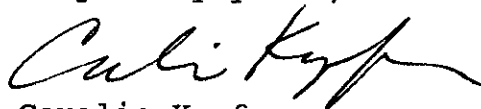
- Application for building permit filed October 14, 1977 on behalf of Autotronics. Paragraph 6D, although difficult to read, indicates that alteration and repair work to be performed was to replace gasoline dispensing and system, modify existing pump island and a booth and install a 10,000 gallon underground diesel tank.
- Application for building permit dated February 25, 1981 filed by Petroleum Engineering to replace three product lines.

Powerine has no knowledge whether the alterations described in these applications for building permit were actually constructed. Both applications were made after Powerine transferred its interest in the lease and the equipment to Autotronics in September 1977.

Juliette Shin
June 27, 1994
Page 2

Please let me know if the information we have provided concerning Powerine's involvement at the site is not sufficient for your purposes.

Very truly yours,



Coralie Kupfer

CK:sm
Enclosures
H:\W\CCK\POWERINE\SHIN02.LTR

cc: John F. Cermak, Jr., Esq.

(Also, may need another copy)
of VLR

REVIEW PANEL MEETING 6/21/94

**E-Z Serve
525 West "A" Street
Hayward, CA**

Refer to attached sheet for attendance.

Juliet Shin summarized the history of investigations at the site. Required investigations were outlined: 1) Complete delineation of ground water contaminant plume; 2) Containment of the portion of the contaminant plume off site; 3) Interim remediation; and 4) utility lines acting as a potential conduit for migration.

Powerine submitted copies of documents showing history of Powerine's involvement at site. According to Gretchen Stroud, Autotronics, and Corlie Kupfer, Powerine, Autotronics took over the lease from Powerine in 1977. In 1985, Autotronics transferred lease to E-Z Serve. In 1987, E-Z Serve signed a 15-year lease for site. However, they discontinued operations in 1989, apparently due to the earthquake, according to Mr. Brian Cobb, E-Z Serve, and Gene Cain, E-Z Serve's attorney.

According to Mr. Cain, inventory reconciliation tests conducted in November 1986 identified product loss of 4,000-gallons regular gasoline. A leak was identified at the product piping elbow. Subsequently, when tanks still failed tightness tests, the tanks were removed and investigations were implemented at the site. **Due to the fact that the County has no files on the site prior to the March 1987 Converse Report, Juliet Shin requested that Mr. Cobb and Mr. Cain submit any information they may have on leaks and investigations at the site prior to March 1987.**

According to Jonathan Redding, attorney for property owners, the tanks were upgraded in 1977 and a diesel UST was installed. According to his records, all three gasoline product pipelines were repaired in February 1981, although no observations of leaks were recorded. Mr. Redding stated that no maintenance or inventory records prior to 1986 could be located.

According to Bill Rudolph, Subsurface Consultants, the past pipeline leak occurred near the existing monitoring well MW1a. Mr. Rudolph stated that Converse installed six monitoring wells on the site in 1988. This office only has records of Converse installing three monitoring wells in 1987. **This office requested that Subsurface Consultants submit the information on the**

installation of six monitoring wells by Converse in 1988.

Mr. Rudolph also stated that the formerly excavated soil was backfilled into the tank pits by Triple J in February 1992. **This office requested that information on this backfilling job be submitted to this office.** Mr. Redding stated that this site lies within Alameda County's recharge area.

Mr. Gil Jensen, District Attorney, stated that all the requested information shall be submitted within 30 days of the date of this letter, so that all available information can be assessed before the RWQCB writes its letter. This information includes, but is not limited to:

- o Current corporate structure of E-Z Serve
- o Documents outlining the nature of the transactions between Powerine, Autotronics, and E-Z Serve.
- o Any information on records of any potential observed releases when the various parties took over the lease or when tanks were upgraded, replaced, etc. in past.
- o 1988 Converse well installation (of six wells)
- o Info on backfilling by Triple J
- o Any information on site prior to March 1987 Converse Report

6/21/94

SIT W-A ST.

G.I. Jones	Ala Co DA	(570) 568-9291
Tom Hindemuth	Hydro-Environmental	(510) 521-2684
John Turney	HYDRO-ENVIRONMENTAL	(510) 521-2684
Brian Cobb	E-Z Serve	(713) 684-4380
Coralie Kupter	Powerline	(213) 895-4900
Gretchen Strand	Cooley Godward	(415) 843-5036
	(representing Autotronic Systems, Inc.)	
Thomas Peacock	Alameda Co.	(510) 271-4530
Kevin Gares	RWQCB	(510) 286-0435
JULIET SHIN	Alameda Cty	(510) 271-4530
Robert Campbell	Fitzgerald Abbott & Bradsby	(510) 451-3300
Jonathan W. Redding	"	"
F. William Rudolph	Subsurface Consultants, Inc.	510-268-0461
Bernieann Alexander	"	" " " " " "
Gene Cain	Cain & Cain	
	Fac E-Z Serve	510-932-0893

June 21, 1994

7-278

Ms. Juliet Shin
Alameda County Department of Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

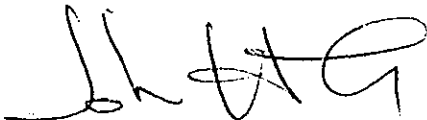
Subj: E-Z Serve Site No. 100877, 525 West A Street, Hayward

Dear Ms. Shin:

On behalf of E-Z Serve, Inc., Hydro-Environmental Technologies, Inc. (HETI) is pleased to present the enclosed *Work Plan for Additional Investigation*. The plan proposes the use of temporary ground water probes to conduct a ground water quality survey prior to installing additional monitoring wells. These wells would be located to define the extent of hydrocarbons in the ground water surrounding the subject site. Following installation of the ground water monitoring wells and delineation of the hydrocarbon plume, containment will be pursued.

If you have any questions, please call me at (510) 521-2684.

Sincerely,
HYDRO-ENVIRONMENTAL TECHNOLOGIES, INC.



John H. Turney, P.E.
Senior Engineer

cc. Mr. Brian Cobb, E-Z Serve
Mr. John Reaves
Ms. Monica Del'Osso

RODI·POLLOCK

JOHN D. CAHILL
JOHN D. PETTKER
THOMAS P. PHILLIPS
CHRISTOPHER ROLIN
WILLIAM R. CHRISTIAN
HENRY P. PRAMOV, JR.
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TELECOPIERS
[213] 895-4921
[213] 895-4922
[213] 895-4750

OUR FILE NUMBER

June 21, 1994

3311-E9

HAND-DELIVERED

Juliette Shin
Alameda County Health Care Department
800 Swan Way, Room 200
Oakland, California 94621

Re: 525 West "A" Street
Hayward, California
Pre-Enforcement Review Panel

Dear Ms. Shin:

As you know, this firm represents Powerine Oil Company ("Powerine") in connection with the real property located at 525 West "A" Street ("the Property"). This purpose of this letter is to provide Alameda County Health Care Department with information about Powerine's past association with the Property in connection with the pre-enforcement review now being conducted by the Department for the Property. The following outline of events may help clarify Powerine's interest in the Property at the time of the release of petroleum hydrocarbons in 1986.

1. In December 1966 Powerine entered into a lease for the Property with Levonard and Margaret Thomsen ("the Thomsens"). By its terms, the lease became effective February 1, 1967 and terminated January 31, 1987. A copy of the 1966 lease is enclosed.
2. On September 16, 1977, to settle pending litigation¹, Powerine assigned its interest in the 1966 lease to Autotronics Systems, Inc. ("Autotronics"). Enclosed is a copy of the Settlement Agreement between Powerine and Autotronics. Exhibit A-1 to the Settlement Agreement is a copy of the assignment of the 1966 Thomsen lease.

¹ E-Z Serve and the Thomsens were not parties to this litigation.

Juliette Shin
June 20, 1994
Page 2

Exhibit Q-1 to the Settlement Agreement is a copy of the Quitclaim Deed which transfers all of Powerine's rights, title and interest to improvements at the Property (including the underground storage tanks and piping) to Autotronics.

3. On December 15, 1977, the Thomsens sent a "Notice of Termination" of the 1966 lease to Powerine which terminated the lease relationships between Powerine and the Thomsens, and Powerine and Autotronics. A copy of the notice is enclosed.
4. On January 16, 1985, Autotronics assigned its interest in the 1966 lease to E-Z Serve Petroleum Marketing Company of California ("E-Z Serve"). Enclosed is a copy of the assignment and the bill of sale of the same date.
5. On January 20, 1987, the Thomsens and E-Z Serve entered into a Lease Agreement effective February 1, 1987. Attached is a copy of the 1987 lease which is still in effect. The Thomsens have indicated that they may terminate this lease in the near future.

As you know, the responsibility for release of petroleum hydrocarbons at the Property is currently the subject of civil litigation. Enclosed for your information is a copy of the First Amended Verified Complaint filed by the Thomsens in Superior Court in the County of Alameda, Case No. H-169600-4 which sets forth the Thomsens' claims for relief. Also enclosed is a copy of Powerine's first amended answer to the complaint which responds to the Thomsens' allegations. No trial date has been set by the Court.

We are of the opinion that Powerine is not responsible for and has no association with the events that resulted in the 1986 release of petroleum hydrocarbons or subsequent releases at the Property. This opinion is based on the facts outlined herein that (i) Powerine assigned all of its rights to the 1966 lease to Autotronics in 1977; (ii) Powerine quit claimed its interest in the underground storage tanks and piping to Autotronics in 1977; (iii) the Thomsens terminated the 1966 lease; (iv) clean up of the site is the responsibility of E-Z Serve, the Thomsens and/or Autotronics; and (v) Powerine had no contact with the site after the assignment of the 1966 lease in 1977.

Juliette Shin
June 20, 1994
Page 3

If you have any questions about the enclosed documentation or Powerine's association with the Property, please do not hesitate to contact me. We will be happy to provide additional information supporting the statements in this letter.

Very truly yours,



Coralie Kupfer

CK:dt

Enclosures

cc: Jonathan W. Redding, Esq. (w/o enclosures)
Gene Cain, Esq. (w/o enclosures)
Gretchen R. Stroud, Esq. (w/o enclosures)

H:\W\CK\POWERINE\SHIN01.LTR

Law Office of

CARL B. LEVERENZ

515 WALL STREET

OAKLAND, CALIFORNIA 94612

TELEPHONE (415) 893-1821

LEASE AGREEMENT

THIS LEASE, made between LEVONARD A. THOMSEN and MARGARET S. THOMSEN, husband and wife, hereinafter referred to as Lessors, and E-Z SERVE OF CALIFORNIA, INC., a California corporation, hereinafter referred to as Lessee, provides as follows:

RECITALS

1. Lessors are the owners of the premises described below and desire to lease the premises to Lessee.
2. Lessee desires to lease the premises for the purpose of conducting a retail gasoline and convenience store business.
3. The parties desire to enter into a lease agreement defining their rights, duties and liabilities relating to the premises.

In consideration of the mutual covenants contained herein, the parties agree as follows:

SECTION ONE

SUBJECT AND PURPOSE

Lessors leases the real property located in the County of Alameda, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, to Lessee, for Lessee's use as a retail gasoline and convenience store business.

Law Office of
CARL B. LEVERENZ
515 WALL STREET
CHICO, CALIFORNIA 95928
TELEPHONE (916) 893 1821

SECTION TWO

TERM AND RENT

Lessors lease the above premises to Lessee for a term of fifteen (15) years, commencing February 1, 1987, and terminating on January 31, 2002, or sooner, as provided herein, at the initial rental of One Thousand One Hundred Ten Dollars (\$1,110.00) per month, in advance, on the first day of each month for that month's rental. Thereafter, said monthly rental shall be adjusted every two (2) years on the anniversary date of this lease by the Consumer Price Index for the San Francisco Bay area for the previous two (2) years. Said adjustment shall not result in an increase in rental in excess of five percent (5%) per year. All rental payments shall be made to Lessors at the address of RT. 1- Box 72
WILLOW⁹⁵⁹⁵⁸, California, or at such other locations as specified by Lessors.

SECTION THREE

ADDITIONAL RENT

All taxes, charges, costs and expenses that Lessee assumes or agrees to pay hereunder, together with all interest and penalties that may accrue thereon in the event of the failure of Lessee to pay those items, and all other damages, costs, expenses, and sums that Lessors may suffer or incur, or that may become due by reason of any default of Lessee or failure by Lessee to comply with the terms and conditions of this lease, shall be deemed to be additional rent, and, in the

Law Office of
CARL R. LEVERENZ
515 WALL STREET

CHICO, CALIFORNIA 95928

TELEPHONE (916) 895 1621

1 event of nonpayment, Lessors shall have all the rights and
2 remedies as herein provided for failure to pay rent, in-
3 cluding an award of reasonable attorney's fees and costs.
4

5 SECTION FOUR

6 ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

7 A. All alterations, additions and improvements on or
8 in the demised premises at the commencement of the term, or
9 that may be erected or installed during the term, shall become
10 part of the demised premises and the sole property of Lessors,
11 except that all moveable trade fixtures installed by Lessee
12 shall be and remain the property of Lessee.

13 B. Lessee may, at its own expense, make any alterations,
14 additions or improvements in and to the demised premises as
15 long as prior written approval of the Lessors is obtained.

16 SECTION FIVE

17 REPAIRS

18 Lessee shall, at all times during this lease, and at
19 its own cost and expense, repair, replace and maintain, in
20 a good, safe and substantial condition, all improvements,
21 additions and alterations on the demised premises, and shall
22 use all reasonable precaution to prevent waste, damage or
23 injury to the demised premises Lessee shall be responsible
24 for all windows, awnings and normal maintenance thereof.

25 SECTION SIX

26 TAXES

Lessee shall be responsible for all real property taxes

Law Office of
CARL B. LEVERENZ
515 WALL STREET
CHICAGO, CALIFORNIA 95928
TELEPHONE (415) 435-1621

1 and any other taxes levied on the property.

2 SECTION SEVEN

3 UTILITIES

4 All applications and connections for necessary utility
5 services on the demised premises shall be made in the name
6 of the Lessee only, and Lessee shall be solely liable for
7 such utility charges as they become due.

8 SECTION EIGHT

9 USE

10 Lessors are leasing the premises to Lessee for the
11 specific purpose of a retail gasoline and convenience store
12 business. Any other use by Lessee, consistent with the
13 zoning of said property, is acceptable to Lessors.

14 SECTION NINE

15 INSURANCE

16 During the term of the lease, Lessee shall obtain and
17 maintain, at their expense, the following types and amounts
18 of insurance:

19 (a) Fire Insurance:

20 Lessee shall be responsible for fire insurance on the
21 premises, with Lessors named as a loss payee, and any other
22 coverages on Lessee's personal property, and shall maintain
23 fire insurance thereon.

24 (b) Personal Injury and Property Damage Insurance:

25 Lessee, in accordance with Section Eleven, shall
26 maintain personal injury and property damage insurance in

Law Office of
CARL B. LEVERENZ
515 WALL STREET
CHICO, CALIFORNIA 95928
TELEPHONE (916) 895 1821

1 the amount of one million dollars, with Lessors named as an
2 additional insured.

3 SECTION TEN

4 UNLAWFUL OR DANGEROUS ACTIVITY

5 Lessee shall neither use nor occupy the demised premises,
6 or any part thereof, for any unlawful, disreputable, or ultra-
7 hazardous business purpose, nor operate or conduct its business
8 in a manner constituting a nuisance of any kind. Lessee
9 shall immediately, on discovery of any unlawful, disreputable
10 or ultrahazardous use, take action to halt such activity.

11 SECTION ELEVEN

12 INDEMNITY

13 Lessee shall indemnify Lessors against all expenses,
14 liabilities and claims of every kind, including reasonable
15 attorney's fees, by or on behalf of any person or entity
16 arising out of either (1) a failure by Lessee to perform any
17 of the terms or conditions of this lease; (2) any injury or
18 damage happening on or about the demised premises caused by
19 Lessee; (3) failure by Lessee to comply with any law of any
20 governmental authority; or (4) any mechanic's lien or security
21 interest filed against the demised premises or equipment,
22 materials, or alterations of buildings or improvements thereon
23 due to the conduct of Lessee.

24 In the event of a default of this lease, or in the event
25 any dispute concerning this lease arises between the parties,
26 the prevailing party in any legal action shall be entitled

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515 WALL STREET
CHICO, CALIFORNIA 95928
TEL. 871-1411 (248) 895-1427

1 to reasonable attorney's fees and costs.

2 SECTION TWELVE

3 DEFAULT OR BREACH

4 Each of the following events shall constitute a default
5 or breach of this lease by Lessee:

6 (1) If Lessee, or any successor or assignee of Lessee,
7 while in possession, shall file a petition in bankruptcy or
8 insolvency, or for reorganization under any bankruptcy act,
9 or shall voluntarily take advantage of any such act by answer
10 or otherwise, or shall make an assignment for the benefit of
11 creditors.

12 (2) If involuntary proceedings under any bankruptcy
13 law or insolvency act shall be instituted against Lessee, or
14 if a receiver or trustee shall be appointed of all or sub-
15 stantially all of the property of Lessee, and such proceedings
16 shall not be dismissed or the receivership or trusteeship
17 vacated within thirty (30) days after the institution or
18 appointment.

19 (3) If Lessee shall fail to pay Lessors any rent or
20 additional rent when the rent shall become due and shall not
21 make the payment within thirty (30) days after notice thereof
22 by Lessors to Lessee.

23 (4) If Lessee shall fail to perform or comply with any
24 of the conditions of this lease, and if the nonperformance
25 shall continue for a period of thirty (30) days after notice
26 thereof by Lessors to Lessee, or, if the performance cannot

1 be reasonably had within the thirty (30) day period, Lessee
2 shall not in good faith have commenced performance within
3 the thirty (30) day period and shall not diligently proceed
4 to completion of performance.

5 (5) If Lessee shall vacate or abandon the demised premises.

6 (6) If this lease, or the estate of Lessee hereunder,
7 shall be transferred to or shall pass to or devolve on any
8 other person or party, except in the manner herein permitted.

9 SECTION THIRTEEN

10 EFFECT OF DEFAULT

11 In the event of any default hereunder, as set forth in
12 Section Twelve, the rights of Lessors shall be as follows:

13 (1) Lessors shall have the right to cancel and terminate
14 this lease, as well as all of the right, title and interest
15 of Lessee hereunder, by giving to Lessee not less than thirty
16 (30) days' notice of the cancellation and termination. On
17 expiration of the time fixed in the notice, this lease, and
18 the right, title and interest of Lessee hereunder, shall
19 terminate in the same manner and with the same force and
20 effect, except as to Lessee's liability, as if the date fixed
21 in the notice of cancellation and termination were the end
22 of the term herein originally determined.

23 (2) Lessors may elect, but shall not be obligated, to
24 make any payment required of Lessee herein or comply with
25 any agreement, term, or condition required hereby to be per-
26 formed by Lessee, and Lessors shall have the right to enter

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Carl B. Leverniz
515 WALL STREET
CHICO, CALIFORNIA 95928
TELEPHONE (916) 893 1821

Law Office of
CARL B. LEVERENZ
515 WALL STREET
CLIFCO, CALIFORNIA 95928
TELEPHONE (916) 895 1821

1 the demised premises for the purpose of correcting or remedy-
2 ing any such default and to remain until the default has
3 been corrected or remedied, but any expenditure for the
4 correction by Lessors shall not be deemed to waive or release
5 the default of Lessee, or the right of Lessors to take any
6 action as may be otherwise permissible under this lease in
7 the case of any default.

8 (3) Lessors may re-enter the premises immediately and
9 remove the property and personnel of Lessee, and store the
10 property in a public warehouse or at a place selected by
11 Lessors, at the expense of Lessee. After re-entry, Lessors
12 may terminate the lease on giving thirty (30) days' written
13 notice of termination to Lessee. Without the notice, re-
14 entry will not terminate the lease. On termination, Lessors
15 may recover from Lessee all damages proximately resulting
16 from the breach, including the cost of recovering the premises,
17 and the worth of the balance of this lease over the reasonable
18 rental value of the premises for the remainder of the lease
19 term, which sum shall be immediately due Lessors from Lessee.

20 (4) After re-entry, Lessors may relet the premises, or
21 any part thereof, for any term, without terminating the lease,
22 at the rent and on the terms as Lessors may choose. Lessors
23 may make alterations and repairs to the premises. The duties
24 and liabilities of the parties, if the premises are relet as
25 provided herein, shall be as follows:

26 (a) In addition to Lessee's liability to Lessors
for breach of the lease, Lessee shall be liable

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515 WALL STREET

CHICO, CALIFORNIA 95928

TELEPHONE (916) 895 1821

1 for all expenses of the reletting, for the altera-
2 tions and repairs made, and for the difference
3 between the rent received by Lessors under the new
4 lease agreement and the rent installments that are
5 due for the same period under this lease.

6 (b) Lessors shall have the right, but shall not be
7 required, to apply the rent received from re-
8 letting the premises (1) to reduce the indebted-
9 ness of Lessee to Lessors under the lease, not
10 including indebtedness for rent; (2) to expenses
11 of the reletting and alterations and repairs made;
12 (3) to rent due under this lease; or (4) to
13 payment of future rent under this lease as it
14 becomes due.

15 If the new Lessee does not pay a rent installment
16 promptly to Lessors, and the rent installment has been
17 credited in advance of payment to the indebtedness of Lessee
18 other than rent, or if rentals from the new lessee have been
19 otherwise applied by Lessors as provided for herein, and
20 during any rent installment period are less than the rent
21 payable for the corresponding installment period under this
22 lease, Lessee shall pay Lessors the deficiency, separately
23 for each rent installment deficiency period, and before the
24 end of that period. Lessors may at any time after a reletting,
25 terminate the lease for the breach on which Lessors had
26 based the re-entry and subsequently relet the premises.

(5) After re-entry, Lessors may procure the appoint-
ment of a receiver to take possession and collect rents and
profits of the business of Lessee, and if necessary, to
collect the rents and profits. The receiver may carry on
the business of Lessee and take possession of the personal
property used in the business of Lessee, including inventory,

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1 trade fixtures, and furnishings, and use them in the business
2 without compensating Lessee. Proceedings for appointment of
3 a receiver by Lessors, or the appointment of a receiver and
4 the conduct of the business of Lessee by the receiver, shall
5 not terminate and forfeit this lease unless Lessors has
6 given written notice to Lessee of termination, as provided
7 herein.

8 SECTION FOURTEEN

9 DESTRUCTION OF PREMISES

10 In the event of a partial destruction of the premises
11 during the term, from any cause, Lessors shall forthwith
12 repair the same, provided the repairs can be made within
13 sixty (60) days under the laws and regulations of applicable
14 governmental authorities. Any partial destruction shall
15 neither annul nor void this lease, except that Lessee shall
16 be entitled to a proportionate reduction of rent while the
17 repairs are being made, any proportionate reduction being
18 based upon the extent to which the making of repairs shall
19 interfere with the business carried on by Lessee in the
20 premises.

21 SECTION FIFTEEN

22 ACCESS TO PREMISES

23 Lessee shall permit Lessors, or their agents, to enter
24 the demised premises at all reasonable hours to inspect the
25 premises or make repairs that Lessee may neglect or refuse
26 to make in accordance with the provisions of this lease, and

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1 also to show the premises to prospective buyers. At any
2 time within one (1) year prior to expiration of the term,
3 Lessors may show the premises to persons wishing to rent the
4 premises at reasonable times and with approval of Lessee.

5 SECTION SIXTEEN

6 EASEMENTS, AGREEMENTS, OR ENCUMBRANCES

7 The parties shall be bound by all existing easements,
8 agreements and encumbrances of record relating to the
9 demised premises, and Lessors shall not be liable to Lessee
10 for any damages resulting from any action taken by a holder
11 of an interest pursuant to the rights of that holder there-
12 under.

13 SECTION SEVENTEEN

14 QUIET ENJOYMENT

15 Lessors warrants that Lessee shall be granted peaceable
16 and quiet enjoyment of the demised premises free from any
17 eviction or interference by Lessors if Lessee pays the rent
18 and other charges provided herein, and otherwise fully and
19 punctually performs the terms and conditions imposed on
20 Lessee.

21 SECTION EIGHTEEN

22 LIABILITY OF LESSOR

23 Lessee shall be in exclusive control and possession of
24 the demised premises, and Lessors shall not be liable for
25 any injury or damages to any property or to any person on or
26 about the demised premises, nor for any injury or damage to

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1 any property of Lessee. The provisions herein permitting
2 Lessors to enter and inspect the demised premises are made
3 to insure that Lessee is in compliance with the terms and
4 conditions hereof and make repairs that Lessee has failed
5 to make. Lessors shall not be liable to Lessee for any
6 entry on the premises for inspection purposes.

7 SECTION NINETEEN

8 REPRESENTATIONS BY LESSOR

9 At the commencement of the term, Lessee shall accept
10 the property and improvements, and any equipment, in their
11 existing condition and state of repair, and Lessee agrees
12 that no representations, statements, or warranties, express
13 or implied, have been made by or on behalf of Lessors in
14 respect thereto, except as contained in the provisions of
15 this Lease, and Lessors shall, in no event, be liable for
16 any latent defects.

17 SECTION TWENTY

18 WAIVERS

19 The failure of Lessors to insist on a strict performance
20 of any of the terms and conditions hereof shall be deemed a
21 waiver of the rights or remedies that Lessors may have
22 regarding that specific instance only, and shall not be
23 deemed a waiver of any subsequent breach or default in any
24 terms and conditions.

25 ***

26 ***

1 SECTION TWENTY-ONE

2 NOTICE

3 All notices to be given with respect to this lease
4 shall be in writing. Each notice shall be sent by registered
5 or certified mail, postage prepaid, and return receipt
6 requested, to the party to be notified at the address set
7 forth herein, or at such other address as either party may
8 from time to time designate in writing.

9 Every notice shall be deemed to have been given at the
10 time it shall be deposited in the United States mails in the
11 manner prescribed herein. Nothing contained herein shall be
12 construed to preclude personal service of any notice in the
13 manner prescribed for personal service of a summons or other
14 legal process.

15 SECTION TWENTY-TWO

16 ASSIGNMENT, MORTGAGE, OR SUBLEASE

17 Neither Lessee, nor its successors or assigns, shall
18 assign, mortgage, pledge, or encumber this lease, or sublet
19 the demised premises, in whole or in part, nor shall this
20 lease be assigned or transferred by operation of law,
21 without the prior consent, in writing, of Lessors, in each
22 instance. If this lease is assigned or transferred, or if
23 all or any part of the demised premises is sublet, or
24 occupied by anybody other than Lessee, Lessors may, after
25 default by Lessee, collect rent from the assignee or
26 transferee, and apply the net amount collected to the rent

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1 reserved herein, but no such assignment, subletting,
2 occupancy, or collection shall be deemed a waiver of any
3 agreement or condition hereof, or the acceptance of the
4 assignee, transferee, subtenant or occupant as lessee.
5 Lessee shall continue to be liable hereunder in accordance
6 with the terms and conditions of this lease and shall not be
7 released from the performance of the terms and conditions
8 hereof. The consent by Lessors to an assignment, mortgage,
9 pledge or transfer shall not be construed to relieve Lessee
10 from obtaining the express written consent of Lessors to any
11 future transfer of interest.

12 SECTION TWENTY-THREE

13 OPTION TO RENEW

14 Lessors grant to Lessee an option to renew this lease
15 for a FIVE (5) year period after expiration of the original
16 term of this lease, at a rental continuing on the same basis
17 as the rental provided for in this lease, with all other
18 terms and conditions of the renewal lease to be the same as
19 those contained herein. To exercise this option, Lessee
20 must give Lessors written notice of the intention to do so
21 at least three (3) months before this lease expires.

22 SECTION TWENTY-FOUR

23 SURRENDER OF POSSESSION

24 Lessee shall, on the last day of the term, or on
25 earlier termination and forfeiture of the lease, peaceably
26 and quietly surrender and deliver the demised premises to

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CHICO, CALIFORNIA 95928
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1 Lessors, free of subtenancies, including all buildings, if
2 any, additions, and improvements constructed or placed
3 thereon by Lessee, except moveable trade fixtures, all in
4 good condition and repair. Any trade fixtures or personal
5 property not used in connection with the operation of the
6 demised premises and belonging to Lessee, if not removed at
7 the termination or default, and if Lessors shall so elect,
8 shall be deemed abandoned and become the property of Lessors,
9 without any payment or offset therefor. Lessors may remove
10 such fixtures or property from the demised premises and
11 store them at the risk and expense of Lessee, if Lessors
12 shall not so elect. Lessee shall repair and restore all
13 damage to the demised premises caused by the removal of
14 equipment, trade fixtures, and personal property.

15 SECTION TWENTY-FIVE

16 TOTAL AGREEMENT, APPLICABLE TO SUCCESSORS

17 This lease contains the entire agreement between the
18 parties and cannot be changed or terminated except by a
19 written instrument subsequently executed by the parties
20 hereto. This lease, and the terms and conditions hereof,
21 apply to and are binding upon the heirs, legal representa-
22 tives, successors, and assigns of both parties.

23 SECTION TWENTY-SIX

24 TIME OF THE ESSENCE

25 Time is of the essence in all provisions of this lease.

26 IN WITNESS WHEREOF, the parties have executed this

1 lease at Chico, California, this 20 day of JAN.
2 1987. 7157. L.S.

3 Levonard A. Thomsen
4 LEVONARD A. THOMSEN

5 Margaret S. Thomsen
6 MARGARET S. THOMSEN

7 Address:

8 Rt. 1- Box 72
9 WILLOWS, CA. 95988

10 LESSORS

11 E-Z SERVE OF CALIFORNIA, INC.,
12 a California corporation

13 By M. James Payer
14 Vice President

15 Address:

16 316 S. Bon View Avenue
17 Ontario, CA 91761

18 LESSEE

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LEGAL DESCRIPTION

Property at the northwest corner of "A" Street and Garden Avenue, Alameda County, California.

Beginning at a point on the northern line of "A" Street, otherwise known as County Road No. 1536, which point is distant South $26^{\circ} 56' 51''$ East 1283.22 feet from the point of intersection of the center line of Garden Avenue with the center line of Sunset Boulevard, as said Avenue and Boulevard are shown on the map of "Hayward Acres, Eden Township, Alameda County, California May 1915", filed June 3, 1915, in the office of the County Recorder of Alameda County; running thence along center line of said Garden Avenue North $26^{\circ} 56' 41''$ West 67.48 feet; thence South $85^{\circ} 16'$ West 56.77 feet to the True Point of Beginning; thence South $85^{\circ} 16'$ West 123.54 feet; thence North $26^{\circ} 56' 51''$ West 104 feet; thence North $81^{\circ} 43' 28''$ East 149.83 feet to the western line of Garden Avenue; thence along said western line South $26^{\circ} 56' 51''$ East 84.23 feet; thence along a curve to the right having a radius of 20 feet an arc length of 39.17 feet to the True Point of Beginning.

EXHIBIT "A"

ASSIGNMENT OF LEASE

FOR A VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, AUTOTRONIC SYSTEMS, INC. (Assignor), a Delaware corporation, hereby assigns and transfers to E-Z SERVE, INC. (Assignee), a Delaware corporation, all of its right, title and interest in and to that certain Lease dated December 1, 1966 between Levonard A. Thomsen and Margaret S. Thomsen, as Lessor and Autotronic Systems, Inc., as Lessee, covering the following described property:

TRACT 10 FSL-118 (ASI# 171-04) 525 West "A" Street, Hayward, California

A Lease Agreement dated December 1, 1966 between Levonard A. Thomsen and Margaret S. Thomsen, as "Lessor", and Powerine Oil Company, as "Lessee", covering a parcel of real property in Alameda County, California, more particularly described in said Lease Agreement as evidenced by a Memorandum of Lease dated January 26, 1967 and recorded as Instrument #AZ14352 in Reel 1917, Image 72 of the Official Records of Alameda County, California, and said Lease Agreement was assigned by an Assignment of Lease dated September 16, 1977 from Powerine Oil Company to Autotronic Systems, Inc. and recorded as Instrument #78-021742 in Reel 5249, Image 343 of said county records,

together with its right, title and interest in and to the buildings, improvements and fixtures located thereon.

Assignee agrees to and does hereby accept the assignment and expressly assumes and agrees to keep, perform, and fulfill all the terms, covenants, conditions, and obligations required to be kept, performed, and fulfilled by Assignor as the Lessee thereunder, and to defend and indemnify Assignor from and against, any failure thereof.

This agreement shall be binding on and inure to the benefit of the parties hereto, their successors in interest, and assigns.

EXECUTED this 16th day of January, 1985.

ATTEST:

AUTOTRONIC SYSTEMS, INC.

Don Steinhilber
Secretary

By: *Thomas A. Lyons*
President
(Assignor)

ATTEST:

E-Z SERVE, INC.

William C. Orr
Secretary

By: *Bill Orr*
Title
Vice Pres. (Assignee)

STATE OF TEXAS §
COUNTY OF BEXAR §

ON THIS 16th day of January, in the year 1985, before me, a Notary Public of said State, duly commissioned and sworn, personally appeared Thomas A. Lyons, known to me to be the President of the corpo-

ration that executed the within instrument , known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires: 4-1-87

Paulette M. Walton
Notary Public

Notary's Name Printed:

Paulette M. Walton

STATE OF TEXAS §

§

COUNTY OF TAYLOR §

ON THIS 10 day of January in the year 1985, before me, a Notary Public of said State, duly commissioned and sworn, personally appeared Roland C. Orr known to me to be the Vice President of the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires: 12/16/86

Michele Davis
Notary Public

Notary's Name Printed:

Michele Davis

BILL OF SALE

AUTOTRONIC SYSTEMS, INC., Seller, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, sells and conveys to E-Z SERVE, INC., Buyer, all of Seller's right, title and interest in and to the personal property located on the tract indicated below, including, but not limited to the following described personal property:

TRACT 10 FSL-118 (ASI# 171-04) 525 West "A" Street, Hayward, California

<u>QUANTITY</u>	<u>DESCRIPTION</u>
12	hoses
1	dual 1150 Tokheim dispenser
10	single 1150 Tokheim dispensers
1	canopy
1	booth
1	Tokheim Mems II readout
1	price sign (without identification panels)
4	10,000 gallon tanks

together with all other personal property and equipment, whether similar to the above or not, located at said tract and owned by Seller, including the Inventories as such term is defined in and same is determined in accordance with an Agreement between Seller and Buyer dated January 3, 1985.

All items are sold AS IS AND WITH ALL FAULTS, and there are no warranties of any kind whatsoever, either express or implied, which extend beyond the foregoing including, but not limited to, the condition or quality of the property and equipment or the fitness of such property for a particular use or purpose.

EXECUTED this 16th day of January, 1985.

ATTEST:

AUTOTRONIC SYSTEMS, INC.

1/16/85
Secretary

By Thomas A. Lyons
President

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

ON THIS 16th day of January, in the year 1985, before me, a Notary Public of said State, duly commissioned and sworn, personally appeared Thomas A. Lyons, known to me to be the President of the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires: 4-1-87

Paulette M. Walton
Notary Public
Notary's Name Printed:

Paulette M. Walton

A 000030

ORIGINAL
1 OF 2

SETTLEMENT AGREEMENT

THIS AGREEMENT is executed as of September 16, 1977, by and between AUTOTRONIC SYSTEMS, INC., a Delaware corporation (hereinafter "ASI") and POWERINE OIL COMPANY, a California corporation (hereinafter "POC"), who agree as follows:

1. RECITALS.

This Agreement is executed with reference to and in contemplation of the following facts:

(a) Disputes.

Several disputes and reciprocal claims have arisen and exist between the parties hereto, some of which are the subject of pending litigation described in subsection 1(b) below. It is the parties' desire and intention to effect a final settlement and resolution of all existing disputes and claims, regardless of their nature or basis.

(b) Pending Civil Action.

On or about October 4, 1974, ASI caused civil action No. C-74-2121 to be commenced in the United States District Court for the Northern District of California.

2. TRANSFERS OF SIX STATIONS.

(a) Assignments.

Concurrently with the execution of this Agreement, POC shall execute, acknowledge and deliver to ASI, ^{seven}~~five~~ Assignment(s) of Lease, in form and content as set forth on Exhibits A-1, A-2, A-3, ^{A-4, A-6,} S-3 and S-6 attached hereto;

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narbi

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(b) Leases.

Concurrently with the execution of this Agreement, POC shall execute, acknowledge and deliver to ASI, ^a ~~three~~ Land Lease(s), in form and content as set forth on Exhibits ~~L-4~~, L-5 and ~~L-6~~ attached hereto;

(c) Abstracts.

Concurrently with the execution of this Agreement, POC shall execute, acknowledge and deliver to ASI, ^{an} ~~three~~ Abstract(s) of Lease, in form and content as set forth on Exhibits ~~AB-4~~, AB-5 and ~~AB-6~~ attached hereto;

(d) Surveys.

On or before November 30, 1977, POC shall obtain, and deliver to ASI, complete surveys of the leased premises which are the subjects of Exhibits A-1, A-2, ^{A-4,} ^{A-6,} A-3, ~~L-4~~ L-5 and ~~L-6~~. Said surveys shall be prepared by a registered civil engineer and shall depict (as of the date of this Agreement) at least the following information: (i) the physical dimensions and boundaries of the leased premises; (ii) the dimensions and locations of all improvements and structures situated on the leased premises; and, (iii) all easements, rights of way, ^s encroachments and other interests which might affect the tenant's use of the leased premises. Initially, POC shall advance the cost of the six surveys. POC ultimately shall bear the cost of the surveys of the three properties which are the subject of Exhibits ^{A-4,} ^{A-6,} ~~L-4~~ L-5 and ~~L-6~~, (i.e., stations nos. 119, 124 and ~~137~~). POC shall invoice ASI for the actual cost of the surveys of the three properties which are the subject of Exhibits A-1, A-2 and A-3 (i.e., stations nos. 77,

94 and 122); and, said invoices shall be payable, by ASI, within thirty (30) days after receipt;

(e) Transfer of Improvements.

Concurrently with the execution of this Agreement, POC shall execute, acknowledge and deliver to ASI, six Quitclaim Deed(s) in form and content as set forth respectively on Exhibits Q-1, Q-2, Q-3, Q-4, Q-5 and Q-6. It is understood that the property described therein (hereinafter "The Improvements") is being conveyed to ASI in as "as is" physical condition. ASI shall not record any of said Quitclaim Deed(s) without first executing, acknowledging and delivering, to an escrow holder designated by POC, a quitclaim deed conveying The Improvements back to POC, which quitclaim deed shall be effective and recordable upon expiration of the lease to ASI, without ASI having exercised its option to purchase or extend. All sales taxes, use taxes or other taxes imposed in connection with the transfer of The Improvements shall be borne by POC, who shall indemnify ASI from all loss, expense or liability in connection therewith.

(f) Title Policies.

On or before December 31, 1977, POC shall, at its own expense, cause to be issued to ASI, six ALTA extended coverage owner's leasehold policies of title insurance (with Indorsement No. 107.5), naming ASI as insured lessee, and describing the leasehold estates, The Improvements and all options to purchase as being free and clear of any defect in the title, as hereinafter defined in subsection 3(e). Each policy shall be in an

amount equal to at least the sum of the remaining rent reserved under the lease agreement plus POC's book value of The Improvements being transferred.

3. WARRANTIES, GUARANTIES, NOTICES, DAMAGES AND INDEMNIFICATION.

(a) Warranties. POC warrants and represents that:

- (i) Each of the leases being assigned (hereinafter "Assigned Leases") by Exhibits A-1, A-2 ~~and A-3~~ ^{A-4 and A-6} is valid, in full force and effect and free from any default or breach on the part of any party;
- (ii) Each of the leases being assigned (hereinafter "Assigned Subleases") by Exhibits S-3 and S-6 is valid, in full force and effect and free from any default or breach on the part of any party. POC forthwith shall pay to ASI all security deposits heretofore paid to POC by any of the lessees under the Assigned Subleases;
- (iii) POC has the right, ability and capacity to assign the Assigned Leases and the Assigned Subleases to ASI, and to execute Exhibits ~~L-4, L-5 and L-6~~ (hereinafter "the Land Leases");
- (iv) All options to renew or extend contained in the Assigned Leases either have been exercised or are exercisable;
- (v) None of the terms or provisions of the Assigned Leases or the Assigned Subleases has been amended, revised, cancelled, modified or changed, except as specified in the Amendment

of Lease dated December 8, 1966, affecting station No. 94 and recorded February 16, 1968 at Book 8028, Pages 438-443 of the Official Records of Santa Clara County, California;

(vi) POC has the right, ability and capacity to convey The Improvements, to ASI; and,

(vii) POC is aware of no pending or threatened litigation or administrative proceedings concerning the Assigned Leases, the Assigned Subleases, the real property covered by the Assigned Leases, the real property covered by the Land Leases, or The Improvements.

(b) Guaranties.

POC hereby guarantees that each of the lessors under the Assigned Leases, and all others claiming title to the real property covered by the Assigned Leases, will forthwith acknowledge ASI as the rightful lessee under the Assigned Leases, will forthwith consent to the assignment to ASI of the Assigned Leases, and will hereafter perform all terms and provisions of the Assigned Leases to be performed on the respective lessor's part.

(c) Notices.

POC forthwith shall deliver written notice to the lessees under the Assigned Subleases, notifying them:

- (i) of the assignment, to ASI, of the Assigned Leases;
- (ii) that ASI shall henceforth be their lessor; and,
- (iii) that all rent henceforth shall be paid to ASI.

(d) Damages.

The parties contemplate that the damages which ASI

might sustain as a consequence of a breach of the foregoing warranties or guaranties include, without limitation (provided there is actual interruption or physical interference with ASI's possession), loss of profits, loss of competitive marketing position, loss of good will and injury to business reputation as is proved by competent evidence of damage.

(e) Indemnification.

In addition to the foregoing warranties and guaranties, POC shall indemnify ASI, and its successors-in-interest and assigns, from and against all loss, expense and liability arising as a result of any of the following: (i) a defect in the title to any of the leasehold estates which are the subject of the Assigned Leases; (ii) a defect in the title to any of the leasehold estates created by the Land Leases; (iii) a defect in the title to any of The Improvements; (iv) an interference with ASI's possession, use or quiet enjoyment of any of The Improvements, or of any of the premises leased by the Assigned Leases and the Land Leases. As used herein, a "defect in the title" shall be deemed to include any claim adverse to the right, title and interest of ASI, as well as any condition of title which renders ASI's title to the leased premises or The Improvements unmerchantable.

4. TRANSFER OF POSSESSION OF THE SIX STATIONS.

(a) Transfer of Possession.

ASI shall consult with POC and attempt to make mutually satisfactory arrangements for the transfer of possession of each of the six stations. In the event

the parties are unable to make such mutually satisfactory arrangements, then, as to each of the six stations, within 60 days after the execution of this Agreement, ASI shall give POC at least 15 days written notice of the date on which ASI shall take possession of that particular station. It is contemplated that certain personal property not being conveyed by Exhibits Q-1, Q-2, Q-3, Q-4, Q-5 and Q-6 will be removed by POC, including gasoline dispensers, remote control consoles, token counters and adding machines. POC's removal of such personal property shall be accomplished prior to the date specified for the taking of possession; however, POC shall operate each of the six stations, for its own account prior to such dates.

(b) Trade Names.

Neither ASI nor POC shall conduct any sales operation of any of the six stations under the trade name of the other, or of any entity affiliated with the other. Prior to commencement of any sales operations, ASI shall remove, cover or obliterate POC's trade name, or that of its affiliates, wherever they may appear on the premises.

(c) Gasoline Inventory.

Upon transfer of possession as provided above, ASI and POC mutually shall inventory all gasoline stored in the tanks of the particular station. ASI shall purchase the gasoline according to usual credit and billing procedures, at POC's wholesale delivered price.

(d) Warranties and Representations.

ASI acknowledges that although POC has provided

ASI with information as to past sales volumes, POC has made no representation or warranty as to the income or profitability of any of the six stations.

(e) Non-Competition.

Concurrently with execution of this Agreement, POC is transferring to ASI all of its interest in the property, good will and assets which comprise the business of the six stations. In order to protect that property, good will and assets, POC warrants and agrees that neither it, nor any of its affiliates (as hereinafter defined), shall open, operate, manage or own any gasoline station or retail sales outlet within a one (1) mile radius of any of the six stations, for a period of ten (10) years from the execution of this Agreement, so long as such station is operated, by or for ASI.

(f) Prior Operators' Employees.

It is understood that ASI intends to hire new employees to operate each of the six stations. ASI, therefore, assumes no obligations to POC, to any prior operator of the six stations, or to any of their respective employees relative to future employment or otherwise.

5. GASOLINE ALLOCATIONS.

It is understood and agreed that, with respect to each of the six stations, the entitlement of the current operator thereof to an allocation of gasoline (according to current Adjusted Base Period Volumes) shall automatically transfer to ASI, concurrently with the transfer to ASI of the stations, pursuant to sections 2 through 4 above. POC shall hereafter

do all things necessary to ensure that said transfer is effected including, without limitation, upon ASI's written request, preparing, executing and submitting (as a willing supplier) to the Federal Energy Administration Forms FEO-17 specifying Adjusted Base Period Volumes equal to those now existing, respectively, for the six stations. POC shall supply ASI with all volumes of gasoline which ASI may elect to lift, according to said transferred allocations.

6. INDEMNIFICATION RE PRIOR OPERATION.

POC shall indemnify ASI, and shall hold it harmless from and against all loss, expense and liability arising directly or indirectly out of any acts, events, practices or operations occurring in, on, about or involving the premises leased by the Assigned Leases and the Land Leases, prior to the transfer of possession thereof to ASI.

7. PAYMENT OF FEES.

Concurrently with execution of this Agreement, POC shall pay to ASI the cash sum of \$250,000.00 as and for partial reimbursement of attorneys' fees incurred in connection with the civil action described in subsection 1(b) above.

8. RELEASES OF CLAIMS.

(a) Release by POC.

POC, for itself, and on behalf of its successors-in-interest and assigns, hereby fully and forever releases, acquits and discharges ASI, its successors-in-interest, officers, directors, shareholders, agents, employees, assigns, subsidiaries, parent corporations, sister corporations, affiliates, partners, co-venturers, trustees, trustors, beneficiaries, attorneys and each of them, of and from any and all liabilities, claims,

demands, actions, causes of action and rights which POC may have against any or all of them, excepting and reserving only open book account obligations owing for the purchase, by ASI, of gasoline.

(b) Release by ASI.

ASI, for itself, and on behalf of its successors-in-interest and assigns, hereby fully and forever releases, acquits and discharges POC, its successors-in-interest, officers, directors, shareholders, agents, employees, assigns, subsidiaries, parent corporations, sister corporations, affiliates, partners, co-venturers, attorneys and each of them, of and from any and all liabilities, claims, demands, actions, causes of action and rights which ASI may have against any or all of them.

(c) Mutual Special Releases.

Without limiting the generality of the foregoing releases, POC and ASI, for themselves and on behalf of their respective successors-in-interest and assigns, hereby fully and forever release, acquit and discharge all persons, firms, associations, trusts, corporations and entities (including, without limitation, each other), their respective heirs, successors-in-interest, officers, directors, shareholders, agents, employees, assigns, subsidiaries, parent corporations, sister corporations, affiliates, partners, co-venturers, trustees, trustors, beneficiaries, attorneys and each of them, of and from any and all liabilities, claims, demands, actions, causes of action and rights which either of them may now or hereafter have against any or

all of such persons, firms, associations, trusts, corporations and entities arising out of any of the following: (i) the facts recited in subsections 1(a) and 1(b) above; (ii) the civil action described in subsection 1(b) above, and the facts alleged in the pleadings and documents filed therein; (iii) the disputes and claims referred to in subsection 1(a) above; and, (iv) any aspect of the past business affairs and relationships of and between POC and ASI (excepting and reserving open book account obligations for the purchase, by ASI, of gasoline).

(d) Mutual Waiver of Statutory Rights.

POC and ASI each hereby waive all rights which may exist under Section 1542 of the Civil Code of the State of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

(e) Warranty Against Assignment.

POC and ASI each represent and warrant that it has not heretofore assigned, transferred, or purported to assign or transfer, (and covenants that it will not assign, transfer or purport to assign or transfer), to any person or entity, any liability, claim, demand, action, cause of action or right which is hereby released and discharged; and, POC and ASI respectively shall indemnify each person and entity released and discharged by them, according to the provisions of subsections 8(a) through 8(c) above, and their respective heirs, successors-in-interest, officers, directors, shareholders, agents,

employees, assigns, subsidiaries, parent corporations, sister corporations, affiliates, partners, co-venturers, trustees, trustors, beneficiaries, attorneys and each of them, and shall hold them harmless, from and against:

(i) any liability, claim, demand, action, cause of action or right assigned or transferred contrary to the foregoing warranty; and, (ii) any and all loss, expense or liability arising directly or indirectly out of any breach by them of the foregoing warranty.

(f) Interpretation of Release.

Notwithstanding anything herein set forth to the contrary, no provision of subsections 8(a) through 8(e) shall constitute, or be construed as, a release or discharge of: (i) any obligation to supply gasoline; (ii) any obligations under the terms and provisions of this Agreement; (iii) any claims or causes of action based on events or transactions occurring after execution of this Agreement; or, (iv) any open book account obligations for the purchase, by ASI, of gasoline.

(g) Affiliates' Releases.

Concurrently with the execution of this Agreement, ASI shall execute and deliver to POC a Mutual Release in form and content as set forth on Exhibit R attached hereto. Within thirty (30) days after execution of this Agreement, POC shall cause the Exhibit R Mutual Release to be executed by each of the following persons

and entities (herein POC's "affiliates") and delivered to ASI:

by them according to the following list:

Coin-Op Gasoline Associates

GLR 1974 Trust

GLR III Trust

Hawaiian Self-Service

Industrial Development Associates

Master Trust of HRR's Children Dated 12/4/72

Master Trust of PBR's Children Dated 12/4/72

P.B.R. 1972 Trust

Perpetual Income Equities

Powerine Copper Company

Retail Gasoline Affiliates

Harry R. Rothschild

Peter B. Rothschild

Harry S. Rothschild

Rothschild Industries

Rothschild Oil Company

Reliable Retail Associates

Investment Holdings, Inc.

Pan Nova, Inc.

Consumers Gasoline

POC shall indemnify ASI, its successors-in-interest, officers, directors, shareholders, agents, employees, assigns, subsidiaries, parent corporations, sister corporations, affiliates, partners, co-venturers, attorneys and each of them, and shall hold them harmless from and against any and all loss, expense, and/or liability arising out of the assertion or enforcement, by any of POC's affiliates, of any of the liabilities, claims, demands, actions, causes of action or rights which are described by the Exhibit R Mutual Release.

9. RESOLUTION OF LITIGATION.

POC and ASI forthwith shall do all things necessary to dismiss the civil action described in subsection 1(b) above,

with prejudice, as to all defendants and counter-defendants. Each party thereto shall bear its own costs. POC and ASI hereby authorize and instruct their respective attorneys to execute and file with the court, a stipulation in form and content as set forth on Exhibit X attached hereto.

10. WAIVER OF RIGHT TO ADMINISTRATIVE RELIEF.

ASI hereby waives any right which it may have to demand or receive any relief or recovery from or through the Federal Energy Administration arising out of any events or transactions occurring prior to the execution of this Agreement. In the event POC makes any refund to ASI as the result of any events or transactions occurring prior to the execution of this Agreement, ASI shall:

- (a) Repay such refund to POC, after first deducting therefrom any sums which the Federal Energy Administration, or other governmental agency, expressly requires ASI to pass through or refund to its customers;
- (b) Make a good faith effort, within the law, to contest any such pass through or refund requirement by pursuing all reasonable administrative remedies available to it; and,
- (c) Consult and cooperate with POC in connection with ASI's efforts to contest such pass through or refund requirement.

11. DOCUMENT RELEASE.

Concurrently with execution of this Agreement, ASI shall execute and deliver to POC an Authorization For Release Of Documents in form and content as set forth on Exhibit Y attached hereto. Nothing contained in this Agreement shall

constitute or be construed as a waiver of the attorney-client privilege; and, compliance with the terms and provisions of this Agreement shall not require a waiver of same, it being understood that ASI hereafter shall assert the attorney-client privilege where applicable.

12. ESCROW.

In order to effect the provisions of this Agreement, it may be incorporated, by reference, into escrow instructions executed jointly by POC and ASI.

13. FURTHER ASSURANCE.

POC and ASI each shall hereafter execute all documents (including, without limitation, further authorizations regarding release of documents) and do all acts necessary, convenient or desirable, in the reasonable opinion of the other party, to effect the provisions of this Agreement.

14. SUCCESSORS.

The provisions of this Agreement shall be deemed to obligate, extend to and inure to the benefit of the successors-in-interest, assigns, transferees, grantees and indemnitees of POC and ASI.

15. CALIFORNIA LAW.

This Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced and governed by and under the applicable laws of that State and the applicable laws of the United States.

16. INTEGRATION.

This Agreement and the documents attached hereto as exhibits (after full execution, acknowledgment and delivery) shall constitute and deliver to POC an Authorization for Release collectively memorialize and constitute the entire agreement and understanding between the parties, and supersede and

replace all prior negotiations, proposed agreements and agreements, whether written or unwritten. POC and ASI each acknowledge that neither the other party, nor any agent or attorney of the other party, has made any promise, representation or warranty whatsoever, which is not expressly contained or mentioned in this Agreement; and, POC and ASI each further acknowledge that it has not executed this Agreement in reliance upon any collateral promise, representation or warranty, or in reliance upon any belief as to any fact not expressly mentioned in this Agreement.

17. ATTORNEYS' FEES.

In the event litigation is commenced to enforce any of the provisions of this Agreement, to recover damages for breach of any of the provisions of this Agreement, or to obtain declaratory relief in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees.

18. INTERPRETATION.

Wherever the context so requires: the singular number shall include the plural; the plural shall include the singular; and, the masculine gender shall include the feminine and neuter genders.

19. CAPTIONS.

The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon its interpretation.

20. SEVERANCE.

This Agreement and the documents attached hereto as exhibits, after full execution, shall be deemed to be legal and valid, by a court or agency of competent jurisdiction, if any provision of this Agreement is held to be illegal or invalid, such provision shall be deemed to be severed and deleted; and the remaining provisions shall remain in full force and effect.

and, neither such provision, nor its severance and deletion, shall affect the validity of the remaining provisions. In the event the validity or enforceability of this Agreement is challenged by anyone not a party hereto, ASI and POC jointly shall resist the challenge through appropriate judicial or administrative proceedings, and shall thereby defend its validity. The attorneys' fees and costs reasonably incurred in connection with the resistance and defense shall be borne equally by ASI and POC.

21. EXHIBITS.

Each of the Exhibits attached to this Agreement is incorporated herein by reference.

22. EXECUTION.

This Agreement shall be executed by Ralph Becker (President) and William F. Burke (Vice-President) on behalf of POC, and by James E. Sadler (President) and Frank W. Weathers (Secretary) on behalf of ASI. Within ninety (90) days after execution of this Agreement, ASI and POC shall deliver to each other a certified copy of a valid resolution of their respective Boards of Directors, ratifying this Agreement.

AUTOTRONIC SYSTEMS, INC.,
a Delaware corporation

By James E. Sadler President

By Frank W. Weathers, Secretary

(SEAL)

POWERINE OIL COMPANY,
a California corporation

By Ralph Becker President

By William F. Burke Vice President

(SEAL)

If any provision of this Agreement is held to be illegal
It is understood that Exhibits AB-4, AB-6,
L-4 and L-6 have been deleted and
replaced by Exhibits A-4 and A-6.

[Signature]
RT
RJB
WFB

ASSIGNMENT OF LEASE

(Station No. 77)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, POWERINE OIL COMPANY, a California Corporation, (hereinafter "Assignor") hereby transfers, assigns and sets over unto AUTOTRONIC SYSTEMS, INC., a Delaware corporation (hereinafter "Assignee"), effective from and as of the date hereof, all of Assignor's right, title and interest, as the lessee in, to and under that certain Lease dated December 1, 1966, by and between Levonard A. Thomsen and Margaret S. Thomsen, as Lessor and Powerine Oil Company, as Lessee, concerning those certain premises described on Exhibit A-1A attached hereto and incorporated herein by reference.

Dated: _____

POWERINE OIL COMPANY (Assignor)

By _____

By _____

EXHIBIT--DO NOT SIGN

ACCEPTANCE OF ASSIGNMENT AND ASSUMPTION OF LIABILITY

FOR AND IN CONSIDERATION of the foregoing Assignment of Lease, and effective from and as of the date on which Assignee takes physical possession of the leased premises, Assignee, for itself and its successors-in-interest and assigns, hereby accepts the foregoing Assignment and assumes and

RV:cg
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agrees fully and faithfully to keep and perform all of the terms, provisions and conditions to be performed under said Lease on the part of the lessee.

Dated: _____

AUTOTRONIC SYSTEMS, INC.
a Delaware corporation (assignee)

By _____

By _____

EXHIBIT--DO NOT SIGN

TO 449 C
(Corporation)

(TH)

STATE OF CALIFORNIA

COUNTY OF _____ } SS.

On _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ known to me to be the _____ President, and _____ known to me to be _____ Secretary of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed) _____

(This area for official notarial seal)

for itself and its successors-in-interest and assigns,
hereby assigns the foregoing Assignment and releases

Beginning at a point on the northern line of "A" Street, otherwise known as County Road No. 1536, which point is distant South $26^{\circ}56'51''$ East 1283.22 feet from the point of intersection of the center line of Garden Avenue with the center line of Sunset Boulevard, as said Avenue and Boulevard are shown on the map of "Hayward Acres, Eden Township, Alameda County, California May 1915," filed June 3, 1915, in the office of the County Recorder of Alameda County; running thence along center line of said Garden Avenue North $26^{\circ}56'41''$ West 6.48 feet; thence South $85^{\circ}16'$ West 56.77 feet to the True Point of Beginning; thence South $85^{\circ}16'$ West 123.54 feet; thence North $26^{\circ}56'51''$ West 104 Feet; thence North $81^{\circ}43'28''$ East 149.83 feet to the western line of Garden Avenue; thence along said western line South $26^{\circ}56'51''$ East 84.23 feet; thence along a curve to the right having a radius of 20 feet an arc length of 39.17 feet to the True Point of Beginning.

ASSIGNMENT OF LEASE

(Station No. 194)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, POWERINE OIL COMPANY, a California corporation, (hereinafter "Assignor") hereby transfers, assigns and sets over unto AUTOTRONIC SYSTEMS, INC., a Delaware corporation (hereinafter "Assignee"), effective from and as of the date hereof, all of Assignor's right, title and interest, as the lessee in, to and under that certain Service Station Sublease dated August 24, 1972, by and between Lido Petroleum Corporation, as Lessor and Pan Nova, Inc., as Lessee, concerning those certain premises described on Exhibit A-2A attached hereto and incorporated herein by reference.

Dated: _____ POWERINE OIL COMPANY (Assignor)
By _____
By _____

ACCEPTANCE OF ASSIGNMENT AND ASSUMPTION OF LIABILITY

FOR AND IN CONSIDERATION of the foregoing Assignment of Lease, and effective from and as of the date on which Assignee takes physical possession of the leased premises, Assignee, for itself and its successors-in-interest and assigns, hereby accepts the foregoing Assignment and assumes and agrees fully and faithfully to keep and perform all of the

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terms, provisions and conditions to be performed under said Lease on the part of the lessee.

Dated: _____

AUTOTRONIC SYSTEMS, INC.
a Delaware corporation (Assignee)

By _____

By _____

EXHIBIT--DO NOT REMOVE

TO 449 C
(Corporation)

TT

STATE OF CALIFORNIA

COUNTY OF _____ } SS.

On _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ known to me to be the _____ President, and _____ known to me to be _____ Secretary of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed) _____

(This area for official notarial seal)

herby accepts the foregoing Assignment and assumes all
liability and faithfully to keep the same

PARCEL "A"

BEGINNING at a 3/4" iron pipe found in the Southerly line of the El Camino Real (formerly San Jose and San Francisco Road as said Road existed when 100 feet wide), said iron pipe marking the dividing line between the Regal Petroleum Lease and the Calvin M. Mc Gillis Lease on that certain Record of Survey map filed for Ruel C. and Rose C. Olson on February 14, 1964 in Book 173 of Maps, at page 30 Santa Clara County Records; Thence running South 00 04' 10" West along said dividing line a distance of 10.274 feet to a point which lies southerly, measured at right angles, from said Southerly line of the El Camino Real; thence running North 76o 40' 42" West, parallel to and distant 10.000 feet Southerly from said Southerly line of El Camino Real a distance of 112.597 feet to an iron pipe found at the Easterly end of a return of the 35 foot radius curved property line of the Mathilda Avenue Extension from El Camino Real to Highway 9, said iron pipe lying 10.000 feet Southerly from the Southerly line of the El Camino Real above described; thence running North 13o 19' 18" East at right angles to the last said line of the El Camino Real a distance of 10.000 feet to said Southerly line of the El Camino Real; thence running South 76o 40' 42" East 110.242 feet along said Southerly line of the El Camino Real to the Point of BEGINING, Containing 0.02556 Acres of land and being a portion of the Southwest 1/4 of Section 36, Township 6 South, Range 2 West, M.D.B. & M.

PARCEL "B"

BEGINNING at a 3/4" iron pipe found in the Southerly line of the El Camino Real (formerly San Jose and San Francisco Road as said Road existed when 100 feet wide), said iron pipe marking the dividing line between Regal Petroleum Co. Lease and Calvin M. Mc Gillis Lease on that certain Record of Survey Map filed for Ruel C. & Rose C. Olson on February 14, 1964 in Book 173 of Maps, at page 30, Santa Clara County Records; thence running South 00 04' 10" West along said dividing line a distance of 10.274 feet to a point which lies 10.000 feet Southerly, measured at right angles, from said Southerly line of the El Camino Real, last said point being the True Point of Beginning of this description; thence continuing South 00 04' 10" West along said dividing line and the Southerly prolongation thereof a distance of 155.686 feet to a 3/4" iron pipe set flush with the surface of a driveway; thence running North 76o 33' 50" West 162.000 feet to a point in the Easterly line of the Mathilda Avenue Extension from the El Camino Real to Highway 9;

thence running North 00° 07' 15" East along said Easterly line a distance of 33.250 feet to a 1" iron pipe found marking the beginning of a curve concave to the right, having a radius of 640 feet; thence running Northerly along the said curve a distance of 81.424 feet through a central angle of 70° 17' 22" to a 1" iron pipe found marking the beginning of a 35.000 foot tangent curve concave to the right; thence running Northeasterly, Easterly and Southeasterly along the arc of last said curve through a central angle of 95° 54' 41" an arc distance of 58.562 feet to a 1" iron pipe found marking its point of tangency with a line which lies 10.000 feet Southerly, measured at right angles, from first said Southerly line of the El Camino Real; thence running South 76° 40' 42" East, parallel with said Southerly line of the El Camino Real and distant 10.000 southerly, measured at right angles, a distance of 112.597 feet to the True Point of Beginning, Containing 0.5446 Acres of land being a portion of the Southwest 1/4 of Section 36, Township 6 South, Range 2 West, M. D. B. & M."

... along said dividing line and the southerly prolongation thereof a distance of 155.666 feet to a 1" iron pipe set flush with the surface of a ...

ASSIGNMENT OF LEASE

(Station No. 122)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, POWERINE OIL COMPANY, a California corporation, (hereinafter "Assignor") hereby transfers, assigns and sets over unto AUTOTRONIC SYSTEMS, INC., a Delaware corporation (hereinafter "Assignee"), effective from and as of the date hereof, all of Assignor's right, title and interest, as the lessee in, to and under that certain Lease dated August 1, 1974, by and between Hartfield-Zody's, Inc., as Landlord and Powerine Oil Company, as Tenant, concerning those certain premises described on Exhibit A-3A attached hereto and incorporated herein by reference.

Dated: _____

POWERINE OIL COMPANY (Assignor)

By _____

By _____

ACCEPTANCE OF ASSIGNMENT AND ASSUMPTION OF LIABILITY

FOR AND IN CONSIDERATION of the foregoing Assignment of Lease, and effective from and as of the date on which Assignee takes physical possession of the leased premises, Assignee, for itself and its successors-in-interest and assigns, hereby accepts the foregoing Assignment and assumes and agrees fully and faithfully to keep and perform all of the

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terms, provisions and conditions to be performed under said Lease on the part of the lessee.

Dated: _____

AUTOTRONIC SYSTEMS, INC.
a Delaware corporation (Assignee)

By _____

By _____

EXHIBIT -- DO NOT SIGN

TO 449 C
(Corporation)

(TI)

STATE OF CALIFORNIA }
COUNTY OF _____ } SS.

On _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ known to me to be the _____ President, and _____ known to me to be _____ Secretary of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed) _____

(This area for official notarial seal)

hereby accepts the foregoing Assignment and assumes and

The north half of the east half of lot 921 of Tract No. 1000, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in book 19, pages 1 to 34 inclusive of Maps, in the office of the county recorder of said county, described as follows:

Beginning at a point in the east line of said lot 921 distant North 739.85 feet from the southeast corner of said lot; thence westerly 645.22 feet to a point in the east line of the west half of said lot, distant North 734.53 feet from the south line of said lot; thence north parallel with the west line of said lot, a distance of 734.53 feet to the south line of Twelfth Street; thence easterly 645.27 feet to the northeast corner of said lot 921 in the west line of Angelus Avenue; thence south along said Avenue, 739.85 feet to the point of beginning.

EXCEPT therefrom that portion of said land lying easterly of the following described line:

Beginning at a point on the north line of said lot that is distant westerly along said northerly line 35 feet from the northeasterly corner of said lot; thence southeasterly along a straight line to a point in a line that is parallel with a distant westerly 25 feet, measured at right angles, from the easterly line of said lot, said point being southerly along said parallel line, 10 feet from the northerly line of said lot; thence southerly along said parallel line to the southerly line of the north half of the north half of said lot.

ALSO EXCEPT therefrom the west 128 feet thereof.

ASSIGNMENT OF LEASE

(Station No. 122)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, POWERINE OIL COMPANY, a California corporation, (hereinafter "Assignor") hereby transfers, assigns and sets over unto AUTOTRONIC SYSTEMS, INC., a Delaware corporation (hereinafter "Assignee"), effective from and as of the date hereof, all of Assignor's right, title and interest, as the Sublessor in, to and under that certain Agreement to Sublease, the term of which commenced September 1, 1977, by and between Powerine Oil Company, as Sublessor and Leonard Stein and Aron Glick (dba Universal Cycle Center), as Sublessee, concerning those certain premises consisting of a portion of 8229 Topanga Canyon Boulevard, Canoga Park, California, which premises are outlined on Exhibit S-3A attached hereto and incorporated herein by reference.

Dated: _____

POWERINE OIL COMPANY (Assignor)

By _____

By _____

EXHIBIT -- DO NOT SIGN

TO 449 C
(Corporation)

STATE OF CALIFORNIA

COUNTY OF _____

SS.

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ known to me to be the _____ President, and _____ known to me to be _____ Secretary of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____

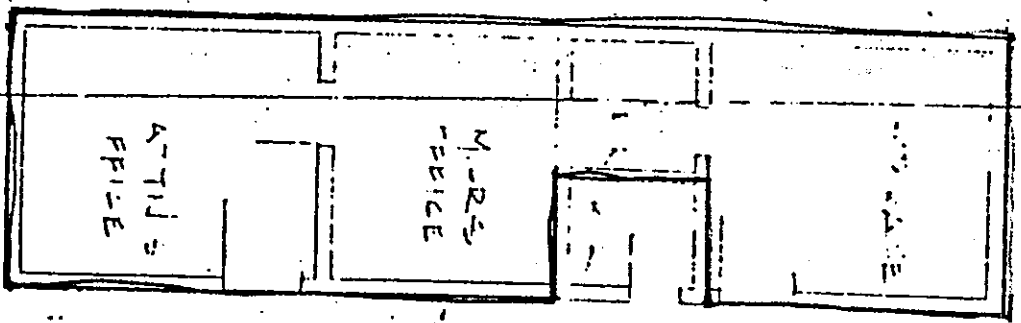
Name (Typed or Printed)

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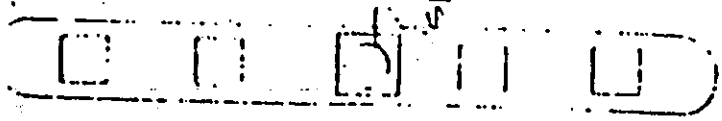
8-14-56 TUESDAY
RECEIVED STATION ELECT. UNIT DE

EXISTING ELECT. PANEL

KANNADEKI
RENTAL UNIT



DESIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF ILLINOIS
THAT HE HAD THE ABOVE
RENDERED CORRECTLY
DRAINED &
AND ALTERED
TO BE USED
WALL 3' 9"
FROM SCENE.



(This area for sketching)

274
RECEIVED
STATION
ELECT. UNIT

ASSIGNMENT OF LEASE

(Station No. 137)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, POWERINE OIL COMPANY, a California corporation, (hereinafter "Assignor") hereby transfers, assigns and sets over unto AUTOTRONIC SYSTEMS, INC., a Delaware corporation (hereinafter "Assignee"), effective from and as of the date hereof, all of Assignor's right, title and interest, as the Lessee in, to and under that certain Lease dated June 1, 1977, by and between Rothschild Industries, as Landlord and Insta-Tune, as Tenant, concerning those certain premises consisting of a portion of 1180 Blossom Hill Road, San Jose, California, which premises are outlined on Exhibit S-6A attached hereto and incorporated hereby by reference.

Dated: _____

POWERINE OIL COMPANY (Assignor)

By _____

By _____

EXHIBIT - DO NOT SIGN

TO 449 C
(Corporation)

TI

STATE OF CALIFORNIA

COUNTY OF _____ } SS.

On _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ known to me to be the _____ President, and _____ known to me to be _____ Secretary of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed)

(This area for official notarial seal)

ABSTRACT OF LEASE

On this _____ day of September, 1977, POWERINE OIL COMPANY (hereinafter "Landlord") hereby leases to AUTOTRONIC SYSTEMS, INC., a Delaware corporation (hereinafter "Tenant"), and Tenant hereby hires from Landlord, that certain real property described on Exhibit AB-5A attached hereto and incorporated herein by reference, on the terms, provisions and conditions set forth in that certain written lease of even date herewith, which lease is entitled LAND LEASE, and is incorporated herein by reference. On the terms, provisions and conditions set forth in said LAND LEASE, Landlord hereby grants, to Tenant, the option to purchase said real property.

POWERINE OIL COMPANY (Landlord)

By _____

EXHIBIT -- DO NOT SIGN

AUTOTRONIC SYSTEMS, INC. (Tenant)

By _____

EXHIBIT -- DO NOT SIGN

TO 449 C
(Corporation)

STATE OF CALIFORNIA
COUNTY OF _____

} SS.

On _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ known to me to be the _____ President, and _____ known to me to be _____ Secretary of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed) _____

(This area for official notarial seal)

Signature _____

Name (Typed or Printed) _____

(This area for official notarial seal)

STAPLE HERE

DEED

BY of September 1977

last

The south 135 feet of the east 135 feet of the following described property:
The south half of the southeast quarter of the southeast quarter of the southeast quarter of section 8, township 21 north, range 4 east, N.M., in King County, Washington, except the south 49 feet and except portion thereof for state Highway No. 1, also known as Pacific Highway; and except from the above described remaining tract a triangular portion conveyed to King County for a right of way at the northwest corner of south 320th Street and Pacific Highway South, by deed recorded under auditor's file No. 5869543; and except the south 10 feet thereof conveyed to King County under receiving No. 7402260101.

Together with and subject to a non-exclusive easement for ingress and egress over that portion of the southeast quarter of the southeast quarter of the southeast quarter of Section 8, Township 21 north, Range 4 east, N.M., in King County, Washington, described as follows:

Beginning at the southeast corner of said Section 8; thence North 89° 46' 10" West along the south line of said section 8, a distance of 182.63 feet; thence north 00° 13' 52" east a distance of 40.00 feet to the true point of beginning; thence north 89° 46' 10" west a distance of 60.00 feet; thence north 45° 15' 52" east a distance of 42.43 feet; thence south 44° 46' 08" east a distance of 42.43 feet to the true point of beginning; and also

Beginning at the southeast corner of said section 8; thence north 89° 46' 10" west along the south line of said section 8, a distance of 77.49 feet to the west right of way line of primary state Highway No. 1, also known as Pacific Highway South; thence North 00° 13' 52" east along said west right of way line a distance of 145.00 feet to the true point of beginning; thence north 44° 46' 08" west a distance of 42.43 feet; thence north 45° 15' 52" east a distance of 42.43 feet of said west right of way line of primary state Highway No. 1; thence south 00° 13' 52" west along said west right of way line a distance of 60.00 feet to the true point of beginning.

Exhibit AB-5A

Name

Street
AddressCity &
State

MAIL TAX STATEMENTS TO

Name

Street
AddressCity &
State

TO 403 CA (8-68)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Documentary Transfer Tax \$

Computed on full value of property conveyed.

or computed on full value less liens and encumbrances remaining thereon at time of sale.

Signature of declarant or agent determining tax

Firm Name

Corporation Quitclaim Deed

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

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

POWERINE OIL COMPANY

a corporation organized under the laws of the state of California

hereby REMISES, RELEASES AND QUITCLAIMS to AUTOTRONIC SYSTEMS, INC., a Delaware corporation, all right, title and interest which it may have in and to

the following described real property in the
County of Alameda, State of California:

Those certain buildings, structures and fixtures situated on the real property described on Exhibit Q-1A attached hereto and incorporated herein by reference, which buildings, structures and fixtures are described on Exhibit Q-1B attached hereto and incorporated herein by reference.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its _____ President and _____ Secretary thereunto duly authorized.

Dated: _____

STATE OF CALIFORNIA

COUNTY OF _____

} SS.

On _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ known to me to be the _____ President, and

_____ known to me to be

Secretary of the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed)

By _____

Ralph Becker

President

By _____

Secretary

(This area for official notarial seal)

Title Order No. _____

Escrow or Loan No. _____

MAIL TAX STATEMENTS AS DIRECTED ABOVE

Beginning at a point on the northern line of "A" Street, otherwise known as County Road No. 1536, which point is distant South $26^{\circ}56'51''$ East 1283.22 feet from the point of intersection of the center line of Garden Avenue with the center line of Sunset Boulevard, as said Avenue and Boulevard are shown on the map of "Hayward Acres, Eden Township, Alameda County, California May 1915," filed June 3, 1915, in the office of the County Recorder of Alameda County; running thence along center line of said Garden Avenue North $26^{\circ}56'41''$ West 6.48 feet; thence South $85^{\circ}16'$ West 56.77 feet to the True Point of Beginning; thence South $85^{\circ}16'$ West 123.54 feet; thence North $26^{\circ}56'51''$ West 104 Feet; thence North $81^{\circ}43'28''$ East 149.83 feet to the western line of Garden Avenue; thence along said western line South $26^{\circ}56'51''$ East 84.23 feet; thence along a curve to the right having a radius of 20 feet an arc length of 39.17 feet to the True Point of Beginning.

WITNESSES:

Notary Public

President

Secretary of the Corporation that executed the
instrument, known to and to be the persons who executed the

Name (Typed or Printed)

FILED AT THE COUNTY RECORDER'S OFFICE

Exhibit Q-1A

Buildings, Structures and Fixtures

- 1 Booth, 5' X 7'
- 1 Canopy with 36 fixtures (72 eight foot bulbs)
- 3 10,000 gallon storage tanks with submerged pumps
- 1 Storage shed, 27' X 11'
- 1 30' high brand sign (Powerine)
- 2 Restrooms
- 2 Floor safes
- 1 Compressor (Wayne) Serial No. 183844
- 2 Fire extinguishers
- 1 Air and water island
- 1 Trash compactor
- 7 Area lights (9 fixtures)
- 2 Towel dispensers
- 1 Vapor recovery system (Stages 1 & 2)
- Brink pick-up bunker
- Concrete and asphalt driveways and surfaces

Name

Street
AddressCity &
State

MAIL TAX STATEMENTS TO

Name

Street
AddressCity &
State

TO 403 CA (6-66)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Documentary Transfer Tax \$

Computed on full value of property conveyed.
or computed on full value less liens and en-
cumbrances remaining thereon at time of sale.

Signature of declarant or agent determining tax

Firm Name

Corporation Quitclaim Deed

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

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

POWERINE OIL COMPANY

a corporation organized under the laws of the state of California

hereby REMISES, RELEASES AND QUITCLAIMS to AUTOTRONIC SYSTEMS, INC., a
Delaware corporation, all right, title and interest which it may
have in and to

the following described real property in the

County of Santa Clara, State of California:

Those certain buildings, structures and fixtures situated
on the real property described on Exhibit Q-2A attached
hereto and incorporated herein by reference, which buildings,
structures and fixtures are described on Exhibit Q-2B attached
hereto and incorporated herein by reference.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instru-
ment to be executed by its _____ President and _____ Secretary
thereunto duly authorized.

Dated: _____

STATE OF CALIFORNIA

COUNTY OF _____ } ss.

On _____ before me, the under-
signed, a Notary Public in and for said State, personally appeared_____, known
to me to be the _____ President, and

_____ known to me to be

_____, Secretary of the Corporation that executed the
within Instrument, known to me to be the persons who executed the
within Instrument on behalf of the Corporation therein named, and
acknowledged to me that such Corporation executed the within Instru-
ment pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed)

(This area for official notarial seal)

Title Order No. _____ Escrow or Loan No. _____

MAIL TAX STATEMENTS AS DIRECTED ABOVE

PARCEL "A"

BEGINNING at a 3/4" iron pipe found in the Southerly line of the El Camino Real (formerly San Jose and San Francisco Road as said Road existed when 100 feet wide), said iron pipe marking the dividing line between the Regal Petroleum Lease and the Calvin M. Mc Gillis Lease on that certain Record of Survey map filed for Ruel C. and Rose C. Olson on February 14, 1964 in Book 173 of Maps, at page 30 Santa Clara County Records; Thence running South 00 04' 10" West along said dividing line a distance of 10.274 feet to a point which lies southerly, measured at right angles, from said Southerly line of the El Camino Real; thence running North 76o 40' 42" West, parallel to and distant 10.000 feet Southerly from said Southerly line of El Camino Real a distance of 112.597 feet to an iron pipe found at the Easterly end of a return of the 35 foot radius curved property line of the Mathilda Avenue Extension from El Camino Real to Highway 9, said iron pipe lying 10.000 feet Southerly from the Southerly line of the El Camino Real above described; thence running North 13o 19' 18" East at right angles to the last said line of the El Camino Real a distance of 10.000 feet to said Southerly line of the El Camino Real; thence running South 76o 40' 42" East 110.242 feet along said Southerly line of the El Camino Real to the Point of BEGINING, Containing 0.02556 Acres of land and being a portion of the Southwest 1/4 of Section 36, Township 6 South, Range 2 West, M.D.B. & M.

PARCEL "B"

BEGINNING at a 3/4" iron pipe found in the Southerly line of the El Camino Real (formerly San Jose and San Francisco Road as said Road existed when 100 feet wide), said iron pipe marking the dividing line between Regal Petroleum Co. Lease and Calvin M. Mc Gillis Lease on that certain Record of Survey Map filed for Ruel C. & Rose C. Olson on February 14, 1964 in Book 173 of Maps, at page 30, Santa Clara County Records; thence running South 0o 04' 10" West along said dividing line a distance of 10.274 feet to a point which lies 10.000 feet Southerly, measured at right angles, from said Southerly line of the El Camino Real, last said point being the True Point of Beginning of this description; thence continuing South 0o 04' 10" West along said dividing line and the Southerly prolongation thereof a distance of 155.686 feet to a 3/4" iron pipe set flush with the surface of a driveway; thence running North 76o 33' 50" West 162.000 feet to a point in the Easterly line of the Mathilda Avenue Extension from the El Camino Real to Highway 9;

thence running North 00 07' 15" East along said Easterly line a distance of 33.250 feet to a 1" iron pipe found marking the beginning of a curve concave to the right, having a radius of 640 feet; thence running Northerly along the said curve a distance of 81.424 feet through a central angle of 70 17' 22" to a 1" iron pipe found marking the beginning of a 35.000 foot tangent curve concave to the right; thence running Northeasterly, Easterly and Southeasterly along the arc of last said curve through a central angle of 950 54' 41" an arc distance of 58.589 feet to a 1" iron pipe found marking its point of tangency with a line which lies 10.000 feet Southerly, measured at right angles, from first said Southerly line of the El Camino-Real; thence running South 760 40' 42" East, parallel with said Southerly line of the El Camino Real and distant 10.000 southerly, measured at right angles, a distance of 112.597 feet to the True Point of Beginning, Containing 0.5446 Acres of land being a portion of the Southwest 1/4 of Section 36, Township 6 South, Range 2 West, M. D. B. & M."

Buildings, Structures and Fixtures

- 1 Canopy with 12 fixtures (24 eight foot bulbs)
- 1 Booth (on island) 4' X 6'
- 1 Oil room, 36' X 20'
- 1 Office space, 15' X 20'
- 2 Restrooms
- 1 Air compressor (Ingersoll-Rand, Model 234C4,
Serial No. 38753)
- 3 11,800 gallon gasoline storage tanks with submerged pumps
- 5 Area lights (7 fixtures)
- 2 Lighted price signs with numbers, 4' X 5'
- 3 Air and water wells
- 2 Safes with drop chute (1 in outside booth/1 in storage shed)
- 2 Fire extinguishers and cabinets
- 1 Vapor recovery system (Stages 1 & 2)
- Concrete and asphalt driveways and surfaces

Exhibit Q-2B

Exhibit Q-2B

Name
Street
Address
City &
State

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO

Name
Street
Address
City &
State

Documentary Transfer Tax \$
____ Computed on full value of property conveyed.
____ or computed on full value less liens and en-
cumbrances remaining thereon at time of sale.

Signature of declarant or agent determining tax
Firm Name

Corporation Quitclaim Deed

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

XXXXXX
KXLYAROW

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

POWERINE OIL COMPANY

a corporation organized under the laws of the state of California

hereby REMISES, RELEASES AND QUITCLAIMS to AUTOTRONIC SYSTEMS, INC., a
Delaware corporation, all right, title and interest which it may
have in and to

the following described real property in the
County of Los Angeles, State of California:

Those certain buildings, structures and fixtures situated
on the real property described on Exhibit Q-3A attached
hereto and incorporated herein by reference, which buildings
structures and fixtures are described on Exhibit Q-3B attached
hereto and incorporated herein by reference.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instru-
ment to be executed by its _____ President and _____ Secretary
thereunto duly authorized.

Dated: _____

STATE OF CALIFORNIA

COUNTY OF _____

} SS.

By Ralph Becker

President

By _____

Secretary

On _____ before me, the under-
signed, a Notary Public in and for said State, personally appeared

_____ known

to me to be the _____ President, and

_____ known to me to be

_____ Secretary of the Corporation that executed the
within Instrument, known to me to be the persons who executed the
within Instrument on behalf of the Corporation therein named, and
acknowledged to me that such Corporation executed the within Instru-
ment pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed)

(This area for official notarial seal)

Title Order No. _____ Escrow or Loan No. _____

MAIL TAX STATEMENTS AS DIRECTED ABOVE

The north half of the east half of lot 921 of Tract No. 1000, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in book 19, pages 1 to 34 inclusive of Maps, in the office of the county recorder of said county, described as follows:

Beginning at a point in the east line of said lot 921 distant North 739.85 feet from the southeast corner of said lot; thence westerly 645.22 feet to a point in the east line of the west half of said lot, distant North 734.53 feet from the south line of said lot; thence north parallel with the west line of said lot, a distance of 734.53 feet to the south line of Twelfth Street; thence easterly 645.27 feet to the northeast corner of said lot 921 in the west line of Angelus Avenue; thence south along said Avenue, 739.85 feet to the point of beginning.

EXCEPT therefrom that portion of said land lying easterly of the following described line:

Beginning at a point on the north line of said lot that is distant westerly along said northerly line 35 feet from the northeasterly corner of said lot; thence southeasterly along a straight line to a point in a line that is parallel with a distant westerly 25 feet, measured at right angles, from the easterly line of said lot, said point being southerly along said parallel line, 10 feet from the northerly line of said lot; thence southerly along said parallel line to the southerly line of the north half of the north

half of said lot.

ALSO EXCEPT therefrom the west 128 feet thereof.

Buildings, Structures and Fixtures

- 1 Canopy with 22 eight foot fixtures (44 eight foot bulbs)
- 1 Booth, 7' X 10'
- 2 Restrooms
- 1 Compressor
- 1 Air and water island
- 1 Area light, four 6' bulbs
- 1 Safe
- 2 Fire extinguishers
- 1 Three-sided lighted price sign with numbers
- 3 11,800 gallon gasoline storage tanks with submerged pumps
- 1 Air conditioner
- 1 Vapor recovery system (Stages 1 & 2)
- Fill caps with adaptors
- Concrete and asphalt driveways and surfaces

Name

Street
AddressCity &
State

MAIL TAX STATEMENTS TO

Name

Street
AddressCity &
State

TO 403 C (7-67)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Documentary Transfer Tax \$

Computed on full value of property conveyed.
or computed on full value less liens and encumbrances remaining thereon at time of sale.

Signature of declarant or agent determining tax

Firm Name

Corporation Quitclaim Deed

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

XXXXXX
XXXXXX

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
POWERINE OIL COMPANY

a corporation organized under the laws of the state of California

hereby REMISES, RELEASES AND QUITCLAIMS to AUTOTRONIC SYSTEMS, INC., a
Delaware corporation, all right, title and interest which it may
have in and to

the following described real property in the

County of Pierce

, State of ~~Ore~~ Washington:

Those certain buildings, structures and fixtures situated
on the real property described on Exhibit Q-4A attached
hereto and incorporated herein by reference, which buildings,
structures and fixtures are described on Exhibit Q-4B attached
hereto and incorporated herein by reference.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instru-
ment to be executed by its _____ President and _____ Secretary
thereunto duly authorized.

Dated: _____

STATE OF CALIFORNIA

COUNTY OF _____

} ss.

On _____ before me, the under-
signed, a Notary Public in and for said State, personally appeared
_____, known
to me to be the _____ President, and

_____, known to me to be

_____, Secretary of the Corporation that executed the
within instrument, known to me to be the persons who executed the
within instrument on behalf of the Corporation therein named, and
acknowledged to me that such Corporation executed the within Instru-
ment pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed)

(This area for official notarial seal)

By _____
Ralph Becker President
By _____ Secretary

EXHIBIT - DO NOT SIGN

TO HAVE AND TO HOLD unto the said City of Tacoma, Washington, for the use and behoof thereof, unto their heirs and assigns forever, all that certain lot or lots of land, together with the South 135 feet of Lot 4, Block 1, Lincoln Heights, in addition to the City of Tacoma, according to the plat thereof filed in Volume 14 of plats, page 61, in Pierce County, Washington, EXCEPT that portion deeded for right of way by deed recorded under auditor's file No. 2111029, Also except Whitman Place.

Lots 1, 2, 3 and the South 135 feet of Lot 4, Block 1, Lincoln Heights

in addition to the City of Tacoma, according to the plat thereof filed in Volume 14 of plats, page 61, in Pierce County, Washington,

EXCEPT that portion deeded for right of way by deed recorded under auditor's file No. 2111029,

Also except Whitman Place.

STATE OF CALIFORNIA

ss.

By

Ralph Barker

President

Exhibit Q-4A

Buildings, Structures and Fixtures

- 1 Canopy with 26 light fixtures (52 eight foot bulbs)
- 1 Booth, 15' X 6'
- 1 Storage shed, 15' X 6'
- 1 Restroom
- 1 Gilbarco air compressor, Model CB300, Serial No. AB2288A1A0064
- 1 Safe
- 6 Air and water wells
- 4 Surface area lights
- 4 12,000 gallon underground gasoline storage tanks (2 regular,
1 premium, 1 no-lead) with submerged pumps
- 1 Air conditioner
- 1 AM/FM Stereo receiver
- 3 Fire extinguishers
- 1 8' X 10' Three-sided lighted price sign with numbers
- Block walls
- 1 Vapor recovery system (Stages 1 & 2)
- Concrete and asphalt driveways and surfaces

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Documentary Transfer Tax \$
 Computed on full value of property conveyed.
 or computed on full value less liens and encumbrances remaining thereon at time of sale.

Signature of declarant or agent determining tax

Firm Name

Corporation Quitclaim Deed

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

AFAW/SXX

DXXKABOX

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

POWERINE OIL COMPANY

a corporation organized under the laws of the state of California

hereby REMISES, RELEASES AND QUITCLAIMS to AUTOTRONIC SYSTEMS, INC., a
 Delaware corporation, all right, title and interest which it may
 have in and to

the following described real property in the
 County of King

, State of ~~CALIFORNIA~~ Washington:

Those certain buildings, structures and fixtures situated
 on the real property described on Exhibit Q-5A attached
 hereto and incorporated herein by reference, which buildings,
 structures and fixtures are described on Exhibit Q-5B attached
 hereto and incorporated herein by reference.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its _____ President and _____ Secretary
 thereunto duly authorized.

Dated: _____

STATE OF CALIFORNIA

COUNTY OF _____ } SS.

On _____ before me, the undersigned, a Notary Public in and for said State, personally appeared
 _____, known
 to me to be the _____ President, and
 _____ known to me to be

Secretary of the Corporation that executed the
 within Instrument, known to me to be the persons who executed the
 within Instrument on behalf of the Corporation therein named, and
 acknowledged to me that such Corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors.
 WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed) _____

(This area for official notarial seal)

Title Order No. _____

Escrow or Loan No. _____

The south 135 feet of the east 135 feet of the following described property:
The south half of the southeast quarter of the southeast quarter of the southeast quarter of section 8, township 21 north, range 4 east, W.M., in King County, Washington, except the south 40 feet and except portion thereof for state Highway No. 1, also known as Pacific Highway; and except from the above described remaining tract a triangular portion conveyed to King County for a right of way at the northwest corner of south 320th Street and Pacific Highway South, by deed recorded under auditor's file No. 5869343; and except the south 10 feet thereof conveyed to King County under receiving No. 7402260101.

Together with and subject to a non-exclusive easement for ingress and egress over that portion of the southeast quarter of the southeast quarter of the southeast quarter of Section 8, Township 21 north, Range 4 east, W.M., in King County, Washington, described as follows:

Beginning at the southeast corner of said Section 8; thence North $89^{\circ} 46' 10''$ West along the south line of said section 8, a distance of 182.63 feet; thence north $00^{\circ} 13' 52''$ east a distance of 40.00 feet to the true point of beginning; thence north $89^{\circ} 46' 10''$ west a distance of 60.00 feet; thence north $45^{\circ} 13' 52''$ east a distance of 42.43 feet; thence south $44^{\circ} 46' 08''$ east a distance of 42.43 feet to the true point of beginning; and also

Beginning at the southeast corner of said section 8; thence north $89^{\circ} 46' 10''$ west along the south line of said section 8, a distance of 77.63 feet to the west right of way line of primary state Highway No. 1, also known as Pacific Highway South; thence North $00^{\circ} 13' 52''$ east along said west right of way line a distance of 145.00 feet to the true point of beginning; thence north $44^{\circ} 46' 08''$ west a distance of 42.43 feet; thence north $45^{\circ} 13' 52''$ east a distance of 42.43 feet of said west right of way line of primary state Highway No. 1; thence south $00^{\circ} 13' 52''$ west along said west right of way line a distance of 60.00 feet to the true point of beginning.

COUNTY OF _____

Recd. _____

Beats (Typed or Printed)

Exhibit Q-5A

Buildings, Structures and Fixtures

- 1 Canopy with 32 light fixtures (64 eight foot bulbs)
- 1 Booth, 5' X 15'
- 1 Storage shed, 5' X 15'
- 1 Restroom
- 1 Trash compactor
- 1 Compressor (Gilbarco Model CB311, Serial No. AB2288A1A0064)
- 8 Air and water wells (2 per island)
- 3 Surface area lights
- 1 Safe (Major)
- 1 Three-sided lighted price sign with numbers (8' X 10')
- 2 Paper towel dispensers
- 4 12,000 gasoline storage tanks (1 premium, 2 regular,
1 no-lead) with vapor recovery
- 1 Air conditioner
- 1 Realistic AM/FM Receiver
- 2 Fire extinguishers
- 1 Vapor recovery system (Stages 1 & 2)
- Concrete and asphalt driveways and surfaces

Name

Street
addressCity &
State

MAIL TAX STATEMENTS TO

Name

Street
addressCity &
State

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Documentary Transfer Tax \$

Computed on full value of property conveyed.
or computed on full value less liens and encumbrances remaining thereon at time of sale.

Signature of declarant or agent determining tax

Firm Name

Corporation Quitclaim Deed

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

RECEIVED

RECEIVED

TO 403 C (7-67)

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

POWERINE OIL COMPANY

a corporation organized under the laws of the state of California

hereby REMISES, RELEASES AND QUITCLAIMS to AUTOTRONIC SYSTEMS, INC., a
Delaware corporation, all right, title and interest which it may
have in and to

the following described real property in the

County of Santa Clara, State of California:

Those certain buildings, structures and fixtures situated
on the real property described on Exhibit Q-6A attached
hereto and incorporated herein by reference, which buildings,
structures and fixtures are described on Exhibit Q-6B attached
hereto and incorporated herein by reference.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its _____ President and _____ Secretary
thereunto duly authorized.

Dated: _____

STATE OF CALIFORNIA

COUNTY OF _____ } SS.

On _____ before me, the undersigned, a Notary Public in and for said State, personally appeared
_____, known
to me to be the _____ President, and

_____, known to me to be

_____, Secretary of the Corporation that executed the
within Instrument, known to me to be the persons who executed the
within Instrument on behalf of the Corporation therein named, and
acknowledged to me that such Corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed)

(This area for official notarial seal)

Title Order No.

By _____
Ralph Becker President
By _____ Secretary

EXHIBIT--DO NOT SIGN

THIS DEED IS A PART OF A TRACT OF LAND IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

RECORDED
IN BOOK 4355
PAGE 649

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF KOOSER ROAD, AS SAID LINE WAS ESTABLISHED BY DEED FROM GEORGE OLIVER, ET AL, TO CITY OF SAN JOSE, DATED FEBRUARY 28, 1959, RECORDED MARCH 17, 1959 IN BOOK 4355 OFFICIAL RECORDS, PAGE 649, SANTA CLARA COUNTY RECORDS, WITH THE NORTHEASTERLY LINE OF THAT CERTAIN 14.424 ACRE TRACT OF LAND CONVEYED BY DEED FROM E. W. KNAPP, ET UX, TO JOSEPH E. ROBINSON, DATED NOVEMBER 10, 1915 AND RECORDED IN BOOK 435 OF DEEDS, PAGE 325, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING NORTH 66° 57' 30" EAST ALONG THE SAID SOUTHEASTERLY LINE OF KOOSER ROAD FOR A DISTANCE OF 176.30 FEET TO THE WESTERNMOST CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY DEED FROM GEORGE OLIVER, ET AL, TO A. CHANDLER BERRY, ET UX, DATED FEBRUARY 25, 1959, RECORDED MARCH 18, 1959 IN BOOK 4355 OFFICIAL RECORDS, PAGE 645, SANTA CLARA COUNTY RECORDS; THENCE SOUTH 34° 27' 13" EAST ALONG THE SOUTHWESTERLY LINE OF LAND SO CONVEYED IN THE DEED TO SAID BERRY FOR A DISTANCE OF 125.00 FEET; THENCE LEAVING SAID LAST MENTIONED LINE AND RUNNING SOUTHWESTERLY 173 FEET, MORE OR LESS, TO A POINT IN THE NORTHEASTERLY LINE OF SAID 14.424 ACRE TRACT, DISTANT THEREON SOUTH 34° 27' 13" EAST 158.00 FEET FROM THE SAID POINT OF BEGINNING; THENCE NORTH 34° 27' 13" WEST ALONG THE NORTHEASTERLY LINE OF SAID 14.424 ACRE TRACT FOR A DISTANCE OF 158.00 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF THE HARVAEZ RANCHO.

CITY OF

Ralph Barker

Pres

Buildings, Structures and Fixtures

- 1 Building
- 1 Canopy with 24 eight foot light fixtures
- 3 Gasoline storage tanks with vapor recovery
 - 1 - 10,000 gallon (regular) with model 70C Tolkheim submerged pump, Serial No. 7029689
 - 1 - 8,000 gallon (premium) with model 70C Tolkheim submerged pump, Serial No. 29692
 - 1 - 6,000 gallon (no-lead) with model 70C Tolkheim submerged pump, Serial No. 7029688
- 1 Booth, 6' X 12', attached to existing station
(existing station leased by Insta-tune)
- 1 8' X 10' two-sided, lighted price sign with numbers
- 2 Restrooms
- 1 Kellogg air compressor, Serial No. 265153
- 1 Area light (four 8' bulbs)
- 2 Window towel dispensers
- 2 Fire extinguishers
- 1 Safe
- 2 Air and water wells
- 1 Vapor recovery system (Stages 1 & 2)
- Concrete and asphalt driveways and surfaces

MUTUAL RELEASES

1. Release By ASI.

Autotronic Systems, Inc. (hereinafter "ASI"), for itself, and on behalf of its successors-in-interest and assigns, hereby fully and forever releases, acquits and discharges Coin-Op Gasoline Associates, GLR 1974 Trust, GLR III Trust, Hawaiian Self-Service, Industrial Development Associates, Master Trust of HRR's Children Dated 12/4/72, Master Trust of PBR's Children Dated 12/4/72, P.B.R. 1972 Trust, Perpetual Income Equities, Powerine Copper Company, Retail Gasoline Affiliates, Harry R. Rothschild, Peter B. Rothschild, Harry S. Rothschild, Rothschild Industries, Rothschild Oil Company, Reliable Retail Associates, Investment Holdings, Inc., Pan Nova, Inc. and Consumers Gasoline (hereinafter collectively "The Rothschild Group"), their successors-in-interest, officers, directors, shareholders, agents, employees, assigns, subsidiaries, parent corporations, sister corporations, affiliates, partners, co-venturers, trustees, trustors, beneficiaries, attorneys and each of them, of and from any and all liabilities, claims, demands, actions, causes of action and rights which ASI may have against any or all of them *

2. Release by The Rothschild Group.

The Rothschild Group, for themselves, and on behalf of their respective heirs, successors-in-interest and assigns, hereby fully and forever release, acquit and discharge ASI, its successors-in-interest, officers, directors, shareholders, agents, employees, assigns, subsidiaries, parent corporations, sister corporations, affiliates, partners, co-venturers, attorneys and each of them, of and from any and all liabilities, claims, demands, actions, causes of action and rights which any members of The Rothschild Group may have against any or all of them *

3. Mutual Special Releases.

Without limiting the generality of the foregoing releases, ASI and The Rothschild Group, for themselves, and on behalf of their respective heirs, successors-in-interest and assigns, hereby fully and

*excepting and reserving all obligations under ~~that~~ certain Land Leases dated September 16, 1977, between Rothschild

forever release, acquit and discharge all persons, firms, associations, trusts, corporations and entities (including, without limitation, each other), their respective heirs, successors-in-interest, officers, directors, shareholders, agents, employees, assigns, subsidiaries, parent corporations, sister corporations, affiliates, partners, co-venturers, trustees, trustors, beneficiaries, attorneys and each of them, of and from any and all liabilities, claims, demands, actions, causes of action and rights which either of them may now or hereafter have against any or all such persons, firms, associations, trusts, corporations and entities arising out of any of the following: (i) Civil Action No. C-74-2121 CFP, pending in the United States District Court for the Northern District of California; (ii) the facts alleged in the pleadings and documents filed in said Civil Action; and, (iii) any aspect of the past business affairs and relationships of and between Powerine Oil Company and ASI.

4. Mutual Waiver of Statutory Rights.

ASI and The Rothschild Group each hereby waive all rights which may exist under Section 1542 of the Civil Code of the State of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

5. Warranty Against Assignment.

ASI and The Rothschild Group each represent and warrant that they have not heretofore assigned, transferred, or purported to assign or transfer, (and covenant that they will not assign, transfer or purport to assign or transfer), to any person or entity, any liability, claim, demand, action, cause of action or right which is hereby released and discharged; and, ASI and The Rothschild Group respectively shall indemnify each person and entity released and discharged by them according to the provisions of sections 1 and 2 above, and their respective heirs, successors-in-interest, officers, directors, shareholders, agents, employees, assigns, subsidiaries, parent corporations, sister corporations,

affiliates, partners, co-venturers, trustees, trustors, beneficiaries, attorneys and each of them, and shall hold them harmless, from and against: (i) any liability, claim, demand, action, cause of action or right assigned or transferred contrary to the foregoing warranty; and, (ii) any and all loss, expense and/or liability arising directly or indirectly out of any breach by them of the foregoing warranty.

6. Attorneys' Fees.

In the event litigation is commenced to enforce any of the provisions of this Mutual Release, to recover damages for breach of any of the provisions of this Mutual Release, or to obtain declaratory relief in connection with any of the provisions of this Mutual Release, the prevailing party shall be entitled to recover reasonable attorneys' fees.

7. Successors.

The provisions of this Mutual Release shall be deemed to obligate, extend to and inure to the benefit of the successors-in-interest, assigns, transferees, grantees and indemnitees of The Rothschild Group and ASI, respectively.

8. Captions.

The captions by which the sections of this Mutual Release are identified are for convenience only, and shall have no effect whatsoever upon its interpretation.

9. Interpretation.

Wherever the context so requires: the singular number shall include the plural; the plural shall include the singular; and, the masculine gender shall include the feminine and neuter genders.

Witness my hand and seal, this _____ day of September, 1977.
Dated: September ____, 1977. Autotronic Systems, Inc.

By: _____

By: _____

Witness my hand and seal, this _____ day of September, 1977.
Dated: September ____, 1977.

Coin-Op Gasoline Associates

By: _____

By: _____

Dated: September __, 1977.

GLR 1974 Trust

By: _____

By: _____

Dated: September __, 1977.

GLR III Trust

By: _____

By: _____

Dated: September __, 1977.

Hawaiian Self-Service

By: _____

By: _____

Dated: September __, 1977.

Industrial Development Associates

By: _____

By: _____

Dated: September __, 1977.

Master Trust of HRR's Children
Dated 12/4/72

By: _____

By: _____

Dated: September __, 1977.

Master Trust of HRR's Children
Dated 12/4/72

By: _____

By: _____

Dated: September __, 1977.

P.B.R. 1972 Trust

By: _____

By: _____

Dated: September __, 1977.

Perpetual Income Equities

By: _____

By: _____

Dated: September __, 1977.

Powerine Copper Company

By: _____

By: _____

Dated: September __, 1977.

Retail Gasoline Affiliates

By: _____

By: _____

Dated: September __, 1977.

Harry R. Rothschild

Dated: September __, 1977.

Peter B. Rothschild

Dated: September __, 1977.

Harry S. Rothschild

Dated: September __, 1977.

Rothschild Industries

By: _____

By: _____

Dated: September __, 1977.

Rothschild Oil Company

By: _____

By: _____

Dated: September __, 1977.

Reliable Retail Associates

By: _____

By: _____

Dated: September __, 1977.

Dated: September __, 1977.

Investment Holdings, Inc.

By: _____

By: _____

Dated: September __, 1977.

Pan Nova, Inc.

By: _____

By: _____

Dated: September __, 1977.

Consumers Gasoline

By: _____

By: _____

EXHIBIT--DO NOT SIGN

By: _____

By: _____

By: _____

By: _____

1 James B. Franklin
2 Reg A. Vitek
3 Jan I. Goldsmith
4 Members of
5 SELTZER CAPLAN WILKINS & McMAHON
6 3003 Fourth Avenue
7 San Diego, California 92103
8 (714) 291-3003

9 Attorneys for Plaintiff
10 AUTOTRONIC SYSTEMS, INC.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13	AUTOTRONIC SYSTEMS, INC.,	)	
14	a Delaware corporation,	)	NO. C-74-2121-CFP
15		)	
16	Plaintiff,	)	STIPULATION RE DISMISSAL
17		)	AND ORDER
18	v.	)	
19		)	
20	POWERINE OIL COMPANY,	)	
21	a California corporation,	)	
22		)	
23	Defendant.	)	

24 IT IS HEREBY STIPULATED by the parties hereto, through the
25 undersigned, their respective counsel, that the action may be
26 dismissed with prejudice as to all defendants and counterdefendants,
27 each party to bear its own costs.

28 Dated: September __, 1977.

29 James B. Franklin
30 Reg A. Vitek
31 Jan I. Goldsmith
32 Members of
SELTZER CAPLAN WILKINS & McMAHON
3003 Fourth Avenue
San Diego, California 92103

Attorneys for Plaintiff
Autotronic Systems, Inc.

EXHIBIT--DO NOT SIGN

1 Dated: September __, 1977.

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W. Herbert Young
YOUNG & YOUNG
606 South Olive, Suite 2104
Los Angeles, California 90014

Attorneys for Defendant and Counter-
claimant Powerine Oil Company

O R D E R

IT IS SO ORDERED.

Dated: _____

UNITED STATES DISTRICT JUDGE

Jan 11, 1978
Member of

Attorneys for Defendant
Autotronic Systems, Inc.

AUTHORIZATION FOR RELEASE

OF DOCUMENTS

1. Autotronic Systems, Inc. (hereinafter "ASI") hereby authorizes and instructs Charles Owens & Associates and its agents and employees to release to Powerine Oil Company (hereinafter "POC"), or its designate, all records, files or writings made or obtained by Charles Owens & Associates, or its agents or employees, in connection with ASI's prosecution of that certain civil action now pending in the United States District Court for the Northern District of California as action number C-74-2121 CFP (hereinafter "the lawsuit") including, without limitation, all copies, abstracts, summaries, compilations and analyses of POC's print-outs, books, records and files.

2. ASI hereby assigns, transfers and conveys to POC, without warranty or recourse, all right, title and interest which it may have in and to any and all writings (computerized or otherwise) prepared or obtained by Charles Owens & Associates relating to the lawsuit.

3. ASI hereby authorizes Charles Owens & Associates to consult with POC, at no expense to ASI, concerning the services performed by Charles Owens & Associates for ASI, in connection with the lawsuit.

4. ASI hereby authorizes Micro Reproduction Service, and its agents and employees, to release to POC, or its designate, at no expense to ASI, all films, microfilms and the like, made or obtained by Micro Reproduction Service in connection with the lawsuit.

5. ASI hereby authorizes and instructs its attorneys, Seltzer Caplan Wilkins & McMahon, to release to POC, or its designate, all records, files or writings obtained by Seltzer Caplan Wilkins & McMahon from POC in connection with ASI's

prosecution of the lawsuit. ASI further hereby instructs Seltzer Caplan Wilkins & McMahon to destroy all writings prepared by Seltzer Caplan Wilkins & McMahon in connection with the prosecution of the lawsuit.

6. ASI hereby authorizes and instructs its attorneys, Akin, Gump, Hauer & Feld, to release to POC, or its designate, all records, files or writings obtained by Akin, Gump, Hauer & Feld from POC in connection with ASI's prosecution of the lawsuit. ASI further hereby instructs Akin, Gump, Hauer & Feld to destroy all writings prepared by Akin, Gump, Hauer & Feld in connection with the prosecution of the lawsuit.

7. ASI hereby requests that Charles Owens & Associates, Micro Reproduction Service, Seltzer Caplan Wilkins & McMahon and Akin, Gump, Hauer & Feld cooperate with POC in accomplishing the foregoing.

Dated: September __, 1977.

AUTOTRONIC SYSTEMS, INC.

By _____

EXHIBIT--DO NOT SIGN

and agent and employees to deliver to POC all writings, at no expense to ASI all films, microfilms and the like, made in connection with the prosecution of the lawsuit.

ASI hereby authorizes and instructs its attorneys,

ACCESS AGREEMENT

This Access Agreement is made this ____ day of December, 1994, between Levonard and Margaret Thomsen ("Thomsens") and E-Z Serve Petroleum Marketing Company of California ("E-Z Serve").

Recitals

A. Thomsens are the owners of real property located at 525 West "A" Street, Hayward, California (the "Property").

B. E-Z Serve and Thomsens desire to cooperate in determining the nature and extent of the contamination on the Property and in formulating a plan to remediate the contamination.

NOW, THEREFORE, in consideration of the covenants, obligations, terms and conditions contained herein the parties hereby agreed as follows:

1. As used herein "E-Z Serve" includes E-Z Serve Marketing Company of California.

2. Thomsens hereby grant to E-Z Serve access to the Property to collect soil and groundwater samples and to clean up contamination on-site. E-Z Serve shall provide notice to Thomsens 48 hours in advance of any E-Z Serve entry. For the purposes of this paragraph, adequate notice shall mean telephonic contact with Thomsens' attorneys, Fitzgerald, Abbott & Beardsley, at (510) 451-3300, attention Jonathan Redding. The Thomsens and their consultants may be present during any such E-Z Serve entry to obtain split samples and to observe and take photographs or videotape of the activities.

3. E-Z Serve shall in no way obstruct Thomsens' access to the Property for the purpose of drawing samples from any

groundwater monitoring wells located thereon. Thomsens shall provide telephonic notice to E-Z Serve counsel Jon K. Wactor at Luce, Forward, Hamilton & Scripps (415-395-7910) 48 hours in advance of any such access. Thomsens shall allow E-Z Serve and its representatives to be present during any such access for observation and photographic purposes and to obtain split samples.

4. E-Z Serve and the Thomsens agree to provide each other with a duplicate key (or combination numbers) to any locking device on any groundwater monitoring wells located on the Property. E-Z Serve shall fence the Property, comply with local ordinances regarding weed abatement, and maintain the security of the area, including drums of all waste material generated from its investigations, which drums shall not be stored on the Property for more than 30 days before removal.

5. E-Z Serve and Thomsens shall deliver to counsel for the other party, copies of all field observations and notes, along with the results of any geophysical or chemical analysis performed on samples of soil or groundwater taken from the Property, within 5 days of their receipt or generation.

6. E-Z Serve and the Thomsens shall cooperate to assist each other in obtaining soil or groundwater samples.

7. E-Z Serve agrees that the grant of access under this agreement is revocable by the Thomsens' written request. Any such revocation shall provide E-Z Serve with a reasonable time to vacate.

8. E-Z Serve shall indemnify and hold Thomsens harmless from any losses, expenses, liabilities or claims by Thomsens or any parties, including attorney fees, arising out of or related to any

work on the Property or entry thereon by E-Z Serve, its employees, agents, and independent contractors. E-Z Serve shall ensure that all persons entering the Property under this Agreement have adequate insurance coverage (comprehensive, general and automobile liability insurance) with a combined single limit of not less than \$1,000,000.00 and workers' compensation insurance as required by state law. E-Z Serve shall not permit any mechanics' liens to be filed against the Property.

9. In entering into this Agreement, E-Z Serve and the Thomsens acknowledge that the other is not waiving or giving up any claims or rights at common law, whether legal or equitable, or any statutory rights.

10. This Agreement may be executed in any number of counterparts all of which taken together shall be deemed to constitute an original document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, with their attorneys' approval of the Agreement as to form and content, as of the day and year first written above.

Date: December __, 1994.

Margaret S. Thomsen

Date: December __, 1994.

Levonard A. Thomsen

Date: December __, 1994.

E-Z SERVE PETROLEUM MARKETING
COMPANY OF CALIFORNIA

By _____

Approved as to Form and Content:

Date: December ___, 1994.

FITZGERALD, ABBOTT & BEARDSLEY

By

Richard T. White
Attorneys for Thomsens

Date: December ___, 1994.

LUCE, FORWARD, HAMILTON & SCRIPPS

By

Jon K. Wactor
Attorneys for E-Z Serve

ACCESS AGREEMENT

This Access Agreement is made this ___ day of December, 1994,
between Levonard and Margaret Thomsen ("Thomsens") and E-Z Serve
Petroleum Marketing Company of California ("E-Z Serve"). *Carlene Consultants*

Recitals

- A. Thomsens are the owners of real property located at 525 West "A" Street, Hayward, California (the "Property").
- B. E-Z Serve has occupied the Property since 1985 and was the lessee of the Property beginning February 1, 1987. E-Z Serve terminated the lease and relinquished possession in November, 1994.
- C. E-Z Serve and Thomsens desire to cooperate in determining

the nature and extent of the contamination on the Property and in formulating a plan to remediate the contamination.

NOW, THEREFORE, in consideration of the covenants, obligations, terms and conditions contained herein the parties hereby agreed as follows:

- 1. As used herein "E-Z Serve" includes ~~E-Z Serve~~, ~~E-Z Serve~~ *Marketing Management Company of California*, and their employees, agents, consultants, ~~contractor and subcontractors~~.
- 2. Thomsens ~~shall~~ *Henry* grant to E-Z Serve access to the Property to install, repair, operate, ~~collect soil and groundwater samples~~ *and to clean up contamination on-site*, replace, monitor and destroy ~~groundwater monitoring wells and to drill soil borings~~. ~~The wells and borings shall be installed, monitored and abandoned in accordance with work plans approved by Alameda County Health Care Services Agency.~~ E-Z Serve shall provide ~~adequate notice~~ *48 hr E-Z Serve entry* to Thomsens at least 72 hours in advance of any access, which E-Z Serve ~~intends to make to install, repair, operate, replace, monitor or~~

~~with 48 hr notice~~

~~destroy said wells and borings.~~ For the purposes of this paragraph, adequate notice shall mean telephonic contact with Thomsens' attorneys, Fitzgerald, Abbott & Beardsley, at (510) 451-3300, attention Jonathan Redding. E-Z Serve shall allow Thomsens and their consultants ^{may} ~~to~~ be present during any such ^{E-Z Serve entry} ~~access~~ to obtain split samples and to observe and take photographs or videotape of the activities.

3. E-Z Serve shall in no way obstruct Thomsens' access to the Property for the purpose of drawing samples from any groundwater monitoring wells located thereon. Thomsens shall provide telephonic notice to E-Z Serve ^{at least 48} ~~at least 72~~ hours in advance of any such access. Thomsens shall allow E-Z Serve and its ^{representatives} ~~agents~~ to be present during any such access for observation purposes and to obtain split samples. ^{+ photographic}

4. E-Z Serve ^{and the Thomsens} agrees ^{each other} to provide ~~Thomsens~~ with a duplicate key (or combination numbers) to any locking device which ~~might prevent Thomsens from gaining access to the~~ groundwater monitoring wells located on the Property. E-Z Serve shall fence the Property, comply with local ordinances regarding weed abatement, and maintain the security of the area, including drums of all waste material generated from its investigations, which drums shall not be stored on the Property for more than 30 days before removal.

5. E-Z Serve and Thomsens shall deliver to the other copies of all field observations and notes, along with the results of any geophysical or chemical analysis performed on samples of soil or groundwater taken from the Property, within 5 days of their receipt or generation. In addition, E-Z Serve shall give adequate notice to Thomsens in accordance with Paragraph 2 of this agreement at

least 72 hours prior to any sampling or drilling on the Property, and allow Thomsens and their consultants to be present at such sampling or drilling to obtain split samples and to observe and take photographs or videotape of E-Z Serve's sampling or drilling activities.

6. E-Z Serve ^{and the Thomsens} shall cooperate ^{each other} with Thomsens' consultants to assist them in obtaining soil or groundwater samples, pursuant to ~~any requests made by Thomsens.~~

7. E-Z Serve agrees that the grant of access under this agreement to enter the Property and other rights to install and utilize monitoring wells and soil borings is ~~a revocable license, and that it will promptly relocate the monitoring wells upon~~ Thomsens' written request. ^{Any such request for revocation will provide E-Z Serve with a reasonable time to vacate}

8. E-Z Serve shall indemnify and hold Thomsens harmless from any losses, expenses, liabilities or claims by Thomsens or any parties, including attorney fees, arising out of or related to any work on the Property or entry thereon by E-Z Serve, its employees, agents, and independent contractors. E-Z Serve shall ensure that all persons entering the Property under this Agreement have adequate insurance coverage (comprehensive, general and automobile liability insurance) with a combined single limit of not less than \$1,000,000.00 and workers' compensation insurance as required by state law. E-Z Serve shall not permit any mechanics' liens to be filed against the Property.

9. In entering into this Agreement, E-Z Serve ^{and the Thomsens} acknowledges ^{the other} that ~~Thomsens~~ are not waiving or giving up any claims or rights at common law, whether legal or equitable, or any statutory rights, ~~to receive reimbursement and recover damages from E-Z Serve in~~

~~connection with the hydrocarbon contamination existing upon or beneath the Property.~~

10. E-Z Serve acknowledges that Thomsens are marketing the Property for lease, and will not interfere with Thomsens' efforts. E-Z Serve agrees to comply with any prospective tenant's requests for access to or information about the Property.

11. This Agreement may be executed in any number of counterparts all of which taken together shall be deemed to constitute an original document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, with their attorneys' approval of the Agreement as to form and content, as of the day and year first written above.

Date: December __, 1994.

Margaret S. Thomsen

Date: December __, 1994.

Levonard A. Thomsen

Date: December __, 1994.

E-Z SERVE PETROLEUM MARKETING
COMPANY OF CALIFORNIA

By _____

Approved as to Form and Content:

Date: December __, 1994.

FITZGERALD, ABBOTT & BEARDSLEY

By _____
Richard T. White
Attorneys for Thomsens

Date: December __, 1994.

LUCE, FORWARD, HAMILTON & SCRIPPS

By _____
Jon K. Wactor
Attorneys for E-Z Serve

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
MICHAEL P. WALSH
J. BRITTAIN HABEGGER
VIRGINIA PALMER
TIMOTHY H. SMALLSREED
STEPHEN M. JUDSON
STEPHEN M. WILLIAMS
JONATHAN W. REDDING
BETH E. ASPEDON
THEODORA R. LEE
KRISTIN A. PACE
ROBERT F. CAMPBELL
MICHAEL M. K. SEBREE
ANTONIA L. MORE
MARIA I. LAWLESS
JULIA LYNN NYE
MATTHEW P. MATIASEVICH

FITZGERALD, ABBOTT & BEARDSLEY

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1221 BROADWAY, 21ST FLOOR

OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

R. M. FITZGERALD 1858-1934
CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1862-1963

TELECOPIER: (510) 451-1527

June 20, 1994

VIA FACSIMILE AND U.S. MAIL

Gene Cain
Cain & Cain
1501 North Broadway, Suite 203
Walnut Creek, CA 94596

Coralie Kupfer
Rodi, Pollock, Pettker, Galbraith & Phillips
801 South Grand Avenue
Suite 400
Los Angeles, CA 90017-4623

Ms. Juliet Shin
Alameda County Health Care Department
80 Swan Way, Room 200
Oakland, California 94621

Re: Pre-Enforcement Review Panel
In Re The Property Known As: E-Z Serve
525 West "A" Street, Hayward, California

Dear Mr. Cain, Ms. Kupfer and Ms. Shin:

This is to confirm that the pre-enforcement panel hearing will be held as originally scheduled on June 21, 1994, at 11:00 a.m. The Thomsens have not been included in E-Z Serve's apparent attempts to continue the hearing until August, and they do not consent to continue the hearing to a later date. We will be making a presentation to the panel regarding the scope of further investigations which should be performed at this site.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By *Jonathan W. Redding*
Jonathan W. Redding

JWR:mbb

ALCO
HAZMAT
94 JUN 21 PM 3:15

TELECOPIER: (210) 491-1627

TELECOPIED BY:

JAMES C. ROPER, INC.
 PHILIP M. JELLEY, INC.
 GERALD C. SMITH
 LAWRENCE R. SHEPP
 LLEWELLYN E. THOMPSON II
 RICHARD Y. WHITE
 MICHAEL P. WALSH
 J. BRITAIN HADGGER
 VIRGINIA PALMER
 TIMOTHY H. SMALLERED
 STEPHEN M. JUDSON
 STEPHEN M. WILLIAMS
 JONATHAN W. REDDING
 BETH E. ASPEDON
 THEODORA R. LEE
 KRISTIN A. PAGE
 ROBERT F. CAMPBELL
 MICHAEL M. K. BEBBER
 ANTONIA L. MORE
 MARIA I. LAWLESS
 JULIA LYNN NYE
 MATTHEW P. MATIASSEVICH

FITZGERALD, ABBOTT & BEARDSLEY

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1221 BROADWAY, 21ST FLOOR

OAKLAND, CALIFORNIA 94612-1637

TELEPHONE: (510) 451-3300

R. M. FITZGERALD 1888-1934
 CARL H. ABBOTT 1887-1933
 CHARLES A. BEARDSLEY 1882-1933

TELECOPIER: (510) 451-1827

June 20, 1994

VIA FACSIMILE AND U.S. MAIL

Gene Cain
 Cain & Cain
 1501 North Broadway, Suite 203
 Walnut Creek, CA 94596

Coralie Kupfer
 Rodi, Pollock, Pettker, Galbraith & Phillips
 801 South Grand Avenue
 Suite 400
 Los Angeles, CA 90017-4623

Ms. Juliet Shin
 Alameda County Health Care Department
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 Oakland, California 94621

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In Re The Property Known As: E-Z Serve
525 West "A" Street, Hayward, California

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Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By *Jonathan W. Redding*
 Jonathan W. Redding

JWR:mbb

E-Z SERVE
MANAGEMENT COMPANY

ALCO
HAZMAT

94 JUN 17 AM 11:29

June 13, 1994

Ms. Juliette Shin
Alameda County Health Care Services
80 Swan Way, Room 200
Oakland, CA 94621

Re: E-Z Serve #100877
525 West "A" Street
Hayward, California

Dear Ms. Shin:

This is in response to your recent request for meeting regarding the referenced location. As discussed by telephone E-Z Serve is in the process of transitioning a new consultant into this project. Because of this we are requesting that any meeting not take place until mid to late July. Also, we would like an extension of time for preparing a Work Plan for additional assessment. I would prefer that our new consultant be involved in preparing this Work Plan.

If you have questions please advise. Your assistance is appreciated.

Sincerely,



Brian Cobb, P.E.
Environmental Manager

cc: Eddy So - CRWQCB

E-Z SERVE MANAGEMENT COMPANY

June 13, 1994

Ms. Juliette Shin
Alameda County Health Care Services
80 Swan Way, Room 200
Oakland, CA 94621

Re: E-Z Serve #100877
525 West "A" Street
Hayward, California

Dear Ms. Shin:

This is in response to your recent request for meeting regarding the referenced location. As discussed by telephone E-Z Serve is in the process of transitioning a new consultant into this project. Because of this we are requesting that any meeting not take place until mid to late July. Also, we would like an extension of time for preparing a Work Plan for additional assessment. I would prefer that our new consultant be involved in preparing this Work Plan.

If you have questions please advise. Your assistance is appreciated.

Sincerely,

Brian Cobb

Brian Cobb, P.E.
Environmental Manager

cc: Eddy So - CRWQCB

Post-It Fax Note 7671		Date 6-13-94	# of pages 1
To Juliette Shin		From Brian Cobb	
Co./Dept.		Co.	
Phone #		Phone #	
Fax # 510-569-4757		Fax #	

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

In Re The Property Known As :)
E-Z Serve)
525 West "A" Street)
Hayward, CA 94541)

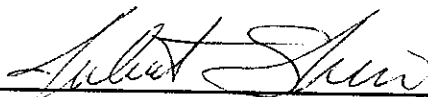
Notice of
Pre-Enforcement
Review Panel

Notice is hereby given that upon the motion of the Alameda County Hazardous Materials Division, and the San Francisco Bay Regional Water Quality Control Board a Review Panel will convene on June 21, 1994 at 11:00 AM in the offices of the Alameda County Hazardous Materials Division located at 80 Swan Way, Room 200, Oakland, CA 94621. This Review Panel will convene for the purpose of determining responsible parties as well as appropriate closure, site assessment, clean-up and mitigation of contamination at the above location.

The Alameda County Hazardous Materials Division, and the San Francisco Bay Regional Water Quality Control Board have named and served notice of this Review Panel on the following persons or entities as having proposed responsibility for closure, site assessment, clean-up and mitigation of contamination at the above location, and by this notice all parties named herein are informed of the right to appear and show cause, if any they have, for the exclusion or inclusion of any of the parties served herein from said responsibility or obligations:

1. E-Z Serve Mgmt. Co. (Contact: Brian Cobb)
P.O. Box 922021, Houston, Texas 77292-2021
2. L.A. & Margaret Thompson
P.O. Box 16290, Houston, Texas 77222
3. Powerine Oil Company, Inc. (Contact: Henry Del Castillo)
12354 Lakeland Road, Santa Fe Springs, CA 90670-3816

Dated: June 7, 1994



Certified Mail #

06/07/94
STID# 3580

Notice of Requirement to Reimburse

Brian Cobb
E Z Serve Petroleum Marketing
10700 N I-45, Suite 500
Houston, Tx 77037-1187

Responsible Party #1
Property Owner

Margaret Thompson
n/a
1675 Manzanita Ave. #120
Chico, C A 95926

Responsible Party #2
Contact Person
Contact Company

EZ Serve
525 W A St
Hayward, CA 94541

SITE

Date First Reported 12/26/86
Substance: Gasoline
Petroleum: (X)Yes

The federal Petroleum Leaking Underground Storage Tank Trust Fund (Federal Trust Fund) provides funding to pay the local and state agency administrative and oversight costs associated with the cleanup of releases from underground storage tanks. The legislature has authorized funds to pay the local and state agency administrative and oversight costs associated with the cleanup of releases from underground storage tanks. The direct and indirect costs of site investigation or remedial action at the above site are funded, in whole or in part, from the Federal Trust Fund. The above individual(s) or entity(ies) have been identified as the party or parties responsible for investigation and cleanup of the above site. YOU ARE HEREBY NOTIFIED that pursuant to Title 42 of the United States Code, Section 6991b(h)(6) and Sections 25297.1 and 25360 of the California Health and Safety Code, the above Responsible Party or Parties must reimburse the State Water Resources Control Board not more than 150 percent of the total amount of site specific oversight costs actually incurred while overseeing the cleanup of the above underground storage tank site, and the above Responsible Party or Parties must make full payment of such costs within 30 days of receipt of a detailed invoice from the State Water Resources Control Board.

Please contact Juliet M SHIN, Hazardous Materials Specialist at this office if you have any questions concerning this matter.

Edgar B. Howell, III, Chief
Contract Project Director

cc: Mike Harper, SWRCB

SWRCB Use:

Update : X Reason: Change of RP#2 address

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

In Re The Property Known As :)
E-Z Serve)
525 West "A" Street)
Hayward, CA 94541)
_____)

Notice of
Pre-Enforcement
Review Panel

Notice is hereby given that upon the motion of the Alameda County Hazardous Materials Division, and the San Francisco Bay Regional Water Quality Control Board a **Review Panel** will convene on June 21, 1994 at 11:00 AM in the offices of the Alameda County Hazardous Materials Division located at 80 Swan Way, Room 200, Oakland, CA 94621. This **Review Panel** will convene for the purpose of determining responsible parties as well as appropriate closure, site assessment, clean-up and mitigation of contamination at the above location.

The Alameda County Hazardous Materials Division, and the San Francisco Bay Regional Water Quality Control Board have named and served notice of this **Review Panel** on the following persons or entities as having proposed responsibility for closure, site assessment, clean-up and mitigation of contamination at the above location, and by this notice all parties named herein are informed of the right to appear and show cause, if any they have, for the exclusion or inclusion of any of the parties served herein from said responsibility or obligations:

1. E-Z Serve Mgmt. Co. (Contact: Brian Cobb)
P.O. Box 922021, Houston, Texas 77292-2021
2. L.A. & Margaret Thompson
P.O. Box 16290, Houston, Texas 77222
3. Powerine Oil Company, Inc. (Contact: Henry Del Castillo)
12354 Lakeland Road, Santa Fe Springs, CA 90670-3816

Dated: June 7, 1994 _____

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

In Re The Property Known As :)
E-Z Serve)
525 West "A" Street)
Hayward, CA 94541)
_____)

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Pre-Enforcement
Review Panel

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12354 Lakeland Road, Santa Fe Springs, CA 90670-3816

Dated: June 7, 1994 _____

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LEWELLYN A. THOMPSON &
RICHARD T. WHITE
MICHAEL D. WALSH
J. BRITAIN HASEGGER
VIRGINIA PALMER
TIMOTHY W. SMALLER
STEPHEN M. JUDSON
STEPHEN M. WILLIAMS
JONATHAN W. REDDING
BETH E. ADPSON
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KRISTIN A. PAGE
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JULIA LYNN NYE
MATTHEW P. MATIASOVICH

FITZGERALD, ABBOTT & BEARDSLEY

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1221 BROADWAY, 21ST FLOOR

OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

R. M. FITZGERALD 1935-1994
CARL H. ABBOTT 1927-1993
CHARLES A. BEARDSLEY 1922-1993

TELECOPIER: (510) 451-1527

TELECOMMUNICATION COVER PAGE

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: J. L. Smith
FAX NO: 569-4757
FROM: J. Redding
TOTAL NUMBER OF PAGES: 1 INCLUDING COVER PAGE
DATE: 6/6/94 TIME:

IF TOTAL NUMBER OF PAGES ARE NOT RECEIVED,
PLEASE CALL BACK AS SOON AS POSSIBLE.

PHONE: (510) 451-3300; EXTENSION: 57
FAX: (510) 451-1527

CLIENT CODE: TELECODE:

COMMENTS: Pursuant to your request, enclosed is address of
Powerine & their counsel who were lessees of the
property in Nov 1986. They assigned their interest earlier,
but remained liable on the lease. See excerpt of lease, P2 -

THE INFORMATION CONTAINED IN THIS FACSIMILE IS CONFIDENTIAL AND MAY ALSO BE
PROTECTED BY THE ATTORNEY-CLIENT OR OTHER ATTORNEY PRIVILEGES. IT IS INTENDED
ONLY FOR THE USE OF THE ADDRESSEE. IF YOU ARE NOT THE ADDRESSEE OR THE PERSON
RESPONSIBLE FOR DELIVERING FACSIMILES TO THE ADDRESSEE, THEN YOU HAVE RECEIVED
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DISSEMINATE, DISTRIBUTE OR COPY SUCH FACSIMILE BUT ARE REQUESTED TO TELEPHONE THE
SENDER AND MAIL THE FACSIMILE TO THE SENDER AT THE ABOVE ADDRESS.

HARD COPY TO FOLLOW: YES () NO ()

TELECOPIED BY:

term till
January
1987.

Powerine Oil Company, Inc.
Henry Del Castillo
12354 Lakeland Road
Santa Fe Springs, CA 90670-3816

→ Coralie Kupfer, *esp*
Rodi, Pollock, Pettker, Galbraith & Phillips
801 South Grand Avenue, Suite 400
Los Angeles, CA 90017-4623

A Harry for Powerine

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 1st day of December, 1966, by and between LEONARD A. THOMSON MARGARET E. THOMSON, hereinafter referred to as "Lessor", and POWERLINE OIL COMPANY, a California corporation, having its principal offices at 12354 Lakeland Rd., Santa Fe Springs, California, hereinafter referred to as "Lessee".

WITNESSETH:

(1) Lessor does hereby lease to the Lessee all that certain real property situated in the County of Alameda, State of California, located on the Southwest corner of "A" Street and Garden in said county, which said parcel of real property has a frontage of approximately 133 feet on "A" Street and approximately 120 feet on Garden measuring from the present property lines and which parcel of real property is described as follows: To be determined by survey, subject to approval of both Lessor and Lessee, and to be attached to and become a part of this lease.

(2) TERM: The term of this lease shall be for twenty (20) years commencing on the 1st day of February, 1967, and terminating on the 31st day of January, 1987.

(3) RENTAL: Lessee agrees to pay Lessor as rental for the use and occupancy of the leased property a total rental of One Hundred Fourteen Thousand and no/100 (\$14,000.00) Dollars payable in monthly installments of Four Hundred and no/100 (\$400.00) Dollars commencing on the 1st day of February, 1967 to and including the 31st day of January, 1972 Four Hundred Fifty and no/100 (\$450.00) Dollars commencing on the 1st day of February, 1972 to and including the 31st day of January, 1977. Five Hundred and no/100 (\$500.00) Dollars commencing on the 1st day of February, 1977 to and including the 31st day of January, 1982 and Five Hundred Fifty and no/100 (\$550.00) thereafter on the first day of each and every month during the term hereof. In the event of default in the payment of any installment of rent when due, then at the option of the Lessor, the entire unpaid balance shall immediately become due and payable thirty days after written notice of said default has been given to the Lessee.

(4) FIRST RIGHT OF REFUSAL: Lessor agrees that in the event Lessor should decide to sell said real property, Lessee shall have the first refusal to buy said real property at such purchase price as is offered Lessor by a bona fide purchaser, ready, willing and able to buy and that Lessor will notify Lessee in writing, setting forth the terms and conditions of the offer of purchase; and that Lessee shall have ten (10) days thereafter within which to accept or reject the right to purchase on the aforesaid terms.

TH10271

DAVID O. LARSON
GREGORY DAVID BROWN
ROBERT J. LYMAN
SCOTT C. FINCH
RALPH A. ZAPPALA
PETER DIXON
SUSAN FELDSTEDT HALMAN
GARY R. SELVIN
ROBERT A. FORD
MICHAEL R. REYNOLDS

CLARK J. BURNHAM
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ERIC R. HAAS
STEVEN M. MARDEN
MONICA DELL'OSSO
JEFFERY G. BAIREY
PATRICK MCCARTHY
H. WAYNE GOODROE
DAVID R. PINELLI
JAMES L. WRAITH

LAW OFFICES OF
LARSON & BURNHAM
A PROFESSIONAL CORPORATION
1901 HARRISON STREET, 11TH FLOOR
OAKLAND, CALIFORNIA 94612-3501
TELEPHONE: (510) 444-6800

Please reply to:

POST OFFICE BOX 119
OAKLAND, CALIFORNIA 94604-0019
TELECOPIER NUMBER: (510) 835-6666

A.J. MOORE, JR. (1918-1984)

JAMES H. RIGGS (OF COUNSEL)*

*Certified Specialist, Probate, Estate Planning and Trust Law
The State Bar of California Board of Legal Specialization

CHRISTOPHER L. AGUILAR
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DAVID H. WATERS
STEPHEN C. WHITNEY
BARRY ZOLLER

July 8, 1994

Ms. Juliet Shin
Alameda County
Department of Environmental Health Services
80 Swan Way, Room 200
Oakland, CA 94621

Dear Ms. Shin:

This letter is a follow-up to our telephone conversation of July 1, 1994. As I advised you, I was appointed by the court as special trustee of the Pauline M. Ratto trust. Among the assets of the trust is a trailer park located at 21748 Garden Avenue, Hayward, California. That property is adjacent to 525 "A" Street, Hayward. The Garden Avenue property has been impacted by a gasoline leak which occurred some years ago on the "A" Street property.

You have advised me that the County has now issued a thirty-day request for information. The purpose of that inquiry will be to gather necessary information for determination of the extent of the contamination and responsibility for the cleanup. We are certainly willing to cooperate in any way possible to assist in obtaining the information required to make these determinations. Our primary concern is that appropriate remedial steps be taken to eliminate any and all contamination on the Garden Avenue property. The existence of this problem has a potentially serious impact on the future use and salability of the property.

We would request that you keep us fully apprised of any developments.

Very truly yours,

LARSON & BURNHAM

Monica Dell'Osso
Monica Dell'Osso

MDO:ss

cc: Jonathan Redding, Esq.
Gil Jensen, Esq.
Gene Cain, Esq.

94 JUL 12 PM 3:53
ALCOAT
HAZMAT

LAW OFFICES OF

CAIN & CAIN

STEPHEN AUSTIN CAIN
CAROLYN D. CAIN
GENE CAIN

1501 NORTH BROADWAY, SUITE 203
WALNUT CREEK, CALIFORNIA 94596

ALCO
HAZMAT

TELEPHONE
(510) 932-0893
FACSIMILE
(510) 932-0216

94 JUN -7 PM 2:10

June 4, 1994

Richard White, Esquire
FITZGERALD, ABBOTT & BEARDSLEY
1221 Broadway, 21st Floor
Oakland, CA 94612-1837

Re: Thomsen vs Powerine Oil Company, et. al.
Your telefaxes of June 3, 1994

Dear Mr. White:

Your comments regarding my "magic mail box" are consistent with the unprofessional conduct we have experienced with your office. Placing your office on written communication has been successful in that it has limited your opportunities to make false statements as to our discussions. In response, you have shifted to a new intimidation tactic; making known to be false accusations regarding service by mail. As usual, you are wasting your clients' money. In truth, as with all of the other documents served by mail to your office, there is no reason to believe that these latest moving papers were not actually received by FAB within a day or two after they were mailed on May 27. As to the absence of a "corresponding mark placed by the United States Postal Service," it is common knowledge that the service does not place its own postmark on metered mail unless the postage meter date is incorrect. Therefore, your assertions were not only known to be false when made and unbelievable, they serve no purpose.

If there are other reasons why you need more time to prepare an opposition, such as the fact that your associate Ms. Nye will be out of town for the next few weeks, we will accomodate any written request to continue the hearing date on that basis. You do not aid the presentation of your clients' claims by making known to be false accusations.

As for Judge Hodge's ruling, as mandated by CCP § 437c(f), summary adjudication can be granted only if it disposes of a cause of action or an issue of duty. The ruling of Judge Hodge makes no mention of either. In fact, as argued by the E Z SERVE in its opposition papers, although plaintiffs' motion was supposed to have disposed of the eighth cause of

Continued.

Richard White, Esquire
June 4, 1994,
Page two

action, it clearly did not. The mere "finding" of a breach does not dispose of a cause of action, absent a determination of damages and an adjudication of other allegations of the eighth cause of action. Of course, if properly noticed as required by the lease, any breach can be cured at any time during the term, with any and all "removable trade fixtures," such as equipment and/or improvements, later removed at the expiration of the lease.

There are other problems with the ruling on the motion, such as the fact that in oral argument (but not in their moving papers), plaintiffs asserted for the first time that E Z SERVE's ownership of and its right to remove "removable trade fixtures" applied only to those items installed by E Z SERVE after execution of the January 1987 lease. The language of the lease does not specify the period of installation but refers to installed in both the past tense and in the future. Nor was that subject addressed in plaintiffs' moving papers. In fact, as pointed out by E Z SERVE in its opposition to the motion, plaintiffs' Separate Statement included alleged undisputed facts where they specifically deleted the exception for those items installed by E Z SERVE.

Additionally, supports (f)(2) and (g) of 437c mandate that when summary adjudication is granted, either by written or oral order, reference must be made to the evidence offered in support of and in opposition to the motion, if applicable, which indicate that no triable issue exists. Since, the "evidence offered in support of" specifically excluded the words "except that all movable trade fixtures installed by Lessee shall be and remain the property of Lessee" (meaning those items that had been installed (past tense) remained E Z SERVE's property and meaning that those that shall be (future) would remain E Z SERVE's property, emphasis added), plaintiffs' counsel will be hard pressed to write a formal order that complies with 437c. Any proposed order must be submitted to this office for approval as to form before it is submitted to the court.

Another problem is that the wording of the ruling with respect to the court's power to interpret documents strongly suggests that his Honor went beyond the summary adjudication

Continued.

Richard White, Esquire
June 4, 1994,
Page three

function of spotting the existence or the non existence of triable issues in that he appears to have actually weighed the evidence to make a finding based upon that evidence and his own interpretation of documents. The latter conduct is in excess of the jurisdiction of the court in hearing a summary adjudication motion.

Your analysis of the impact of Judge Hodge's ruling is wishful thinking. No determination has been made that plaintiffs are entitled to damages "upwards to \$500,000," or in any amount or that they will ultimately be the prevailing party in the lawsuit on the issue of the leases and therefore entitled to an award of attorney's fees. Contrary to your wishful thinking, the court has not held that E Z SERVE cannot remove "removable trade fixtures" installed by E Z SERVE at the expiration of the lease. Your contention contradicts the specific language of the 1987 lease that was written by plaintiffs. You should recall that in open court during oral argument, his Honor questioned the wisdom of plaintiffs' motion. I also suggest that before committing your clients to asserting ownership of the USTs that were removed in 1990, you re-visit the provisions of the Health & Safety Code, particularly those attendant to such ownership.

There is no reason for E Z SERVE (or any knowledgeable person) to alter its opinion as to the fact that this elderly couple has been and continues to be victimized by their own attorneys. The plaintiffs' motion for summary adjudication and the time and the money that has been wasted on unnecessary communication and motions reinforces that opinion. By contrast, E Z SERVE's conduct has been and, if permitted, will continue to be exemplary. Notwithstanding the constant barrage of rude, harassing and unprofessional behavior from plaintiffs' counsel that began in 1992 and which has interfered with its right to quiet enjoyment and use of the property, E Z SERVE has continued to pay the rent on the lease and it has committed its time and its resources to a complete clean-up of the property regardless of the ultimate determination of the identity of the responsible party or parties.

As to the issue of mediation, E Z SERVE made its offer.

Continued.

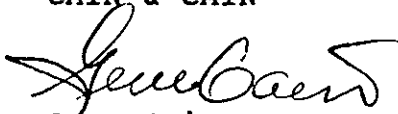
Richard White, Esquire
June 4, 1994,
Page four

It was refused. It therefore pressed on with additional discovery and with the preparation of its own motion for summary judgment and/or summary adjudication which will be served within the next few days. E Z SERVE is unable to understand why the plaintiffs have seemingly unlimited funds for discovery and/or motions purposes but none to pay their fair share for mediation. They cannot have it both ways. If the plaintiffs were serious about mediation, they will find the funds.

As to plaintiffs' noticed depositions and their other "discovery," E Z SERVE will make timely decisions as to objections, protective orders, etc.. In the event that one or more witnesses can be and/or needs to be produced, E Z SERVE may elect to present them in California.

Notwithstanding any argument or contention to the contrary, plaintiffs and their attorneys are fully aware that E Z SERVE has fully performed all conditions and covenants to be performed on its part under the 1987 lease. If plaintiffs' and/or their agents make any further attempt to interfere with E Z SERVE's quiet enjoyment and use of the property, in particular, while the remediation is on-going, they must be prepared to face the full consequences of their conduct.

Very truly,
CAIN & CAIN


Gene Cain

Copy: All counsel
Ms. Juliet Shin

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
MICHAEL P. WALSH
J. BRITTAIN HABEGGER
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MATTHEW P. MATIASSEVICH

FITZGERALD, ABBOTT & BEARDSLEY

ATTORNEYS AT LAW

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1221 BROADWAY, 21ST FLOOR

OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

R. M. FITZGERALD 1858-1934
CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

TELECOPIER: (510) 451-1527

June 1, 1994

Ms. Juliet Shin
Alameda County Health Care Department
80 Swan Way, Room 200
Oakland, California 94621

Re: Thomsen v. Powerine, et al.
525 West A Street, Hayward

Dear Ms. Shin:

This letter is to supplement my letter of May 13, 1994, in which I enclosed a copy of Subsurface Consultants, Inc.'s site assessment letter report concerning the property. Apparently, Gene Cain, attorney for E-Z Serve, has felt it necessary to make additional comments to you concerning the accurate statements contained in our prior correspondence. Because of the nature of his May 18, 1994, letter concerning "Mr. Redding's slanderous statements," this firm's "callous victimization of elderly owners and the lawsuit as 'frivolous,'" I feel it necessary to advise you further of our clients' position and the court's proceedings in this matter.

Regarding E-Z Serve, it has been our experience that it had no intention of cleaning up the property until compelled to do so by the threat of litigation and the current litigation. Prior to our active involvement in the case, E-Z Serve did nothing to remediate any soil or groundwater contamination for many years, instead allowing it to migrate offsite. During that time, two separate notices of violation were issued by the county and numerous requests for additional work went unanswered. Even at this time, E-Z Serve refuses to acknowledge the fact that its releases have caused a major problem within the vicinity, and instead proposes insufficient remediation, while attempting to refuse to perform the characterization studies which would expand the scope of its remediation. This is not acceptable to our clients and should not be acceptable to the county. Plaintiffs require a full and

complete cleanup of the property as soon as possible, and they are currently in court seeking just that.

Regarding the court proceedings, you should be advised that E-Z Serve and its counsel have now been sanctioned three separate times by the court for abuses of the discovery process. Moreover, E-Z Serve's position regarding its obligations under the governing lease has been found by the court to be of no merit: E-Z Serve promised in 1990, to construct a new state of the art gas station on the site, including a convenience store, but repudiated its contractual obligations in 1992, apparently when it discovered the extensive contamination on the property which had remained untreated since the spill of 4,000 gallons fully six years earlier.

In order to establish lack of merit to E-Z Serve's denials of its lease obligations, plaintiffs filed a motion for summary adjudication of E-Z Serve's liability for breach of the 1990 agreement to completely upgrade and remodel the facility with state-of-the-art fuel dispensing equipment and a convenience store. Upon review of the record, the court granted plaintiffs' motion by Order Re Summary Adjudication of Issues, a copy of which I enclose. As you will see on the last page of the Order, the court has determined that E-Z Serve "reneged on their promise to renovate the facility" (p: 9-10) and that their conduct constitutes "a breach of the contract" by which they leased the premises. The significance of this Order is two-fold: (1) it establishes E-Z Serve's liability for the costs of constructing the upgraded service station and convenience store which are conservatively estimated to exceed \$500,000.00; and (2) it establishes E-Z Serve's breach of lease, thereby confirming plaintiffs' entitlement to recover their attorneys' fees which have also climbed into six figures. Of course, the total of sanctions paid by E-Z Serve and its counsel will be credited against the final total of costs and fees which E-Z Serve is ordered to pay.

Plaintiffs have not yet filed their motion to establish E-Z Serve's breach of law, and therefore a separate breach of the lease, due to its many failures to properly operate a gas station and to remediate known releases on and emanating from the property in compliance with various California statutes and common law doctrines. We do expect to bring those matters to the court's attention in the near future. In the interim, however, as we share a joint interest in compelling E-Z Serve to conduct a full characterization of contamination on and emanating from the site, followed by a swift and prompt cleanup of contamination, which can be accomplished within the lifetimes of our 75 and 78 year old

June 1, 1994

clients. We again offer to you the assistance of our environmental consultants who have spent dozens of hours reviewing the files and documenting the inadequacies in both the site characterization and cleanup proposals to date. We look forward to discussing these matters with you in the near future. Please contact me at your earliest convenience.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By 
Jonathan W. Redding

JWR:mah

Enclosure (May 23, 1994, Order re Summary Adjudication of Issues)

cc: Gene Cain, Esq.
Gilbert Jensen, Esq. (w/encl.)
Bill Rudolph (w/encl.)
Richard T. White, Esq.

MAY 27 1994

RONALD G. OVERHOLT, Exec. Off./Clerk
By Lillian C. Don

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

---o0o---

LEVONARD A. THOMSEN and
MARGARET S. THOMSEN,

Plaintiffs,

vs.

No. H-169600

POWERLINE OIL COMPANY, INC., a
California Corporation, E-Z SERVE
PETROLEUM MARKETING COMPANY OF
CALIFORNIA, a California
Corporation, HARKEN MARKETING
COMPANY OF CALIFORNIA, a
California Corporation, and DOES
1 through 100, inclusive,

ORDER RE SUMMARY
ADJUDICATION OF
ISSUES

Defendants.

Plaintiffs seek a summary adjudication, pursuant to their 8th cause of action, that defendant E-Z Serve Petroleum ("E-Z Serve"), breached its contractual obligations to renovate a gas station owned by plaintiffs and leased to defendants. Plaintiffs' position depends upon the interpretation of the 1987 lease between the parties and a letter of June 13, 1990, urged to be a modification of the lease.

The evidence pertaining to the execution of the relevant documents is essentially without dispute. Thus,

1 it is purely "a judicial function to interpret a written
2 instrument unless the interpretation turns upon the
3 credibility of extrinsic evidence." Parsons vs. Bristol
4 Development Company, (1965) 62 Cal.2d 861.

5 Section four of the 1987 lease provides:

6 "A. All alterations, additions and
7 improvements on or in the demised
8 premises at the commencement of the
9 term, or that may be erected or
10 installed during the term, shall
11 become part of the demised premises
12 and the sole property of Lessors,
13 except that all movable trade
14 fixtures installed by Lessee shall be
15 and remain the property of Lessee.

16 B. Lessee, may, at its own expense,
17 make any alterations, additions or
18 improvements in and to the demised
19 premises as long as prior written
20 approval of the Lessors is obtained."

21 In 1986, defendants discovered leakage from the
22 underground gasoline tanks. In 1989, the Loma Prieta
23 earthquake caused defendants to conduct an investigation
24 into the safety of the tanks. On June 13, 1990,
25 defendants sent the following letter, the terms of which
26 were accepted and "approved" by plaintiffs:

27 "Dear Mr. and Mrs. Thomsen:

28 As you may be aware we have had the
above referred to station location,
which we lease from you, closed for
quite some time. We were forced to
close because the underground storage
tanks would not pass the required
tank tightness tests. In order to
remedy the current situation we must
remove the underground tanks and
related piping and conduct an
investigation. The removal is taking
place this week.

1 At the time of the extensive exca-
2 vation we would like to completely
3 upgrade and remodel the facility.
4 The upgrade will include the
5 installation of new underground
6 storage tanks and piping, new
7 automated gasoline dispensing
8 equipment and a convenience store
9 building. We plan to use the
10 existing canopy structure and to
11 resurface the entire lot. The
12 equipment installed will be of the
13 latest approved design, to accommo-
14 date constant monitoring of tanks and
15 lines.

16 Pursuant to Section Four B of our
17 lease agreement, your agreement to
18 the alterations is required. There-
19 fore, I ask that you sign a copy of
20 this letter where indicated, and
21 return it to me in the enclosed
22 envelope.

23 If you have any questions, please
24 call me."

25 Defendants would evade the unmistakable language
26 of the lease and letter in modification thereof by looking
27 to events antecedent to the 1987 lease. In 1966 plain-
28 tiffs executed a 20-year lease with Powerine Oil Company.
In 1977, Powerine assigned its leasehold rights to
Autotronic Systems, Inc. (ASI), along with a quitclaim
deed to all structures and fixtures. In 1985, ASI
assigned its leasehold and quitclaim rights to defendants.

Defendants argue that under the 1966 lease, all
structures and fixtures were required to be removed within
30 days after termination of the lease. Thus, defendants
argue that as of the commencement of the 1987 lease, all
fixtures and improvements on the premises remained the
property of defendants.

1 Defendants' argument has several flaws. Section
2 17 of the 1966 lease is not absolute in its requirement
3 that the lessee remove "all fixtures or improvements", but
4 rather provides that "upon receipt of written notice for
5 (sic.) the lessor permitting lessee to do so, lessee shall
6 have the right and option to leave all said fixtures and
7 improvements on the leased premises, which shall then
8 become the property of lessor."

9 Whether or not there was a specific "written
10 notice", it's clear that the lessee did accede to the
11 continued presence of the improvements which "then became
12 the property of the lessor." The quitclaim deed~~s~~ between
13 Powerine and ASI is of little moment since the quitclaim
14 deed can convey no greater legal interest than that avail-
15 able to the grantor. Here, that interest was essentially
16 nothing.

17 Of greater significance is the unambiguous
18 language of Section Four of the 1987 lease which nullifies
19 any preexisting claim of ownership to the property.
20 Without qualification, Section Four provides that all
21 "alterations, additions and improvements on or in the
22 demised premises at the commencement of the term"
23 (emphasis added), shall become the "sole property of
24 lessors". Thus, if the improvements were there for
25 whatever reason and by whatever legal course at the
26 commencement of the lease, they belong to the lessor. The
27 exception that "all movable trade fixtures installed by
28 lessee shall be and remain the property of lessee" clearly

1 refers to any installation subsequent to the execution of
2 the lease.

3 The letter agreement of June 13, 1990, is
4 equally without ambiguity. Succinctly stated, the letter
5 constitutes a request for permission to remove "the
6 underground tanks and piping" in return for a promise "to
7 completely upgrade and renovate the facility." In
8 essence, defendants removed tanks, piping and buildings
9 owned by lessors and then reneged on their promise to
10 renovate the facility. The May 20, 1992, letter from
11 defendants to plaintiffs constitutes a repudiation of the
12 1990 contract.

13 The Court finds a breach of contract. The scope
14 of the breach and the allocation of appropriate damages
15 are left to the trier of fact.

16 IT IS SO ORDERED.

17 ---o0o---

18 Dated: May 23, 1994

19
20
21
22
23 RICHARD A. HODGE, Judge
24 of the Superior Court
25
26
27
28

ALCO
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94 MAY 26 AM 11:39

E-Z SERVE
MANAGEMENT COMPANY

May 20, 1994

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
80 Swan Way, Room 200
Oakland, CA 94621

Re: Quarterly Monitoring Report
Former E-Z Serve #100877
525 West "A" Street
Hayward, California

Dear Ms. Shin:

Attached is a monitoring report for the fourth quarter of 1993. This report was prepared in accordance with the requirements established by the California Regional Water Quality Control Board.

If you have any questions advise.

Sincerely,



Brian Cobb, P.E.
Environmental Manager

w/enclosure

cc: Mr. Eddy So - CRWQCB w/encl.
John Reaves

STEPHEN AUSTIN CAIN
CAROLYN D. CAIN
GENE CAIN

LAW OFFICES OF
CAIN & CAIN ALCO
HAZMAT
1501 NORTH BROADWAY, SUITE 203
WALNUT CREEK, CALIFORNIA 94596
MAY 19 11:05

TELEPHONE
(510) 932-0893
FACSIMILE
(510) 932-0216

May 18, 1994

Ms. Juliet Shinn
Alameda County Health Care Department
80 Swan Way, Room 200
Oakland, California 94621

RE: Thomsen v. Powerine Oil Co., et al
525 West A St., Hayward, CA
J. Redding's Letter of 5/13/94

Dear Ms. Shinn:

Contrary to Mr. Redding's slanderous statements, he is well aware that my letter of May 2, 1994 is an accurate account of the status of this litigation. Mr. Redding and his associates have been aware of E-Z Serve's commitment to the complete clean-up of this property to closure all along. Plaintiffs' depositions testimony revealed that they have not been kept informed by their attorneys.

Plaintiffs' counsel is fully aware that remediation of the 1986 loss commenced immediately and that the removal of E-Z Serve's property in 1990 was the result of Loma Prieta; not the 1986 fuel line problem.

Sadly, this is another of the countless environmental lawsuits that should have never been filed. Plaintiffs' attorneys have further demonstrated their callous victimization of these elderly owners by unnecessarily spending more of their money to retain Subsurface Consultants to oversee your department's supervision of the completion of the clean-up. We trust that the department will not be swayed by such unsolicited opinions.

The assertion that E-Z Serve agreed to construct a new service station is frivolous. It did not. Moreover, if new equipment and a new building had been installed, everything would have been removed at the expiration of the lease in 2002 or 2007.

In the seven plus years that this office has represented E-Z Serve, we have observed that it is company policy to always fully cooperate with agencies in order to more than meet its obligations with respect to remediation and to then determine the cause, if

Ms. Shinn
May 18, 1994
Page 2

possible. We intend to do the same here, notwithstanding the harassment, annoyance and added expense of frivolous litigation.

Should you have any questions regarding this matter, please do not hesitate to call.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Gene Cain".

Gene Cain

cc: E-Z Serve
Gilbert Jensen, Esq.
J. Redding

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
MICHAEL P. WALSH
J. BRITTAIN HABEGGER
VIRGINIA PALMER
TIMOTHY H. SMALLSREED
STEPHEN M. JUDSON
STEPHEN M. WILLIAMS
JONATHAN W. REDDING
BETH E. ASPEDON
THEODORA R. LEE
KRISTIN A. PACE
ROBERT F. CAMPBELL
MICHAEL M. K. SEBREE
ANTONIA L. MORE
MARIA I. LAWLESS
JULIA LYNN NYE
MATTHEW P. MATIASSEVICH

FITZGERALD, ABBOTT & BEARDSLEY

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1221 BROADWAY, 21ST FLOOR

OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

R. M. FITZGERALD 1858-1934
CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

TELECOPIER: (510) 451-1527

May 13, 1994

Ms. Juliet Shin
Alameda County Health Care Department
80 Swan Way, Room 200
Oakland, California 94621

Re: Thomsen v. Powerine, et al.
525 West A Street, Hayward

Dear Ms. Shin:

I am enclosing a copy of the Subsurface Consultants, Inc.'s site assessment letter report dated May 10, 1994. This report was conducted on the property owned by our clients, Levonard and Margaret Thomsen, which is located at 525 West "A" Street in Hayward. It was performed to examine the history of the site and to evaluate the adequacy of site investigations and cleanup proposals made by E-Z Serve to date.

Gene Cain, local counsel for E-Z Serve Petroleum Marketing Company of California ("E-Z Serve"), sent to you a copy of his May 2, 1994, letter to my partner, Richard T. White. Not only is Cain's letter full of untruths and mischaracterizations of the status of the litigation, he makes serious claims which cannot go unanswered. This letter will also respond to several of Cain's misstatements.

Although its acknowledged release of 4,000 gallons occurred at least as early as November, 1986, E-Z Serve has done nothing to remediate the ensuing contamination. Indeed, E-Z Serve ignored the recommendation of its own consultant, Converse Environment Consultants in early 1987, that E-Z Serve immediately take steps to contain the contamination and avoid migration off-site. Most shocking, when E-Z Serve, four years later finally removed the underground storage tanks and piping system in 1990 -- after eliciting the Thomsen's consent by promising to replace them with

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May 13, 1994

a state of the art system^{1/} -- E-Z Serve did not remove the soil which had been saturated with contamination four years earlier. Instead, E-Z Serve simply dumped the contaminated soil back into the ground where it has remained ever since.

In his May 2, 1994, letter, Cain claims that E-Z Serve has "committed to completion of remediation of the property, regardless of who is ultimately determined to be liable." No such commitment has ever been made to plaintiffs. If E-Z Serve has made such a commitment to your office, to the District Attorney's Office or to the office of any regulatory agency with jurisdiction over the site, please forward a copy of such commitment. The only documents in our files on the subject property issued by regulatory agencies are repeated notices of violation to E-Z and notices of rejection of E-Z Serve's attempts (1) to evade its responsibilities for the characterization and cleanup of off-site contamination, (2) to limit the scope of its investigation and (3) to offer patently inadequate remediation proposals. None of these remotely suggest E-Z Serve has made the unqualified commitment referenced in Cain's letter.

Please consider the Subsurface Consultant, Inc. report in responding to E-Z Serve's ongoing attempts to "band-aid" what in reality is a serious contamination problem, both on and off-site. We believe that E-Z Serve must be ordered to remediate all of the contamination, both on and off-site. In light of the severity of the contamination and the length of time which has lapsed since discovery of the 4,000 gallon release in 1986, and the irresponsibility of E-Z Serve delaying soil removal for 4 years, then temporarily removing and subsequently replacing contaminated soil back into the pit in violation of RWQCB and County regulations and policies (and Proposition 65), we further request that E-Z Serve be ordered to perform a complete investigation, excavation, removal and treatment of the heavily contaminated soils beneath the former tank pit, pipelines (which are severally impacted as the source of the 4,000 gallon leak) and dispensing units. The excavated areas should then be restored with clean fill.

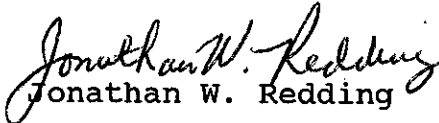
If you have any questions, please do not hesitate to call upon me. We will make ourselves and SCI available to assist you in further evaluation of remedial alternatives for this site, which may be acceptable to the owners. Regrettably, as we have

^{1/} See enclosed copy of letter agreement dated June 13, 1990, on this subject.

discussed, E-Z Serve refuses to send us copies of proposed remediation or to consult with us directly concerning the cleanup.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By 
Jonathan W. Redding

JWR:mah

cc: Gene Cain, Esq.
Gilbert Jensen, Esq.
Bill Rudolph

May 11, 1994
SCI 447.053

Mr. Jonathan Redding
Fitzgerald, Abbott & Beardsley
1221 Broadway, 21st Floor
Oakland, California 94612

Environmental Consultation
525 West A Street
Oakland, California

Dear Mr. Redding:

This letter summarizes our conclusions and recommendations regarding oil and groundwater contamination, and remedial alternatives related to past petroleum releases from the former service station at the referenced site. The conclusions and recommendations presented herein are based on information available through a review of Alameda County Health Care Services Agency files, Alameda County Building and Planning Department records and numerous site specific studies associated with the former service station. A list of pertinent documents reviewed is attached.

SERVICE STATION HISTORY

Powerine Oil Company obtained a permit to install three (3) underground storage tanks at the site in June 1967. At that time Powerine was leasing the property from Mr. Levonard and Mrs. Margaret Thomsen. Reportedly, the tanks were used to store gasoline for a new service station.

Autotronic Systems, Inc. took over the property lease in September 1977 and in October 1977 obtained a permit to upgrade the station. The permit upgrades included replacing the gasoline dispensers, installing Spenco Systems, modifying the pump island and cashiers booth, and installing one (1) underground tank to store diesel. In 1981, 4 years after the station improvements were in place, a permit was obtained to replace three (3) product lines. The reason for the product line replacement is unknown.

■ Subsurface Consultants, Inc.

Mr. Jonathan Redding
Fitzgerald, Abbott & Beardsley
May 11, 1994
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Page 2

E-Z Serve took over the property lease in January 1985. On November 17, 1986, "Petrotite" testing of the pressurized gasoline piping system identified that one of the gasoline product lines had failed. Inventory reconciliation documented a 4000 gallon release. The pipeline was repaired and the station continued its business. Converse Environmental Consultants was retained to investigate the impact to soil and groundwater as a result of the release. Their studies indicated that the upper 20 feet of soil in the area of the release, and groundwater near the release and at the east and west property boundaries, contained significant concentrations of gasoline and BTEX.

Following the Loma Prieta Earthquake in October 1989, E-Z Serve reportedly had integrity tests performed on the tanks which indicated that the tanks were not testing tight. Since we were not able to review tank integrity testing records, we are uncertain whether the tanks were testing tight before the earthquake.

In June 1990, the underground tanks were removed. Analytical test results indicated that soil from the tank area contained elevated levels of gasoline and diesel range petroleum hydrocarbons, and BTEX. Tank related piping was removed in August 1990 and the test results again showed elevated levels of petroleum hydrocarbons and BTEX in shallow soils.

In a letter dated August 7, 1990, E-Z Serve (a.k.a. Harken Marketing) proposed to Alameda County Health Care Services Agency (ACHCSA) that the contaminated soil generated during tank removal be temporarily replaced in the former tank pit until the extent of contamination was determined. It is unclear as to what the agency response was or what action was taken by E-Z Serve. Reportedly, the tank removal contractor has recalled that the contaminated soil was pushed back into the tank pit. This recollection is further substantiated by the fact that in February 1992 Triple J (a contractor) was retained to backfill an excavation at the site with a volume of import soil that would be equivalent to the volume needed to replace the tank volumes only.

Several investigations have been performed to date at the site by various consultants and testing companies. The data show that the extent of soil and groundwater contamination have not been determined to date. There is also data which suggest that free floating product is, or has been, present. In a letter dated May 27, 1993, Associated Soils Analysis, a consultant, proposed to the ACHCSA that interim free product recovery be performed using a skimmer pump. However, it is not clear whether any free product recovery was ever performed.

Mr. Jonathan Redding
Fitzgerald, Abbott & Beardsley
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Page 3

Most recently, Hydro Environmental Technologies, Inc. (HETI) has been retained to implement remedial activities. HETI has proposed that air sparging and soil vapor extraction technologies be used. HETI's preliminary testing indicates that soil conditions at the site may be conducive to this alternative.

CONCLUSIONS

Remedial Efforts to Date

In November 1986, a significant release of petroleum fuel occurred at the site. At that time no product recovery nor remediation was performed. Converse Environmental Consultants was retained in December 1986 to perform a fuel leak assessment. Based on this study, Converse recommended in March 1987 that a thorough site investigation be performed to provide sufficient data to design a remedial system. Further, Converse added that "Due to the potential for continued migration of contaminants, we recommend that this program be carried out as quickly as possible." Although Converse performed a Phase II investigation (1988) and a Soil Vapor and Groundwater Probe Survey (1989), not enough data was generated to characterize the problem nor was a remedial system designed.

In 1990, four years after the release, the underground storage tanks were removed; however, it appears that significantly contaminated soils were placed back in the excavation. Several additional investigations have been performed at the site beginning in 1991. However, now, more than 8 years after the release the contamination is still not fully characterized. During the course of this investigative phase, the ACHCSA has had to resort to filing a "notice of violation" letter to E-Z Serve on several occasions before any action was taken. As a result, a significant release has been allowed to dissipate and migrate, significantly impacting the site and adjacent properties.

Soil Contamination

Significant soil contamination has been identified at the site. Contaminates of concern include BTEX, gasoline and diesel range petroleum hydrocarbons and isopropylbenzene. The highest concentrations which have been documented in place at the site are as follows:

Mr. Jonathan Redding
Fitzgerald, Abbott & Beardsley
May 11, 1994
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■ Subsurface Consultants, Inc.

Gasoline range hydrocarbons	1400 mg/kg
Diesel range hydrocarbons	820 mg/kg
Benzene	9.7 mg/kg
Toluene	23 mg/kg
Ethylbenzene	26 mg/kg
Toluene	90 mg/kg
Isopropylbenzene	0.66 mg/kg

Diesel has also been documented as high as 2000 mg/kg in the stockpiled soils from the tank pit.

Hydrocarbon impacted soil has not been thoroughly investigated nor remediated near the failed pipeline area, dispensers, other product pipeline alignments, nor at the limit of excavation in the former tank area. Soil within the zone of groundwater fluctuation has also been impacted across the site, as evidenced by limited testing of soil samples from monitoring well test borings. Additionally, it appears that the contaminated soil excavated during tank removal was replaced into the former tank pit without remediation. It is our opinion that the impacted soil will continue to be an ongoing source of groundwater contamination, and as such, should be remediated.

Groundwater Contamination

Extensive on-site and off-site groundwater contamination exists at and near the site. The contaminate plume appears to consist of both free-floating and dissolved product phases. The extent of the free and dissolved product phases has not been defined.

Analytical testing to date has confirmed that contaminants of concern include gasoline range hydrocarbons and BTEX. However, diesel range hydrocarbons are also likely present. The highest concentrations in on-site wells have been documented as follows:

Gasoline range hydrocarbons	150,000 ug/l
Benzene	76,000 ug/l
Toluene	23,000 ug/l
Ethylbenzene	48,000 ug/l
Xylene	24,000 ug/l

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Fitzgerald, Abbott & Beardsley
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■ Subsurface Consultants, Inc.

Off-site concentrations have been documented to be as high as:

Gasoline range hydrocarbons	86,000 ug/l
Benzene	22,000 ug/l
Toluene	1,200 ug/l
Ethylbenzene	3,500 ug/l
Xylene	15,000 ug/l

The highest gasoline range hydrocarbons were detected in the off-site well immediately downgradient of the site.

Presently, the groundwater gradient in the area is very flat. However, the gradient would have been drastically altered in 1986 due to free-product mounding which likely occurred during the documented 4000 gallon release. In our opinion, this release would have caused significant mounding, resulting in radial groundwater flow from the point of release. Over time the mound would dissipate and radial flow would not be observed. Given the location and quantity of the release, and the site hydrogeology, we suspect that some, if not all, the observed off-site contamination is related to releases at the site. The fact that no remedial measures have been performed during the ensuing 8 years has likely resulted in the significant migration of the contaminate plume.

At a minimum, interim groundwater extraction/treatment should be performed immediately to contain future migration. Long term remedial technologies selected for the site should address containment of the groundwater plume and reduction of gasoline, diesel and BTEX range contaminants in soil both on-site and off-site.

Air Sparging and Vapor Extraction

HETI has recently proposed in a work plan the use of air sparging and vapor extraction technologies to remediate the on-site groundwater plume. Generally, we concur that these technologies are appropriate if the plume is localized to the site. However, a thorough review of the data indicates that the plume is not limited to the site. As such, if the current plan is implemented, further off-site migration will occur since air sparging and vapor extraction will cause a rise in groundwater levels thereby steepening the gradient and resulting in radial flow. In our opinion, the remedial system should provide hydraulic control to contain the plume and to counteract the rise in groundwater levels.

Mr. Jonathan Redding
Fitzgerald, Abbott & Beardsley
May 11, 1994
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Page 6

■ Subsurface Consultants, Inc.

Subsurface conditions at the site appear to be non-uniform given the presence of filled areas, utility trenches and varying soil types. Due to the potential for preferential flow to occur, the number of proposed vapor extraction/air sparging wells may not be appropriate to address the on-site contamination. Additional wells will also be required to address the off-site contamination. During remediation, system performance should be monitored to evaluate its effectiveness and additional wells should be installed as necessary to increase effectiveness.

In their work plan, HETI lists several "applicable conditions" for the site, one of which regards the highest concentrations of contaminants. As stated previously herein, a variety of contaminants have been detected at the site at concentrations significantly more elevated than what HETI presented in the work plan. The data further indicates that diesel range hydrocarbons are present at the site. The presence of these heavier compounds will have an effect on the length of time required to remediate the site.

RECOMMENDATIONS

Soil Remediation

It is our opinion that the impacted soil will continue to be an on-going source of groundwater contamination. Additional studies would be required to define the limits of soil contamination. Impacted soils which extend from a shallow depth to groundwater in the area of the previous pipeline failure and pump island, and soils replaced in the former tank pit, in our opinion, should be physically removed and treated. Remedial technologies implemented to address groundwater contamination should also address impacted soil within the zone of groundwater fluctuation.

Groundwater Remediation

Based on the site conditions and contaminants of concern, we judge that a combination of remedial technologies including groundwater and vapor extraction will be most effective. Additional studies are required to provide the basis for the design of the remedial systems. The studies should include well pump tests, installing additional wells to determine the extent of the groundwater contamination, additional test borings to define zones of soil contamination and additional analytical testing of soil and groundwater to quantify gasoline, diesel and BTEX range constituents.

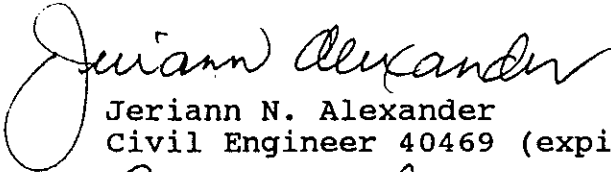
■ Subsurface Consultants, Inc.

Mr. Jonathan Redding
Fitzgerald, Abbott & Beardsley
May 11, 1994
SCI 447.053
Page 7

If you have any questions, please call.

Yours very truly,

Subsurface Consultants, Inc.



Jeriann N. Alexander
Civil Engineer 40469 (expires 3/31/95)



R. William Rudolph
Geotechnical Engineer 741 (expires 12/31/96)

JNA:RWR:cl

Attachment: List of Pertinent Documents/Information

PERTINENT DOCUMENTS/INFORMATION
525 WEST "A" STREET
HAYWARD, CALIFORNIA

May 29, 1967	Alameda County Building Permit Tank installation
Oct 14, 1977	Alameda County Building Permit Station improvements
Feb 26, 1981	Alameda County Building Permit Product line replacement
Nov 17, 1986	Petrotite testing of pressurized piping system detects leak. Product inventory reconciliation identifies 4000 gallon loss.
Mar 13, 1987	Converse Environmental Consultants Fuel Leak Assessment Report
Jun 30, 1988	Converse Environmental Consultants Phase II Investigation Report
Mar 14, 1989	Converse Environmental Consultants Soil Vapor and Groundwater Probe Survey Report
Oct 1989	Tank tightness tests fail after Loma Prieta Earthquake
Jun 14 & 15, 1990	Tanks removed by C.K.C.
Aug 7, 1990	Letter from Harken Marketing to ACHCSA proposing to replace contaminated soil in original excavation.
Aug 24, 1990	Pipelines removed by Triple J Construction
Oct 2, 1991	Associated Soils Analysis Work Plan to replace monitoring wells.
Feb 27, 1992	Triple J Construction invoice indicating that an excavation was backfilled with a volume equivalent to tank volumes
Mar 2, 1992	Associated Soils Analysis Site Assessment Study report
May 27, 1993	Letter from Associated Soils Analysis to ACHCSA proposing use of free product skimmer
July 20, 1993	Associated Soils Analysis Site Assessment Study
Dec 10, 1993	Hydro Environmental Technologies Air Sparging Feasibility Work Plan
Mar 1, 1994	Hydro Environmental Technologies, Inc. Remedial Investigation Report

STEPHEN AUSTIN CAIN
CAROLYN D. CAIN
GENE CAIN

LAW OFFICES OF
CAIN & CAIN ALCO
1501 NORTH BROADWAY, SUITE 203 HAZMAT
WALNUT CREEK, CALIFORNIA 94596
May -3 PM 12:40

TELEPHONE
(510) 932-0893
FACSIMILE
(510) 932-0216

May 2, 1994

Richard T. White, Esq.
FITZGERALD, ABBOTT & BEARDSLEY
1221 Broadway, 21st Floor
Oakland, California 94612-1837

Re: Thomsen v. Powerine, et al.
"Plaintiffs' Notice to Perform Covenants of Lease or Quit
Premises"

Dear Mr. White:

Section 21 of the lease specifies the proper method of notice. Please advise your clients accordingly.

More important, however, is the fact that your notice is based upon contentions that are known to be contrary to the facts. Plaintiffs' depositions revealed that they do not believe nor do they contend that E-Z Serve failed to maintain and operate the fuel system properly. Additionally, Mrs. Thomsen testified that she learned from her niece when and why E-Z Serve ceased operations. It is also readily apparent from the transcripts that plaintiffs' attorneys have failed to keep them properly informed, in particular, that E-Z Serve was engaged in on-going remediations that would result in a complete cleanup of the property.

You are also fully aware that E-Z Serve has not and is not engaging in any conduct except the operation of a service station and the on-going remediation under the direction of the Health Care Department and that such conduct, by statute, cannot be construed as a nuisance or unlawful.

There is also no reasonable basis for contending that E-Z Serve has vacated the premises. Plaintiffs continue to receive and accept rent payments. Under Section 8 of the lease, the property can be used by E-Z Serve for any lawful purpose, including the on-going remediation.

There was no agreement between plaintiffs and E-Z Serve to build a new retail station and/or convenience store. Even if E-Z Serve had installed new equipment and a convenience store, as moveable trade fixtures, ownership would have remained with the

Richard T. White
May 2, 1994
Page 2

company and all such property would have been removed at the expiration of the lease.

You are also fully aware that E-Z Serve has made a commitment to the Alameda County Health Care Department to complete the remediation of the property, regardless of who is ultimately determined to be liable for such expenses and that the remediation will take place in a manner and in a time frame approved by the agency and by E-Z Serve; certainly long before the lease expires.

Before committing further acts that may have more catastrophic consequences to these elderly retired plaintiffs, please consider whether you should consult with others experienced in litigating service station pollution as to the wisdom of filing and pursuing a lawsuit against a lessee who is continuing to pay the rent, the taxes, and the insurance in a long term lease and who is committed to completion of remediation of the property, regardless of who is ultimately determined to be liable.

Please forward an exact copy of this letter to Mr. and Mrs. Thomsen. Their deposition testimony leads us to conclude that they have been misinformed as to E-Z Serve's conduct and its intent to complete remediation of the property.

Very truly yours,


Gene Cain

cc: E-Z Serve
Alameda County Health Care Department, Juliet Shin
Alameda County District Attorney's Office, Mark Thompson

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

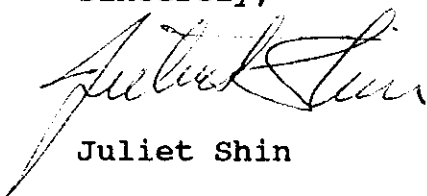
February 18, 1994

Dear Mr. Redding,

Per our phone conversation on February 17, 1994, attached is a copy of the map showing the locations of other tank sites in the vicinity of 525 West "A" St. The only BP site that was noted on the map is located at 18501 Hesperian Blvd. I'm not sure whether this is the BP site you were referring to, however, there appears to be no other BP sites in the area under our LOP program. Also attached is a copy of the most recent letter from this office to the site, addressing their proposal for air sparging remediation.

If you have any questions or comments, please contact me at (510) 271-4530.

Sincerely,



Juliet Shin

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

December 23, 1993

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

Mr. Brian Cobb
E-Z Serve Mgmt. Co.
P.O. Box 922021
Houston, Texas 77292-2021

STID 3580

Re: Investigations at 525 West "A" Street, Hayward, California

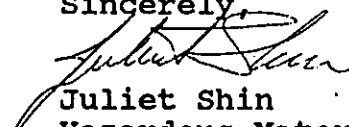
Dear Mr. Cobb,

This office has received Hydro Environmental's letter, dated December 14, 1993. The letter states, in lieu of implementing containment measures for the off-site contaminant plume, you wish to focus on on-site source removal and determine whether the off-site contamination is resulting from the site. However, although on-site source removal may reduce the amount of contamination migrating off site in the future, it does not address containment and abatement of the current off-site contaminant plume. Furthermore, the proposed air sparging remediation system has the potential for driving the dissolved plume in a horizontal direction due to the presence of relatively impermeable soil zones above the water surface, so off-site containment measures may be even more pertinent.

If it is shown, after conducting the proposed off-site survey in January 1994, that there are no other potential contributors to the off-site contamination, you will be required to submit a work plan addressing the delineation and containment of the contaminant plume, per Article 11, Title 23 California Code of Regulations. A report documenting the results of the off-site survey is due to this office by the end of February 1994.

If you have any questions or comments, please contact me at (510) 271-4530.

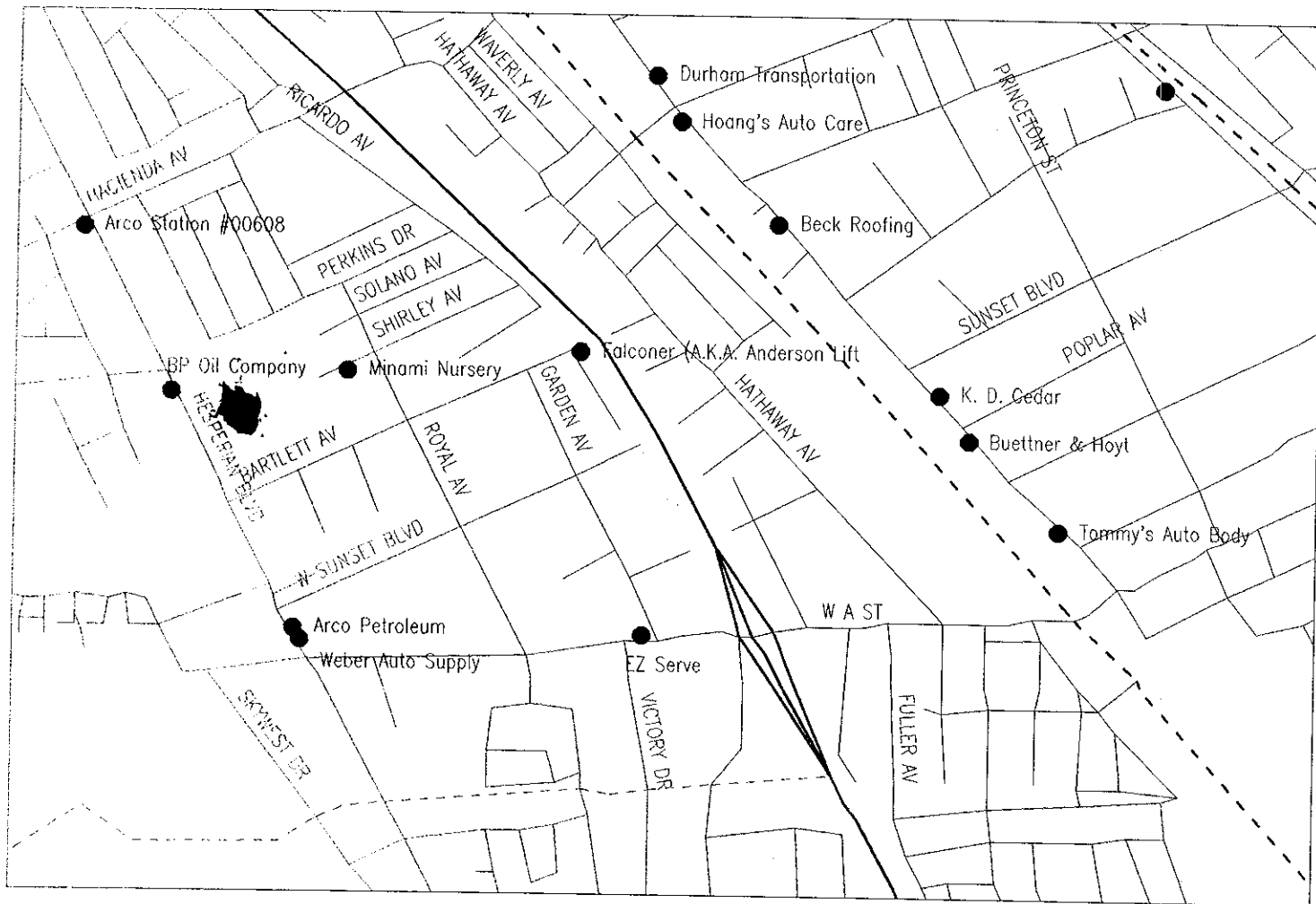
Sincerely,

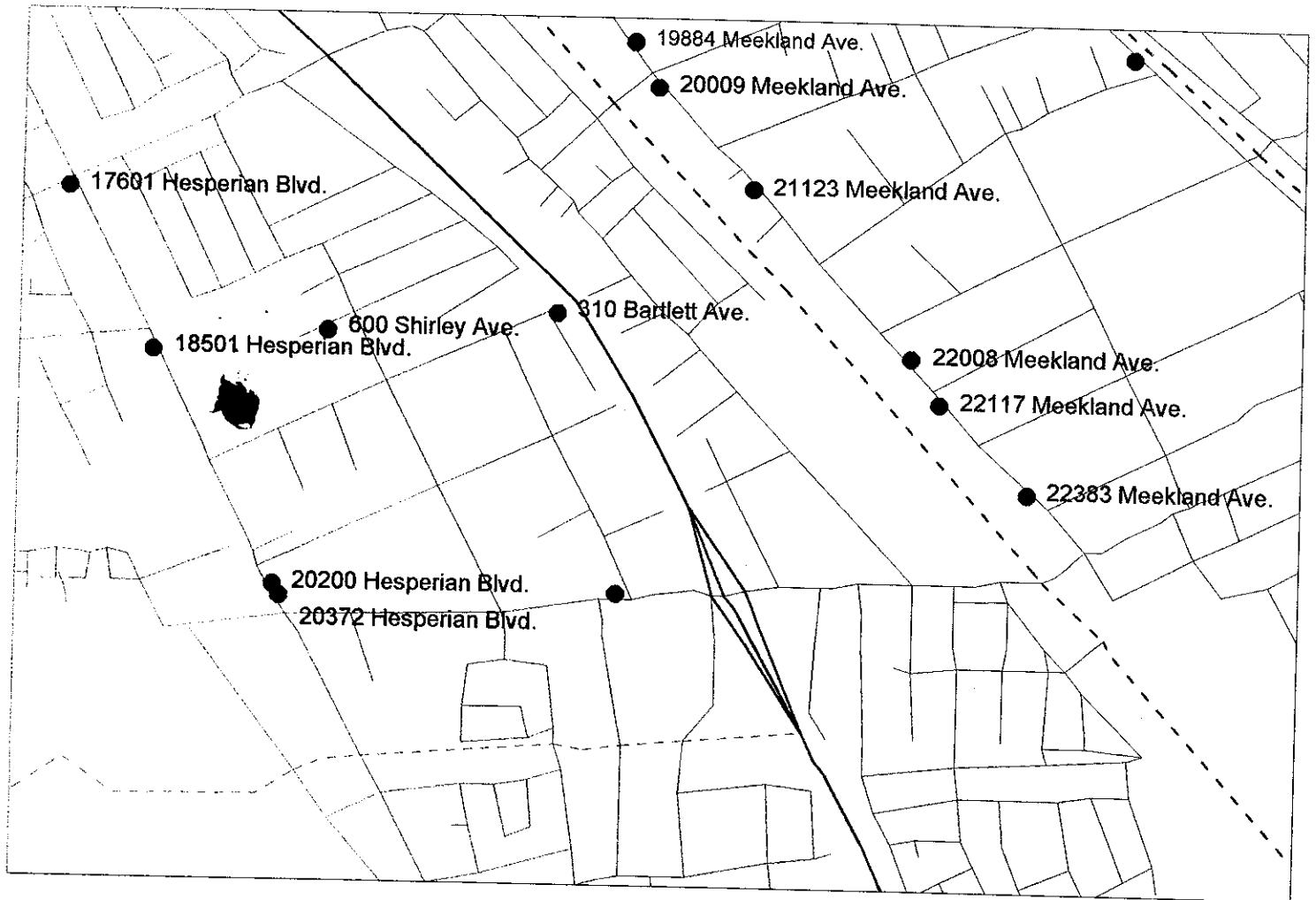

Juliet Shin
Hazardous Materials Specialist

cc: Markus Niebanck
Hydro Environmental Technologies
2363 Mariner Square Drive, Ste 243
Alameda, CA 94501

Gil Jensen, Alameda County District Attorney's Office

Edgar Howell-File(JS)





ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

March 25, 1994

Mr. Brian Cobb
E-Z Serve Mgmt. Co.
P.O. Box 922021
Houston, Texas 77292-2021

STID 3580

Re: Investigations at 525 West "A" Street, Hayward, California

Dear Mr. Cobb,

This office has reviewed Hydro Environmental's Off-Site Survey letter report, dated March 11, 1994, and their Remedial Investigation Report, dated March 1, 1994. Based on the results of the vapor extraction pilot tests conducted on some of the on-site monitoring wells, Hydro Environmental has proposed to implement vapor extraction and air sparging to remediate some of the soil and ground water contamination resulting from the site.

This office is concerned that the vapor extraction system will create preferential air flow through the sand lenses noted at 10 to 15 feet and 25 to 30 feet below ground surface, thereby remediating soil contamination in the strands of sand lenses rather than in the more common, less permeable, silty clay units. However, per my conversation with John Turney, Hydro Environmental, on March 25, 1994, he stated that, to some degree, air flow through the sand lenses would create a concentration gradient and, therefore, diffusion of air flow into some of the silty clay units. Also, he added that if these remediation systems were not effective, that their ineffectiveness would be detected during additional tests to confirm the estimated capture zones. Mr. Turney stated that subsequent to employing the vapor extraction and air sparging systems for a period of time, confirmatory soil samples would eventually be collected to confirm that all units of soil were adequately remediated.

Lastly, in Hydro Environmental's letter report, they listed four potential off-site sources contributing to the observed off-site contamination: 411 West "A" St., 491 West "A" St., 504 West "A" St., and 691 West "A" St. The sites at 411 and 504 West "A" Street are within the jurisdiction of the Hayward Fire Department. Per my conversation with Hugh Murphy, Hayward Fire Department, 411 West "A" Street was recently "delisted", therefore, it appears that the site no longer poses a threat, and the site at 504 West "A" Street has never been opened as a case. The Hayward Fire Department and this office had no files on 491 or 691 West "A" Street.

ALCO
HAZMAT
94 MAR 14 PM 2:50
7-278

March 11, 1994

Ms. Juliet Shin
Alameda County Department of Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Subject: E-Z Serve Site No. 100877, 525 West A Street, Hayward

Dear Ms. Shin,

On behalf of E-Z Serve, Inc., Hydro-Environmental Technologies, Inc. (HETI) has investigated the area surrounding the subject site for potential off-site sources (Figure 1). The rationale for instituting this investigation is based on the discrepancy between the observed distribution of dissolved hydrocarbons in ground water in the vicinity of the site and the expected distribution based on the location of the potential on-site source and the observed ground water gradient patterns.

HETI reviewed the previous work on this subject presented in a letter to you dated August 26, 1993 by Associate Soils Analysis. That letter reported three locations within one eighth mile of the site which are potential contamination sources and requested additional information from your office on those locations. One site, Vic Hubbard at 411 West "A" Street, is upgradient of the subject site. That request should be considered still open.

HETI also reviewed aerial photos of the site taken from 1953 to 1977, Sanborn Insurance maps and Alameda County Fire Department tank records. These did not show any specific indications of potential contaminant sources in the area, due to incomplete records.

Finally, we reviewed Polk's Hayward City Directories from 1940 to 1976, related telephone books and Chamber of Commerce newsletters in the Hayward Public Library to determine which businesses were previously in the site vicinity. Our investigation revealed three additional potential sources which could have contributed to the hydrocarbons in the ground water. These are:

- 491 West "A" Street. This is across Garden Avenue from the site and is the present location of United Video (489 West "A") and Liberty Pizza (499 West "A"). The 491 West "A" street number is no longer used. In 1958 or 1959 the street

numbers were changed, and 491 West "A" was previously 2997 West "A" Street. From 1946 to approximately 1959 this address was used by various auto service businesses, including:

- o K & W Automotive Service
- o Hoyt & Buettner
- o Stahl & Shattuck

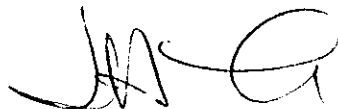
Stahl & Shattuck were also in the business of farm machinery repair and asphalt paving. In 1959, this address became Doak Carpet Company. In 1965, it became Quart House Liquors No. 5.

- 504 West "A" Street. This is across West "A" Street from the site and is the present location of the Motel Orleans (500 West "A") and is upgradient of and near well MW-10. From 1951 to at least 1976, this was operated as Vic's Auto Repair or Andy's AA's auto repair. Before 1958, this was 3010 West "A" Street (Vic's Auto Repair).
- 691 West "A" Street. This may have been reported as 692 West "A" Street at times. Between 1965 and 1974 this location was reported as a gasoline service station under the names:
 - o A Street Signal Service
 - o Dave's Auto Service
 - o Longene's Mohawk

In visiting the site, the location of wells MW-1A and MW-8 (Figure 2) are located somewhat differently than shown in earlier reports. Well MW-8 is much closer to West "A" Street than previously indicated.

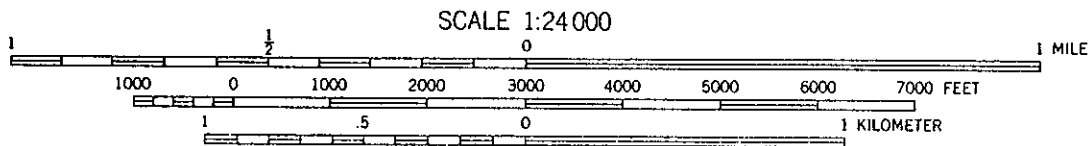
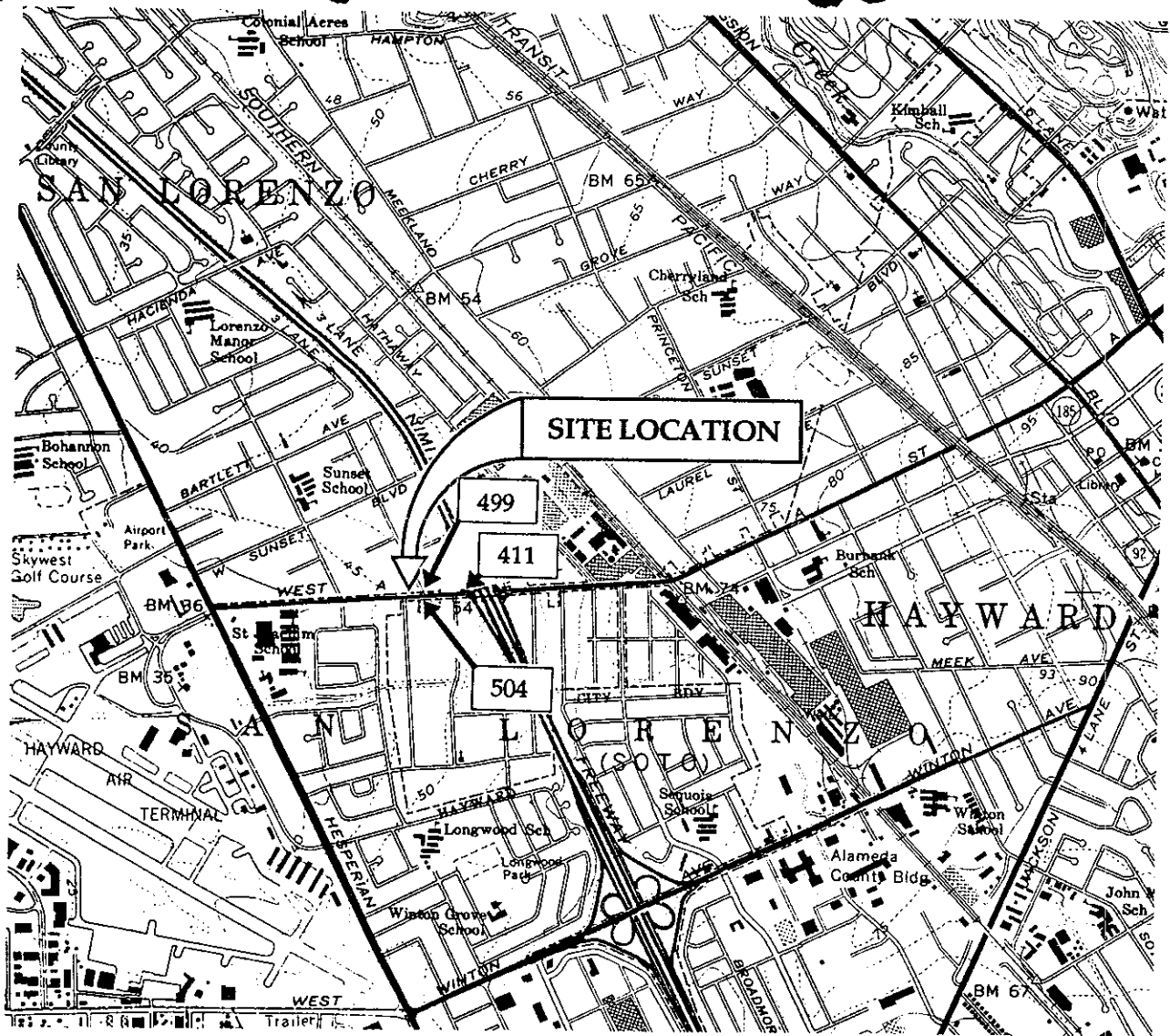
It would be prudent to investigate these sites further, especially 411 West "A", 499 West "A" and 504 West "A". If you have any questions, please call me at (510) 521-2684.

Sincerely,
HYDRO-ENVIRONMENTAL TECHNOLOGIES, INC.

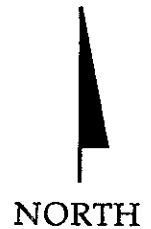


John H. Turney, P.E.
Technical Manager

cc: Mr. Brian Cobb, E-Z Serve
Mr. John Reaves



CONTOUR INTERVAL 20 FEET
 DOTTED LINES REPRESENT 5-FOOT CONTOURS
 NATIONAL GEODETIC VERTICAL DATUM OF 1929



Source: USGS 7.5' Quadrangle "Hayward"

**HYDRO-
 ENVIRONMENTAL
 TECHNOLOGIES, INC.**

SITE LOCATION MAP

E-Z Serve Station No. 100877
 525 West A Street
 Hayward, California

Job No.
 7-278
 Figure 1
 12/7/93

MMI
MURPHY & MACONACHY, INC.
A SERVICE & SUPPORT COMPANY

VIA FACSIMILE

March 7, 1994

Ms. Madhulla Logan
Alameda County Health Department
Hazardous Materials Division
80 Swan Way Room 200
Oakland CA 94621

RE: Public Records Request: MMI # 1099-00018

Dear Ms. Logan

We are currently conducting an environmental audit and request that you advise us of any and all current and historical information you may have concerning permits, notices of compliance or violation, or inspections, and any other information concerning the storage, use or disposal of hazardous substances, materials, or waste on the following property:

Powerline Oil Co. / E-Z Serve of Ca.
525 West 'A' Street
Hayward, CA 94541

3/14/94

B

We appreciate your prompt assistance, and thank you in advance for your help in this matter. If you have any questions, please do not hesitate to call me or Ted Mendez (ext. 226) at 714/547-5541.

Sincerely yours,

MURPHY & MACONACHY, INC.

- gave Norma / TB - 3/10/94

David J. Munro
Executive Vice President

tm

ALCO
HAZMAT
94 MAR 11 PM 4:21

JAN 06 1994

RONALD G. OVERHOLT, Exec. Off./Clerk
By K. Bigelow

Attorneys for
POWERINE OIL COMPANY

FOR THE COUNTY OF ALAMEDA

vs.

FIRST AMENDED ANSWER OF
POWERINE OIL COMPANY TO
PLAINTIFFS' FIRST AMENDED
VERIFIED COMPLAINT

Defendants.

VS.

RODI, POLLOCK, PETTKER, GALBRAITH & PHILLIPS
A LAW CORPORATION
801 SOUTH GRAND AVENUE
SUITE 400
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 893-4900

RODI, POLLOCK, PETTKER, GALBRAITH & PHILLIPS
A LAW CORPORATION
801 SOUTH GRAND AVENUE
SUITE 400
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 893-4900

1 COMPANY, a corporation, E-Z)
2 SERVE CORPORATION, a)
3 corporation, and ROES)
4 1 through 100, inclusive,)
5 Cross-Defendants.)

6 E-Z SERVE PETROLEUM MARKETING)
7 COMPANY OF CALIFORNIA, INC.,)

8 Cross-Complainant,)

9 vs.)

10 POWERINE OIL COMPANY, INC.,)
11 MOBIL OIL COMPANY, BP OIL)
12 COMPANY, AUTOTRONIC SYSTEMS,)
13 INC., and ROES 5 through 50,)
14 inclusive,)

15 Cross-Defendants.)

16 POWERINE OIL COMPANY ("Powerine"), for itself alone and no
17 other parties, answers Plaintiffs' First Amended Verified
18 Complaint ("Complaint") and admits, denies, and alleges as
19 follows:

20 GENERAL ALLEGATIONS

21 1. Answering the allegations in Paragraph 1 of the
22 Complaint, Powerine lacks sufficient information and belief to
23 admit or deny the allegations set forth in Paragraph 1 and
24 therefore denies such allegations.

25 2. Answering the allegations in Paragraph 2 of the
26 Complaint, Powerine admits the allegations set forth therein
27 except to state that Powerine was incorporated under the laws of
28 the State of California not Delaware, and that its principal
offices are located in the City of Santa Fe Springs not the City
of Long Beach.

1 3. Answering the allegations of Paragraph 3 of the
2 Complaint, Powerine lacks sufficient information and belief to
3 admit or deny the allegations set forth in Paragraph 3 and
4 therefore denies such allegations.

5 4. Answering the allegations of Paragraph 4 of the
6 Complaint, Powerine lacks sufficient information and belief to
7 admit or deny the allegations set forth in Paragraph 4 and
8 therefore denies such allegations.

9 5. Answering the allegations of Paragraph 5 of the
10 Complaint, Powerine lacks sufficient information and belief to
11 admit or deny the allegations set forth in Paragraph 5 and
12 therefore denies such allegations.

13 6. Answering the allegations of Paragraph 6 of the
14 Complaint, Powerine denies such allegations therein insofar as
15 they refer to any successors-in-interest, predecessors-in-
16 interest, employees, agents, licensees, subsidiaries, parent
17 companies, alter egos, partners, assignees, sublessees, or persons
18 associated or affiliated with, or owned by, Powerine. Powerine
19 lacks sufficient information and belief to admit or deny the other
20 allegations set forth in Paragraph 6 of the Complaint and
21 therefore denies such allegations.

22 7. Answering the allegations of Paragraph 7 of the
23 Complaint, Powerine denies the allegations therein insofar as such
24 allegations refer to any officers, directors, shareholders,
25 parents or subsidiaries associated or affiliated with, or owned
26 by, Powerine. Powerine lacks sufficient information and belief to
27 admit or deny the other allegations set forth in Paragraph 7 of
28 the Complaint and therefore denies such allegations.

RODI, POLLOCK, PETTKER, GALBRAITH & PHILLIPS
A LAW CORPORATION
801 SOUTH GRAND AVENUE
SUITE 400
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 893-4800

1 8. Answering the allegations of Paragraph 8 of the
2 Complaint, Powerine lacks sufficient information and belief to
3 admit or deny the allegations set forth in Paragraph 8 and
4 therefore denies such allegations.

5 9. Answering the allegations of Paragraph 9 of the
6 Complaint, and assuming that Exhibit "A" is a true and correct
7 copy of the 1966 Lease, Powerine admits the allegations set forth
8 therein.

9 10. Answering the allegations of Paragraph 10 of the
10 Complaint, and assuming that Exhibit "A" is a true and correct
11 copy of the 1966 Lease, Powerine admits the allegations set forth
12 therein.

13 11. Answering the allegations of Paragraph 11 of the
14 Complaint, and assuming that Exhibit "A" is a true and correct
15 copy of the 1966 Lease, Powerine admits the allegations set forth
16 therein.

17 12. Answering the allegations of Paragraph 12 of the
18 Complaint, and assuming that Exhibit "A" is a true and correct
19 copy of the 1966 Lease, Powerine admits the allegations set forth
20 therein.

21 13. Answering the allegations of Paragraph 13 of the
22 Complaint, and assuming that Exhibit "A" is a true and correct
23 copy of the 1966 Lease, Powerine admits the allegations set forth
24 therein.

25 14. Answering the allegations of Paragraph 14 of the
26 Complaint, and assuming that Exhibit "A" is a true and correct
27 copy of the 1966 Lease, Powerine admits the allegations set forth
28 therein. Powerine further alleges that the full language of

RODI, POLLOCK, PETTKER, GALBRAITH & PHILLIPS
A LAW CORPORATION
801 SOUTH GRAND AVENUE
SUITE 400
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 893-4900

1 Paragraph 12 of the 1966 Lease, which is only partially quoted in
2 Paragraph 14 of the Complaint, provides:

3 Should any of the rent herein reserved be
4 due and unpaid, or should the Lessee vacate or
5 abandon said premises or should the Lessee be in
6 default in any other condition of this lease,
7 the Lessor may, upon notice as herein provided
8 and without Lessee's correction or curing of
9 such default, at its option and without demand
10 re-enter and take possession of said premises
11 and remove all persons therefrom, and should the
12 Lessor elect to re-enter and take possession of
13 said premises under any one or more of the
14 provisions described in this paragraph, said
15 Lessor may, at his option, either terminate this
16 lease and recover from the Lessee all damages
17 caused by any breach hereof by the Lessee,
18 including unpaid rental and all reasonable
19 attorney's fees and court costs which the Lessor
20 may be required to incur in recovering
21 possession of said premises or in collecting
22 unpaid rentals or damages, or Lessor may
23 terminate this lease and hold all equipment,
24 installations and leashold improvements of
25 Lessee as liquidated damages.

26 Powerine is also informed and believes and therefore alleges that
27 Plaintiffs have never re-entered and taken possession of the
28 premises.

15. Answering the allegations of Paragraph 15 of the
Complaint, and assuming that Exhibit "A" is a true and correct
copy of the 1966 Lease, Powerine admits the allegations set forth
therein.

16. Answering the allegations of Paragraph 16 of the
Complaint, and assuming that Exhibit "A" is a true and correct
copy of the 1966 Lease, Powerine admits the allegations set forth
therein.

17. Answering the allegations of Paragraph 17 of the
Complaint, Powerine lacks sufficient information and belief to

///

1 admit or deny the allegations set forth in Paragraph 17 and
2 therefore denies such allegations.

3 18. Answering the allegations of Paragraph 18 of the
4 Complaint, Powerine admits that it assigned the 1966 Lease to
5 Autotronic Systems, Inc. on or about September 16, 1977. Except
6 as expressly admitted herein, Powerine denies each and every
7 allegation of Paragraph 18.

8 19. Answering the allegations of Paragraph 19 of the
9 Complaint, Powerine lacks sufficient information and belief to
10 admit or deny the allegations set forth in Paragraph 19 and
11 therefore denies such allegations.

12 20. Answering the allegations of Paragraph 20 of the
13 Complaint, Powerine lacks sufficient information and belief to
14 admit or deny the allegations set forth in Paragraph 20 and
15 therefore denies such allegations.

16 21. Answering the allegations of Paragraph 21 of the
17 Complaint, Powerine lacks sufficient information and belief to
18 admit or deny the allegations set forth in Paragraph 21 and
19 therefore denies such allegations.

20 22. Answering the allegations of Paragraph 22 of the
21 Complaint, Powerine lacks sufficient information and belief to
22 admit or deny the allegations set forth in Paragraph 22 and
23 therefore denies such allegations.

24 23. Answering the allegations of Paragraph 23 of the
25 Complaint, Powerine admits that the document attached to the
26 Complaint as Exhibit "B" appears to be an executed copy of the
27 1987 Lease. Powerine lacks sufficient information and belief to

28 ///

1 admit or deny the other allegations set forth in Paragraph 23 and
2 therefore denies such allegations.

3 24. Answering the allegations of Paragraph 24 of the
4 Complaint, and assuming that Exhibit "B" is a true and correct
5 copy of the 1987 Lease, Powerine admits the allegations set forth
6 therein.

7 25. Answering the allegations of Paragraph 25 of the
8 Complaint, and assuming that Exhibit "B" is a true and correct
9 copy of the 1987 Lease, Powerine admits the allegations set forth
10 therein.

11 26. Answering the allegations of Paragraph 26 of the
12 Complaint, and assuming that Exhibit "B" is a true and correct
13 copy of the 1987 Lease, Powerine admits the allegations set forth
14 therein.

15 27. Answering the allegations of Paragraph 27 of the
16 Complaint, and assuming that Exhibit "B" is a true and correct
17 copy of the 1987 Lease, Powerine admits the allegations set forth
18 therein.

19 28. Answering the allegations of Paragraph 28 of the
20 Complaint, and assuming that Exhibit "B" is a true and correct
21 copy of the 1987 Lease, Powerine admits the allegations set forth
22 therein.

23 29. Answering the allegations of Paragraph 29 of the
24 Complaint, and assuming that Exhibit "B" is a true and correct
25 copy of the 1987 Lease, Powerine admits the allegations set forth
26 therein.

27 30. Answering the allegations of Paragraph 30 of the
28 Complaint, and assuming that Exhibit "B" is a true and correct

1 copy of the 1987 Lease, Powerine admits the allegations set forth
2 therein.

3 31. Answering the allegations of Paragraph 31 of the
4 Complaint, and assuming that Exhibit "B" is a true and correct
5 copy of the 1987 Lease, Powerine admits the allegations set forth
6 therein.

7 32. Answering the allegations of Paragraph 32 of the
8 Complaint, and assuming that Exhibit "B" is a true and correct
9 copy of the 1987 Lease, Powerine admits the allegations set forth
10 therein.

11 33. Answering the allegations of Paragraph 33 of the
12 Complaint, and assuming that Exhibit "B" is a true and correct
13 copy of the 1987 Lease, Powerine admits the allegations set forth
14 therein.

15 34. Answering the allegations of Paragraph 34 of the
16 Complaint, and assuming that Exhibit "B" is a true and correct
17 copy of the 1987 Lease, Powerine admits the allegations set forth
18 therein.

19 35. Answering the allegations of Paragraph 35 of the
20 Complaint, and assuming that Exhibit "B" is a true and correct
21 copy of the 1987 Lease, Powerine admits the allegations set forth
22 therein.

23 36. Answering the allegations of Paragraph 36 of the
24 Complaint, Powerine lacks sufficient information and belief to
25 admit or deny the allegations set forth in Paragraph 36 and
26 therefore denies such allegations.

27 37. Answering the allegations of Paragraph 37 of the
28 Complaint, Powerine lacks sufficient information and belief to

1 admit or deny the allegations set forth in Paragraph 37 and
2 therefore denies such allegations.

3 38. Answering the allegations of Paragraph 38 of the
4 Complaint, Powerine lacks sufficient information and belief to
5 admit or deny the allegations set forth in Paragraph 38 and
6 therefore denies such allegations.

7 39. Answering the allegations of Paragraph 39 of the
8 Complaint, Powerine lacks sufficient information and belief to
9 admit or deny the allegations set forth in Paragraph 39 and
10 therefore denies such allegations.

11 40. Answering the allegations of Paragraph 40 of the
12 Complaint, Powerine admits that the document attached to the
13 Complaint as Exhibit "C" appears to be a letter dated June 13,
14 1990 from Sharon A. Stout of Harken Marketing to Plaintiffs.
15 Powerine lacks sufficient information and belief to admit or deny
16 the other allegations set forth in Paragraph 40 and therefore
17 denies such allegations.

18 41. Answering the allegations of Paragraph 41 of the
19 Complaint, and assuming that Exhibit "B" is a true and correct
20 copy of the 1987 Lease, Powerine admits that Section Four B. of
21 the 1987 Lease required E-Z Serve to obtain Plaintiffs' agreement
22 before making improvements to the Property and that Section Four
23 A. of the 1987 Lease appears to give Plaintiffs title to all
24 improvements constructed on the Property. Powerine lacks
25 sufficient information and belief to admit or deny the other
26 allegations set forth in Paragraph 41 and therefore denies such
27 allegations.

28 ///

1 42. Answering the allegations of Paragraph 42 of the
2 Complaint, Powerine admits that the document attached to the
3 Complaint as Exhibit "C" appears to bear the signatures of
4 Plaintiffs. Powerine lacks sufficient information and belief to
5 admit or deny the other allegations set forth in Paragraph 42 and
6 therefore denies such allegations.

7 43. Answering the allegations of Paragraph 43 of the
8 Complaint, Powerine lacks sufficient information and belief to
9 admit or deny the allegations set forth in Paragraph 43 and
10 therefore denies such allegations.

11 44. Answering the allegations of Paragraph 44 of the
12 Complaint, Powerine lacks sufficient information and belief to
13 admit or deny the allegations set forth in Paragraph 44 and
14 therefore denies such allegations.

15 45. Answering the allegations of Paragraph 45 of the
16 Complaint, Powerine lacks sufficient information and belief to
17 admit or deny the allegations set forth in Paragraph 45 and
18 therefore denies such allegations.

19 46. Answering the allegations of Paragraph 46 of the
20 Complaint, Powerine lacks sufficient information and belief to
21 admit or deny the allegations set forth in Paragraph 46 and
22 therefore denies such allegations.

23 47. Answering the allegations of Paragraph 47 of the
24 Complaint, Powerine lacks sufficient information and belief to
25 admit or deny the allegations set forth in Paragraph 47 and
26 therefore denies such allegations.

27 48. Answering the allegations of Paragraph 48 of the
28 Complaint, Powerine admits that the document attached to the

1 Complaint as Exhibit "D" appears to be a letter dated May 20, 1992
2 from Paul Martin of E-Z Serve Petroleum Marketing Company to
3 Plaintiffs. Powerine lacks sufficient information and belief to
4 admit or deny the other allegations set forth in Paragraph 48 and
5 therefore denies such allegations.

6 49. Answering the allegations of Paragraph 49 of the
7 Complaint, Powerine admits that the May 20, 1992 letter from Paul
8 Martin of E-Z Serve Petroleum Marketing Company to Plaintiffs
9 attached to the Complaint as Exhibit "D" states "E-Z Serve has
10 made a corporate decision to place it's [sic] emphasis in the
11 eastern portion of the U.S. and has no future plans to construct
12 or operate a service station on this particular site." Powerine
13 lacks sufficient information and belief to admit or deny the other
14 allegations set forth in Paragraph 49 and therefore denies such
15 allegations.

16 50. Answering the allegations of Paragraph 50 of the
17 Complaint, Powerine admits that the May 20, 1992 letter from Paul
18 Martin of E-Z Serve Petroleum Marketing Company to Plaintiffs
19 attached to the Complaint as Exhibit "D" states "E-Z Serve would
20 be favorable to a mutual termination of the lease, so that the
21 property can be fully utilized." Powerine lacks sufficient
22 information and belief to admit or deny the other allegations set
23 forth in Paragraph 50 and therefore denies such allegations.

24 51. Answering the allegations of Paragraph 51 of the
25 Complaint, Powerine lacks sufficient information and belief to
26 admit or deny the allegations set forth in Paragraph 51 and
27 therefore denies such allegations.

28 ///

1 52. Answering the allegations of Paragraph 52 of the
2 Complaint, Powerine lacks sufficient information and belief to
3 admit or deny the allegations set forth in Paragraph 52 and
4 therefore denies such allegations.

5 53. Answering the allegations of Paragraph 53 of the
6 Complaint, Powerine lacks sufficient information and belief to
7 admit or deny the allegations set forth in Paragraph 53 and
8 therefore denies such allegations.

9 54. Answering the allegations of Paragraph 54 of the
10 Complaint, Powerine lacks sufficient information and belief to
11 admit or deny the allegations set forth in Paragraph 54 and
12 therefore denies such allegations.

13 55. Answering the allegations of Paragraph 55 of the
14 Complaint, Powerine admits that the document attached to the
15 Complaint as Exhibit "E" appears to be a letter dated January 3,
16 1993 from H.E. Lambert of E-Z Serve Petroleum Marketing Company of
17 California to Jonathan W. Redding, Esq. of Fitzgerald, Abbott &
18 Beardsley. Powerine further admits that the letter from H.E.
19 Lambert to Jonathan W. Redding attached to the Complaint as
20 Exhibit "D" states "we will view interference with our possession
21 of the property as constructive eviction, and will aggressively
22 pursue our remedies for vexatious and unfounded claims or
23 charges." Powerine lacks sufficient information and belief to
24 admit or deny the other allegations set forth in Paragraph 55 and
25 therefore denies such allegations.

26 56. Answering the allegations of Paragraph 56 of the
27 Complaint, Powerine lacks sufficient information and belief to

28 ///

1 admit or deny the allegations set forth in Paragraph 56 and
2 therefore denies such allegations.

3 57. Answering the allegations of Paragraph 57 of the
4 Complaint, Powerine lacks sufficient information and belief to
5 admit or deny the allegations set forth in Paragraph 57 and
6 therefore denies such allegations.

7 58. Answering the allegations of Paragraph 58 of the
8 Complaint, Powerine lacks sufficient information and belief to
9 admit or deny the allegations set forth in Paragraph 58 and
10 therefore denies such allegations.

11 59. Answering the allegations of Paragraph 59 of the
12 Complaint, Powerine lacks sufficient information and belief to
13 admit or deny the allegations set forth in Paragraph 59 and
14 therefore denies such allegations.

15 60. Answering the allegations of Paragraph 60 of the
16 Complaint, Powerine admits that the document attached to the
17 Complaint as Exhibit "F" appears to be a Hazardous Materials
18 Division Inspection Form from the Alameda County Department of
19 Environmental Health dated October 23, 1992 for the site located
20 at 525 West A Street in Hayward. Powerine lacks sufficient
21 information and belief to admit or deny the other allegations set
22 forth in Paragraph 60 and therefore denies such allegations.

23
24 FIRST CAUSE OF ACTION

25 61. Answering the allegations of Paragraph 61 of the
26 Complaint, Powerine realleges and incorporates by reference its
27 responses to Paragraphs 1 through 60 of the Complaint as set forth
28 above.

1 62. Answering the allegations of Paragraph 62 of the
2 Complaint, Powerine denies the allegations set forth therein.

3 63. Answering the allegations of Paragraph 63 of the
4 Complaint, Powerine lacks sufficient information and belief to
5 admit or deny the allegations set forth in Paragraph 63 and
6 therefore denies such allegations.

7 64. Answering the allegations of Paragraph 64 of the
8 Complaint, Powerine denies the allegations set forth therein.

9 65. Answering the allegations of Paragraph 65 of the
10 Complaint, Powerine denies the allegations set forth therein.

11 66. Answering the allegations of Paragraph 66 of the
12 Complaint, Powerine lacks sufficient information and belief to
13 admit or deny the allegations set forth in Paragraph 66 and
14 therefore denies such allegations.

15 67. Answering the allegations of Paragraph 67 of the
16 Complaint, Powerine denies the allegations set forth therein.

17
18 SECOND CAUSE OF ACTION

19 68. Answering the allegations of Paragraph 68 of the
20 Complaint, Powerine realleges and incorporates by reference its
21 responses to Paragraphs 1 through 60 of the Complaint as set forth
22 above.

23 69. Answering the allegations of Paragraph 69 of the
24 Complaint, Powerine lacks sufficient information and belief to
25 admit or deny the allegations set forth in Paragraph 69 and
26 therefore denies such allegations.

27 70. Answering the allegations of Paragraph 70 of the
28 Complaint, Powerine denies the allegations set forth therein.

1 71. Answering the allegations of Paragraph 71 of the
2 Complaint, Powerine denies the allegations set forth therein.

3 72. Answering the allegations of Paragraph 72 of the
4 Complaint, Powerine denies the allegations set forth therein.

5 73. Answering the allegations of Paragraph 73 of the
6 Complaint, Powerine denies the allegations set forth therein.

7 74. Answering the allegations of Paragraph 74 of the
8 Complaint, Powerine lacks sufficient information and belief to
9 admit or deny the allegations set forth in Paragraph 74 and
10 therefore denies such allegations.

11
12 THIRD CAUSE OF ACTION

13 75. Answering the allegations of Paragraph 75 of the
14 Complaint, Powerine realleges and incorporates by reference its
15 responses to Paragraphs 1 through 60 of the Complaint as set forth
16 above.

17 76. Answering the allegations of Paragraph 76 of the
18 Complaint, Powerine lacks sufficient information and belief to
19 admit or deny the allegations set forth in Paragraph 76 and
20 therefore denies such allegations.

21 77. Answering the allegations of Paragraph 77 of the
22 Complaint, Powerine denies the allegations set forth therein.

23 78. Answering the allegations of Paragraph 78 of the
24 Complaint, Powerine denies the allegations set forth therein.

25 79. Answering the allegations of Paragraph 79 of the
26 Complaint, Powerine denies the allegations set forth therein.

27 80. Answering the allegations of Paragraph 80 of the
28 Complaint, Powerine denies the allegations set forth therein.

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1 81. Answering the allegations of Paragraph 81 of the
2 Complaint, Powerine denies the allegations set forth therein.

3 82. Answering the allegations of Paragraph 82 of the
4 Complaint, Powerine denies the allegations set forth therein.

5 83. Answering the allegations of Paragraph 83 of the
6 Complaint, Powerine denies the allegations set forth therein.

7 84. Answering the allegations of Paragraph 84 of the
8 Complaint, Powerine denies the allegations set forth therein.

9 85. Answering the allegations of Paragraph 85 of the
10 Complaint, Powerine lacks sufficient information and belief to
11 admit or deny the allegations set forth in Paragraph 85 and
12 therefore denies such allegations.

13
14 FOURTH CAUSE OF ACTION

15 86. Answering the allegations of Paragraph 86 of the
16 Complaint, Powerine realleges and incorporates by reference its
17 responses to Paragraphs 1 through 60 of the Complaint as set forth
18 above.

19 87. Answering the allegations of Paragraph 87 of the
20 Complaint, Powerine lacks sufficient information and belief to
21 admit or deny the allegations set forth in Paragraph 87 and
22 therefore denies such allegations.

23 88. Answering the allegations of Paragraph 88 of the
24 Complaint, Powerine denies the allegations set forth therein.

25 89. Answering the allegations of Paragraph 89 of the
26 Complaint, Powerine denies the allegations set forth therein.

27 90. Answering the allegations of Paragraph 90 of the
28 Complaint, Powerine denies the allegations set forth therein.

1 91. Answering the allegations of Paragraph 91 of the
2 Complaint, Powerine denies the allegations set forth therein.

3 92. Answering the allegations of Paragraph 92 of the
4 Complaint, Powerine denies the allegations set forth therein.

5 93. Answering the allegations of Paragraph 93 of the
6 Complaint, Powerine lacks sufficient information and belief to
7 admit or deny the allegations set forth in Paragraph 93 and
8 therefore denies such allegations.

9
10 FIFTH CAUSE OF ACTION

11 94. Answering the allegations of Paragraph 94 of the
12 Complaint, Powerine realleges and incorporates by reference its
13 responses to Paragraphs 1 through 60 of the Complaint as set forth
14 above.

15 95. Answering the allegations of Paragraph 95 of the
16 Complaint, Powerine lacks sufficient information and belief to
17 admit or deny the allegations set forth in paragraph 95 and
18 therefore denies such allegations.

19 96. Answering the allegations of Paragraph 96 of the
20 Complaint, Powerine denies the allegations set forth therein.

21 97. Answering the allegations of Paragraph 97 of the
22 Complaint, Powerine denies the allegations set forth therein.

23 98. Answering the allegations of Paragraph 98 of the
24 Complaint, Powerine denies the allegations set forth therein.

25 99. Answering the allegations of Paragraph 99 of the
26 Complaint, Powerine lacks sufficient information and belief to
27 admit or deny the allegations set forth in Paragraph 99 and
28 therefore denies such allegations.

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SIXTH CAUSE OF ACTION

100. Answering the allegations of Paragraph 100 of the Complaint, Powerine realleges and incorporates by reference its responses to Paragraphs 1 through 60 of the Complaint as set forth above.

101. Answering the allegations of Paragraph 101 of the Complaint, Powerine denies the allegations set forth therein.

102. Answering the allegations of Paragraph 102 of the Complaint, Powerine lacks sufficient information and belief to admit or deny the allegations set forth in Paragraph 102 and therefore denies such allegations.

103. Answering the allegations of Paragraph 103 of the Complaint, Powerine denies the allegations set forth therein.

104. Answering the allegations of Paragraph 104 of the Complaint, Powerine denies the allegations set forth therein.

105. Answering the allegations of Paragraph 105 of the Complaint, Powerine lacks sufficient information and belief to admit or deny the allegations set forth in Paragraph 105 and therefore denies such allegations.

106. Answering the allegations of Paragraph 106 of the Complaint, Powerine denies the allegations set forth therein.

SEVENTH CAUSE OF ACTION

107. Answering the allegations of Paragraph 107 of the Complaint, Powerine realleges and incorporates by reference its responses to Paragraphs 1 through 60 of the Complaint as set forth above.

///

1 108. Answering the allegations of Paragraph 108 of the
2 Complaint, Powerine lacks sufficient information and belief to
3 admit or deny the allegations set forth in Paragraph 108 and
4 therefore denies such allegations.

5 109. Answering the allegations of Paragraph 109 of the
6 Complaint, Powerine denies the allegations set forth therein.

7 110. Answering the allegations of Paragraph 110 of the
8 Complaint, Powerine denies the allegations set forth therein.

9 111. Answering the allegations of Paragraph 111 of the
10 Complaint, Powerine lacks sufficient information and belief to
11 admit or deny the allegations set forth in Paragraph 111 and
12 therefore denies such allegations.

13 112. Answering the allegations of Paragraph 112 of the
14 Complaint, Powerine denies the allegations set forth therein.

15
16 EIGHTH CAUSE OF ACTION

17 113. Answering the allegations of Paragraph 113 of the
18 Complaint, Powerine realleges and incorporates by reference its
19 responses to Paragraphs 1 through 60 of the Complaint as set forth
20 above.

21 114. Answering the allegations of Paragraph 114 of the
22 Complaint, inasmuch as the allegations of this Paragraph are not
23 directed toward Powerine and based on a lack of information and
24 belief, Powerine neither admits or denies the allegations set
25 forth in Paragraph 114.

26 115. Answering the allegations of Paragraph 115 of the
27 Complaint, inasmuch as the allegations of this Paragraph are not
28 directed toward Powerine and based on a lack of information and

1 belief, Powerine neither admits or denies the allegations set
2 forth in Paragraph 115.

3 116. Answering the allegations of Paragraph 116 of the
4 Complaint, inasmuch as the allegations of this Paragraph are not
5 directed toward Powerine and based on a lack of information and
6 belief, Powerine neither admits or denies the allegations set
7 forth in Paragraph 116.

8 117. Answering the allegations of Paragraph 117 of the
9 Complaint, inasmuch as the allegations of this Paragraph are not
10 directed toward Powerine and based on a lack of information and
11 belief, Powerine neither admits or denies the allegations set
12 forth in Paragraph 117.

13 118. Answering the allegations of Paragraph 118 of the
14 Complaint, inasmuch as the allegations of this Paragraph are not
15 directed toward Powerine and based on a lack of information and
16 belief, Powerine neither admits or denies the allegations set
17 forth in Paragraph 118.

18
19 NINTH CAUSE OF ACTION

20 119. Answering the allegations of Paragraph 119 of the
21 Complaint, Powerine realleges and incorporates by reference its
22 responses to Paragraphs 1 through 60 of the Complaint as set forth
23 above.

24 120. Answering the allegations of Paragraph 120 of the
25 Complaint, inasmuch as the allegations of this Paragraph are not
26 directed toward Powerine and based on a lack of information and
27 belief, Powerine neither admits or denies the allegations set
28 forth in Paragraph 120.

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1 121. Answering the allegations of Paragraph 121 of the
2 Complaint, inasmuch as the allegations of this Paragraph are not
3 directed toward Powerine and based on a lack of information and
4 belief, Powerine neither admits or denies the allegations set
5 forth in Paragraph 121.

6 122. Answering the allegations of Paragraph 122 of the
7 Complaint, inasmuch as the allegations of this Paragraph are not
8 directed toward Powerine and based on a lack of information and
9 belief, Powerine neither admits or denies the allegations set
10 forth in Paragraph 122.

11 123. Answering the allegations of Paragraph 123 of the
12 Complaint, inasmuch as the allegations of this Paragraph are not
13 directed toward Powerine and based on a lack of information and
14 belief, Powerine neither admits or denies the allegations set
15 forth in Paragraph 123.

16 124. Answering the allegations of Paragraph 124 of the
17 Complaint, inasmuch as the allegations of this Paragraph are not
18 directed toward Powerine and based on a lack of information and
19 belief, Powerine neither admits or denies the allegations set
20 forth in Paragraph 124.

21 125. Answering the allegations of Paragraph 125 of the
22 Complaint, inasmuch as the allegations of this Paragraph are not
23 directed toward Powerine and based on a lack of information and
24 belief, Powerine neither admits or denies the allegations set
25 forth in Paragraph 125.

26 126. Answering the allegations of Paragraph 126 of the
27 Complaint, inasmuch as the allegations of this Paragraph are not
28 directed toward Powerine and based on a lack of information and

1 belief, Powerine neither admits or denies the allegations set
2 forth in Paragraph 126.

3 127. Answering the allegations of Paragraph 127 of the
4 Complaint, inasmuch as the allegations of this Paragraph are not
5 directed toward Powerine and based on a lack of information and
6 belief, Powerine neither admits or denies the allegations set
7 forth in Paragraph 127.

8

9

TENTH CAUSE OF ACTION

10 128. Answering the allegations of Paragraph 128 of the
11 Complaint, Powerine realleges and incorporates by reference its
12 responses to Paragraphs 1 through 60 of the Complaint as set forth
13 above.

14 129. Answering the allegations of Paragraph 129 of the
15 Complaint, inasmuch as the allegations of this Paragraph are not
16 directed toward Powerine and based on a lack of information and
17 belief, Powerine neither admits or denies the allegations set
18 forth in Paragraph 129.

19 130. Answering the allegations of Paragraph 130 of the
20 Complaint, inasmuch as the allegations of this Paragraph are not
21 directed toward Powerine and based on a lack of information and
22 belief, Powerine neither admits or denies the allegations set
23 forth in Paragraph 130.

24 131. Answering the allegations of Paragraph 131 of the
25 Complaint, inasmuch as the allegations of this Paragraph are not
26 directed toward Powerine and based on a lack of information and
27 belief, Powerine neither admits or denies the allegations set
28 forth in Paragraph 131.

1 132. Answering the allegations of Paragraph 132 of the
2 Complaint, inasmuch as the allegations of this Paragraph are not
3 directed toward Powerine and based on a lack of information and
4 belief, Powerine neither admits or denies the allegations set
5 forth in Paragraph 132.

6 133. Answering the allegations of Paragraph 133 of the
7 Complaint, inasmuch as the allegations of this Paragraph are not
8 directed toward Powerine and based on a lack of information and
9 belief, Powerine neither admits or denies the allegations set
10 forth in Paragraph 133.

11 134. Answering the allegations of Paragraph 134 of the
12 Complaint, inasmuch as the allegations of this Paragraph are not
13 directed toward Powerine and based on a lack of information and
14 belief, Powerine neither admits or denies the allegations set
15 forth in Paragraph 134.

16
17 ELEVENTH CAUSE OF ACTION

18 135. Answering the allegations of Paragraph 135 of the
19 Complaint, Powerine realleges and incorporates by reference its
20 responses to Paragraphs 1 through 60 of the Complaint as set forth
21 above.

22 136. Answering the allegations of Paragraph 136 of the
23 Complaint, inasmuch as the allegations of this Paragraph are not
24 directed toward Powerine and based on a lack of information and
25 belief, Powerine neither admits or denies the allegations set
26 forth in Paragraph 136.

27 137. Answering the allegations of Paragraph 137 of the
28 Complaint, inasmuch as the allegations of this Paragraph are not

1 directed toward Powerine and based on a lack of information and
2 belief, Powerine neither admits or denies the allegations set
3 forth in Paragraph 137.

4 138. Answering the allegations of Paragraph 138 of the
5 Complaint, inasmuch as the allegations of this Paragraph are not
6 directed toward Powerine and based on a lack of information and
7 belief, Powerine neither admits or denies the allegations set
8 forth in Paragraph 138.

9 139. Answering the allegations of Paragraph 139 of the
10 Complaint, inasmuch as the allegations of this Paragraph are not
11 directed toward Powerine and based on a lack of information and
12 belief, Powerine neither admits or denies the allegations set
13 forth in Paragraph 139.

14 140. Answering the allegations of Paragraph 140 of the
15 Complaint, inasmuch as the allegations of this Paragraph are not
16 directed toward Powerine and based on a lack of information and
17 belief, Powerine neither admits or denies the allegations set
18 forth in Paragraph 140.

19
20 TWELFTH CAUSE OF ACTION

21 141. Answering the allegations of Paragraph 141 of the
22 Complaint, Powerine realleges and incorporates by reference its
23 responses to Paragraphs 1 through 60 of the Complaint as set forth
24 above.

25 142. Answering the allegations of Paragraph 142 of the
26 Complaint, Powerine lacks sufficient information and belief to
27 admit or deny the allegations set forth in Paragraph 142 and
28 therefore denies such allegations.

1 143. Answering the allegations of Paragraph 143 of the
2 Complaint, Powerine denies the allegations set forth therein.

3 144. Answering the allegations of Paragraph 144 of the
4 Complaint, Powerine denies the allegations set forth therein.

5 145. Answering the allegations of Paragraph 145 of the
6 Complaint, Powerine denies the allegations set forth therein.

7 146. Answering the allegations of Paragraph 146 of the
8 Complaint, Powerine denies the allegations set forth therein.

9 147. Answering the allegations of Paragraph 147 of the
10 Complaint, Powerine lacks sufficient information and belief to
11 admit or deny the allegations set forth in Paragraph 147 and
12 therefore denies such allegations.

13 148. Answering the allegations of Paragraph 148 of the
14 Complaint, Powerine denies the allegations set forth therein.

15 149. Answering the allegations of Paragraph 149 of the
16 Complaint, Powerine denies the allegations set forth therein.

17
18 THIRTEENTH CAUSE OF ACTION

19 150. Answering the allegations of Paragraph 150 of the
20 Complaint, Powerine realleges and incorporates by reference its
21 responses to Paragraphs 1 through 60 of the Complaint as set forth
22 above.

23 151. Answering the allegations of Paragraph 151 of the
24 Complaint, Powerine lacks sufficient information and belief to
25 admit or deny the allegations set forth in Paragraph 151 and
26 therefore denies such allegations.

27 152. Answering the allegations of Paragraph 152 of the
28 Complaint, Powerine lacks sufficient information and belief to

1 admit or deny the allegations set forth in Paragraph 152 and
2 therefore denies such allegations.

3 153. Answering the allegations of Paragraph 153 of the
4 Complaint, Powerine lacks sufficient information and belief to
5 admit or deny the allegations set forth in Paragraph 153 and
6 therefore denies such allegations.

7
8 FOURTEENTH CAUSE OF ACTION

9 154. Answering the allegations of Paragraph 154 of the
10 Complaint, Powerine realleges and incorporates by reference its
11 responses to Paragraphs 1 through 60 of the Complaint as set forth
12 above.

13 155. Answering the allegations of Paragraph 155 of the
14 Complaint, Powerine lacks sufficient information and belief to
15 admit or deny the allegations set forth in Paragraph 155 and
16 therefore denies such allegations.

17 156. Answering the allegations of Paragraph 156 of the
18 Complaint, Powerine admits that benzene has been identified by the
19 State of California to cause cancer and/or reproductive toxicity.
20 Powerine lacks sufficient information and belief to admit or deny
21 the other allegations set forth in Paragraph 156 and therefore
22 denies such allegations.

23 157. Answering the allegations of Paragraph 157 of the
24 Complaint, Powerine lacks sufficient information and belief to
25 admit or deny the allegations set forth in the first sentence of
26 such Paragraph and therefore denies such allegations. Powerine
27 denies the allegations set forth in the second sentence of
28 Paragraph 157.

1 158. Answering the allegations of Paragraph 158 of the
2 Complaint, Powerine lacks sufficient information and belief to
3 admit or deny the allegations set forth in Paragraph 158 and
4 therefore denies such allegations.

5 159. Answering the allegations of Paragraph 159 of the
6 Complaint, Powerine lacks sufficient information and belief to
7 admit or deny the allegations set forth in Paragraph 159 and
8 therefore denies such allegations.

9 160. Answering the allegations of Paragraph 160 of the
10 Complaint, Powerine denies the allegations set forth therein.

11 161. Answering the allegations of Paragraph 161 of the
12 Complaint, Powerine denies the allegations set forth therein.

13 FIFTEENTH CAUSE OF ACTION

14
15 162. Answering the allegations of Paragraph 162 of the
16 Complaint, Powerine realleges and incorporates by reference its
17 responses to Paragraphs 1 through 60 of the Complaint as set forth
18 above.

19 163. Answering the allegations of Paragraph 163 of the
20 Complaint, Powerine lacks sufficient information and belief to
21 admit or deny the allegations set forth in Paragraph 163 and
22 therefore denies such allegations.

23 164. Answering the allegations of Paragraph 164 of the
24 Complaint, Powerine lacks sufficient information and belief to
25 admit or deny the allegations set forth in Paragraph 164 and
26 therefore denies such allegations.

27 165. Answering the allegations of Paragraph 165 of the
28 Complaint, Powerine denies the allegations set forth therein.

SIXTEENTH CAUSE OF ACTION

166. Answering the allegations of Paragraph 166 of the Complaint, Powerine realleges and incorporates by reference its responses to Paragraphs 1 through 60 of the Complaint as set forth above.

167. Answering the allegations of Paragraph 167 of the Complaint, Powerine lacks sufficient information and belief to admit or deny the allegations set forth in Paragraph 167, including the allegations contained in subparagraphs a. through d. of Paragraph 167, and therefore denies such allegations.

168. Answering the allegations of Paragraph 168 of the Complaint, Powerine lacks sufficient information and belief to admit or deny the allegations set forth in Paragraph 168 and therefore denies such allegations.

169. Answering the allegations of Paragraph 169 of the Complaint, Powerine lacks sufficient information and belief to admit or deny the allegations set forth in Paragraph 169 and therefore denies such allegations.

170. Answering the allegations of Paragraph 170 of the Complaint, Powerine denies the allegations set forth therein.

SEVENTEENTH CAUSE OF ACTION

171. Answering the allegations of Paragraph 171 of the Complaint, Powerine realleges and incorporates by reference its responses to Paragraphs 1 through 60 of the Complaint as set forth above.

172. Answering the allegations of Paragraph 172 of the Complaint, Powerine denies the allegations set forth therein.

1 173. Answering the allegations of Paragraph 173 of the
2 Complaint, Powerine lacks sufficient information and belief to
3 admit or deny the allegations set forth in Paragraph 173 and
4 therefore denies such allegations.

5 174. Answering the allegations of Paragraph 174 of the
6 Complaint, Powerine denies the allegations set forth therein.

7
8 AFFIRMATIVE DEFENSES

9
10 FIRST AFFIRMATIVE DEFENSE TO FIRST THROUGH
11 SEVENTH AND TWELFTH THROUGH SEVENTEENTH CAUSES OF ACTION

12 (Failure to State Claim)

13 175. The First through Seventh and Twelfth through Seventeenth
14 Causes of Action set forth in Plaintiffs' Complaint each fail to
15 state a cause of action against Powerine.

16
17 SECOND AFFIRMATIVE DEFENSE TO FIRST THROUGH
18 SEVENTH AND TWELFTH THROUGH SEVENTEENTH CAUSES OF ACTION

19 (Assignment)

20 176. Powerine's liability, if any, for the damages allegedly
21 suffered by Plaintiffs was assigned to Autotronic Systems, Inc.
22 ("Autotronic") in 1977.

23
24 THIRD AFFIRMATIVE DEFENSE TO FIRST THROUGH
25 SEVENTH AND TWELFTH THROUGH SEVENTEENTH CAUSES OF ACTION

26 ("As-Is" Contract)

27 177. The agreement by which Powerine assigned its interest in
28 the subject property to Autotronic specifically provided that the

1 property was being transferred to Autotronic in an "as-is"
2 condition and, as such, Autotronic assumed all liability for the
3 condition of the property.

4
5 FOURTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
6 SEVENTH AND TWELFTH THROUGH SEVENTEENTH CAUSES OF ACTION

7 (Release)

8 178. The agreement by which Powerine assigned its interest in
9 the subject property to Autotronic provided that
10 Powerine was being released from all liability relating to the
11 property.

12
13 FIFTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
14 SEVENTH AND TWELFTH THROUGH SEVENTEENTH CAUSES OF ACTION

15 (Quitclaim of Underground Storage Tanks)

16 179. At the time Powerine assigned its interest in the subject
17 property to Autotronic it also quitclaimed to Autotronic ownership
18 of the underground storage tanks and related piping beneath the
19 property and, consequently, Powerine has no liability for damage
20 resulting from leakage or spillage from such tanks and related
21 piping.

22
23 SIXTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
24 SEVENTH AND TWELFTH THROUGH SEVENTEENTH CAUSES OF ACTION

25 (No Leaking Underground Storage Tanks)

26 180. At no time during the period Powerine operated the
27 gasoline station at the property which is the subject of this
28 lawsuit did any gasoline leak from the underground storage tanks

1 or the underground piping for such tanks or was there any spillage
2 from such tanks or piping.

3
4 SEVENTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
5 SEVENTH AND TWELFTH THROUGH SEVENTEENTH CAUSES OF ACTION
6 (Statute of Limitations)

7 181. The First through Seventh and Twelfth through Seventeenth
8 Causes of Action set forth in Plaintiffs' Complaint are barred by
9 one or more of the following Sections of the Code of Civil
10 Procedure: 337, 337.1, 337.15, 337.2, 338(a), 338(b), 338(d),
11 338(i), 338(j), 338.1, 340(1), 340(3), and 343.

12
13 EIGHTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
14 SEVENTH AND TWELFTH THROUGH SEVENTEENTH CAUSES OF ACTION
15 (Laches)

16 182. The First through Seventh and Twelfth through Seventeenth
17 Causes of Action set forth in Plaintiffs' Complaint are barred by
18 the doctrine of laches.

19
20 NINTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
21 SEVENTH AND TWELFTH THROUGH SEVENTEENTH CAUSES OF ACTION
22 (Waiver)

23 183. The First through Seventh and Twelfth through Seventeenth
24 Causes of Action set forth in Plaintiffs' Complaint have been
25 waived by Plaintiffs.

26
27 ///

28 ///

TENTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
SEVENTH AND TWELFTH THROUGH SEVENTEENTH CAUSES OF ACTION

(Estoppel)

184. Plaintiffs are precluded from proceeding on the First through Seventh and Twelfth through Seventeenth Causes of Action set forth in their Complaint by the doctrine of estoppel.

ELEVENTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
SEVENTH AND TWELFTH THROUGH SEVENTEENTH CAUSES OF ACTION

(Failure to Mitigate)

185. Plaintiffs have failed to take all reasonable and necessary care and diligence to mitigate the damages alleged in the First through Seventh and Twelfth through Seventeenth Causes of Action set forth in their Complaint.

TWELFTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
SEVENTH AND TWELFTH THROUGH SEVENTEENTH CAUSES OF ACTION

(Consent)

186. Plaintiff is precluded from proceeding on the First through Seventh and Twelfth through Seventeenth Causes of Action set forth in their Complaint because Plaintiffs expressly and impliedly consented to the actions by Powerine.

THIRTEENTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
SIXTH, TWELFTH, THIRTEENTH, AND FIFTEENTH CAUSES OF ACTION

(Assumption of Risk)

187. Plaintiffs may not recover for damages alleged in the Sixth, Twelfth, Thirteenth and Fifteenth Causes of Action of their

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1 Complaint because all risks associated with the property were
2 expressly or reasonably and impliedly assumed by Plaintiffs.

3
4 FOURTEENTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
5 SIXTH, TWELFTH, THIRTEENTH, AND FIFTEENTH CAUSES OF ACTION
6 (Contributory Negligence)

7 188. Plaintiffs may not recover for damages alleged in the
8 Sixth, Twelfth, Thirteenth and Fifteenth Causes of Action of their
9 Complaint because Plaintiffs failed to exercise reasonable and
10 ordinary care for their own interests, and the damages allegedly
11 suffered by Plaintiffs were proximately caused or contributed to
12 by Plaintiffs' own negligence.

13
14 FIFTEENTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
15 SIXTH, TWELFTH, THIRTEENTH, AND FIFTEENTH CAUSES OF ACTION
16 (Comparative Negligence)

17 189. Plaintiffs may not recover on the Sixth, Twelfth,
18 Thirteenth and Fifteenth Causes of Action of their Complaint
19 because the damages allegedly suffered by Plaintiffs were in fact
20 wholly or partially the result of Plaintiffs' failure to exercise
21 reasonable and ordinary care, caution and/or prudence and the
22 resulting injuries or damages, if any, sustained by Plaintiffs
23 were proximately caused and contributed to by the negligence of
24 Plaintiffs.

25
26 ///

27 ///

28 ///

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SIXTEENTH AFFIRMATIVE DEFENSE TO FIRST THROUGH
SIXTH, TWELFTH, THIRTEENTH, AND FIFTEENTH CAUSES OF ACTION

(Plaintiffs' Damages the Result of Other's Actions)

190. Plaintiffs may not recover on the Sixth, Twelfth, Thirteenth and Fifteenth Causes of Action of their Complaint because the injuries and damages sustained by Plaintiffs, if any, were proximately caused by the intervening and superseding actions of other defendants or third parties, which intervening and superseding actions bar and/or diminish Plaintiffs' recovery, if any, against Powerine.

SEVENTEENTH AFFIRMATIVE DEFENSE

TO FIRST CAUSE OF ACTION

(Statutes Not Applicable)

191. The provisions of Water Code Sections 13000, et seq., including Sections 13053, 13054, 13260, 13261, 13264, 13265, 13271 and 13272, and the provisions of Health & Safety Code Sections 25154, 25189.5, 25201, 25249.5 and 25284, all of which are alleged in the First Cause of Action in Plaintiffs' Complaint, do not apply to Powerine.

EIGHTEENTH AFFIRMATIVE DEFENSE TO

FOURTH AND FIFTH CAUSES OF ACTION

(No Trespass to Own Property)

192. Plaintiffs may not sue Powerine for trespass to their own Property and are therefore not entitled to recovery on the Fourth and Fifth Causes of Action in their Complaint.

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NINETEENTH AFFIRMATIVE DEFENSE TO
SIXTH AND SEVENTH CAUSES OF ACTION

(Failure to Re-Enter)

193. Plaintiffs may not sue Powerine for damages on the Sixth and Seventh Causes of Action in their Complaint because they failed to re-enter and take possession of the Property, a prerequisite to bringing suit against Powerine for damages under the 1966 Lease.

TWENTIETH AFFIRMATIVE DEFENSE TO
SIXTH AND SEVENTH CAUSES OF ACTION

(Expired Lease)

194. Plaintiffs' Sixth and Seventh Causes of Action must fail because the 1966 Lease between Powerine and Plaintiffs expired on January 31, 1987 and any contractual relationship between Powerine and Plaintiffs ceased at that time.

TWENTY-FIRST AFFIRMATIVE DEFENSE
TO FOURTEENTH CAUSE OF ACTION

(Statute Not Applicable)

195. The provisions of Health & Safety Code Section 25249.5, et seq., as alleged in the Fourteenth Cause of Action in Plaintiffs' Complaint, do not apply to Powerine.

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TWENTY-SECOND AFFIRMATIVE DEFENSE
TO FOURTEENTH CAUSE OF ACTION

(No Discharge into Drinking Water and
Discharge in Conformity with All Laws)

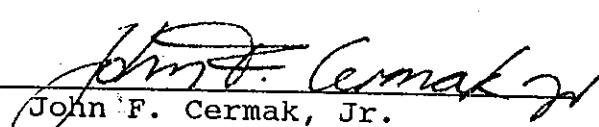
196. The discharges, if any, alleged in the Fourteenth Cause of Action in Plaintiffs' Complaint did not cause any significant amount of a discharged or released chemical to enter any source of drinking water and were in conformity with all laws and with every applicable regulation, permit, requirement, and order (Health & Safety Code Section 25249.9(b)(1)).

WHEREFORE, Powerine prays as follows:

1. That Plaintiffs take nothing by their Complaint and that judgment be had in favor of Powerine;
2. For costs of suit herein;
3. For reasonable attorney's fees as may be awarded pursuant to applicable contract, statute or court schedule; and
4. For such other and further relief as the Court deems just and proper.

Dated: December 20, 1993

RODI, POLLOCK, PETTKER, GALBRAITH
& PHILLIPS, A Law Corporation

By: 

John F. Cermak, Jr.

Attorneys for
POWERINE OIL COMPANY

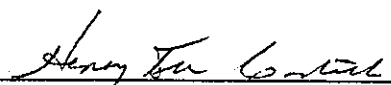
RODI, POLLOCK, PETTKER, GALBRAITH & PHILLIPS
A LAW CORPORATION
801 SOUTH GRAND AVENUE
SUITE 400
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 895-4900

VERIFICATION

State of California)
) ss
County of Los Angeles)

I, Henry Del Castillo, am the Vice President of Finance for Powerine Oil Company, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document entitled First Amended Answer of Powerine Oil Company to Plaintiffs' First Amended Verified Complaint and know its contents. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 21, 1993 at Santa Fe Springs, California.


Henry Del Castillo

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

December 23, 1993

Mr. Brian Cobb
E-Z Serve Mgmt. Co.
P.O. Box 922021
Houston, Texas 77292-2021

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

STID 3580

Re: Investigations at 525 West "A" Street, Hayward, California

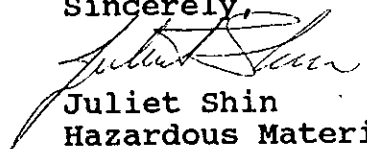
Dear Mr. Cobb,

This office has received Hydro Environmental's letter, dated December 14, 1993. The letter states, in lieu of implementing containment measures for the off-site contaminant plume, you wish to focus on on-site source removal and determine whether the off-site contamination is resulting from the site. However, although on-site source removal may reduce the amount of contamination migrating off site in the future, it does not address containment and abatement of the current off-site contaminant plume. Furthermore, the proposed air sparging remediation system has the potential for driving the dissolved plume in a horizontal direction due to the presence of relatively impermeable soil zones above the water surface, so off-site containment measures may be even more pertinent.

If it is shown, after conducting the proposed off-site survey in January 1994, that there are no other potential contributors to the off-site contamination, you will be required to submit a work plan addressing the delineation and containment of the contaminant plume, **per Article 11, Title 23 California Code of Regulations**. A report documenting the results of the off-site survey is due to this office by the end of February 1994.

If you have any questions or comments, please contact me at (510) 271-4530.

Sincerely,


Juliet Shin
Hazardous Materials Specialist

cc: Markus Niebanck
Hydro Environmental Technologies
2363 Mariner Square Drive, Ste 243
Alameda, CA 94501

Gil Jensen, Alameda County District Attorney's Office

Edgar Howell-File(JS)

ALCO
HAZMAT

93 DEC 17 PM 2:32

December 14, 1993

Ms. Juliet Shin

7-278

Alameda County Department of Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Re: E-Z Serve #100877, E-Z Serve, A Street, Hayward

Dear Ms. Shin,

Thank you for your response to the December 10 workplan. The following addresses the concerns you mentioned in your December 13 transmittal:

1) Abatement of further migration of the ground water contaminant plume. E-Z Serve shares your concern regarding the presence of hydrocarbons in ground water. This is the primary motivation for the initiation of the on-site air sparging/soil vapor extraction project. This remedial approach was selected in order to remove these hydrocarbons and abate the on-site portion of the hydrocarbon plume. This source removal is critical to the abatement of further migration. It is recognized that a remedial approach that is often employed in situations such as this centers around ground water extraction as the primary means of plume migration control. It has, however, also been demonstrated that ground water extraction and treatment is typically less than effective in terms of overall site cleanup than other forms of site remediation. Subsurface site characteristics suggest that air sparging and soil vapor extraction will be the most appropriate remedial application at this site. The pilot test will be conducted in order to confirm this assertion.

2) Delineation of the ground water contaminant plume. As we discussed last week, the distribution of dissolved hydrocarbons in ground water in the vicinity of this facility does not appear completely consistent with the location of the potential on-site source in relation to observed ground water gradient patterns. Prior to the preparation of a workplan outlining efforts required for complete plume

delineation, HETI recommends the completion of a more thorough evaluation of other possible contributors. This evaluation will be complete and reported by the end of January, 1994.

Thanks again for the response. If you have any questions or comments please do not hesitate to call. I look forward to speaking with you again soon.

Sincerely,

HYDRO-ENVIRONMENTAL TECHNOLOGIES, INC.

A handwritten signature in dark ink, appearing to read 'Markus B. Niebanck', written in a cursive style.

Markus B. Niebanck, R. G.
Western Regional Manager

cc. Mr. Brian Cobb, E-Z Serve

E-Z SERVE ALCO
MANAGEMENT COMPANY HAZMAT

93 DEC 20 PM 3:26

December 13, 1993

Ms. Juliette Shin
Alameda County Health Care Services
80 Swan Way, Room 200
Oakland, CA 94621

Re: Quarterly Monitoring Report
E-Z Serve #100877
525 West "A" Street
Hayward, California

Dear Ms. Shin:

Attached is a Quarterly Monitoring Report for the third quarter of 1993. This report was prepared in accordance with the requirements of the California Regional Water Quality Control Board.

If you have questions please advise.

Sincerely,

Brian Cobb

Brian Cobb, P.E.
Enviromental Manager

enclosure

cc: Eddy So - CRWQCB w/encl.

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

December 13, 1993

Mr. Brian Cobb
E-Z Serve Mgmt. Co.
P.O. Box 922021
Houston, Texas 77292-2021

STID 3580

Re: Work plan for 525 West "A" Street, Hayward, California

Dear Mr. Cobb,

This office has reviewed Hydro Environmental Technologies' work plan, dated December 10, 1993, addressing preliminary tests to aid in choosing an adequate remediation system for the above site. This portion of the required work is acceptable, however, this plan does not address the two most immediate concerns outlined in the August 25, 1993 letter: 1) Abatement of further migration of the ground water contaminant plume, per Section 2722, Article 11, Title 23 California Code of Regulations; and 2) Delineation of the ground water contaminant plume, per Section 2725, Article 11, Title 23 California Code of Regulations.

You are required to submit an addendum to this work plan addressing these concerns within 45 days of the date of this letter. Please be reminded to include timelines for this additional work.

If you have any questions or comments, please contact me at (510) 271-4530.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Juliet Shin'.

Juliet Shin
Hazardous Materials Specialist

cc: Markus Niebanck
Hydro Environmental Technologies
2363 Mariner Square Drive, Ste 243
Alameda, CA 94501

Edgar Howell-File(JS)

November 15, 1993

Ms. Juliet Shin
Alameda County Department of Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

7-278

RE: E-Z Serve Site No. 100877, 525 West A Street, Hayward

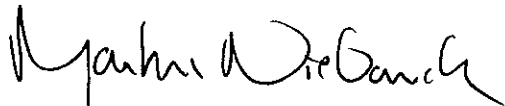
Dear Ms. Shin,

On behalf of E-Z Serve, Inc. Hydro-Environmental Technologies, Inc. (HETI) is pleased to provide this status report for activities at the referenced location. HETI has been retained to evaluate site data generated to date and to design the most appropriate remedial strategy for the removal of petroleum hydrocarbons from soil and ground water. We are presently in preliminary design stages and anticipate delivery of a completed plan by the end of the second week in December.

During the early file assessment portion of HETI's project assignment it was noted that the distribution of hydrocarbons in ground water did not appear consistent with the local hydraulic gradient, specifically relative to on-site tank and line locations. Project personnel reviewed historical aerial photographs in an effort to determine the past uses of the property immediately upgradient from the subject site. The results of this file review were inconclusive. Any assistance you may be able to provide regarding the identification of the source of hydrocarbons detected in off site wells MW-7, MW-8 and MW-10 would be greatly appreciated.

In order to ensure that you remain informed regarding project direction, we would like to schedule a meeting for the week of December 16, 1993. Mr. Brian Cobb of E-Z Serve will be in attendance, as will be project representatives from HETI. Please call Mr. Cobb or myself at your convenience to discuss logistics. Thank you for your assistance.

Sincerely,
HYDRO-ENVIRONMENTAL TECHNOLOGIES, INC.



Markus B. Niebanck, R. G.
Western Regional Manager

cc. Mr. Brian Cobb, E-Z Serve

24:11W 8Z AON 86

HAZMAT
ALCO

E-Z SERVE
MANAGEMENT COMPANY

93 OCT 22 PM 3:44

October 14, 1993

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
80 Swan Way, RM 200
Oakland, California 94621

Re: E-Z Serve #100877
525 West A Street
Hayward, CA

Dear Ms. Shin:

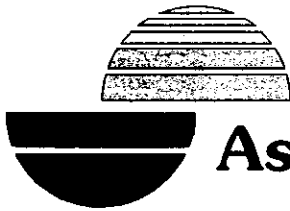
This is to provide an update regarding on-going environmental investigation at the referenced location. E-Z Serve recently contracted with Hydro-Environmental Technologies of Alameda California to prepare a work plan for additional subsurface investigation and interim remediation. Also, Hydro-Environmental is also further evaluating the likelihood of additional sources of contamination in the area.

If you have any questions or require additional information please contact myself or Markus Niebank of Hydro-Environmental at 510-521-2684.

Sincerely,



Brian Cobb, P.E.
Environmental Manager



93 SEP -1 AM 11:52

Associated Soils Analysis

August 26, 1993
File #238-91

Juliet Shin
Alameda County Health Care Services
Department of Environmental Health
80 Swan Way, Rm 200
Oakland, CA 94621

Project: E-Z Serve #100877, 525 West "A" Street, Hayward, California

Subject: Potential contributions to on-site contamination

Dear Ms. Shin:

A government records search has indicated there are 15 properties of environmental concern within 0.5 mile radius of the site. Three of these sites are located within one eighth mile of the site. These sites could potentially contribute to the problem at 525 West A Street. Would you please provide the status or information on the following sites:

Thrifty Oil Company (Site #1)

700 W. A Street
Hayward, CA 94541

plus franchise

Gasoline spill 2/27/89, Quantity not available
Pollution characterization

Accurate Auto Service (Site #2)

580 W. A Street
Hayward, CA 94541

did some cleanup

Gasoline spill 1/20/88, Quantity not available
No action taken by responsible party after initial report of leak

Vic Hubbard (Site #3)

411 W. A Street
Hayward, CA 94541

Gasoline spill 6/5/86, Quantity not available
Preliminary site assessment underway

UNOCAL Station #3791 (Site #4)

391 W. A Street
Hayward, CA 94541

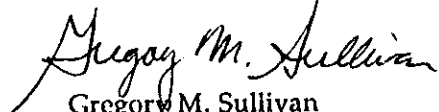
1141 Batavia Ct. • Tulare, California 93274 • (209) 688-1011

Diamond Bathurst (Site #5)
22302 Hathway Avenue
Hayward, CA 94541

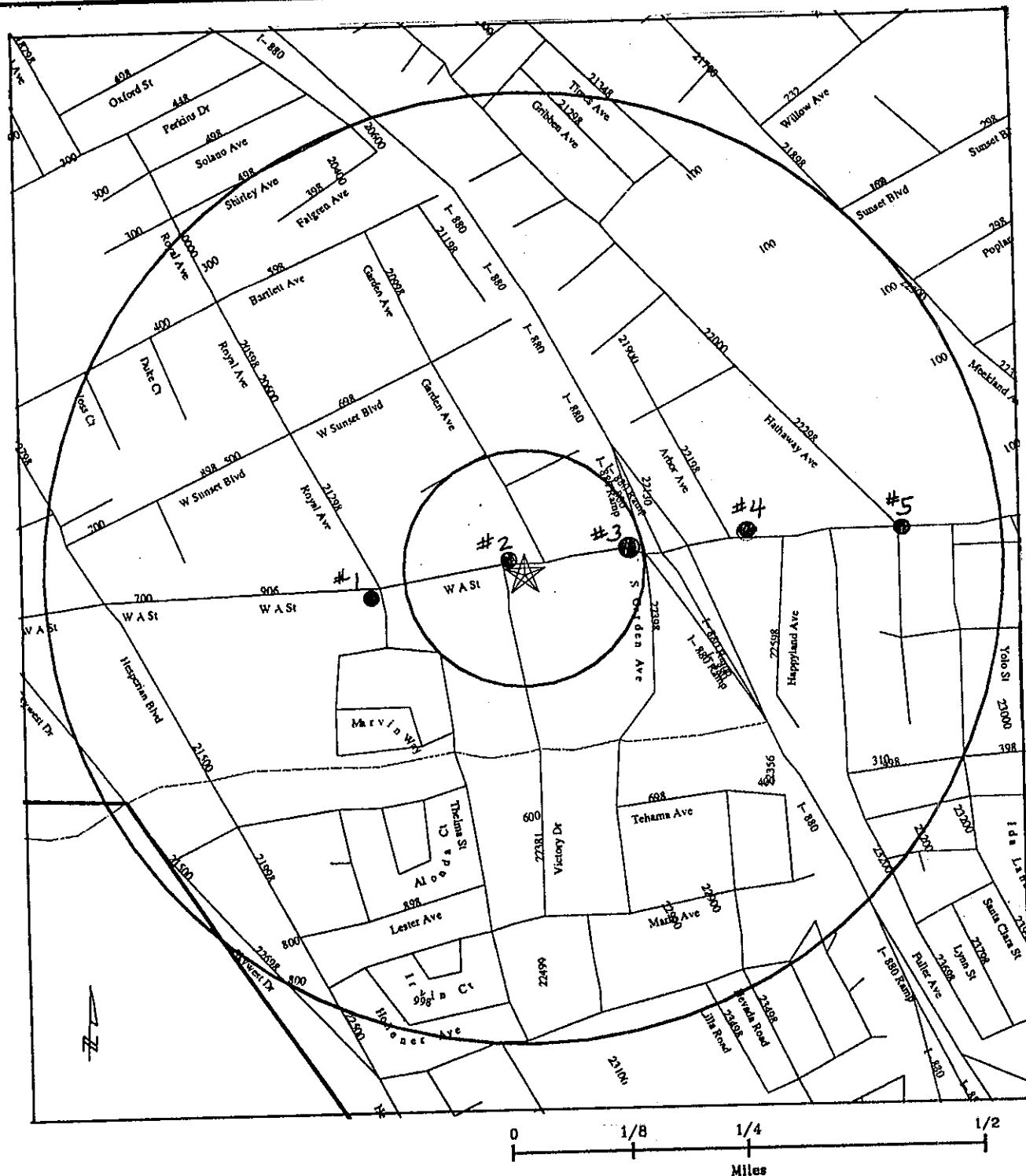
Gasoline spill 11/8/85, Quantity not available
Preliminary site assessment underway

Thank you for your cooperation. If you have any comments or need additional information, please contact me at this office.

Sincerely,


Gregory M. Sullivan
Project Geologist

cc Brian Cobb, E-Z Serve Management Company



SITES OF POTENTIAL ENVIRONMENTAL CONCERN

E-Z Serve
525 West "A" Street
Hayward, California



Associated Soils Analysis
1141 Batavia Court • Tulare, California 93274
(209) 688-1011 • FAX (209) 688-1195

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

August 25, 1993

Mr. Brian Cobb
E-Z Serve Mgmt. Co.
P.O. Box 922021
Houston, Texas 77292-2021

STID 3580

Re: Remediation requirements for the site located at 525 West
"A" Street, Hayward, California

Dear Mr. Cobb,

This office has received and reviewed Associated Soils Analysis' Site Investigation Report, dated July 20, 1993. According to recent investigations, **extremely** elevated levels of Total Petroleum Hydrocarbons as gasoline (TPHg), as high as 45,000 parts per billion (ppb), and benzene, toluene, ethylbenzene, and xylenes (BTEX) have been identified both on and off the above site. It appears that the observed off-site contamination is resulting from your site. **Per Section 2722, Article 11, Title 23 California Code of Regulations**, you are required to conduct interim remedial actions at the site to abate further migration of this ground water contaminant plume.

Additionally, per **Section 2725, Article 11, Title 23 California Code of Regulations**, you are required to complete assessments to delineate the extent and severity of this soil and ground water contamination. You are required to submit a work plan, addressing both the required interim remedial measures and the delineation of the ground water contaminant plume, **within 45 days** of the date of this letter.

Lastly, this office is uncertain as to whether all the piping was ever removed from the site since the pump islands and canopy are still in place. Please contact this office with information indicating whether this work was ever conducted.

If you have any questions or comments, please contact me at (510) 271-4530.

Sincerely,

Juliet Shin
Hazardous Materials Specialist

1 JONATHAN W. REDDING #132631
2 ROBERT F. CAMPBELL #136153
3 FITZGERALD, ABBOTT & BEARDSLEY
4 1221 Broadway, 21st Floor
5 Oakland, California 94612-1837
6 Telephone: (510) 451-3300

7 Attorneys for Plaintiffs

ENDORSED
FILED
ALAMEDA COUNTY

JUL 22 1993

RONALD G. OVERHOLT, Exec. Off./Clerk
By L. Viggiano

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10 LEVONARD A. THOMSEN and
11 MARGARET S. THOMSEN,

12 Plaintiffs,

13 v.

14 POWERINE OIL COMPANY, INC., a
15 California Corporation, E-Z SERVE
16 PETROLEUM MARKETING COMPANY OF
17 CALIFORNIA, a California
18 Corporation, HARKEN MARKETING
19 COMPANY OF CALIFORNIA, a
20 California corporation, and DOES
21 1 through 100, inclusive,

22 Defendants.

No. H-169600-4

23 FIRST AMENDED VERIFIED
24 COMPLAINT FOR NEGLIGENCE, STRICT LIABILITY, NUISANCE,
25 TRESPASS, WASTE, BREACH OF CONTRACT, PROMISSORY ESTOPPEL,
26 BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING,
27 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS,
28 MISREPRESENTATION, UNJUST ENRICHMENT, VIOLATION OF
H&SC § 25249.5 ET SEQ., INDEMNITY, AND DECLARATORY
AND INJUNCTIVE RELIEF

Plaintiffs, complain of defendants and each of them, and for
their causes of action, allege as follows:

////

////

1 GENERAL ALLEGATIONS

2 1. Plaintiffs Levonard A. Thomsen and Margaret S. Thomsen,
3 (the "Thomsens") are Husband and Wife and individuals residing in
4 Butte County, California, and are the owners of a parcel of
5 property located at 525 West "A" Street, in the City of Hayward,
6 County of Alameda, California ("Property").

7 2. Plaintiffs are informed and believe and thereupon allege
8 that defendant Powerine Oil Company, Inc. ("Powerine"), is a
9 corporation organized and existing under the laws of the State of
10 Delaware with its principal offices in the City of Long Beach,
11 County of Los Angeles, California and is qualified to do business,
12 and is actually doing business, in the State of California.

13 3. Plaintiffs are informed and believe and thereupon allege
14 that defendant E-Z Serve Petroleum Marketing Company of California
15 ("E-Z Serve"), which may be doing business using various names
16 including E-Z Serve Petroleum Marketing Company, E-Z Serve
17 Management Company and/or Harken Marketing Company of California,
18 is a corporation organized and existing under the laws of the State
19 of California with its principal offices in the City of Houston,
20 Texas, and is qualified to do business, and is actually doing
21 business, in the State of California.

22 4. Plaintiffs are informed and believe and thereupon allege
23 that defendant Harken Marketing Company of California ("Harken
24 Marketing"), which may be doing business using various names
25 including E-Z Serve Petroleum Marketing Company of California and
26 Harken Marketing Company, is a corporation organized and existing
27 under the laws of the State of California with its principal
28

1 offices in the City of Riverside, and is qualified to do business,
2 and is actually doing business, in the State of California.

3 5. The true names and capacities of the defendants sued
4 herein under the fictitious names DOE 1 through 100 are unknown to
5 plaintiffs, and plaintiffs will seek leave of court to amend this
6 complaint to allege such names and capacities as soon as they are
7 ascertained.

8 6. Plaintiffs are informed and believe and thereon allege
9 that each of the defendants designated herein as DOE 1 through 50
10 is responsible in some manner for the events and happenings
11 referred to and alleged herein and proximately caused injury
12 thereby to plaintiffs. Plaintiffs are informed and believe and
13 thereupon allege that defendants DOE 1 through 50 include, but are
14 not limited to, the successors-in-interest, predecessors-in-
15 interest, employees and agents acting within the scope and
16 authority of such agency and employment, licensees, subsidiaries,
17 parent companies, alter egos, partners, assigns and sublessees of
18 defendants Powerine, E-Z Serve and Harken Marketing; persons who
19 owned, operated, installed and/or controlled the subject tanks and
20 associated piping, and/or persons who sold, supplied and/or
21 delivered petroleum hydrocarbons, including gasoline, to the
22 Property.

23 7. Plaintiffs are informed and believe and thereon allege
24 that each of the defendants designated herein as DOE 51 through 100
25 are the officers, directors, shareholders, parents and subsidiaries
26 of defendants Powerine, E-Z Serve and Harken Marketing, and DOES 1
27 through 50 and are directly responsible through their control of
28

1 and responsibility for the operations of defendants Powerine, E-Z
2 Serve, Harken Marketing and DOES 1-50, and are derivatively
3 responsible, as a result of their disregard of the corporate
4 entities of defendants Powerine, E-Z Serve, Harken Marketing and
5 DOES 1-50, for the events and happenings referred to and alleged
6 herein which proximately caused injury to plaintiffs herein.

7 8. Plaintiffs are informed and believe and thereupon allege
8 that the Property was not improved and was not used for any
9 commercial purpose involving the storage, sale or use of petroleum
10 hydrocarbons, prior to December 1, 1966, and that no petroleum
11 hydrocarbon contamination existed on the Property prior to
12 December 1, 1966.

13 9. The Thomsens, as lessors, entered into a lease dated
14 December 1, 1966, with Powerine Oil Company, as lessee ("1966
15 Lease"). A true and correct copy of this 1966 Lease is attached
16 hereto as Exhibit "A" and is incorporated herein by this reference.

17 10. The 1966 Lease provided for a lease term commencing on
18 February 1, 1967, and terminating on January 31, 1987.

19 11. Paragraph (9) of the 1966 Lease provides:

20 "Lessor shall not be liable to lessee or to any other
21 person or persons whatsoever for any loss or damage to
22 persons or property arising out of, or by reason of the
23 occupancy of the leased premises, or the adjoining premises,
24 or the streets fronting thereon, by lessee, his subtenants or
25 assigns, employees, patrons, or otherwise . . ."

26 12. Paragraph (10) of the 1966 Lease provides:

27 "Lessee shall have the right to assign this lease
28 in whole or in part without the written consent of
Lessor, provided however, that undersigned Lessee shall
remain responsible and liable for the fulfillment of the
conditions of this lease agreement."

13. Paragraph (11) of the 1966 Lease provides:

1 "Lessee may sublease the leased premises, but such
2 sub-leasing shall not release the Lessee hereunder of
3 any obligation herein and no notice herein required to
4 be given by lessor to Lessee shall be required to be
5 given to such sub-lessee by Lessors. All conditions and
6 covenants herein contained shall continue in full force
7 and effect as to Lessee and Lessor herein."

8
9 14. Paragraph 12 of the 1966 Lease provides:

10 "Should . . . the lessee be in default in any . . .
11 condition of this lease, the lessor may . . . recover
12 from the lessee all damages caused by any breach hereof
13 by the lessee . . . and all reasonable attorneys' fees
14 and court costs which the lessor may be required to
15 incur . . . in collecting . . . damages . . ."

16 15. Paragraph 14 of the 1966 Lease provides:

17 "Lessee shall conduct his business on the premises
18 in compliance with all the applicable laws, ordinances
19 and regulations of appropriate governmental
20 authorities."

21 16. Paragraph 15 of the 1966 Lease provides:

22 "All of the terms, conditions and covenants hereof
23 shall be binding upon and shall inure to the benefit of
24 the heirs, executors, administrators or assigns of the
25 respective parties hereto."

26 17. Plaintiffs are informed and believe and thereupon allege
27 that defendant Powerine, Inc., and/or DOES 1-100, constructed or
28 caused to be constructed, an automobile service station for the
storage and sale of petroleum hydrocarbons, including, without
limitation, gasoline, after the commencement of the 1966 Lease.

18 18. Plaintiffs are informed and believe and thereupon allege
19 that Powerine and/or DOES 1-100 sold its interest in the service
20 station and/or assigned the 1966 Lease and/or subleased the subject
21 service station to defendants DOE and/or E-Z Serve at some time
22 after the commencement of the 1966 Lease.

23 19. Plaintiffs are informed and believe and thereupon allege
24 that unauthorized releases of petroleum hydrocarbons including,
25
26
27
28

1 without limitation, gasoline, occurred from the use and operation
2 of gasoline underground storage tanks and associated piping at the
3 station by Powerine, E-Z Serve, Harken Marketing and defendants DOE
4 between February 1, 1967 and January 31, 1987.

5 20. Plaintiffs are informed and believe and thereupon allege
6 that prior to the termination of the 1966 Lease, and as early as
7 June 1986, Powerine, E-Z Serve, Harken Marketing and/or defendants
8 DOE investigated the environmental conditions of the Property and
9 discovered the existence of petroleum hydrocarbon contamination
10 including, without limitation, gasoline, associated with the
11 gasoline underground storage tanks and associated piping.

12 21. Plaintiffs are informed and believe and thereupon allege
13 that Powerine, E-Z Serve, Harken Marketing and/or defendants DOE
14 did not disclose this information of the contamination to
15 plaintiffs or the appropriate governmental agencies as required by
16 law. Plaintiffs did not learn of this contamination until a time
17 within three years of the filing of this complaint.

18 22. Plaintiffs are informed and believe and thereupon allege
19 that Powerine, E-Z Serve, Harken Marketing and defendants DOE
20 intentionally withheld all information known to them regarding the
21 contamination from plaintiffs and the relevant governmental
22 agencies in order to avoid and escape liability for the
23 contamination. Plaintiffs are further informed and believe and
24 thereupon allege that Powerine, E-Z Serve, Harken Marketing and
25 defendants DOE continued to operate the gasoline underground
26 storage tanks in spite of evidence of leaks from such tanks and/or
27 associated piping and that their continued operation was a knowing
28

1 and intentional violation of the law and in reckless disregard of
2 the rights of plaintiffs and the harm caused to them.

3 23. The Thomsens, as lessors, entered into a lease with E-Z
4 Serve which was executed on January 20, 1987, for a lease term
5 commencing February 1, 1987, and continuing for fifteen (15) years
6 and terminating on January 31, 2002 ("1987 Lease"). A true and
7 correct copy of the 1987 Lease is attached hereto as Exhibit "B"
8 and is incorporated herein by this reference.

9 24. Section Four B. of the 1987 Lease provides:

10 "Lessee may, at its own expense, make any
11 alterations, additions or improvements in and to the
12 demised premises as long as prior written approval of
the Lessors is obtained."

13 25. Section Five of the 1987 Lease provides:

14 "Lessee shall, at all times during this lease, and
15 at its own cost and expense, repair, replace and
16 maintain, in a good, safe and substantial condition, all
17 improvements, additions and alterations on the demised
premises, and shall use all reasonable precaution to
prevent waste, damage or injury to the demised
premises."

18 26. Section Nine of the 1987 Lease provides:

19 "During the term of the lease, Lessee shall obtain
20 and maintain, at their expense, the following types and
amounts of insurance:

21 "(b) Personal Injury and Property Damage
22 Insurance: Lessee, in accordance with Section Eleven,
23 shall maintain personal injury and property damage
insurance in the amount of one million dollars, with
Lessors named as an additional insured."

24 27. Section Ten of the 1987 Lease provides:

25 "Lessee shall neither use nor occupy the demised
26 premises, or any part thereof, for any unlawful,
disreputable, or ultrahazardous business purpose, nor
27 operate or conduct its business in a manner constituting
a nuisance of any kind. Lessee shall immediately, on
discovery of any unlawful, disreputable or
28 ultrahazardous use, take action to halt such activity."

1 28. Section eleven of the 1987 Lease provides:

2 "Lessee shall indemnify Lessors against all
3 expenses, liabilities and claims of every kind,
4 including reasonable attorney's fees, by or on behalf of
5 any person or entity arising out of either (1) a failure
6 by lessee to perform any of the terms or conditions of
7 this lease; (2) any injury or damage happening on or
8 about the demised premises caused by Lessee; (3) failure
9 by Lessee to comply with any law of any governmental
10 authority"

11 29. Section Eleven of the 1987 Lease provides:

12 "In the event of a default of this lease, or in the
13 event any dispute concerning this lease arises between
14 the parties, the prevailing party in any legal action
15 shall be entitled to reasonable attorney's fees and
16 costs."

17 30. Section Twelve of the 1987 lease provides that:

18 "Each of the following events shall constitute a
19 default or breach of this lease by Lessee:

20 "(4) If Lessee shall fail to perform or comply
21 with any of the conditions of this lease, and if the
22 nonperformance shall continue for a period of thirty
23 (30) days after notice thereof by Lessors to Lessee, or,
24 if the performance cannot be reasonably had within the
25 thirty (30) day period, Lessee shall not in good faith
26 have commenced performance within the thirty (30) day
27 period and shall not diligently proceed to completion of
28 performance.

"(5) If Lessee shall vacate or abandon the demised
premises.

"(6) If this lease, or the estate of Lessee
hereunder, shall be transferred to or shall pass to or
devolve on any other person or party, except in the
manner herein permitted."

31. Section Thirteen of the 1987 lease provides that:

"In the event of any default hereunder, as set
forth in Section Twelve, the rights of Lessors shall be
as follows:

"(3) Lessors may re-enter the premises immediately
. . . . After re-entry, Lessors may terminate the lease
on giving thirty (30) days' written notice of
termination to Lessee. Without the notice, re-entry
will not terminate the lease. On termination, Lessors

1 may recover from Lessee all damages proximately
2 resulting from the breach, including the cost of
3 recovering the premises, and the worth of the balance of
4 this lease over the reasonable rental value of the
premises for the remainder of the lease term, which sum
shall be immediately due Lessors from Lessee.

5 "(4) After re-entry, Lessors may relet the
6 premises, or any part thereof, for any term, without
7 terminating the lease, at the rent and on the terms as
8 Lessors may choose. Lessors may make alterations and
repairs to the premises. The duties and liabilities of
the parties, if the premises are relet as provided
herein, shall be as follows:

9 "(a) In addition to Lessee's liability to
10 Lessors for breach of the lease, Lessee shall
11 be liable for all expenses of the reletting,
12 for the alterations and repairs made, and for
the difference between the rent received by
Lessors under the new lease agreement and the
rent installments that are due for the same
period under this lease.

13 "(5) After re-entry, Lessors may procure the
14 appointment of a receiver to take possession and collect
rents and profits of the business of Lessee, and if
15 necessary, to collect the rents and profits. The
receiver may carry on the business of Lessee and take
16 possession of the personal property used in the business
of Lessee, including inventory, trade fixtures, and
17 furnishings, and use them in the business without
compensating Lessee. Proceedings for appointment of a
18 receiver by Lessors, or the appointment of a receiver
and the conduct of the business of Lessee by the
19 receiver, shall not terminate and forfeit this lease
unless Lessors has given written notice to Lessee of
20 termination, as provided herein.

21 32. Section Eighteen of the 1987 Lease provides:

22 "Lessee shall be in exclusive control and
possession of the demised premises, and Lessors shall
23 not be liable for any injury or damages to any property
or to any person on or about the demised premises, nor
24 for any injury or damage to any property of Lessee."

25 33. Section Nineteen of the 1987 Lease provides:

26 "At the commencement of the term, Lessee shall
accept the property and improvements, and any equipment,
27 in their existing condition and state of repair, and
Lessee agrees that no representations, statements, or
28 warranties, express or implied, have been made by or on

1 behalf of Lessors in respect thereto, except as
2 contained in the provisions of this Lease, and Lessors
3 shall, in no event, be liable for any latent defects."

4 34. Section Twenty-Two of the 1987 Lease provides:

5 "Neither Lessee, nor its successors or assigns,
6 shall assign, mortgage, pledge, or encumber this lease,
7 or sublet the demised premises, in whole or in part, nor
8 shall this lease be assigned or transferred by operation
9 of law, without the prior consent, in writing, of
10 Lessors, in each instance. If this lease is assigned or
11 transferred, or if all or any part of the demised
12 premises is sublet, or occupied by anybody other than
13 Lessee, Lessors may, after default by Lessee, collect
14 rent from the assignee or transferee, and apply the net
15 amount collected to the rent reserved herein, but no
16 such assignment, subletting, occupancy, or collection
17 shall be deemed a waiver of any agreement or condition
18 hereof, or the acceptance of the assignee, transferee,
19 subtenant or occupant as lessee. Lessee shall continue
20 to be liable hereunder in accordance with the terms and
21 conditions of this lease and shall not be released from
22 the performance of the terms and conditions hereof. The
23 consent by lessors to an assignment, mortgage, pledge or
24 transfer shall not be construed to relieve Lessee from
25 obtaining the express written consent of Lessors to any
26 future transfer of interest."

27 35. Section Twenty-Four of the 1987 Lease provides:

28 "Lessee shall, on the last day of the term, or on
earlier termination and forfeiture of the lease,
peaceably and quietly surrender and deliver the demised
premises to Lessors, free of subtenancies, including all
buildings, if any, additions, and improvements
constructed or placed thereon by Lessee, except moveable
trade fixtures, all in good condition and repair. []
Lessee shall repair and restore all damage to the
demised premises caused by the removal of equipment,
trade fixtures, and personal property.

36. Plaintiffs are informed and believe and thereupon allege
that E-Z Serve, Harken Marketing and/or defendants DOE continued
operation of the service station on the Property upon the
commencement of the 1987 Lease.

37. Plaintiffs are informed and believe and thereupon allege
that E-Z Serve's, Harken Marketing's and/or defendant DOES'

1 operation of the tanks and associated piping on the Property after
2 the commencement of the 1987 Lease resulted in further releases of
3 petroleum hydrocarbons, including, without limitation, gasoline.

4 38. Plaintiffs are informed and believe and thereupon allege
5 that E-Z Serve, Harken Marketing and/or defendants DOE knew of the
6 existence of petroleum hydrocarbons at the time of the 1987 Lease
7 was entered into and that they performed further investigations of
8 the environmental conditions on the Property in 1987 and that such
9 investigations further disclosed and confirmed the existence of
10 hydrocarbon contamination on the Property.

11 39. Plaintiffs are informed and believe and thereupon allege
12 that E-Z Serve, Harken Marketing and/or defendants DOE
13 intentionally withheld this information from plaintiffs and the
14 relevant regulatory agencies in order to escape liability for the
15 contamination. Plaintiffs are informed and believe and thereupon
16 allege the E-Z Serve, Harken Marketing and/or defendants DOE
17 continued to operate the gasoline underground storage tanks despite
18 evidence of leaks from the tanks and associated piping and that
19 their operation was a knowing and intentional violation of the law
20 and was done in reckless disregard of the rights of plaintiffs and
21 the harm caused to them.

22 40. By letter dated June 13, 1990, from Sharon A. Stout, Vice
23 President, Harken Marketing, to the Thomsens, E-Z Serve, Harken
24 Marketing and/or DOES 1-100 informed the Thomsens that the subject
25 service station had been closed because the gasoline tanks had been
26 leaking. A true and correct copy of this letter is attached hereto
27 as Exhibit "C" and is incorporated herein by this reference.
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1 41. The June 13, 1990, letter further stated that E-Z Serve,
2 Harken Marketing and/or DOES 1-100 would remove the gasoline USTs
3 and related piping within the week to conduct an investigation and
4 remedy the contamination problem; and, that E-Z Serve, Harken
5 Marketing and/or DOES 1-100 would completely upgrade and remodel
6 the facility by installing new gasoline USTs and piping, and new
7 gasoline dispensing equipment and a convenience store building in
8 exchange for the Thomsens agreement to allow the excavation work
9 and alterations, which agreement was required pursuant to Section
10 Four B. of the lease between E-Z Serve and the Thomsens prior to
11 the commencement of such work. Under Section Four A. of the 1987
12 Lease, the Thomsens would retain title to all improvements
13 constructed on the Property.

14 42. The Thomsens signed and returned a copy of the June 13,
15 1990, letter to communicate their agreement to allow the demolition
16 in exchange for the promise to rebuild the station. It was the
17 Thomsens understanding that they were granting permission to have
18 the existing improvements on the Property removed in return for a
19 promise made in the June 13, 1990, letter to construct a new
20 service station and convenience store on the site, to which they
21 would retain title. Thereafter, E-Z Serve, Harken Marketing and
22 DOES 1-100 did not communicate with plaintiffs for a period of two
23 years regarding their contract to construct a new service station
24 on the Property. Plaintiffs are informed and believe and thereupon
25 allege that E-Z Serve, Harken Marketing and DOES 1-100 determined
26 during this time to repudiate its contract with plaintiffs to build
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1 the station and that it intentionally withheld that information
2 from plaintiffs.

3 43. Plaintiffs are informed and believe and thereupon allege
4 that E-Z Serve, Harken Marketing and/or DOES 1-100 removed the
5 gasoline storage tanks from the Property in June 1990 and
6 thereafter ceased all operations on the property. A new service
7 station and convenience store has not been constructed on the
8 Property as agreed between the parties.

9 44. By letter dated November 11, 1991, from the Thomsens to
10 Sharon Stout, Vice President, Harken Marketing, the Thomsens
11 confirmed an earlier telephone conference with Ms. Stout that an
12 environmental cleanup plan had been filed by Paul Martin,
13 Environmental Director, E-Z Serve, Harken Marketing and/or DOES 1-
14 100 and requested a copy of that plan. The Thomsens further
15 requested Ms. Stout to keep them informed as to the plans for
16 rebuilding the station.

17 45. By letter dated December 9, 1991, from Paul Martin, E-Z
18 Serve, Harken Marketing and/or DOES 1-100 to the Thomsens, Paul
19 Martin enclosed a copy of the environmental assessment work plan
20 that had been submitted to the county and informed the Thomsens
21 that the work plan was undergoing review and that E-Z Serve
22 anticipated it would commence work within 30 days after approval
23 of the work plan.

24 46. By letter dated April 24, 1992, the Alameda County Health
25 Services Department, Juliette Shin, Hazardous Materials Specialist,
26 notified Amy Stites, E-Z Serve Petroleum Marketing Co., that E-Z
27 Serve was required to submit a work plan to address the delineation
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1 and containment of the groundwater contaminant plume from the
2 Property. E-Z Serve did not respond to this letter.

3 47. By letter dated May 14, 1992, from the Thomsens to Paul
4 Martin, E-Z Serve, Harken Marketing and/or DOES 1-100, the Thomsens
5 notified E-Z Serve that the excavations from the tank removals had
6 been filled, the chain link fence removed and that all site cleanup
7 activities had apparently been abandoned. The Thomsens requested
8 that they be informed of all remediation activities on the
9 Property. The Thomsens further stated that, at the request of
10 Harken Marketing, they consented to their plans to excavate the
11 site and construct improvements, including a convenience store on
12 the Property, and that two years was long enough to leave the site
13 abandoned, i.e., that there had been an unreasonable delay in the
14 construction of the improvements.

15 48. By letter dated May 20, 1992, from Paul Martin, E-Z
16 Serve, Harken Marketing and/or DOES 1-100 to the Thomsens, Paul
17 Martin notified the Thomsens that E-Z serve was conducting an
18 ongoing environmental assessment of the Property under the
19 direction of the Alameda County Health Care Services Agency. A
20 true and correct copy of this letter is attached hereto as
21 Exhibit "D" and is incorporated herein by this reference.

22 49. The May 20, 1992, letter further states that E-Z Serve,
23 Harken Marketing and/or DOES 1-100 "has made a corporate decision
24 to place its emphasis on the eastern portion of the United States
25 and has no future plans to construct or operate a service station
26 on this particular site." Plaintiffs are informed and believe and
27 thereupon allege that E-Z Serve's, Harken Marketing's and/or DOES
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1 1-100 representation, that it had "made a corporate decision to
2 place its emphasis on the eastern portion of the United States,"
3 was intended to falsely represent to plaintiffs that E-Z Serve,
4 Harken Marketing and/or DOES 1-100 would not build the station
5 because E-Z Serve, Harken Marketing and/or DOES 1-100 no longer
6 intended to operate service stations in the area. Plaintiffs are
7 informed and believe and thereupon allege that at the time E-Z
8 Serve, Harken Marketing and/or DOES 1-100 made this representation
9 it intended to continue operating service stations in the area and
10 in fact that E-Z Serve, Harken Marketing and/or DOES 1-100 are, are
11 presently operating a service station in the area. Plaintiffs are
12 informed and believe and thereupon allege that E-Z Serve, Harken
13 Marketing and/or DOES 1-100 made this false representation in an
14 attempt to avoid responsibility for the clean-up of the
15 contamination on the Property which would be required prior to the
16 construction of the new service station.

17 50. The May 20, 1992 letter further offered that E-Z Serve,
18 Harken Marketing and/or DOES 1-100 would be "favorable to a mutual
19 termination of the lease, so that the property could be fully [sic]
20 utilized." This letter was a repudiation of E-Z Serve's, Harken
21 Marketing's and/or DOES 1-100 obligation to rebuild the station.

22 51. A Notice of Violation dated August 27, 1992, from the
23 Alameda County Health Care Services Agency was sent to E-Z Serve,
24 Harken Marketing and/or DOES 1-100 requiring that a work plan be
25 prepared, approved and implemented.

26 52. In September 1992, E-Z Serve, Harken Marketing and/or
27 DOES 1-100 finally submitted a work plan to the Alameda County
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1 Health Care Services Agency. The work plan, however, was
2 determined to be deficient by the Alameda County Health Care
3 Services Agency because it was not submitted under the seal of a
4 California-Registered Geologist, Engineering Geologist or Civil
5 Engineer as required by law.

6 53. E-Z Serve, Harken Marketing and/or DOES 1-100 was
7 notified of this deficiency, and that a certified work plan was
8 required to be submitted, by the Alameda County Health Care
9 Services Agency by telephone on September 29, 1992.

10 54. E-Z Serve, Harken Marketing and/or DOES 1-100 thereafter
11 failed to submit the required work plan as requested and
12 consequently, by letter dated December 3, 1992, the Alameda County
13 Health Care Services Agency notified E-Z Serve, Harken Marketing
14 and/or DOES 1-100 that it must submit the required work plan, under
15 the seal of a certified engineer or geologist, within 45 days of
16 the date of the instant letter. The letter further provided that
17 this was a formal request for technical reports pursuant to
18 California Water Code § 13267(b) and that any extensions of the
19 stated guidelines, or modifications of the required tasks, required
20 written confirmation by either the Alameda County Health Care
21 Services Agency or the Regional Water Quality Control Board
22 ("RWQCB").

23 55. By letter dated January 3, 1993, E-Z Serve, Harken
24 Marketing and/or DOES 1-100 informed plaintiffs that if plaintiffs
25 took any actions consistent with the November 9, 1992, letter sent
26 by plaintiffs to E-Z Serve, Harken Marketing and/or DOES 1-100
27 would view that action as "interference with our possession of the
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1 property as constructive eviction," and further stated that they
2 would "aggressively pursue [their] remedies for vexatious and
3 unfounded claims or charges." Plaintiffs are informed and believe
4 and thereupon allege that E-Z Serve, Harken Marketing and/or DOES
5 1-100 intended by that letter to convey to plaintiffs that if they
6 pursued their rights, E-Z Serve, Harken Marketing and/or DOES 1-100
7 would stop rental payments and would initiate litigation against
8 plaintiffs. Plaintiffs are informed and believe and thereupon
9 allege that E-Z Serve, Harken Marketing and/or DOES 1-100 knew that
10 plaintiffs were an elderly couple with limited financial resources,
11 that plaintiffs were dependent upon rental income from the Property
12 for financial support and that plaintiffs could not afford to
13 defend the threatened lawsuit. Plaintiffs are informed and believe
14 and thereupon allege that E-Z Serve, Harken Marketing and/or DOES
15 1-100 thereby intended by this letter to threaten and cause severe
16 emotional distress to plaintiffs and thereby intimidate plaintiffs
17 and coerce them into not pursuing their rights. E-Z Serve's,
18 Harken Marketing's and/or DOES 1-100's actions, by this letter and
19 otherwise, have caused plaintiffs to suffer severe emotional
20 distress from the fear that they may lose an important source of
21 income, suffer the expense of defending a lawsuit and otherwise,
22 particularly in light of their understanding that their property
23 presently has no value due to the presence of extensive petroleum
24 contamination on the property and the failure of defendants', and
25 each of them, to remediate the contamination to the extent required
26 by law. A true and correct copy of this letter is attached hereto
27 as Exhibit "E" and is incorporated herein by this reference.
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1 56. By letter dated February 22, 1993, the Alameda County
2 Health Care Services Agency, Juliette Shin, Hazardous Materials
3 Specialist, notified Brian Cobb, E-Z Serve, that E-Z Serve must
4 immediately commence free product recovery efforts on the Property
5 and submit a work plan addressing the product removal within 30
6 days of the date of the letter. The letter further requested that
7 E-Z Serve begin collecting groundwater level measurements and
8 prepare elevation contour maps on a monthly basis, in addition to
9 quarterly groundwater monitoring requirements.

10 57. Plaintiffs are informed and believe and thereupon allege
11 that E-Z Serve, Harken Marketing and/or DOES 1-100 and defendants
12 DOE have failed to adequately comply with these requests of the
13 Alameda County Health Care Services Agency. Plaintiffs are
14 informed and believe and thereupon allege that the failure of
15 defendants, and each of them, to remediate the contamination at the
16 site has caused petroleum contamination to migrate onto and into
17 adjacent property and into a source of public drinking water.

18 58. E-Z Serve, Harken Marketing and/or DOES 1-100 and
19 defendants DOE have abandoned and thereby illegally stored and
20 disposed, and continue to illegally store and dispose, as defined,
21 for example, in Health and Safety Code § 25113(a)(2), of numerous
22 drums of waste materials and/or hazardous waste on the Property in
23 violation of various State and federal laws.

24 59. E-Z Serve, Harken Marketing and defendants DOE have
25 failed, and continue to fail, to maintain the Property in a neat
26 and sanitary manner by removing a security fence and thereby
27 allowing wastes, including trash, garbage, appliances and old
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1 automobiles, to accumulate on the Property. The lot is also
2 covered with weeds and is an unsightly mess.

3 60. E-Z Serve, Harken Marketing and defendants DOE, by
4 removing fencing from around the Property, have permitted, and
5 continue to permit, the Property to be used as an illegal dumping
6 site and have thereby created a public nuisance in violation of the
7 1987 Lease. See Alameda County Department of Health Services
8 Environment Health, Hazardous Materials Division, Inspection Form,
9 dated October 23, 1992, which is attached hereto as Exhibit "F" and
10 is incorporated herein by this reference.

11 FIRST CAUSE OF ACTION

12 (Negligence As To All Defendants)

13 61. Plaintiffs reallege and incorporate herein by reference
14 the allegations set forth in Paragraphs 1 through 60, inclusive as
15 though set forth in full.

16 62. The acts of the defendants, and each of them, as herein
17 alleged were and are in violation of The Porter-Cologne Water
18 Quality Control Act, California Water Code Sections 13000, et seq.,
19 including, without limitation, §§ 13260, 13261, 13264, 13265, 13271
20 and 13272 prohibiting the unauthorized discharge or release,
21 including the continuing discharge or release, of waste that could
22 affect the quality of the waters of the State, and other
23 applicable codes, regulations and statutes, including, without
24 limitation, the Dickey Water Pollution Control Act (in effect
25 preceding the Porter-Cologne Water Quality Control Act), Water Code
26 Sections 13000, including, without limitation, §§ 13053 and 13054,
27 which prohibited the discharge of waste into the waters of the
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1 State; and, Health and Safety Code §§ 25154 (unlawful management
2 of hazardous waste), 25189.5 (disposal of hazardous waste without
3 a permit), 25201 (operation of a hazardous waste facility with a
4 permit), 25249.5 (discharge of carcinogens or terratogens into
5 drinking water sources) and 25284 (underground storage tank
6 permits), in that defendants have failed and continue to fail to
7 properly monitor, report and remediate discharges or releases of
8 petroleum contamination (including continuing discharges or
9 releases from continued migration of petroleum contamination) as
10 required by such statutes. Such failure has proximately caused
11 damage to plaintiffs' property as hereinafter set forth, which
12 damage the statutes cited herein were designed to prevent.
13 Plaintiffs were and are within the classification of persons for
14 whose protection such statutes were enacted. The conduct of
15 defendants, and each of them, in violating those statutes is
16 therefore conduct which is negligent per se and defendants are
17 liable to plaintiffs for damages resulting to plaintiffs from the
18 violation of these statutes.

19 63. At all material times, defendants, and each of them, also
20 had a duty to plaintiffs and others similarly situated to exercise
21 reasonable care in the construction, operation, maintenance and
22 closure of the underground petroleum storage tanks and delivery
23 systems at the Property and to avoid the release of petroleum
24 contamination into the soil and groundwater.

25 64. Defendants, and each of them, breached their duty of
26 reasonable care by allowing the release of petroleum contaminants
27 and by thereafter failing to remove, contain or otherwise
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1 immobilize the petroleum contamination in such a manner as to
2 prevent its migration through the soil and groundwater on the
3 Property, all to plaintiffs' damage as hereinafter set forth.

4 65. As a direct and proximate result of defendants' wrongful
5 acts as herein alleged, plaintiffs have been damaged in an amount
6 exceeding the jurisdictional minimum of this court. Plaintiffs
7 will seek leave of the court to amend their complaint to state the
8 true amount of said damages when the same has been ascertained.

9 66. The effects of the defendants' negligent mishandling of
10 petroleum products was not immediately apparent on visual
11 inspection of the Property, and plaintiffs were unable with
12 reasonable diligence to discover the contamination existing on the
13 Property until a time within three years of the filing of this
14 complaint.

15 67. Enforcing compliance with the Porter-Cologne Water
16 Quality Control Act and the Dickey Water Pollution Control Act,
17 California Water Code Sections 13000, et seq., and applicable
18 Health and Safety Code provisions, as hereinabove specified, and
19 other applicable codes, regulations and statutes, and the
20 remediation of the aforementioned releases of hazardous substances,
21 will result in the enforcement of important rights affecting the
22 public interest and quality of public drinking water in that a
23 significant benefit will be conferred on the general public,
24 including, but not limited to, the City of Hayward, County of
25 Alameda, and residents in the vicinity of the Property.
26 Accordingly, plaintiffs are entitled to an award of attorneys' fees
27 pursuant to the provisions of California Code of Civil Procedure
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1 \$ 1021.5 because a significant benefit will be conferred on the
2 general public, the necessity and financial burden of private
3 enforcement are such as to make said award appropriate, and such
4 fees should not in the interest of justice be paid out of
5 plaintiffs' recovery.

6 WHEREFORE, plaintiffs pray for relief as hereinafter set
7 forth.

8 SECOND CAUSE OF ACTION

9 (Strict Liability As To All Defendants)

10 68. Plaintiffs reallege and incorporate herein by reference
11 the allegations set forth in Paragraphs 1 through 60, inclusive as
12 though set forth in full.

13 69. Defendants, and each of them, used the Property for the
14 deposit, disposal and the storage and use of petroleum
15 hydrocarbons. The petroleum products were stored and used and were
16 disposed and deposited in such a manner that the petroleum products
17 would be likely to and did contaminate and pollute the Property and
18 properties in the vicinity of the Property and would be likely to
19 and did impact adversely on the safety, value, use, and enjoyment
20 of such properties.

21 70. Storage and disposal of petroleum substances in such a
22 manner is an ultrahazardous activity in that it necessarily
23 involves serious risk of harm to persons and property, and is not
24 a common usage of property in the area.

25 71. Accordingly, defendants are liable for all harm
26 proximately caused thereby, regardless of the degree of care
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1 exercised by defendants in the storage and disposal of said
2 hazardous materials and contaminants.

3 72. As a direct and proximate result of the release,
4 disposal, deposit, and storage of petroleum substances at the
5 Property, the Property and properties in the vicinity of the
6 Property, have been and continue to be contaminated and polluted,
7 thereby rendering such properties unavailable for commercial use
8 and substantially decreasing the value of such properties for
9 current and future economic purposes.

10 73. As a further direct and proximate result of the
11 ultrahazardous activity conducted by defendants on the Property,
12 plaintiffs have incurred and will continue to incur costs and
13 expenses associated with further investigations of the nature and
14 extent of contamination existing on and under such properties, as
15 set forth above, and other damages and losses in an amount
16 exceeding the jurisdictional minimum of this court. Plaintiffs
17 will seek leave of the court to amend their complaint to state the
18 true amount of said damage when the same has been ascertained.

19 74. The effects of the defendants' ultrahazardous activities
20 were not immediately apparent on visual inspection of the Property,
21 and plaintiffs were unable with reasonable diligence to discover
22 the contamination existing on the Property until a time within
23 three years of the filing of this complaint.

24 WHEREFORE, plaintiffs pray for relief as hereinafter set
25 forth.

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1 79. At all material times, defendants, and each of them, had
2 a duty not to permit or allow the continuance of a nuisance.
3 Defendants, and each of them, have breached and are breaching that
4 duty by allowing hazardous substances to remain at the Property and
5 to migrate from the Property. Defendants, and each of them, have
6 threatened to, and will, continue to maintain the continuing
7 nuisance, unless restrained by this court.

8 80. As a direct and proximate result of the continuing
9 nuisance created and maintained by defendants, and each of them,
10 plaintiffs have been damaged in an amount exceeding the
11 jurisdictional minimum of this court, by reason of their inability
12 to use, develop, sell, let or encumber the Property so long as the
13 nuisance exists, and by necessary payments to environmental
14 consultants and remediation contractors to investigate the nature
15 and extent of the contamination existing thereon and to remove and
16 remediate that contamination. Plaintiffs will seek leave of the
17 court to amend their complaint to state the true amount of said
18 damages when the same has been ascertained.

19 81. As a further direct and proximate result of the nuisance,
20 the value of plaintiffs' Property has been temporarily diminished
21 in an amount exceeding the jurisdictional minimum of this court.
22 Plaintiffs will seek leave of the court to amend their complaint
23 to state the true amount of said diminution in value when the same
24 has been ascertained. Unless the nuisance is abated, plaintiffs'
25 Property will be progressively further diminished in value.

26 82. Unless defendants, and each of them, are ordered by this
27 court to abate the aforesaid nuisance forthwith, it will be
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1 necessary for plaintiffs to commence successive actions to secure
2 compensation for damages sustained, thus requiring a multiplicity
3 of suits. Failure to abate the nuisance will result in irreparable
4 injury to plaintiffs and to the general public in that contaminants
5 will continue to affect plaintiffs' use and enjoyment of the
6 Property and the contaminants will continue to migrate onto
7 neighboring properties and into the waters of the state.
8 Plaintiffs do not have an adequate remedy at law for damages alone
9 because it is difficult to determine what the actual cost of
10 remediating the contamination on plaintiffs' Property will be.

11 83. The abatement of said nuisance will result in the
12 enforcement of important rights affecting the public interest, and
13 the quality of public drinking water in that a significant benefit
14 will be conferred on the general public, including, but not limited
15 to, the City of Hayward, the County of Alameda and residents in the
16 vicinity of the Property. Accordingly, plaintiffs are entitled to
17 an award of attorneys' fees pursuant to the provisions of
18 California Code of Civil Procedure § 1021.5 because a significant
19 benefit will be conferred on the general public, the necessity and
20 financial burden of private enforcement are such as to make said
21 award appropriate, and such fees should not in the interests of
22 justice be paid out of plaintiffs' recovery.

23 84. In maintaining and continuing to maintain the aforesaid
24 nuisance, defendants, and each of them, were and are acting
25 negligently as well as intentionally, with full knowledge of the
26 consequences and damage being caused to plaintiffs and to the
27 public, and the conduct of defendants was and is willful,
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1 oppressive and malicious, and in conscious disregard of the rights
2 of plaintiffs and the public. Plaintiffs are further informed and
3 believe and thereupon allege that each of the defendant
4 corporations' management authorized the maintaining of the
5 aforesaid nuisance and ratified the decision of their employees to
6 maintain the aforesaid nuisance. Accordingly, plaintiffs are
7 entitled under California Civil Code § 3294 to exemplary damages
8 against defendants, and each of them, in an amount sufficient to
9 punish defendants, and each of them, and to make them an example.

10 85. The effects of the defendants' activity causing the
11 nuisance were not immediately apparent on visual inspection of the
12 Property, and plaintiffs were unable with reasonable diligence to
13 discover the contamination existing on the Property until a time
14 within three years of the filing of this complaint.

15 WHEREFORE, plaintiffs pray for relief as hereinafter set
16 forth.

17 FOURTH CAUSE OF ACTION

18 (Intentional Continuing Trespass As To All Defendants)

19 86. Plaintiffs reallege and incorporate herein by reference
20 the allegations set forth in Paragraphs 1 through 60, inclusive as
21 though set forth in full.

22 87. The failure of defendants, and each of them, to remove,
23 contain or otherwise immobilize the hazardous substances deposited
24 on the Property, and to properly use, maintain and repair the
25 petroleum storage tanks and underground petroleum pipelines at the
26 Property, was substantially certain to, and did, cause the entry
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1 of petroleum products and hydrocarbons onto the Property by
2 groundwater migration and migration through the soil.

3 88. The aforesaid entry of petroleum hydrocarbons onto the
4 Property by groundwater migration and migration through the soil,
5 as herein described, without the consent of plaintiffs or their
6 predecessors in interest, constitutes an intentional trespass in
7 that petroleum hydrocarbons have been intentionally placed and
8 allowed to remain on plaintiffs' Property and that said
9 contamination has interfered with, and continues to interfere with,
10 the possession, use and enjoyment by plaintiffs of the Property by
11 precluding them from improving, developing, encumbering or
12 otherwise using the Property while said contamination continues to
13 exist thereon.

14 89. At all material times, defendants and each of them had
15 a duty not to permit or allow the continuance of such trespass.
16 Defendants and each of them are aware of said trespass and have
17 failed and refused to take action to remove the contaminants from
18 the Property, or to remediate the hazardous condition.

19 90. As a direct and proximate result of said trespass,
20 plaintiffs have been damaged in sums exceeding the jurisdictional
21 minimum of this court, including damages which plaintiffs may
22 sustain in the future due to the assertion of third party claims.
23 Plaintiffs will seek leave of the court to amend their complaint
24 to state the true amount of said damages when the same has been
25 ascertained.

26 91. Plaintiffs have no adequate remedy at law for the
27 injuries threatened by the continuing trespass, in that defendants
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1 and each of them will continue to allow hazardous substances and
2 petroleum hydrocarbons to remain on and migrate to and from the
3 Property unless enjoined, and plaintiffs would be required to
4 maintain a multiplicity of judicial proceedings to protect their
5 interests. Plaintiffs do not have an adequate remedy at law for
6 damages alone because it is difficult to determine what the actual
7 cost of remediating plaintiffs' Property will be.

8 92. Plaintiffs are informed and believe and thereon allege
9 that in causing and maintaining the trespass, defendants, and each
10 of them, were and are acting deliberately, with full knowledge of
11 the damage being caused to plaintiffs. Plaintiffs are further
12 informed and believe and thereupon allege that defendant
13 corporations' management authorized the maintaining of the
14 aforesaid trespass and ratified the decision of their employees to
15 maintain the aforesaid trespass. The conduct of defendants, and
16 each of them, was and is willful, oppressive and malicious, and in
17 conscious disregard of the rights of plaintiffs and others.
18 Plaintiffs are therefore entitled under California Civil Code §
19 3294 to exemplary damages for the sake of example and by way of
20 punishing defendants, and each of them.

21 93. The effects of the defendants' activity causing the
22 trespass were not immediately apparent on visual inspection of the
23 Property, and plaintiffs were unable with reasonable diligence to
24 discover the contamination existing on the Property until a time
25 within three years of the filing of this complaint.

26 WHEREFORE, plaintiffs pray for relief as hereinafter set
27 forth.

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FIFTH CAUSE OF ACTION

(Negligent Continuing Trespass As To All Defendants)

94. Plaintiffs reallege and incorporate herein by reference the allegations set forth in paragraphs 1 through 60, inclusive as though set forth in full.

95. The aforementioned deposit, entry, and failure to remove, contain or immobilize the petroleum hydrocarbons as herein alleged constitutes negligent trespass under the California common law in that petroleum products and hydrocarbons have been negligently placed on and allowed to migrate through the Property, contrary to law. As a direct and proximate result of defendants' negligent failure to remove, contain, or otherwise immobilize the petroleum products and hydrocarbons, petroleum products have migrated and continue to further migrate through the soil and groundwater underlying the Property, without plaintiffs' consent, unlawfully interfering with plaintiffs' possession of the land and thereby constituting a negligent trespass under California common law. At all material times, defendants and each of them, had a duty not to permit or allow the continuance of this trespass.

96. Defendants, and each of them, have breached that duty by allowing petroleum products and hydrocarbons to remain on plaintiffs' Property, and by failing to take action to prevent further migration of hazardous materials to the Property.

97. As a direct and proximate result of said trespass, plaintiffs have been damaged in sums exceeding the jurisdictional minimum of this court, including damages which plaintiffs may sustain in the future due to the assertion of third party claims.

1 Plaintiffs will seek leave of the court to amend their complaint
2 to state the true amount of said damages when the same has been
3 ascertained.

4 98. Plaintiffs have no adequate remedy at law for the
5 injuries threatened by the trespass, in that defendants, and each
6 of them, will continue to allow petroleum products and hydrocarbons
7 to remain on and migrate on the Property unless enjoined, and
8 plaintiffs would be required to maintain a multiplicity of judicial
9 proceedings to protect their interests. Plaintiffs do not have an
10 adequate remedy at law for damages alone because it is difficult
11 to determine what the actual cost of remediating the contamination
12 on plaintiffs' Property will be.

13 99. The effects of the defendants' activities causing the
14 trespass were not immediately apparent on visual inspection of the
15 Property, and plaintiffs were unable with reasonable diligence to
16 discover the contamination existing on the Property until a time
17 within three years of the filing of this complaint.

18 WHEREFORE, plaintiffs pray for relief as hereinafter set
19 forth.

20 SIXTH CAUSE OF ACTION

21 (Waste As To All Defendants)

22 100. Plaintiffs reallege and incorporate herein by reference,
23 the allegations set forth in paragraphs 1 through 60, inclusive,
24 as though set forth in full.

25 101. Defendants and each of them have or had a duty not to
26 commit waste on the Property.
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1 102. Defendants and each of them breached their duty not to
2 commit waste and have committed waste, in that the unauthorized
3 release of petroleum products onto and into the Property caused by
4 defendants, and defendants' failure to remove and remediate the
5 petroleum contamination, as herein alleged, has substantially
6 interfered with the use, and depreciated the market value, of the
7 Property.

8 103. Defendants and each of them acted intentionally and
9 maliciously and/or in reckless disregard of the harm caused to
10 plaintiffs in committing waste as herein alleged.

11 104. As a direct and proximate result of said waste,
12 plaintiffs have been damaged in sums exceeding the jurisdictional
13 minimum of this court, including damages which plaintiffs may
14 sustain in the future due to the assertion of third party claims.
15 Plaintiffs will seek leave of the court to amend their complaint
16 to state the true amount of said damages when the same has been
17 ascertained. Plaintiffs are entitled to have these damages trebled
18 pursuant to C.C.P § 732.

19 105. The effects of the defendants' activity in wasting
20 plaintiffs' Property were not immediately apparent on visual
21 inspection of the Property, and plaintiffs were unable with
22 reasonable diligence to discover the contamination existing on the
23 Property until a time within three years of the filing of this
24 complaint.

25 106. Plaintiffs have no adequate remedy at law for the
26 injuries threatened by the waste, in that defendants, and each of
27 them, will continue to allow petroleum products and hydrocarbons
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1 to remain on and migrate on the Property unless enjoined, and
2 plaintiffs would be required to maintain a multiplicity of judicial
3 proceedings to protect their interests. Plaintiffs do not have an
4 adequate remedy at law for damages alone because it is difficult
5 to determine what the actual cost of remediating plaintiffs'
6 Property will be.

7 WHEREFORE, plaintiffs pray for relief as hereinafter set
8 forth.

9 SEVENTH CAUSE OF ACTION

10 (Breach of Contract As To All Defendants)

11 107. Plaintiffs reallege and incorporate herein by reference,
12 the allegations set forth in paragraphs 1 through 60, inclusive,
13 as though set forth in full.

14 108. Defendants and each of them during the years they were
15 in possession of the Property, were operating the Service Station
16 pursuant to the leases referred to herein. Under the terms and
17 conditions of the leases, defendants, and each of them, were
18 required to use the Property only for lawful purposes and were
19 required to return the Property at the expiration of the lease free
20 of unlawful levels of petroleum hydrocarbon contamination.

21 109. Plaintiffs and their predecessors in interest performed
22 all conditions and covenants required by them on their part to be
23 performed in accordance with the terms and conditions of the
24 leases.

25 110. Defendants and each of them breached the terms of the
26 leases by using the Property in violation of the law, as herein
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1 alleged, and failed to return the Property free of petroleum
2 hydrocarbon contamination.

3 111. The effects of defendants' breaches of these contracts
4 were not immediately apparent on visual inspection of the Property,
5 and plaintiffs were unable with reasonable diligence to discover
6 the contamination existing on the Property and the breaches of this
7 contract until a time within three years of the filing of this
8 complaint.

9 112. As a direct and proximate result of the breaches of these
10 contracts, plaintiffs have been damaged in sums exceeding the
11 jurisdictional minimum of this court, including damages which
12 plaintiffs may sustain in the future due to the assertion of third
13 party claims. Plaintiffs will seek leave of the court to amend
14 their complaint to state the true amount of said damages when the
15 same has been ascertained.

16 WHEREFORE, plaintiffs pray for relief as hereinafter set
17 forth.

18 EIGHTH CAUSE OF ACTION

19 (Breach Of Contract As To E-Z Serve,
20 Harken Marketing And DOES 1-100)

21 113. Plaintiffs reallege and incorporate herein by reference,
22 the allegations set forth in paragraphs 1 through 60, inclusive,
23 as though set forth in full.

24 114. Defendants E-Z Serve, Harken Marketing and DOES 1-100
25 entered into a written contract with plaintiffs to build a new
26 service station on the Property in exchange for plaintiffs'
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1 permission to demolish the existing service station on the
2 Property.

3 115. Plaintiffs and their predecessors in interest performed
4 all conditions and covenants required by them on their part to be
5 performed in accordance with the terms and conditions of the
6 contract and with the lease.

7 116. Defendants E-Z Serve, Harken Marketing and DOES 1-100
8 breached the terms of the this contract by demolishing the service
9 station on the Property and then refusing to build a new service
10 station on the site. Said defendants have also breached the lease
11 by failing to make timely payments or make payments in the full
12 amount required by the lease. Said defendants have also breached
13 the lease by abandoning the Property.

14 117. This contract was breached by letter dated May 20, 1992,
15 from E-Z Serve and Harken Marketing which repudiated the contract.
16 The contract was breached during a period within three years of the
17 filing of this complaint. The lease requirement of timely rental
18 payments in the full amount required by the lease was breached
19 during a period within three years of the filing of this complaint.

20 118. As a direct and proximate result of the breach of this
21 contract, plaintiffs has been damaged in sums exceeding the
22 jurisdictional minimum of this court. Plaintiffs will seek leave
23 of the court to amend their complaint to state the true amount of
24 said damages when the same has been ascertained.

25 WHEREFORE, plaintiffs pray for relief as hereinafter set
26 forth.

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NINTH CAUSE OF ACTION

(Breach of Contract - Promissory Estoppel
As To E-Z Serve, Harken Marketing And DOES 1-100)

119. Plaintiffs reallege and incorporate herein by reference, the allegations set forth in paragraphs 1 through 60, inclusive, as though set forth in full.

120. Defendants E-Z Serve, Harken Marketing and DOES 1 through 100 promised to investigate and remediate the contamination on the Property in the manner and time frame required by the Alameda County Health Care Services Agency and other responsible regulatory agencies. Defendants E-Z Serve, Harken Marketing and DOES 1 through 100 also promised to construct a service station on the Property after demolishing the existing service station on the Property. Plaintiffs are informed and believe and thereupon allege that after removing the underground storage tanks on the Property and discovering the extent of the contamination thereon, said defendants determined not to remediate the contamination or build a new service station, as promised. Through their silence they intentionally and with reckless disregard misrepresented their true intent and continued to represent that they would perform their promises. In addition, E-Z Serve, Harken Marketing and DOES 1 through 100 promised on several occasions between June 13, 1990, and the date of the filing of this complaint to remediate the contamination in the manner and time frame required by the Alameda County Health Care Services Agency and other responsible regulatory agencies.

1 121. These promises were made by E-Z Serve, Harken Marketing
2 and DOES 1 through 100 with the intent to induce reliance by
3 plaintiffs and the Alameda County Health Care Services Agency and
4 other responsible regulatory agencies.

5 122. Plaintiffs reasonably relied upon these promises as
6 herein alleged to their detriment, in what includes, but is not
7 limited, to the following ways: plaintiffs were prevented from
8 compelling said defendants to remove and remediate the
9 contamination and the contamination as herein alleged has as a
10 result continued to migrate and contaminate soil and sources of
11 public drinking water and said defendants have continued to waste
12 the Property; plaintiffs have suffered emotional distress as a
13 result of the existence of the contamination and their possible
14 liability for that contamination; plaintiffs have suffered
15 emotional distress as a result of threats as alleged herein if they
16 pursue their rights against said defendants; and, plaintiffs'
17 future uses of the property have been impaired as a result of the
18 contamination and the demolition of the existing service station
19 without construction of a new service station.

20 123. Defendants E-Z Serve, Harken Marketing and DOES 1 through
21 100 breached these promises by failing and refusing to construct
22 the service station and failing to investigate and remediate the
23 contamination as promised.

24 124. Plaintiffs are informed and believe and thereupon allege
25 that defendants E-Z Serve, Harken Marketing and DOES 1 through 100
26 actively concealed their true intent not to construct the service
27 station and actively concealed and continue to actively conceal
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1 their true intent not to investigate and remediate the
2 contamination on the site as promised.

3 125. Plaintiffs are informed and believe and thereupon allege
4 that defendants E-Z Serve, Harken Marketing and DOES 1 through 100
5 intent was and is to delay and avoid entirely their performance of
6 these promises. Plaintiffs first learned of said defendants' true
7 intentions during a period within four years of the filing of this
8 complaint.

9 126. The false promises of defendants E-Z Serve and DOES 1
10 through 100 were and are part of a continuing course of conduct to
11 delay or avoid entirely constructing the station, removing and
12 remediating the contamination and to lull plaintiffs into not
13 pursuing legal or administrative remedies to compel said defendants
14 to perform its obligations.

15 127. As a direct and proximate result of the breaches as
16 herein alleged, plaintiffs have been damaged in sums exceeding the
17 jurisdictional minimum of this court. Plaintiffs will seek leave
18 of the court to amend their complaint to state the true amount of
19 said damages when the same has been ascertained.

20 WHEREFORE, plaintiffs pray for relief as hereinafter set
21 forth.

22 TENTH CAUSE OF ACTION

23 (Tortious Breach of Covenant Of Good Faith And Fair Dealing
24 As To E-Z Serve, Harken Marketing And DOES 1-100)

25 128. Plaintiffs reallege and incorporate herein by reference,
26 the allegations set forth in paragraphs 1 through 60, inclusive,
27 as though set forth in full.
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1 129. Defendants E-Z Serve, Harken Marketing and DOES 1-100
2 entered into a written contract with plaintiffs to build a new
3 service station on the Property in exchange for plaintiffs'
4 permission to demolish the existing service station on the
5 Property.

6 130. Defendants E-Z Serve, Harken Marketing and DOES 1-100
7 entered into the 1987 Lease with plaintiffs.

8 131. Implied within this contract and the 1987 Lease were
9 covenants of good faith and fair dealing which required each party
10 not to do anything that would deprive plaintiffs of the benefits
11 of the contracts, to refrain from doing anything that would render
12 performance of the contracts impossible, and to do everything that
13 the contracts presupposed that said defendants would do to
14 accomplish its purposes.

15 132. Defendant E-Z Serve, Harken Marketing and DOES 1-100 have
16 intentionally and maliciously breached these covenants of good
17 faith and fair dealing by repudiating their promise to construct
18 a service station on the property after demolishing the existing
19 service station and abandoning the station; not communicating to
20 plaintiffs in a timely manner their intent to repudiate the
21 contract; misrepresenting to plaintiffs that they did not intend
22 to operate a service station in the area in an attempt to avoid
23 their obligations under the lease; and, threatening plaintiffs to
24 cut off rental payments under the 1987 Lease and institute
25 litigation for breach of the 1987 Lease if plaintiffs took any
26 actions to enforce their rights under the aforementioned contract
27 or lease. These tortious breaches of the covenant of good faith
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1 and fair dealing occurred during a period within one year of the
2 filing of this complaint.

3 133. As a direct and proximate result of this tortious breach
4 of the covenant of good faith and fair dealing, plaintiffs have
5 been damaged in sums exceeding the jurisdictional minimum of this
6 court. Plaintiffs will seek leave of the court to amend their
7 complaint to state the true amount of said damages when the same
8 has been ascertained.

9 134. The conduct of defendants, as herein alleged, was and is
10 willful, oppressive and malicious, and in conscious disregard of
11 the rights of plaintiffs and others. Plaintiffs are therefore
12 entitled under California Civil Code § 3294 to exemplary damages
13 for the sake of example and by way of punishing defendants, and
14 each of them.

15 WHEREFORE, plaintiffs pray for relief as hereinafter set
16 forth.

17 ELEVENTH CAUSE OF ACTION

18 (Intentional Infliction Of Emotional Distress
19 As To E-Z Serve, Harken Marketing And DOES 1-100

20 135. Plaintiffs reallege and incorporate herein by reference,
21 the allegations set forth in paragraphs 1 through 60, inclusive,
22 as though set forth in full.

23 136. Defendants E-Z Serve, Harken Marketing and DOES 1-100
24 engaged in extreme and outrageous conduct in threatening
25 plaintiffs, whom defendants knew to be an elderly couple with
26 limited financial resources, that if they sought to enforce their
27 rights to have the contamination on the Property investigated and
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1 remediated and have said defendants perform their other
2 obligations, such as construction of the service station, said
3 defendants would retaliate by stopping their rental payments, which
4 said defendants knew was an important source of income to
5 plaintiffs upon which plaintiffs relied upon for their support, and
6 initiate litigation which plaintiffs would be forced to defend,
7 which defendants knew plaintiffs could not afford to defend.
8 Defendants E-Z Serve, Harken Marketing and DOES 1-100 have taken
9 actions consistent with such threats by failing to make rental
10 payments in a timely manner or in the full amount required under
11 the lease.

12 137. Defendants E-Z Serve, Harken Marketing and DOES 1-100
13 engaged in this extreme and outrageous conduct with the intent to
14 cause plaintiffs severe emotional distress in order to intimidate
15 and coerce them into not pursuing their rights against said
16 defendants. Said defendants engaged in this conduct within a
17 period of one year of the filing of this complaint.

18 138. The conduct of defendants E-Z Serve and DOES 1-100 in
19 fact caused plaintiffs to suffer severe emotional distress.

20 139. As a direct and proximate result of causing plaintiffs
21 to suffer severe emotional distress, plaintiffs were damaged in an
22 amount exceeding the jurisdictional minimum of this court.
23 Plaintiffs will seek leave of the court to amend their complaint
24 to state the true amount of said damages when the same has been
25 ascertained.

26 140. The conduct of defendants, and each of them, was and is
27 willful, oppressive and malicious, and in conscious disregard of
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1 the rights of plaintiffs and others. Plaintiffs are therefore
2 entitled under California Civil Code § 3294 to exemplary damages
3 for the sake of example and by way of punishing defendants and each
4 of them.

5 WHEREFORE, plaintiffs pray for relief as hereinafter set
6 forth.

7 TWELFTH CAUSE OF ACTION

8 (Intentional And Negligent Misrepresentation
9 As To All Defendants)

10 141. Plaintiffs reallege and incorporate herein by reference,
11 the allegations set forth in paragraphs 1 through 60, inclusive,
12 as though set forth in full.

13 142. Plaintiffs are informed and believe and thereupon allege
14 that defendants, and each of them, in a superior position with
15 exclusive knowledge of the relevant facts, represented to
16 plaintiffs or their predecessors, by failing to disclose that a
17 release of petroleum products had occurred at the Property which
18 facts defendants had a duty to disclose, that the Property was
19 clean and not contaminated with petroleum products, and that the
20 Property was in compliance with all laws.

21 143. These representations were false.

22 144. Plaintiffs are informed and believe and thereupon allege
23 that defendants, and each of them, either knew that the
24 representations were false, or made the representations recklessly
25 without knowing whether they were true or false.
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1 145. Plaintiffs are informed and believe and thereupon allege
2 that defendants, and each of them, made the representations without
3 any reasonable ground for believing them to be true.

4 146. Plaintiffs are informed and believe and thereupon allege
5 that defendants, and each of them, made the representations for the
6 purpose of inducing plaintiffs or their predecessors to act in
7 reliance thereon and to refrain from requiring defendants to remove
8 and remediate the contamination and comply with all laws.

9 147. Plaintiffs were unaware of the falsity of the
10 representations and acted upon the truth of the representations and
11 were justified in relying upon the representations. Plaintiffs did
12 not become aware of the falsity of the representation until a time
13 within three years of the filing of this complaint.

14 148. As a direct and proximate result of causing plaintiffs
15 to so rely upon the truth of the representations, plaintiffs were
16 damaged in an amount exceeding the jurisdictional minimum of this
17 court. Plaintiffs will seek leave of the court to amend their
18 complaint to state the true amount of said damages when the same
19 has been ascertained.

20 149. Plaintiffs are informed and believe and thereupon allege
21 that, in misrepresenting the true facts to plaintiffs, defendants,
22 and each of them, were and are acting deliberately, and with full
23 knowledge of the damage being caused to plaintiffs. Plaintiffs are
24 further informed and believe and thereupon allege defendant
25 corporations' management was aware that the true facts were
26 misrepresented to plaintiffs and authorized this misrepresentation
27 and ratified the decision of their employees to maintain the
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1 aforesaid misrepresentation. The conduct of defendants, and each
2 of them, was and is willful, oppressive and malicious, and in
3 conscious disregard of the rights of plaintiffs and others.
4 Plaintiffs are therefore entitled under California Civil Code §
5 3294 to exemplary damages for the sake of example and by way of
6 punishing defendants and each of them.

7 WHEREFORE, plaintiffs pray for relief as hereinafter set
8 forth.

9 THIRTEENTH CAUSE OF ACTION

10 (Unjust Enrichment As To All Defendants)

11 150. Plaintiffs reallege and incorporate herein by reference
12 the allegations set forth in Paragraphs 1 through 60, inclusive as
13 though set forth in full.

14 151. By wrongfully depositing petroleum products and
15 hydrocarbons on the Property without consent of plaintiffs or their
16 predecessors in interest, and/or failing and refusing to remove
17 petroleum contamination, defendants, and each of them, have
18 obtained a benefit in that they are maintaining a nuisance on the
19 site, and have utilized and are continuing to utilize the Property
20 as a hazardous substance disposal site and a hazardous waste
21 facility, without compensating plaintiffs for the reasonable value
22 thereof, and without incurring the expense of proper disposal of
23 petroleum wastes and/or hazardous substances in the manner
24 prescribed by law.

25 152. Plaintiffs are informed and believe and thereupon allege
26 that instead of remediating said contamination, defendants, and
27 each of them, opened a nearby gasoline station, which has profited
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1 defendants, and each of them, by permitting them to operate the
2 station without first incurring cleanup costs.

3 153. Defendants, and each of them, have thus been unjustly
4 enriched and should reimburse plaintiffs for the value of the
5 benefit conferred upon defendants, and each of them, by the
6 improper disposal of hazardous substances on the Property.
7 Plaintiffs are informed and believe and thereupon allege that said
8 unjust benefit to defendants, and each of them, is in excess of the
9 jurisdictional limit of this court.

10 WHEREFORE, plaintiffs pray for relief as hereinafter set
11 forth.

12 FOURTEENTH CAUSE OF ACTION

13 (Violation Of Health & Safety Code § 25249.5 et seq.
14 As To All Defendants)

15 154. Plaintiffs reallege and incorporate herein by reference
16 the allegations set forth in paragraphs 1 through 60, inclusive as
17 though set forth in full.

18 155. Defendants, and each of them, are persons in the course
19 of doing business, as defined in Health & Safety Code §
20 25249.11(b), who knowingly discharged petroleum hydrocarbons,
21 including, without limitation, gasoline, onto and into the
22 Property.

23 156. Such releases of petroleum hydrocarbons as herein
24 described contained benzene and other chemicals which have been
25 identified by the State of California, pursuant to Health & Safety
26 Code § 25249.8, as chemicals known to the State to cause cancer
27 and/or reproductive toxicity.

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1 161. Defendants, and each of them, are liable for a civil
2 penalty not exceeding \$2,500 for each day the discharge has
3 occurred and continued, and such civil penalty may be assessed
4 against defendants and recovered by plaintiffs in this civil action
5 pursuant Health & Safety Code § 25249.7(b).

6 WHEREFORE, plaintiffs pray for relief as hereinafter set
7 forth.

8 FIFTEENTH CAUSE OF ACTION

9 (Indemnity As To All Defendants)

10 162. Plaintiffs reallege and incorporate herein by reference
11 the allegations set forth in paragraphs 1 through 60, inclusive as
12 though set forth in full.

13 163. The costs, including attorneys' fees, incurred by
14 plaintiffs to investigate the source and extent of, and to
15 remediate, petroleum products and hydrocarbons on the Property, as
16 previously alleged, were costs which plaintiffs were required to
17 incur by the Regional Water Quality Control Board pursuant to
18 Porter-Cologne Water Quality Control Act, California Water Code §
19 13000, et seq. ("Porter-Cologne"). Plaintiffs incurred these costs
20 within a period of three years prior to the filing of this
21 complaint.

22 164. Defendants, and each of them, as actual dischargers are
23 liable pursuant to Porter-Cologne for all removal and remedial
24 action costs incurred with respect to all petroleum products and
25 hydrocarbons existing on or originating from the Property, and all
26 petroleum products and hydrocarbons released from the use of
27 storage facilities and pipelines at the Property.
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1 165. Accordingly, plaintiffs are entitled to be indemnified
2 by defendants, and each of them, for all removal or remedial action
3 costs, including without limitation attorneys' fees, that have been
4 or will be incurred by plaintiffs, and indemnified against any and
5 all third party claims asserted against plaintiffs as a result
6 thereof in connection with hazardous substances and petroleum
7 hydrocarbons on, or originating from, the Property.

8 WHEREFORE, plaintiffs pray for relief as hereinafter set
9 forth.

10 SIXTEENTH CAUSE OF ACTION

11 (Declaratory Relief As To All Defendants)

12 166. Plaintiffs reallege and incorporate herein by reference
13 the allegations set forth in paragraphs 1 through 60, inclusive as
14 though set forth in full.

15 167. An actual controversy has arisen and now exists between
16 plaintiffs and defendants, and each of them, concerning their
17 respective rights and duties in that:

18 a. Plaintiffs contend that defendants, and each of
19 them, have a duty to remediate the hazardous condition which exists
20 on the Property as a result of the release and discharge of
21 petroleum products and hydrocarbons from the operation of storage
22 tanks and pipelines on the Property;

23 b. Plaintiffs contend that defendants, and each of
24 them, have a duty to perform investigations to fully characterize
25 the nature and extent of hazardous contamination existing on the
26 Property, and to evaluate the feasibility of alternative
27 remediation scenarios;
28

1 c. Plaintiffs contend that defendants and each of them
2 have a duty to indemnify plaintiffs for all remedial action and
3 response costs expended by them in connection with the
4 contamination existing on the Property, including consultant's
5 fees, attorneys' fees and all costs of investigation and removal
6 incurred by plaintiffs, and for costs to indemnify claims asserted
7 against plaintiffs by third parties;

8 d. Defendants, and each of them, dispute these
9 contentions and contend that they do not have a duty to remediate
10 the hazardous conditions which they have created on the Property;
11 do not have a duty to investigate or to characterize the nature and
12 extent of the petroleum and hydrocarbon contamination on the
13 Property; do not have a duty to indemnify plaintiffs; and are not
14 responsible for contamination existing on plaintiffs' Property.

15 168. Plaintiffs desire a judicial determination of their
16 rights and duties and a declaration as to whether defendants are
17 obligated to plaintiffs as set forth above.

18 169. Defendants E-Z Serve, Harken Marketing and DOES 1-100
19 have a duty to rebuild the service station on the Property.

20 170. A judicial declaration is necessary and appropriate at
21 this time under the circumstances in order that plaintiffs may
22 ascertain their rights and duties with respect to the cleanup of
23 hazardous substances and petroleum products and hydrocarbons on the
24 Property.

25 WHEREFORE, plaintiffs pray for relief as hereinafter set
26 forth.

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1 employees, and all other persons acting in concert or participating
2 with them, as follows:

3 a. to comply with all laws and regulations pertaining
4 to the cleanup of petroleum products and hydrocarbons on the
5 Property; and

6 b. to remove or remediate the soil and groundwater
7 contamination existing on and emanating from the Property, in a
8 manner reasonably acceptable to plaintiffs and to the appropriate
9 state and local government agencies;

10 WHEREFORE, plaintiffs pray for judgment against defendants,
11 and each of them, as follows:

12 a. For general and special damages according to proof, along
13 with interest on such damages pursuant to Civil Code § 3288;

14 b. For exemplary and punitive damages;

15 c. For treble damages pursuant to C.C.P. § 732;

16 d. For reasonable attorneys' fees pursuant to the 1966 Lease
17 and 1987 Lease and pursuant to Code of Civil Procedure § 1021.5;

18 e. For statutory penalties pursuant to Health & Safety Code
19 § 25249.7(b).

20 f. For a declaration by the court of the rights and duties
21 of the parties herein, and specifically for a declaration:

22 (i) that defendants have a duty to perform
23 investigations to fully characterize the nature and extent of
24 hazardous substances existing on and beneath the Property;

25 (ii) that defendants have a duty to remediate the
26 petroleum and hydrocarbon contamination which exists on, and which
27 has migrated from, the Property;
28

1 (iii) that defendants have a duty to indemnify
2 plaintiffs for all third party claims and for remedial action and
3 response costs expended by plaintiffs in connection with the
4 contamination existing on and beneath the Property, including
5 consultants' fees, attorneys' fees and any costs of investigation
6 and removal incurred by plaintiffs;

7 g. For a preliminary and permanent injunction enjoining,
8 ordering and compelling defendants and their agents, servants and
9 employees, and all other persons acting in concert or participating
10 with them, as follows:

11 (i) to comply with all laws and regulations pertaining
12 to the cleanup of hazardous substances; and

13 (ii) to remove or remediate the contamination existing
14 on the Property, in a manner reasonably acceptable to plaintiffs
15 and to the appropriate state and local government agencies.

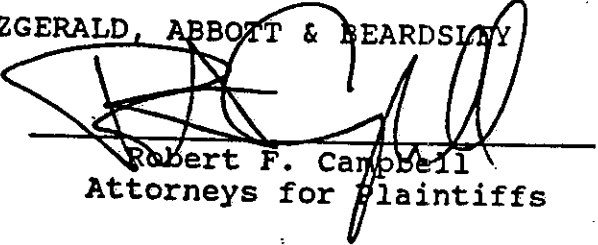
16 h. For costs of suit herein incurred; and

17 i. For such other and further relief as the court may deem
18 proper.

19 DATED: July 21, 1993

20 FITZGERALD, ABBOTT & BEARDSLEY

21 By

22 
23 Robert F. Campbell
24 Attorneys for Plaintiffs
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-1-

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 1st day of December, 1966, by and between Levonard A. Thomsen
Margaret S. Thomsen, hereinafter referred to as "Lessor", and POWERINE OIL
COMPANY, a California corporation, having its principal offices at 12354 Lakeland Rd.,
Santa Fe Springs, California, hereinafter referred to as "Lessee".

W I T N E S S E T H:

(1) Lessor does hereby lease to the Lessee all that certain real property situated in the County of Alameda, State of California, located on the ^{NORTHWEST} ~~southwest~~ corner of "A" Street and Garden in said county, which said parcel of real property has a frontage of approximately 155 feet on "A" Street and approximately 120 feet on Garden measuring from the present property lines and which parcel of real property is described as follows: To be determined by survey, subject to approval of both Lessor and Lessee, and to be attached to and become a part of this lease.

(2) TERM: The term of this lease shall be for twenty (20) years commencing on the 1st day of February, 1966, and terminating on the 31st day of January, 1987.

(3) RENTAL: Lessee agrees to pay Lessor as rental for the use and occupancy of the leased property a total rental of One Hundred Fourteen Thousand and no/100 6114,000. Dollars payable in monthly installments of Four Hundred and no/100 (\$400.00) Dollars commencing on the 1st day of February, 1967 to and including the 31st day of January, 1970 Four Hundred Fifty and no/100 (\$450.00) Dollars commencing on the 1st day of February, 1970 to and including the 31st day of January, 1977. Five Hundred and no/100 (\$500.00) Dollars commencing on the 1st day of February, 1977 to and including the 31st day of January, 1980 and Five Hundred Fifty and no/100 (\$550.00) thereafter on the first day of each and every month during the term hereof. In the event of default in the payment of any installment of rent when due, then at the option of the Lessor, the entire unpaid balance shall immediately become due and payable thirty days after written notice of said default has been given to the Lessee.

(4) FIRST RIGHT OF REFUSAL: Lessor agrees that in the event Lessor should decide to sell said real property, Lessee shall have the first refusal to buy said real property at such purchase price as is offered Lessor by a bona fide purchaser, ready, willing and able to buy and that Lessor will notify Lessee in writing, setting forth the terms and conditions of the offer of purchase, and that Lessee shall have ten (10) days thereafter within which to accept or reject the right to purchase on the specified terms.

Dec 1st 1966
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(5) USE OF LEASED PREMISES: The Lessee shall be entitled to use the leased premises for any purpose which local zoning laws will permit, which shall include and not be limited to the construction, maintenance and operation of a retail service station. The Lessor, in negotiating this agreement, warrants, as a consideration of the Lessee executing this agreement, that said premises are adequately zoned to permit said construction, maintenance and operation of an independent service station.

The Lessee is also given the privilege of destroying and/or removing, at his obligation and expense, any and all structures presently located on said premises, at no cost to the Lessor.

(6) SIDEWALKS AND CURBING: Lessee shall have the right to break curbing and sidewalks where necessary at his expense and hereby agrees to keep all existing curbings and sidewalks in good condition and repair during the term hereof or any extension hereof.

(7) CLAIMS: Lessee shall, at all times, pay any and all claims, mechanic's and materialman's liens and any charges or costs of any kind that may be asserted or enforced against the leased premises by reason of any work ordered to be done, or done by or for the Lessee for, on, or pertinent to said leased property; should any claim or lien remain due and unpaid for thirty (30) days, the Lessor may, at their option and without liability to inquire into the correctness or validity of the same, remit and pay the same, together with any penalties added thereto and upon such assumption or payment by the Lessor, the lien assumed or paid shall immediately thereafter become due and payable by the Lessee to the Lessor as additional rental hereunder.

(8) NOTICES: Any notices contemplated or required by the provisions of this lease shall be given by either party to the other by depositing the same, by Registered Mail, in the United States Post Office, postage pre-paid, and addressed to the other party to whom the notice is sent at the address herein given or at such other address as said party may from time to time indicate by written notice served as in this paragraph set forth on the other, or the same may be personally served.

(9) LIABILITY: Lessor shall not be liable to Lessee or to any other person or persons whatsoever for any loss or damage to persons or property arising from or out of, or by reason of the occupancy of the leased premises, or the adjoining premises, or the streets fronting thereon, by Lessee, his sub-tenants or assignees, employees, patrons, or otherwise, and Lessee agrees to carry public liability and property damage insurance and to name Lessor as co-insured thereon in the minimum sum of TWO HUNDRED THOUSAND AND 00/100 (\$200,000.00) DOLLARS for injury to any person and FIVE HUNDRED THOUSAND AND 00/100 (\$500,000.00) DOLLARS for injury to two or more persons, and FIVE THOUSAND AND 00/100

(\$5,000.00) DOLLARS for injury or damage to property, and to furnish Lessor with a certificate of such insurance.

(10) ASSIGNABILITY: Lessee shall have the right to assign this lease in whole or in part without the written consent of Lessor, provided however, that undersigned Lessee shall remain responsible and liable for the fulfillment of the conditions of this lease agreement.

(11) SUB-LEASING: Lessee may sub-lease the leased premises, but such sub-leasing shall not release the Lessee hereunder of any obligation herein and no notice herein required to be given by Lessor to Lessee shall be required to be given to such sub-lessee by Lessors. All provisions and covenants herein contained shall continue in full force and effect as to Lessee and Lessor herein.

(12) DEFAULT: Should any of the rent herein reserved be due and unpaid, or should the Lessee vacate or abandon said premises or should the Lessee be in default in any other condition of this lease, the Lessor may, upon notice as herein provided and without Lessee's correction or curing of such default, at its option and without demand re-enter and take possession of said premises and remove all persons therefrom, and should the Lessor elect to re-enter and take possession of said premises under any one or more of the provisions described in this paragraph, said Lessor may, at his option, either terminate this lease and recover from the Lessee all damages caused by any breach hereof by the Lessee, including unpaid rentals and all reasonable attorney's fees and court costs which the Lessor may be required to incur in recovering possession of said premise or in collecting unpaid rentals or damages, or Lessor may terminate this lease and hold all equipment, installations and leasehold improvements of Lessee as liquidated damages. For any default Lessor shall give to Lessee written notice to cure or correct said default and in the event of Lessee's failure to correct or cure said default within thirty (30) days after receipt of said notice, then in that event Lessor shall have the right and option to declare a default hereunder and proceed as in this paragraph provided, without further or other notice or demand.

(13) TAXES: As a further consideration for the execution hereof by Lessor and additional rental hereunder, Lessee shall and does hereby agree to pay any and all taxes real and personal, general or special, that may be levied or assessed against the leased premises for and during the term hereof or any extensions or renewals hereof, and to pay the same when due and before delinquency; if any such taxes or assessments be not so paid the Lessor shall have the right to pay the same, together with any interest or penalties.

-4-

accruing thereon and, if so paid, the same shall immediately become due and payable by Lessee to Lessor as additional rent. Lessee further agrees to pay all general and special or personal property taxes levied or assessed against merchandise, stock-in-trade or other personal property or improvements of the Lessee kept or stored upon the leased premises or the business of Lessee thereon, and any licenses or other taxes, whether city, county, state or federal, levied or assessed against the business of the Lessee.

(14) OPERATION: Lessee shall conduct his business on the premises in compliance with all the applicable laws, ordinances and regulations of appropriate governmental authorities.

(15) SUCCESSORS: All of the terms, conditions and covenants hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators or assigns of the respective parties hereto.

(16) UTILITIES: Lessee shall pay all utility, water, gas, telephone, electric and power bills delivered to the leased premises before the same shall become delinquent, during the term hereof.

(17) RESTORATION OF POSSESSION: Upon the expiration hereof, or any extension or renewal hereof, Lessee shall peacefully surrender the leased premises to Lessor. Lessee further agrees that at the expiration of the term of this lease or any extension or renewal thereof, Lessee shall within thirty (30) days after such termination, remove from the leased premises all fixtures or improvements situated thereon and in the event of Lessee's failure to so do, Lessor shall have the right and option to enter upon the demised premises and remove the same at Lessee's expense, provided, further, however, that upon receipt of written notice for the Lessor permitting Lessee to do so, Lessee shall have the right and option to leave all said fixtures and improvements on the leased premises, which shall then become the property of Lessor. In the event that such improvements are removed by such Lessee, or otherwise, Lessee shall fill in all excavations caused by such removal.

(18) HOLDING OVER: If the Lessee shall hold over on the expiration hereof with or without the consent of Lessor, such holding over shall constitute a month-to-month tenancy only at the rental herein provided and upon the terms and conditions herein stated and not a renewal or extension hereof.

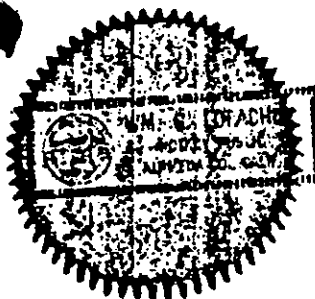
IN WITNESS WHEREOF, the parties hereto have set their hands
and seals the day and year first above written.

Leonard A. Thomsen
By Margaret S. Thomsen
"Lessor"

POWERINE OIL COMPANY

Wm. G. Lopachuk
President
Harry R. Rothschild
Vice President
"Lessee"

State of California
County of Alameda



—ACKNOWLEDGMENT—General

On this 1st day of December A.D. 1966 before me,
Wm. G. Lopachuk Notary Public in and for the said
County and State, residing therein, duly commissioned and sworn, personally appeared
Leonard A. Thomsen and Margaret S. Thomsen

known to me to be the person whose name is subscribed to the within
Instrument, and acknowledged to me that they executed the same.
In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and
year in this Certificate first above written.

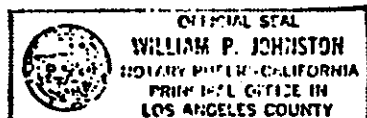
Wm. G. Lopachuk
Notary Public in and for said County and State of California.

STATE OF CALIFORNIA,
COUNTY OF Los Angeles

ON December 1, 1966
before me, the undersigned, a Notary Public in and for said State, personally appeared
H. S. Rothschild known to me to be the

STATE OF CALIFORNIA,
COUNTY OF Los Angeles

ON December 1, 1966
before me, the undersigned, a Notary Public in and for said State, personally appeared
Harry R. Rothschild known to me to be the
President



of the Powerine Oil Company
the Corporation that executed the within instrument, known to me to be the person who
executed the within instrument, on behalf of the Corporation, therein named, and acknowledged
to me that such Corporation executed the same.

WITNESS my hand and official seal

William P. Johnston

WILLIAM P. JOHNSTON
My Commission Expires Feb. 14, 1969

(NAME TYPED OR PRINTED)
Notary Public in and for said State.

D. WOODROW W. TES
CIVIL ENGINEER
P. O. BOX 592, BERKELEY, CALIFORNIA
TELEPHONE: THERMALL 8-2807

RECEIVED
PRES. DIV.
JAN 23, 1967

JANUARY 18, 1967

☐ SALES ☐ PERM ☐ TRANS
☐ RETL ☐ SUPPL ☐ LAB
☐ CRCT ☐ PURCH ☐ PRD
☐ OFF ☐ ACCT ☐ FILE

LEGAL DESCRIPTION

Property at the northwest corner of "A" Street and Garden Avenue, Alameda County, California.

Beginning at a point on the northern line of "A" Street, extending South to County Road No. 1536, which point is 1703.27 feet from the point of intersection of the center line of Garden Avenue with the center line of Sunset Boulevard, as said Avenue and Boulevard are shown on the map of "Hayward Acres, Eden Township, Alameda County, California May 1915", filed June 13, 1915, in the office of the County Recorder of Alameda County; running thence along center line of said Garden Avenue North $26^{\circ} 56' 41''$ West 6.48 feet; thence South $45^{\circ} 16'$ West 56.77 feet to the True Point of Beginning; thence South $85^{\circ} 16'$ West 123.54 feet; thence North $2^{\circ} 5' 51''$ West 104 feet; thence North $81^{\circ} 43' 28''$ 149.83 feet to the western line of Garden Avenue; thence along said western line South $26^{\circ} 56' 41''$ East, 84.23 feet; thence along a curve to the right having a radius of 20 feet on arc length of 31.17 feet to the True Point of Beginning.

APPROVED:

Levonard A. Thomsen

Margaret S. Thomsen

"Lessor"

APPROVED:

POWERINE OIL COMPANY

By [Signature]
President

By [Signature]
Vice President

"Lessee"

Law Office of
CARL B. IEVERENZ
515 WALL STREET
CHICO, CALIFORNIA 95928
TELEPHONE (916) 695 1821

LEASE AGREEMENT

THIS LEASE, made between LEVONARD A. THOMSEN and MARGARET S. THOMSEN, husband and wife, hereinafter referred to as Lessors, and E-Z SERVE OF CALIFORNIA, INC., a California corporation, hereinafter referred to as Lessee, provides as follows:

RECITALS

1. Lessors are the owners of the premises described below and desire to lease the premises to Lessee.
2. Lessee desires to lease the premises for the purpose of conducting a retail gasoline and convenience store business.
3. The parties desire to enter into a lease agreement defining their rights, duties and liabilities relating to the premises.

In consideration of the mutual covenants contained herein, the parties agree as follows:

SECTION ONE

SUBJECT AND PURPOSE

Lessors leases the real property located in the County of Alameda, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, to Lessee, for Lessee's use as a retail gasoline and convenience store business.

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CARL B. LEVERENZ
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TELEPHONE (916) 893 1821

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SECTION TWO

TERM AND RENT

Lessors lease the above premises to Lessee for a term of fifteen (15) years, commencing February 1, 1987, and terminating on January 31, 2002, or sooner, as provided herein, at the initial rental of One Thousand One Hundred Ten Dollars (\$1,110.00) per month, in advance, on the first day of each month for that month's rental. Thereafter, said monthly rental shall be adjusted every two (2) years on the anniversary date of this lease by the Consumer Price Index for the San Francisco Bay area for the previous two (2) years. Said adjustment shall not result in an increase in rental in excess of five percent (5%) per year. All rental payments shall be made to Lessors at the address of RT. 1- Box 72
WILLOWS, California, ⁹⁵⁹⁸⁸ or at such other locations as specified by Lessors.

SECTION THREE

ADDITIONAL RENT

All taxes, charges, costs and expenses that Lessee assumes or agrees to pay hereunder, together with all interest and penalties that may accrue thereon in the event of the failure of Lessee to pay those items, and all other damages, costs, expenses, and sums that Lessors may suffer or incur, or that may become due by reason of any default of Lessee or failure by Lessee to comply with the terms and conditions of this lease, shall be deemed to be additional rent, and, in the

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1 event of nonpayment, Lessors shall have all the rights and
2 remedies as herein provided for failure to pay rent, in-
3 cluding an award of reasonable attorney's fees and costs.
4

5 SECTION FOUR

6 ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

7 A. All alterations, additions and improvements on or
8 in the demised premises at the commencement of the term, or
9 that may be erected or installed during the term, shall become
10 part of the demised premises and the sole property of Lessors,
11 except that all moveable trade fixtures installed by Lessee
12 shall be and remain the property of Lessee.

13 B. Lessee may, at its own expense, make any alterations,
14 additions or improvements in and to the demised premises as
15 long as prior written approval of the Lessors is obtained.

16 SECTION FIVE

17 REPAIRS

18 Lessee shall, at all times during this lease, and at
19 its own cost and expense, repair, replace and maintain, in
20 a good, safe and substantial condition, all improvements,
21 additions and alterations on the demised premises, and shall
22 use all reasonable precaution to prevent waste, damage or
23 injury to the demised premises Lessee shall be responsible
24 for all windows, awnings and normal maintenance thereof.

25 SECTION SIX

26 TAXES

Lessee shall be responsible for all real property taxes

1 and any other taxes levied on the property.

2 SECTION SEVEN

3 UTILITIES

4 All applications and connections for necessary utility
5 services on the demised premises shall be made in the name
6 of the Lessee only, and Lessee shall be solely liable for
7 such utility charges as they become due.

8 SECTION EIGHT

9 USE

10 Lessors are leasing the premises to Lessee for the
11 specific purpose of a retail gasoline and convenience store
12 business. Any other use by Lessee, consistent with the
13 zoning of said property, is acceptable to Lessors.

14 SECTION NINE

15 INSURANCE

16 During the term of the lease, Lessee shall obtain and
17 maintain, at their expense, the following types and amounts
18 of insurance:

19 (a) Fire Insurance:

20 Lessee shall be responsible for fire insurance on the
21 premises, with Lessors named as a loss payee, and any other
22 coverages on Lessee's personal property, and shall maintain
23 fire insurance thereon.

24 (b) Personal Injury and Property Damage Insurance:

25 Lessee, in accordance with Section Eleven, shall
26 maintain personal injury and property damage insurance in

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TEL (916) 895 1621

1 the amount of one million dollars, with Lessors named as an
2 additional insured.

3 SECTION TEN

4 UNLAWFUL OR DANGEROUS ACTIVITY

5 Lessee shall neither use nor occupy the demised premises,
6 or any part thereof, for any unlawful, disreputable, or ultra-
7 hazardous business purpose, nor operate or conduct its business
8 in a manner constituting a nuisance of any kind. Lessee
9 shall immediately, on discovery of any unlawful, disreputable
10 or ultrahazardous use, take action to halt such activity.

11 SECTION ELEVEN

12 INDEMNITY

13 Lessee shall indemnify Lessors against all expenses,
14 liabilities and claims of every kind, including reasonable
15 attorney's fees, by or on behalf of any person or entity
16 arising out of either (1) a failure by Lessee to perform any
17 of the terms or conditions of this lease; (2) any injury or
18 damage happening on or about the demised premises caused by
19 Lessee; (3) failure by Lessee to comply with any law of any
20 governmental authority; or (4) any mechanic's lien or security
21 interest filed against the demised premises or equipment,
22 materials, or alterations of buildings or improvements thereon
23 due to the conduct of Lessee.

24 In the event of a default of this lease, or in the event
25 any dispute concerning this lease arises between the parties,
26 the prevailing party in any legal action shall be entitled

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1 to reasonable attorney's fees and costs.

2 SECTION TWELVE

3 DEFAULT OR BREACH

4 Each of the following events shall constitute a default
5 or breach of this lease by Lessee:

6 (1) If Lessee, or any successor or assignee of Lessee,
7 while in possession, shall file a petition in bankruptcy or
8 insolvency, or for reorganization under any bankruptcy act,
9 or shall voluntarily take advantage of any such act by answer
10 or otherwise, or shall make an assignment for the benefit of
11 creditors.

12 (2) If involuntary proceedings under any bankruptcy
13 law or insolvency act shall be instituted against Lessee, or
14 if a receiver or trustee shall be appointed of all or sub-
15 stantially all of the property of Lessee, and such proceedings
16 shall not be dismissed or the receivership or trusteeship
17 vacated within thirty (30) days after the institution or
18 appointment.

19 (3) If Lessee shall fail to pay Lessors any rent or
20 additional rent when the rent shall become due and shall not
21 make the payment within thirty (30) days after notice thereof
22 by Lessors to Lessee.

23 (4) If Lessee shall fail to perform or comply with any
24 of the conditions of this lease, and if the nonperformance
25 shall continue for a period of thirty (30) days after notice
26 thereof by Lessors to Lessee, or, if the performance cannot

new copy of
CARL B. LEVERENZ
515 WALL STREET
CHICO, CALIFORNIA 95928
TELEPHONE (916) 895 1821

1 be reasonably had within the thirty (30) day period, Lessee
2 shall not in good faith have commenced performance within
3 the thirty (30) day period and shall not diligently proceed
4 to completion of performance.

5 (5) If Lessee shall vacate or abandon the demised premises.

6 (6) If this lease, or the estate of Lessee hereunder,
7 shall be transferred to or shall pass to or devolve on any
8 other person or party, except in the manner herein permitted.

9 SECTION THIRTEEN

10 EFFECT OF DEFAULT

11 In the event of any default hereunder, as set forth in
12 Section Twelve, the rights of Lessors shall be as follows:

13 (1) Lessors shall have the right to cancel and terminate
14 this lease, as well as all of the right, title and interest
15 of Lessee hereunder, by giving to Lessee not less than thirty
16 (30) days' notice of the cancellation and termination. On
17 expiration of the time fixed in the notice, this lease, and
18 the right, title and interest of Lessee hereunder, shall
19 terminate in the same manner and with the same force and
20 effect, except as to Lessee's liability, as if the date fixed
21 in the notice of cancellation and termination were the end
22 of the term herein originally determined.

23 (2) Lessors may elect, but shall not be obligated, to
24 make any payment required of Lessee herein or comply with
25 any agreement, term, or condition required hereby to be per-
26 formed by Lessee, and Lessors shall have the right to enter

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1 the demised premises for the purpose of correcting or remedy-
2 ing any such default and to remain until the default has
3 been corrected or remedied, but any expenditure for the
4 correction by Lessors shall not be deemed to waive or release
5 the default of Lessee, or the right of Lessors to take any
6 action as may be otherwise permissible under this lease in
7 the case of any default.

8 (3) Lessors may re-enter the premises immediately and
9 remove the property and personnel of Lessee, and store the
10 property in a public warehouse or at a place selected by
11 Lessors, at the expense of Lessee. After re-entry, Lessors
12 may terminate the lease on giving thirty (30) days' written
13 notice of termination to Lessee. Without the notice, re-
14 entry will not terminate the lease. On termination, Lessors
15 may recover from Lessee all damages proximately resulting
16 from the breach, including the cost of recovering the premises,
17 and the worth of the balance of this lease over the reasonable
18 rental value of the premises for the remainder of the lease
19 term, which sum shall be immediately due Lessors from Lessee.

20 (4) After re-entry, Lessors may relet the premises, or
21 any part thereof, for any term, without terminating the lease,
22 at the rent and on the terms as Lessors may choose. Lessors
23 may make alterations and repairs to the premises. The duties
24 and liabilities of the parties, if the premises are relet as
25 provided herein, shall be as follows:

26 (a) In addition to Lessee's liability to Lessors
for breach of the lease, Lessee shall be liable

1 for all expenses of the reletting, for the altera-
2 tions and repairs made, and for the difference
3 between the rent received by Lessors under the new
4 lease agreement and the rent installments that are
5 due for the same period under this lease.

- 6 (b) Lessors shall have the right, but shall not be
7 required, to apply the rent received from re-
8 letting the premises (1) to reduce the indebted-
9 ness of Lessee to Lessors under the lease, not
10 including indebtedness for rent; (2) to expenses
11 of the reletting and alterations and repairs made;
12 (3) to rent due under this lease; or (4) to
13 payment of future rent under this lease as it
14 becomes due.

15 If the new Lessee does not pay a rent installment
16 promptly to Lessors, and the rent installment has been
17 credited in advance of payment to the indebtedness of Lessee
18 other than rent, or if rentals from the new lessee have been
19 otherwise applied by Lessors as provided for herein, and
20 during any rent installment period are less than the rent
21 payable for the corresponding installment period under this
22 lease, Lessee shall pay Lessors the deficiency, separately
23 for each rent installment deficiency period, and before the
24 end of that period. Lessors may at any time after a reletting,
25 terminate the lease for the breach on which Lessors had
26 based the re-entry and subsequently relet the premises.

- (5) After re-entry, Lessors may procure the appoint-
ment of a receiver to take possession and collect rents and
profits of the business of Lessee, and if necessary, to
collect the rents and profits. The receiver may carry on
the business of Lessee and take possession of the personal
property used in the business of Lessee, including inventory,

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1 trade fixtures, and furnishings, and use them in the business
2 without compensating Lessee. Proceedings for appointment of
3 a receiver by Lessors, or the appointment of a receiver and
4 the conduct of the business of Lessee by the receiver, shall
5 not terminate and forfeit this lease unless Lessors has
6 given written notice to Lessee of termination, as provided
7 herein.

8
9 SECTION FOURTEEN

10 DESTRUCTION OF PREMISES

11 In the event of a partial destruction of the premises
12 during the term, from any cause, Lessors shall forthwith
13 repair the same, provided the repairs can be made within
14 sixty (60) days under the laws and regulations of applicable
15 governmental authorities. Any partial destruction shall
16 neither annul nor void this lease, except that Lessee shall
17 be entitled to a proportionate reduction of rent while the
18 repairs are being made, any proportionate reduction being
19 based upon the extent to which the making of repairs shall
20 interfere with the business carried on by Lessee in the
21 premises.

22 SECTION FIFTEEN

23 ACCESS TO PREMISES

24 Lessee shall permit Lessors, or their agents, to enter
25 the demised premises at all reasonable hours to inspect the
26 premises or make repairs that Lessee may neglect or refuse
to make in accordance with the provisions of this lease, and

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TELEPHONE (916) 895-1821

Law Office of
CARL R. LEVERENZ
515 WALL STREET
CHICO, CALIFORNIA 95928
TELEPHONE (916) 895 1871

1 also to show the premises to prospective buyers. At any
2 time within one (1) year prior to expiration of the term,
3 Lessors may show the premises to persons wishing to rent the
4 premises at reasonable times and with approval of Lessee.

5 SECTION SIXTEEN

6 EASEMENTS, AGREEMENTS, OR ENCUMBRANCES

7 The parties shall be bound by all existing easements,
8 agreements and encumbrances of record relating to the
9 demised premises, and Lessors shall not be liable to Lessee
10 for any damages resulting from any action taken by a holder
11 of an interest pursuant to the rights of that holder there-
12 under.

13 SECTION SEVENTEEN

14 QUIET ENJOYMENT

15 Lessors warrants that Lessee shall be granted peaceable
16 and quiet enjoyment of the demised premises free from any
17 eviction or interference by Lessors if Lessee pays the rent
18 and other charges provided herein, and otherwise fully and
19 punctually performs the terms and conditions imposed on
20 Lessee.

21 SECTION EIGHTEEN

22 LIABILITY OF LESSOR

23 Lessee shall be in exclusive control and possession of
24 the demised premises, and Lessors shall not be liable for
25 any injury or damages to any property or to any person on or
26 about the demised premises, nor for any injury or damage to

1 any property of Lessee. The provisions herein permitting
2 Lessors to enter and inspect the demised premises are made
3 to insure that Lessee is in compliance with the terms and
4 conditions hereof and make repairs that Lessee has failed
5 to make. Lessors shall not be liable to Lessee for any
6 entry on the premises for inspection purposes.

7 SECTION NINETEEN

8 REPRESENTATIONS BY LESSOR

9 At the commencement of the term, Lessee shall accept
10 the property and improvements, and any equipment, in their
11 existing condition and state of repair, and Lessee agrees
12 that no representations, statements, or warranties, express
13 or implied, have been made by or on behalf of Lessors in
14 respect thereto, except as contained in the provisions of
15 this Lease, and Lessors shall, in no event, be liable for
16 any latent defects.

17 SECTION TWENTY

18 WAIVERS

19 The failure of Lessors to insist on a strict performance
20 of any of the terms and conditions hereof shall be deemed a
21 waiver of the rights or remedies that Lessors may have
22 regarding that specific instance only, and shall not be
23 deemed a waiver of any subsequent breach or default in any
24 terms and conditions.

25 ***

26 ***

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SECTION TWENTY-ONE

NOTICE

All notices to be given with respect to this lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid, and return receipt requested, to the party to be notified at the address set forth herein, or at such other address as either party may from time to time designate in writing.

Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

SECTION TWENTY-TWO

ASSIGNMENT, MORTGAGE, OR SUBLEASE

Neither Lessee, nor its successors or assigns, shall assign, mortgage, pledge, or encumber this lease, or sublet the demised premises, in whole or in part, nor shall this lease be assigned or transferred by operation of law, without the prior consent, in writing, of Lessors, in each instance. If this lease is assigned or transferred, or if all or any part of the demised premises is sublet, or occupied by anybody other than Lessee, Lessors may, after default by Lessee, collect rent from the assignee or transferee, and apply the net amount collected to the rent

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TELEPHONE (916) 895 1621

1 reserved herein, but no such assignment, subletting,
2 occupancy, or collection shall be deemed a waiver of any
3 agreement or condition hereof, or the acceptance of the
4 assignee, transferee, subtenant or occupant as lessee.
5 Lessee shall continue to be liable hereunder in accordance
6 with the terms and conditions of this lease and shall not be
7 released from the performance of the terms and conditions
8 hereof. The consent by Lessors to an assignment, mortgage,
9 pledge or transfer shall not be construed to relieve Lessee
10 from obtaining the express written consent of Lessors to any
11 future transfer of interest.

12 SECTION TWENTY-THREE

13 OPTION TO RENEW

14 Lessors grant to Lessee an option to renew this lease
15 a FIVE (5) year period after expiration of the original
16 term of this lease, at a rental continuing on the same basis
17 as the rental provided for in this lease, with all other
18 terms and conditions of the renewal lease to be the same as
19 those contained herein. To exercise this option, Lessee
20 must give Lessors written notice of the intention to do so
21 at least three (3) months before this lease expires.

22 SECTION TWENTY-FOUR

23 SURRENDER OF POSSESSION

24 Lessee shall, on the last day of the term, or on
25 earlier termination and forfeiture of the lease, peaceably
26 and quietly surrender and deliver the demised premises to

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CHICO, CALIFORNIA 95928
TELEPHONE (916) 893 1821

1 Lessors, free of subtenancies, including all buildings, if
2 any, additions, and improvements constructed or placed
3 thereon by Lessee, except moveable trade fixtures, all in
4 good condition and repair. Any trade fixtures or personal
5 property not used in connection with the operation of the
6 demised premises and belonging to Lessee, if not removed at
7 the termination or default, and if Lessors shall so elect,
8 shall be deemed abandoned and become the property of Lessors,
9 without any payment or offset therefor. Lessors may remove
10 such fixtures or property from the demised premises and
11 store them at the risk and expense of Lessee, if Lessors
12 shall not so elect. Lessee shall repair and restore all
13 damage to the demised premises caused by the removal of
14 equipment, trade fixtures, and personal property.

15 SECTION TWENTY-FIVE

16 TOTAL AGREEMENT, APPLICABLE TO SUCCESSORS

17 This lease contains the entire agreement between the
18 parties and cannot be changed or terminated except by a
19 written instrument subsequently executed by the parties
20 hereto. This lease, and the terms and conditions hereof,
21 apply to and are binding upon the heirs, legal representa-
22 tives, successors, and assigns of both parties.

23 SECTION TWENTY-SIX

24 TIME OF THE ESSENCE

25 Time is of the essence in all provisions of this lease.

26 IN WITNESS WHEREOF, the parties have executed this

1 lease at Chico, California, this 20 day of JAN.
2 1987. 7157. 45.

3
4 Levonard A. Thomsen
LEVONARD A. THOMSEN

5
6 Margaret S. Thomsen
MARGARET S. THOMSEN

7 Address:

8 Rt. 1- Box 72
9 WILLOWS, CA. 95988

10 LESSORS

11 E-Z SERVE OF CALIFORNIA, INC.,
12 a California corporation

13 By M. James Payer
14 Vice President

15 Address:

16 316 S. Bon View Avenue
17 Ontario, CA 91761

18 LESSEE

19
20
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26
Law Office of
CARL B. LEVERENZ
515 WALL STREET
CHICO, CALIFORNIA 95928
TELEPHONE (916) 895 1821

June 13, 1990

Levonard A. and Margaret S. Thomsen
307 Black Oak Dr.
Chico, California 95926

Reference: Leased premises - 525 West "A" St., Hayward, CA.

Dear Mr. and Mrs Thomsen:

As you may be aware we have had the above referred to station location, which we lease from you, closed for quite some time. We were forced to close because the underground storage tanks would not pass the required tank tightness tests. In order to remedy the current situation we must remove the underground tanks and related piping and conduct an investigation. The removal is taking place this week.

At the time of the extensive excavation we would like to completely upgrade and remodel the facility. The upgrade will include the installation of new underground storage tanks and piping, new automated gasoline dispensing equipment and a convenience store building. We plan to use the existing canopy structure and to resurface the entire lot. The equipment installed will be of the latest approved design, to accommodate constant monitoring of tanks and lines.

Pursuant to Section Four B. of our lease agreement, your agreement to the alterations is required. Therefore, I ask that you sign a copy of this letter where indicated, and return it to me in the enclosed envelope.

If you have any questions, please call me.

Sincerely,

Sharon A. Stout
Sharon A. Stout
Vice President

SAS:bas

cc: Chuck Collins
Lease file

APPROVED:

Levonard A. Thomsen
Levonard A. Thomsen
Margaret S. Thomsen
Margaret S. Thomsen

May 20, 1992

Mr. and Mrs. L.A. Thompson
307 Black Oak Drive
Chico, California 95926

RE: E-Z Serve of California #100877
525 W. "A" Street
Hayward, California

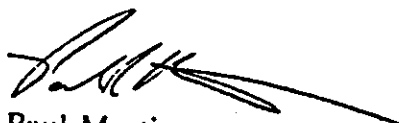
Dear Mr/Mrs. Thompson:

In response to your May 14, 1992 letter, E-Z Serve, in accordance with the Alameda County Health Care Services Agency, is conducting an ongoing environmental assessment of the property. The first phase was completed by Associated Soils and a report was completed on March 2, 1992 and forwarded to the agency for comments.

Since the correspondence of June 1990, E-Z Serve has made a corporate decision to place it's emphasis in the eastern portion of the U.S. and has no future plans to construct or operate a service station on this particular site. Should you desire, E-Z Serve would be favorable to a mutual termination of the lease, so that the property can be full utilized.

Please contact me should your have any further questions.

Sincerely,



Paul Martin
Environmental Director

PM/as

CC: J. Boley w/attachments
T. Davis w/attachments
K. Gabriel w/attachments

a152-877

80 Swan Way, #200
Oakland, CA 94621
(415) 271-4320

1
y's Date 10/23/92

EPA ID# _____

TRANSPORTER
Materials

Safety Code (HS&C)

above captioned
was indeed
several of the
les that I found
moved.

(1) drums labelled
(2)

broken appliances
and household
in the property.

property is being
ground.

that you are
the property. This
property owners to
notice. This will prevent
Please reply as

you
R. Arulammithan

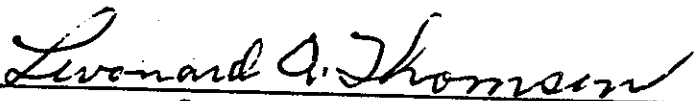
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VERIFICATION

I, Levonard A. Thomsen am one of the plaintiffs named herein. I have reviewed the foregoing First Amended Complaint For Negligence, Strict Liability, Nuisance, Trespass, Waste, Breach of Contract, Promissory Estoppel, Breach of Covenant of Good Faith And Fair Dealing, Intentional Infliction of Emotional Distress, Misrepresentation, Unjust Enrichment, Violation of H&SC § 25249.5 Et Seq., Indemnity, And Declaratory And Injunctive Relief and know the contents thereof from my personal knowledge, except for those matters stated on information and belief and, as to those matters, I believe them to be true.

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

Executed on July 15, 1993 at Chico, California.


Levonard A. Thomsen

VERIFICATION

I, Margaret S. Thomsen am one of the plaintiffs named herein. I have reviewed the foregoing First Amended Complaint For Negligence, Strict Liability, Nuisance, Trespass, Waste, Breach of Contract, Promissory Estoppel, Breach of Covenant of Good Faith and Fair Dealing, Intentional Infliction of Emotional Distress, Misrepresentation, Unjust Enrichment, Violation of H&SC § 25249.5 Et Seq., Indemnity, and Declaratory and Injunctive Relief and know the contents thereof from my personal knowledge, except for those matters stated on information and belief and, as to those matters, I believe them to be true.

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

Executed on July 15, 1993 at Chico, California.

Margaret S. Thomsen
Margaret S. Thomsen

ALAMEDA COUNTY, DEPARTMENT OF ENVIRONMENTAL HEALTH

Hazardous Materials Division Inspection Form

80 Swan Way, #200
Oakland, CA 94621
(415) 271-4320

Site ID# _____ Site Name EZ TH 100877 Today's Date 6/24/93
Site Address 525 W. A St. EPA ID# _____
City Hayward Zip 94 Phone _____

MAX Amt. Stored > 500lbs/55g/200cf? Y N
Hazardous Waste generated per month? _____

Inspection Categories:

- ☐ I. Haz. Mat/Waste GENERATOR/TRANSPORTER
- ☐ II. Business Plans, Acute Hazardous Materials
- ☐ III. Underground Tanks MW Sampling

The marked items represent violations of the Calif. Administration Code (CAC) or the Health & Safety Code (HS&C)

IA GENERATOR (Title 22)

	1. Waste ID	* 66471
	2. EPA ID	66472
	3. > 90 days	66508
	4. Label dates	66508
	5. Biennial	66493
Manifest	6. Records	66492
	7. Correct	66484
	8. Copy sent	66492
	9. Exception	66484
	10. Copies Rec'd	66492
Misc.	11. Treatment	66371
	12. On-site Disp. (H.S.&C.)	26189.5
	13. Ex Haz. Waste	66570
Prevention	14. Communications	67121
	15. Able Space	67124
	16. Local Authority	67126
	17. Maintenance	67120
	18. Training	67105
Confin. gency	19. Prepared	67140
	20. Name List	67141
	21. Copies	67141
	22. Emg. Coord. Tmg.	67144
Containers, Tanks	23. Condition	67241
	24. Compatibility	67242
	25. Maintenance	67243
	26. Inspection	67244
	27. Buffer Zone	67246
	28. Tank Inspection	67259
	29. Containment	67245
	30. Safe Storage	67261
	31. Freeboard	67257

Comments:

MW-1A no odor no shrap DTW
16.85
2 sl odor 18.40
3 no odor 17.86
4 sl. odor 17.35
5 no odor 17.01
6 no odor 17.29
7 sl. odor 17.67
8 no odor 17.63
9 15.84
10 17.39

1A strong odor ~ 2" FP

Surveys tied to fire hydrant

85.89

IB TRANSPORTER (Title 22)

	32. Applic./Insurance	66428
	33. Comp. Cert./CHP Insp.	66448
	34. Containers	66465
Manifest	35. Vehicles	66465
	36. EPA ID #s	66531
	37. Correct	66541
	38. HW Delivery	66543
	39. Records	66544
Confin. gency	40. Name/ Covers	66545
	41. Recyclables	66800

Contact: _____
Title: _____
Signature: _____

Inspector: E. J. Chapp
Signature: E. J. Chapp

Eva,

6/15

Associated Soils, the consultants,
are going to go ahead and
install the wells on Monday
June 21, '93. However, they
will sample the wells on
Thursday, which is what
I would like you to oversee.
They will begin at 8:00 AM
on Thursday. Main thing is
to look out for product &
shum in wells, & make sure
they sample all existing and
new wells.

Greg Sullivan - Assoc. Soil
contact person.

831.2 - 839.9 1848.1

E-Z SERVE
MANAGEMENT COMPANY

June 16, 1993

Ms. Juliet Shin
Alameda County Health Services
80 Swan Way, Rm. 200
Oakland, CA 94621

Re: E-Z Serve #100877
525 West "A" Street
Hayward, CA

Dear Ms. Shin:

This is to advise that drilling will be started on Monday, June 21, 1993 at the referenced location. It is expected that groundwater sampling will be conducted on Thursday, June 24, 1993.

If you have questions please advise.

Sincerely,



Brian Cobb, P.E.
Environmental Manager

cc: Ed Lambert- Corporate Council
Bart Racca - Associated Soils Analysis
Jon Redding - Fitzgerald, Abbott & Beardsley (by Fax)

File

E-Z SERVE
MANAGEMENT COMPANY

RECEIVED

JUN 14 1993

RFC

May 06, 1993

Mr. Jonathan Redding
Fitzgerald, Abbott and Beardsley
1221 Broadway, 21st Floor
Oakland, California 94612-1837

Re: Former E-Z Serve #100877
525 "A" Street
Hayward, California

Dear Mr. Redding:

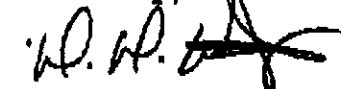
This is in response to your April 15, 1993 letter regarding the referenced location. E-Z Serve has no objections for you or your consultants to observe E-Z Serves consultants (Associated Soils Analysis) sampling procedures and to obtain split samples. A summary of Associated Soils sampling procedures is attached for your information. Also, E-Z Serve utilizes a state-certified laboratory to perform the groundwater analysis.

Be advised that Associated Soils Analysis is under contract to perform a specific scope of work for E-Z Serve. Associated Soils indicated that any delays associated with you and/or your representatives involvement will be billed to you at their project geologist rate of \$60 per hour plus materials.

The next round of groundwater samples are expected during the next phase of investigation. E-Z Serve will keep you advised of the schedule so that you may have a representative on-site.

If you have questions advise.

Sincerely,



Dan Waters, V.P.
Environmental, Construction
and Real Estate

cc: Brian Cobb - E-Z Serve Management
Bart Racca - Associated Soils Analysis

2550 NORTH LOOP WEST, SUITE 600 • HOUSTON, TEXAS 77092
P.O. BOX 922021 • HOUSTON, TEXAS 77282-2021
(713) 684-4300

Method and Container Used to Collect Groundwater Sample

Prior to sampling, the wells were open to the atmosphere for approximately one hour to allow the groundwater to adjust to the open barometric pressure. The depth to groundwater was then measured in each well along with the recording of the electrical conductivity, pH, and temperature of the groundwater. These parameters along with the data and volumes of water removed from the wells were recorded on the field recording form. The volume of standing water in the monitoring well referred to as a well volume was calculated using the following equation:

Calculating Well Volume:

Depth of well minus the depth of water in the well equals the number of feet of water in well.

Number of feet of water in well $\times$ 0.163 for a 2 inch well = Volume of water in gallons

Number of feet of water in well $\times$ 0.653 for a 4 inch well = Volume of water in gallons

The volume of water to be removed during purging was then estimated by multiplying three to four times the well volume of water.

The pH, temperature, electrical conductivity and time are monitored and were recorded between each well volume removed. The monitoring wells were allowed to achieve 85% stability prior to sampling.

Water samples were collected to determine if the groundwater had been impacted by petroleum constituents. The wells were purged of groundwater 4 to 5 times the well volume. A time interval of 30 minutes elapsed before inserting a bailer into the well and collecting each sample. Samples from each well were collected using dedicated disposable 1.7 inch by 36 inch Teflon bailers. The samples were placed into two sterilized 40 ml. V.O.A. glass containers. One vial was for the sample, the second as a backup. The samples were immediately sealed in the

field with Teflon lined threaded caps ensuring that no air bubbles were trapped as the lids were placed over the sample containers. A travel blank accompanied the water samples which would be analyzed if petroleum constituents were detected. Protocol of documentation and transportation for the water samples was followed as described in the field soil sampling procedures above. The samples were transported in an ice chest maintained with chemical ice so do not exceed 4° Celsius (39.2° Fahrenheit). A thermometer and laboratory prepared travel blanks accompanied the ice chest.



Associated Soils Analysis
1141 Balboa Court • Tulare, California 93274
(805) 686-1811 • FAX (805) 686-1166

FILE NO: 376-92DATE: 4/27/93

MONITORING WELL PURGING FOR SAMPLING RECORD

PROJECT LOCATION:

SAMPLER NAME (Print): Shannon Bennett

PRIOR TO PURGING	SAMPLE LOCATION	mw# 1a	mw# 2	mw# 3		
	SCREEN INTERVAL (TOP / BOTTOM)					
	CASING SIZE (in)	4	2	2		
	ELEVATION OF TOP OF WELL CASING					
	DEPTH TO BOTTOM OF WELL CASING	88	89	89		
	TIME	8:54	8:47	8:37		
	DEPTH TO WATER (From top of casing)	74.33	73.04	72.96		
	WELL SOUNDING DEPTH	88	89	89		
	VOLUME OF WATER IN WELL	8.9	2.6	2.6		
	TEMPERATURE (°F)	64	63	64		
	pH READING	7.08	7.12	7.08		
	ELECTRICAL CONDUCTIVITY	240	260	310		
	THICKNESS OF STANDING PRODUCT (in)	0	0	0		
DURING PURGING	PETROLEUM SHEEN	NO	NO	NO		
	PETROLEUM ODOR	YES	NO	NO		
	SAMPLE LOCATION	mw# 1a	mw# 2	mw# 3		
	TIME	10:00	12:00	11:00		
	DEPTH TO WATER (From top of casing)	75.23	74.19	73.44		
	VOLUME OF WATER REMOVED FROM WELL	6.2	2	2		
	TEMPERATURE (°F)	64	64	64		
	pH READING	7.10	7.19	7.10		
	ELECTRICAL CONDUCTIVITY	300	280	350		
	SAMPLE LOCATION	mw# 1a	mw# 2	mw# 3		
	TIME	10:25	12:30	11:31		
	DEPTH TO WATER (From top of casing)	75.98	74.93	73.85		
	VOLUME OF WATER REMOVED FROM WELL	6.2	2	2		
END OF PURGING	TEMPERATURE (°F)	64	64	65		
	pH READING	7.10	7.17	7.14		
	ELECTRICAL CONDUCTIVITY	270	300	320		
SAMPLE	SAMPLE LOCATION	mw# 1a	mw# 2	mw# 3		
	TIME	10:36	12:40	11:40		
	DEPTH TO WATER (From top of casing)	75.62	73.75	73.21		
	TOTAL WATER REMOVED FROM WELL (gal)	110.0	10.4	10.4		
	TEMPERATURE (°F)	64	64	65		
	pH READING	7.11	7.20	7.12		
SAMPLE	ELECTRICAL CONDUCTIVITY	290	320	360		

NOTES:

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

June 9, 1993

Mr. Brian Cobb
E-Z Serve Mgmt. Co
2550 North Loop West, Ste 600
P.O. Box 922021
Houston, Texas 7729-2021

STID 3580

Re: Ground water gradient determinations at 525 West "A"
Street, Hayward, California

Dear Mr. Cobb,

This office recently received Environmental Oversight's Quarterly Monitoring Report for the above site, dated April 12, 1993. The ground water gradient patterns/variations at the site have been very unusual, and this office is requesting that you look into the possible causes of the variations in the gradient (such as pumping of neighboring wells, irrigation of the site or neighboring site, or influences from formerly existing wells on the site that may never have been properly closed).

Additionally, please be reminded that the existing wells and the proposed wells should all be surveyed to the same **established** benchmark to an accuracy of 0.01 feet.

Per this office's earlier conversations with you and your consultants, it is the understanding of this office that the proposed monitoring wells will be installed in June 1993, and that these wells along with the existing wells will all be sampled, and water levels monitored, in the month of June for the required quarterly sampling event.

Please notify this office at least 48 hours in advance of installing and sampling the wells. If you have any questions or comments, please contact me at (510) 271-4530.

Sincerely,

Juliet Shin
Hazardous Materials Specialist

Mr. Brian Cobb
Re: 525 West "A" St.
June 9, 1993
Page 2 of 2

cc: Sumadhu Arigala, RWQCB

Greg Sullivan
Associated Soils Analysis
1141 Batavia Ct.
Tulare, CA 93274

Paul Martin
Environmental Oversight, Inc.
6 Bedford Lane, Ste 100
Conroe, Texas 77384

Edgar Howell-File(JS)

McCLINTOCK|WESTON
BENSHOOF|ROCHEFORT
RUBALCAVA|MACCUISH

ATTORNEYS AT LAW

May 28, 1993

VIA FIRST CLASS MAIL

Re: 525 W. A' St. Hayward

Mr. Kevin Tinsley
Alameda County EHD, Hazardous Materials Division
80 Swan Way
Room 200
Oakland, CA 94621

Re: Invoice No. 7687

Dear Mr. Tinsley:

Pursuant to our telephone conversation on May 28, 1993, I am writing in regards to the above referenced invoice. Please inform you billing department that this bill was paid by Attorney's Diversified, Inc. two days after the date of the file/site search.

I am enclosing Invoice No. 7687 for your review/records. Please feel free to contact me if you have any questions or concerns. Thank you for your assistance in this matter.

Very truly yours,

Denise G. Godfrey

Denise G. Godfrey
Legal Assistant

McCLINTOCK, WESTON, BENSHOOF,
ROCHEFORT, RUBALCAVA & MACCUISH

May 28, 1993

Jonathan W. Redding Esq.
Fitzgerald, Abbott & Beardsley
1221 Broadway, 21 St. Floor
Oakland, CA 94612-1837

Re: **Proposition 65 Notice - November 20, 1992 525 West A St., Hayward CA**
E-Z Serve Petroleum Marketing, Powering Oil Company, Mobil Oil
Co. BP Petroleum and L.A. & Margaret Thompson

Dear Mr. Redding:

This will serve as a formal rejection by this office of your notice pursuant to the statutes of the State of California. As the legal representative of the County of Alameda Hazardous Materials Division, which has been delegated by the California Water Resources Control Board to oversee the cleanup of contamination from underground storage tanks, we intend to pursue the above named responsible parties under the California Water and Health and Safety Codes.

Our deferral to your right to a private cause of action under Proposition 65 at this time, should not be taken to be a comment or representation as to the merit of any action which you may take, or a finding that the drinking waters of the State of California have not been impacted by the acts of all or any of the above named responsible parties. Infact, we reserve the right to apply to the court for an order of intervention in any action which you may bring under Proposition 65, should it become necessary to enhance or fully implement our enforcement strategy in this matter.

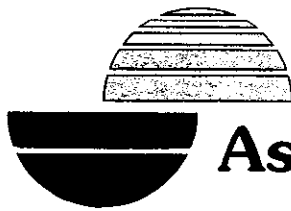
Very truly yours,

JOHN J. MEEHAN
District Attorney

By:
Gilbert A. Jensen
Senior Deputy District Attorney

JJM:GAJ:gj

cc: H.E. Lambert, E-Z Serve Petroleum
Powerine Oil Company



Associated Soils Analysis

May 27, 1993
File #238-91

Ms. Juliet Shin
Hazardous Material Specialist
Department of Environmental Health
State Water Resource Control Board
80 Swan Way, Rm 200
Oakland, Ca 94621

Project: E-Z Serve 100877, 525 West "A" Street, Hayward, CA.

Subject: Interim remediation plan/May 13, 1993 correspondence.

Dear Ms. Shin:

On behalf of E-Z Serve Management Company, Associated Soils Analysis, Inc provides this response to your letter of May 13, 1993. Associated Soils Analysis, Inc., sent a request to the City of Hayward on May 13, 1993 to install a groundwater monitoring well in "A" Street to the east of the site. Although the request has been received, the City of Hayward Public Works Department department was uncertain how long it would take to review the right-of-way permit application. As per our conversation on May 13, 1993, the City of Hayward took approximately 2 weeks to review the previous permit application. However, it appears the review of the second application is taking longer.

In the matter of interim remediation, it is proposed that free product removal begin immediately through the installation of a passive hydrocarbon skimmer system in Monitoring Well MW1A. The interim remediation will consist of a using a Keck PRC-91 passive floating skimmer to remove the light free floating hydrocarbons from the Groundwater Monitoring Well MW1A (FIGURE 1). The Keck system will be used in conjunction with a canister to automatically collect floating product down to a sheen. After recovery, the unit is periodically removed from the well and the product is evacuated from the devise through a discharge valve in the bottom of the canister. A hydrophobic filter buoy enables the recovery of product without recovering water. The system, which is suspended from the top of the well by a

1141 Batavia Ct. • Tulare, California 93274 • (209) 688-1011

guideline, is capable of compensating for up to 12 inch fluctuations in the water table. Because of the passive nature of the Keck PRC-91 system, external power sources are not necessary. Recovery rates are dependant of the amount of free product in contact with the hydrophobic filter. Free product recovered from the 3 liter storage canister will be stored in an model 55 hazardous waste storage barrels with bolt-on steel lids. The system will be periodically monitored to remove product and to adjust the system. The interim remediation program will be discontinued when quarterly sampling indicated free product is no longer present in the wells or if a more effective remediation system is implemented.

In view of the imminent installation of the proposed four groundwater monitoring wells, E-Z Serve Management Company requests permission to delay quarterly sampling of the existing wells until construction and development of the new wells is completed.

If you have any question, please contact Greg Sullivan or myself at this office.

Sincerely,
ASSOCIATED SOILS, ANALYSIS.

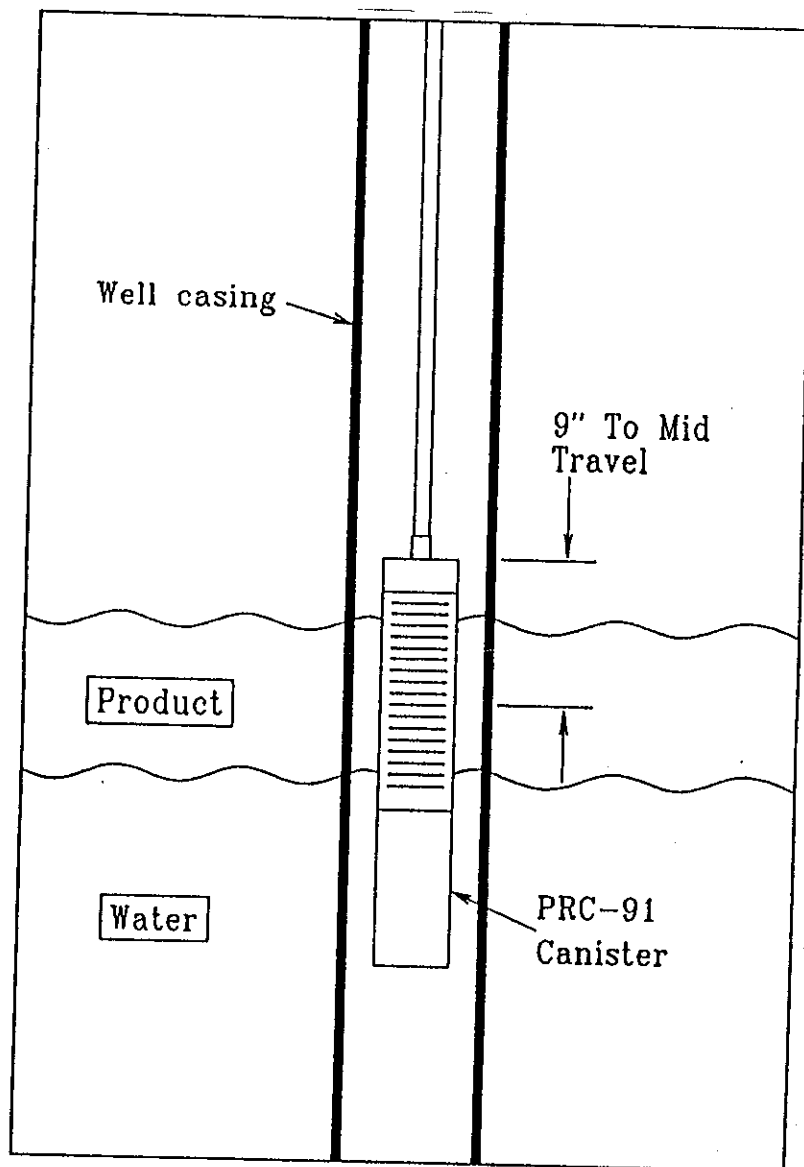
Gary J. Cawthon

Gary J. Cawthon
Registered Geologist #5574
Exp. 9-30-95



GJC:GMS

p.c. Brian Cobb, E-Z Serve Management Company



Specifications

Dimensions

Length: 36"

O.D.: 3.5" or 1.6"

Weight: 2" - 4 lbs., 4" - 7 lbs.

Materials

Stainless Steel, PVC, Polypropylene
and Brass

Recovery Canister Capacity

2" .5 liter transparent cylinder

4" 1 liter standard with modular
design for field conversion to 3 liter.

DESIGN SPECIFICATIONS FOR THE KECK SYSTEM

FIGURE 1

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

May 13, 1993

Mr. Brian Cobb
E-Z Serve Mgmt. Co.
2550 North Loop West, Ste 600
P.O. Box 922021
Houston, Texas 7729-2021

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

STID 3580

Re: Investigations at 525 West "A" Street, Hayward, California

Dear Mr. Cobb,

This office has approved the new locations of the proposed wells as an initial phase of characterizing the ground water contaminant plume resulting from the above site. However, please be reminded that it may be necessary to place additional wells off site in the future, possibly even between the currently proposed wells and the site, in order to better characterize the plume and to accurately determine whether the remediation method that is chosen, such as extraction, is adequately removing the ground water contaminant plume and associated contaminated soil. It is also suggested that the implementation of borings or hydropunches may be helpful as a screening tool in determining prime locations for permanent monitoring wells in the future.

Per a conversation between Greg Sullivan, Associated Soils, and myself on May 13, 1993, he stated Associated Soils would go ahead and apply for the access permit necessary to install the proposed monitoring well to the east. He has estimated that the review and approval process for this access should take approximately two weeks. If there are any problems with meeting this tentative deadline, please get in touch with me immediately. **It is the understanding of this office that once this access permit is granted, work for installing the four proposed monitoring wells will start immediately.**

As stated in our letter to you, dated April 1, 1993, you are required to take the necessary "interim remediation" steps to abate the further migration of this contaminant plume from going off site and remove the free floating product from the site, in conjunction with your work to further delineate the extent of this plume. This office requested that you submit a work plan addressing this issue **by May 30, 1993**. In my conversation with Mr. Sullivan, he stated that no work had yet begun to prepare this work plan. You are required to submit this work plan pursuant to **Section 2722(b), Article 11, Title 23 California Code of Regulations**. Any extensions of the due date or modifications of the required work plan must be approved by this office or RWQCB in writing.

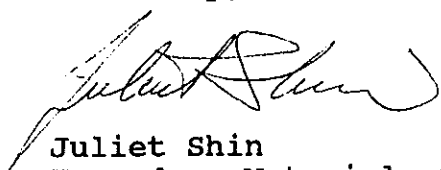
Mr. Brian Cobb
Re: 525 West "A" St.
May 13, 1993
Page 2 of 2

This office has already granted your site a number of extensions for the required work at the site, and is concerned about further delays in the investigations and remediation of the elevated contaminant concentrations observed at your site. Considering that very elevated levels of Total Petroleum Hydrocarbons as gasoline (TPHg), as high as 51,000 ppb, and Benzene, as high as 8,800 ppb, were identified in the ground water at your site as early as January 1987, it appears that your progress in addressing this contaminant problem has been rather slow.

Lastly, as was mentioned in the April 1, 1993 letter from the County, I am requesting that I be notified 48 hours in advance of the next quarterly sampling event at the site so that I may be present to observe the water samples. According to my files, your site is past due for another quarterly sampling event.

If you have any questions or comments, please contact me at (510) 271-4530.

Sincerely,



Juliet Shin
Hazardous Materials Specialist

cc: Sumadhu Arigala, RWQCB

Gil Jensen, Alameda County District Attorney's Office

Bartalome J. Racca
Associated Soils Analysis
1141 Batavia Ct.
Tulare, CA 93274

Maddie MacDonald
Environmental Oversight, Inc.
22 Kazan
Irvine, CA 92714

Jonathan Redding
Fitzgerald, Abbott, & Beardsley
1221 Broadway, 21st Floor
Oakland, CA 94612-1837

Edgar Howell-File(JS)

Alameda County Department of Environmental Health
Hazardous Materials Division

80 Swan Way, Rm. 200, Oakland, CA 94621
Ph: 510-271-4320

BILLING FOR SERVICES

SHD# 3580 L.O.P.

A. Site Name E-Z Serve Station Phone _____
Site Address 525 West "A" St. Hayward
(if no address, description of area) Number Street City Zip
Prior Business Name N/A Prior Owner's Name _____

B. Service Requestor Denise Godfrey, McClintock, Weston, Benschoff (213) 623-2322
Contact Person Company Name Phone
Billing Address 444 S. Flower St. 5th floor Los Angeles 90071
Number Street City Zip

Category of Service	
☒ Site Search	#Hours <u>2</u> x \$ <u>75.⁰⁰/Hr</u> \$ <u>150.⁰⁰</u> (Whole Hours Only)
☐ File Search	#Copies <u>-</u> x \$ <u>-</u> /Copy \$ <u>-</u>
☐ Other _____	Sub-Total <u>-</u> x \$ <u>-</u> \$ <u>150.⁰⁰</u> Other _____
TOTAL CHARGE: \$ <u>150.⁰⁰</u>	

REMARKS: File copied by David Peters of Attorneys Diversified
Services, P.O. Box 359, Oakland, CA 94604 (300 27th St, Oakland)

You will receive an invoice in accordance with Article 11 of Chapter 6, Title 3 of the Ordinance Code of Alameda County

Service Requestor Denise Godfrey printed name signature Date _____
HazMat Specialist Kevin Tinsley printed name signature Date 4/26/93

E-Z SERVE
MANAGEMENT COMPANY

93 APR 26 PM 3:42

April 23, 1993

Ms. Juliet Shin
Alameda County
Health Care Services
80 Swan Way, Room 200
Oakland, CA 94621

Re: Former E-Z Serve 100877
525 West "A" Street
Hayward, California

Dear Ms. Shin:

This is in response to your April 1, 1993 letter received by E-Z Serve on April 12, 1993. As we have discussed, the off-site access agreements are being obtained from the various property owners. E-Z Serve has received written authorization to drill on the property to the north of the site and with your assistance has acquired access to the property immediately west of the site. Associated Soils Analysis is currently obtaining right-of-way permits to the south and east of the property.

E-Z Serve believes that the next phase of field activities will complete the assessment at the referenced location. Based on this additional assessment a comprehensive plan to remediate the entire plume can be prepared. E-Z Serve believes it is premature to formulate a plan at this time. In the event the next phase of assessment does not define the plume then E-Z Serve and our consultants will evaluate the feasibility of interim remediation. The groundwater will continue to be monitored quarterly in order to evaluate off-site migration.

If this is unacceptable or if you have questions or comments do not hesitate to call me at any time.

Sincerely,



Brian Cobb, P.E.
Environmental Manager

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
MICHAEL P. WALSH
J. BRITTAIN HABEGGER
VIRGINIA PALMER
TIMOTHY H. SMALLSREED
STEPHEN M. JUDSON
STEPHEN M. WILLIAMS
JONATHAN W. REDDING
THEODORA R. LEE
KRISTIN A. PACE
ROBERT F. CAMPBELL
MICHAEL M. K. SEBREE
ANTONIA L. MORE
CHRISTOPHER E. REGGIE
MARIA I. LAWLESS
JENNIFER J. BANKER
JULIA L. NYE

FITZGERALD, ABBOTT & BEARDSLEY

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1221 BROADWAY, 21ST FLOOR

OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

R. M. FITZGERALD 1858-1934
CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

BETH E. ASPEDON
SPECIAL COUNSEL

TELECOPIER: (510) 451-1527

April 15, 1993

COPY

H. E. Lambert, Esq.
Vice President and Corporate Counsel
E-Z Serve Petroleum Marketing Company
of California
2550 North Loop West, Suite 600
P.O. Box 922021
Houston, Texas 77292-2021

Re: Contamination at former E-Z Serve Station
525 West "A" Street, Hayward, California

Dear Mr. Lambert:

This letter is to request that I be notified in advance of when your consultants go on to the site to perform their next sampling event at the on-site monitoring wells. It is my intent to send a consultant along to take split samples of certain wells and to observe the conditions on the site. As you may know, your lease with the Thomsens specifically provides for access to them under \$15. Their right to access the site to assure proper conduct of remediation is also guaranteed under California law. See Sachs v. Exxon 92 C.D.O.S. 8198.

We thank you for your courtesy and cooperation.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By
Jonathan W. Redding

JWR:lm

Enclosure

cc: Juliet Shin
Gil Jensen
Levonard and Margaret Thomsen
Powerine Oil Company
Attention: Elliott Heide, Esq.

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

April 1, 1993

Mr. Brian Cobb
E-Z Serve Mgmt. Co.
2550 North Loop West, Ste 600
P.O. Box 922021
Houston, Texas 7729-2021

STID 3580

Re: Additional investigation requirements at 525 West "A"
Street, Hayward, California

Dear Mr. Cobb,

In a letter from the County to E-Z Serve, dated April 24, 1992, this office requested that you submit a work plan addressing both the delineation of the ground water contaminant plume resulting from your site, and the containment of the plume from migrating further off the site. To this date, you have submitted a work plan for the installation of additional wells, however, no plan has been submitted addressing the containment of the contaminant plume.

The levels of hydrocarbon contamination observed from the on-site monitoring wells are extremely elevated, and the location of these wells containing these concentrations suggests that contaminants are migrating off the property. As the contaminant plume migrates further off site, the plume will become an increasingly greater problem and the remediation of this plume will become increasingly more difficult and expensive. **Per Section 2722(b), Article 11, Title 23 California Code of Regulations**, you are required to take the necessary "interim remediation" steps to abate the further migration of this contaminant plume from going off site and remove the free floating product from the site, in conjunction with your work to further delineate the extent of this plume. A work plan addressing the containment of this contaminant plume shall be submitted to this office **within 60 days** of the date of this letter.

Per a conversation between Greg Sullivan, Associated Soils, and myself on March 29, 1993, there have been some problems acquiring access permission from the neighboring property owners for the installation of monitoring wells. I informed Mr. Sullivan that this office will be assisting you in obtaining the access necessary to install the additional proposed monitoring wells. Please submit the correct neighboring property owner's names, phone numbers, and addresses from which you desire access permission, and I will explain the necessity of these wells to them further.

will be indicated

Lowell J. Miller
Alameda County Department of Health
Hazardous Materials Division
80 Swan Way
Oakland, Ca 94621

Tel: (415) 271-4320

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
MICHAEL P. WALSH
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CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

BETH E. ASPEDON
SPECIAL COUNSEL

TELECOPIER: (510) 451-1527

March 12, 1993

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Powerine Oil Company
Attention: A. L. Gualtieri
President and Registered Agent
For Service of Process
12354 Lakeland Road
Santa Fe Springs, California 90670

Re: Former Service Station Located at 525 West A
Street, Hayward, California

Dear Mr. Gualtieri:

This letter is to advise you of possible litigation against Powerine Oil Company ("Powerine") arising out of Powerine's alleged breach of the lease between Powerine and our clients, Margaret and Levonard Thomsen. For your convenience a copy of the lease is enclosed as Exhibit A. E-Z Serve Petroleum Marketing Company of California, Inc. ("E-Z Serve"), your successor-in-interest, is responsible for alleging the facts which may constitute a breach of the lease. Therefore, this letter is also written to afford Powerine an opportunity, for a thirty-day period, to negotiate with E-Z Serve for a prompt and effective cleanup of the subject property.

The original lease between Powerine and our clients, under which Powerine constructed a service station pursuant to a lease commencing on December, 1966, was for a 20-year period. Apparently Powerine sold the premises and improvements to E-Z Serve of California, Inc., which ultimately led to a new lease between E-Z Serve and our clients in January, 1987. Reports prepared by E-Z Serve's consultants in 1990 to 1992 indicate that there is massive soil and groundwater contamination at the premises which, in our opinion, have rendered the property completely useless for rental or sale to third parties. We estimate that many hundreds of thousands of dollars will be required to restore the property to its condition prior to the commencement of the Powerine lease.

For your information, E-Z Serve removed the underground storage tanks in June, 1990. When it discovered the contamination

March 12, 1993

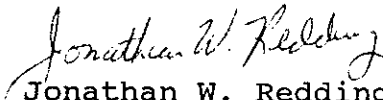
in the vicinity of the tanks, it abandoned all operations on the premises and removed all the improvements. Although E-Z Serve continues to pay rent under its lease, it has failed to comply with government requirements for investigation and cleanup. E-Z Serve, your successor and apparent assignee, maintains that all of the contamination on the property arises out of leaks that occurred during Powerine's occupation of the property (see E-Z Serve's letter of November 9, 1992, wherein its general counsel states "I trust you and your clients will understand that we are remediating a condition that resulted from the actions of our predecessors . . ."). All of E-Z Serve's reports to the County regulatory authorities also indicate that the contamination has been the fault of Powerine. We are not in a position at this point in time to say whose fault it was, and therefore, if litigation is required, we would join Powerine and E-Z Serve in the lawsuit.

We suggest that you discuss with E-Z Serve the repurchase and cleanup of the subject property from our clients at its fair market value of approximately \$300,000. For your convenience, I am enclosing copies of relevant correspondence. Please deem this letter as a 30-day notice of default and our demand for cure under the original lease between Powerine and our clients.

Finally, please review your records and provide me copies of all documents concerning this property. Please feel free to contact me with any questions concerning the above at your earliest convenience.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By 
Jonathan W. Redding

JWR:

Enclosures -- Powerine Oil Company Lease
E-Z Serve Letter of 11/9/92 and 1/3/93
Letter from Alameda County Health dated 12/3/92
Letters from Fitzgerald, Abbott & Beardsley dated
7/16/92 and 11/20/92 (with all attachments)

cc: Margaret and Levonard Thomsen (without attachments)
H. E. Lambert, Esq. (without attachments)
Gil Jensen, Senior Deputy District Attorney
of Alameda County (with attachments)
Juliet Shin, Hazardous Materials Specialist, Alameda County
(without attachments)



Associated Soils Analysis
1141 Batavia Court • Tulare, California 93274
(209) 688-1011 • FAX (209) 688-1195

FAX COVER SHEET

TO: Alameda County Health Care Services

ATTENTION: Juliet Shin

FAX NO.: (510) 589-4757

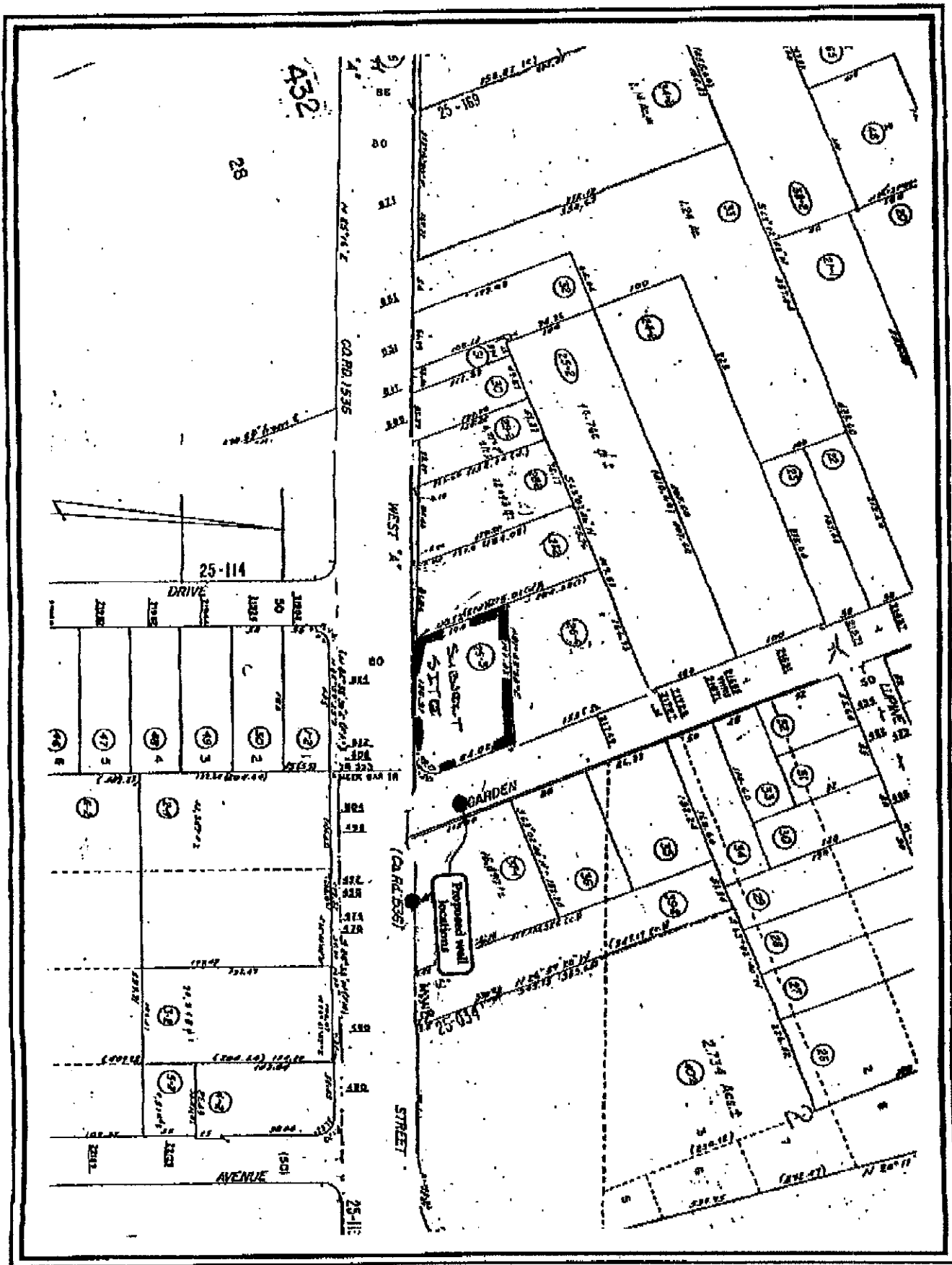
FROM: Greg Sullivan

DATE: May 12, 1993

SUBJECT: Proposed monitoring well locations for the E-Z Serve site located at 525
West "A" Street, Hayward, California

We are transmitting 2 page(s) including this cover sheet. Please call (209) 688-1011 if the copy is unclear.

1141 Batavia Court • Tulare, California 93274 • Office (209) 688-1011
Fax (209) 688-1195





Associated Soils Analysis
 1141 Batavia Court • Tulare, California 93274
 (209) 688-1011 • FAX (209) 688-1195

FAX COVER SHEET

TO: Alameda County Health Care Services

ATTENTION: Juliet Shin

FAX NO.: (510) 589-4757

FROM: Greg Sullivan

DATE: April 21, 1993

SUBJECT: E-Z Serve 525 W. "A" Street, Hayward, CA

- Why is the proposed well MW-7 being placed so far from site boundary?
- (Check to see if the location of this well was previously discussed w/ Assoc. Soils).

4/22/93 - I spoke to Mr. Sullivan. He said that the proposed location for well MW-7 was for the purpose of trying to delineate the extent of the plume in this round of well installations.

We are transmitting 5 page(s) including this cover sheet. Please call (209) 688-1011 if the copy is unclear.



Associated Soils Analysis

April 21, 1993
File 238-92

Juliet Shin
Alameda County Health Care Services
Department of Environmental Health
80 Swan Way, Rm 200
Oakland, CA 94621

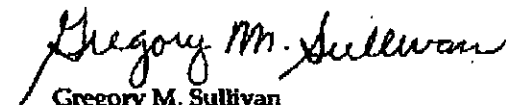
Project: E-Z Serve #100877, 525 West "A" Street, Hayward, California

Subject: Obtaining permission to drill on adjacent properties

Dear Ms. Shin:

In accordance with a request from Brian Cobb of E-Z Serve Management Company, Associated Soils Analysis, Inc. is attempting to obtain permission to drill on the adjacent properties. Attached is a property profile search list, the site map and the Assessor's Parcel Map for the adjacent sites. Verbal authorization has been granted from Albert Wong, (West, APN 432-0016-027-00) and Dorothy Rael/Pauline Macintosh Trust (North, 432-0016-026-04). Mr. Wong is planning to construct condominiums on this property; therefore, building plans have been requested from his Architect to position the proposed well. Certified-return receipt requests were returned without delivery for the County of Alameda property located to the south (APN 432-0032-002-01) and the Fries Property, Inc. site located to the east (APN 432-0012-037-01) of the site. Any assistance in contacting the property owners for drilling approval would be appreciated. If you have any comments or need additional information, please contact me at this office.

Sincerely ,


Gregory M. Sullivan
Project Geologist

Attachments

1141 Batavia Ct. • Tulare, California 93274 • (209) 688-1011

NORTH (Secured)**APN: 432-0016-026-04****Address: 21749 Garden Avenue, Hayward, CA 94541**

Dorothy Rael; Pauline Macintosh Trust
19346 Standish Ave
Hayward, CA 94541
(510) 276-1464

Trust Attorney: Monica Dellosa
(510) 444-6800

EAST (Unsecured)**APN: 432-0012-037-01****Address: 471 W. A Street, Hayward CA, 94541**

Fries Property Management
36601 Newark Boulevard #50
Newark, CA 94560

Contact: Walt Fries (*Freeze*)
(510) 793-1100
(510) 793-1455 FAX

SOUTH (Unsecured)**APN: 432-0032-002-04****Address: 496 (500) W. A Street, Hayward CA, 94541 (Phoenix Lodge)**

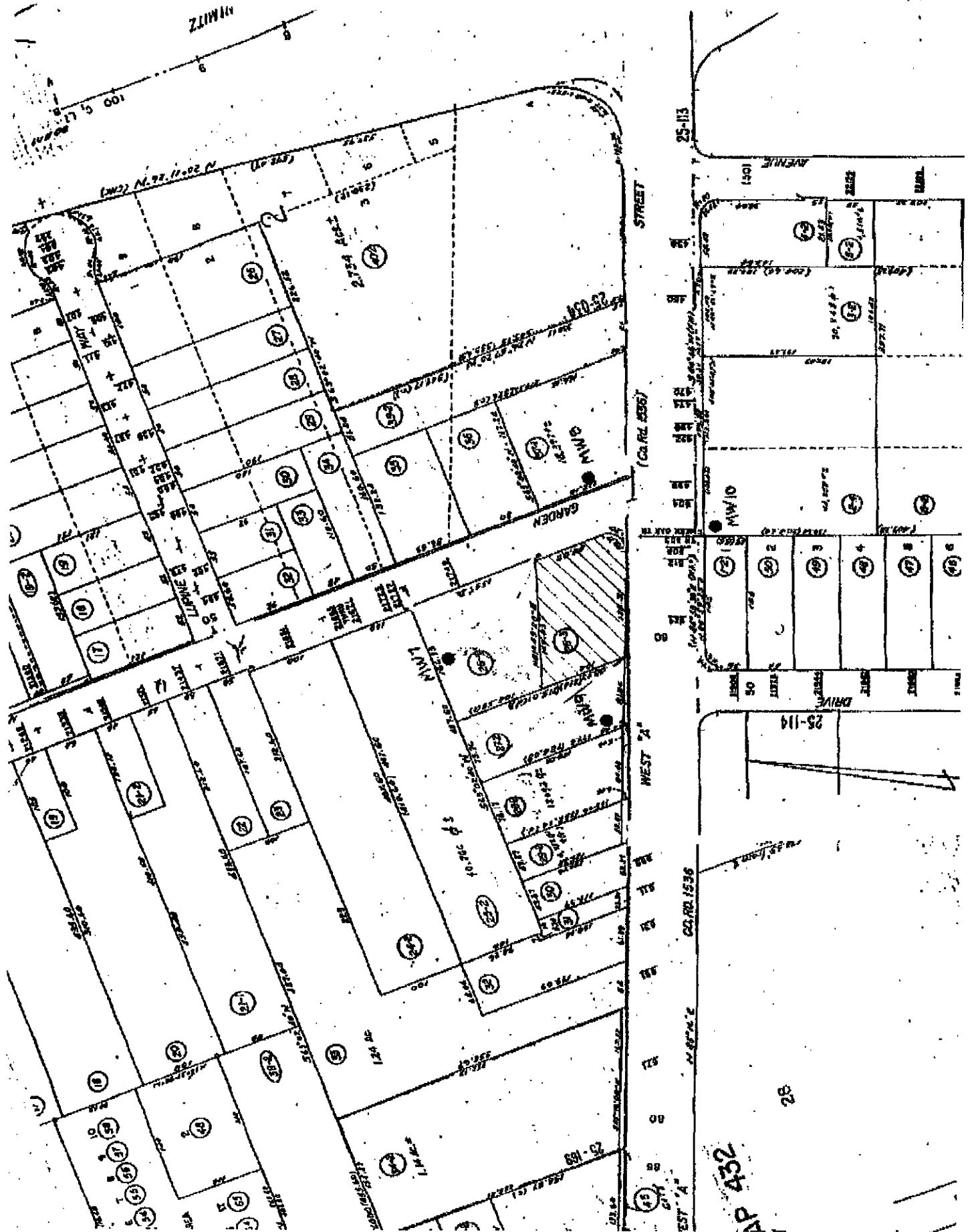
Orkans Hayward Joint Venture
2286 Industrial Parkway
Hayward CA 94545

Mailing Address

Steve Trettin
P. O. Box 8077
Freemont CA 94537

Contact: Steve Trettin
(510) 786-9120
(510) 786-1763 FAX

SOUTH (Unsecured)**APN: 432-0032-002-01****Address: W. A Street, Hayward CA, 94541**
(No physical address given, listed as shown)**City of Hayward**
W. A Street, Hayward CA, 94541**Contact: ?****WEST (Verbally secured)****APN: 432-0016-027-00****Address: 553 W. A Street, Hayward CA, 94541****Albert Wong**
898 Begonia Drive
San Leandro, CA 94578**Contact: Albert Wong**
(510) 895-8046**Mr. Wongs Architect: Alan English**
(Site Plans) (510) 820-2242**Alameda County Assessor's Office**
(510) 272-3787



92215340
IN CASE OF EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8802; WITHIN CALIFORNIA, CALL 1-800-852-7550

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No.	Manifest Document No.	2. Page 1 of 1	Information in the shaded areas is not required by Federal law.	
3. Generator's Name and Mailing Address E-Z SERVE PETROLEUM 10700 North Freeway, Suite 500, Houston, Texas 77037		C A D 9 8 1 6 6 0 5 3 3	0 0 1 3 1	A. State Manifest Document Number 92215340		
4. Generator's Phone (800) 368-6253 ext. 356		6. US EPA ID Number		B. State Generator's ID		
5. Transporter 1 Company Name H & H SHIP SERVICE COMPANY		8. US EPA ID Number		C. State Transporter's ID 402007		
7. Transporter 2 Company Name		8. US EPA ID Number		D. Transporter's Phone (415) 543-4835		
9. Designated Facility Name and Site Address H & H SHIP SERVICE COMPANY 220 Terry A. Francois Street San Francisco CA 94107		10. US EPA ID Number		E. State Transporter's ID		
11. US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number) OIL AND WATER NON-PCRA HAZARDOUS WASTE, LIQUID.		12. Containers No. Type		13. Total Quantity		14. Unit Wt/Vol
		0 0 1 T T		0 0 3 0 0		g
b.						State EPA/OMB
c.						State EPA/OMB
d.						State EPA/OMB
15. Special Handling Instructions and Additional Information JOB #12246 24 Hr. Emergency Contact: H & H (415) 543-4835 APPROPRIATE PROTECTIVE CLOTHING AND RESPIRATOR		16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of the consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable federal, state and international laws. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.		17. Transporter 1 Acknowledgement of Receipt of Materials Printed/Typed Name: THOMAS H. TRICK Signature: [Signature] Month: 03 Day: 06 Year: 93		
18. Transporter 2 Acknowledgement of Receipt of Materials Printed/Typed Name: [Blank] Signature: [Blank] Month: [Blank] Day: [Blank] Year: [Blank]		19. Discrepancy Indication Space		20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in item 19. Printed/Typed Name: [Blank] Signature: [Blank] Month: [Blank] Day: [Blank] Year: [Blank]		

DO NOT WRITE BELOW THIS LINE.

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



FAX

RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

February 22, 1993

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

Brian Cobb
E-Z Serve Mgmt. Co.
2550 North Loop West, Ste 600
P.O. Box 922021
Houston, Texas 77292-2021

STID 3580

Re: Investigations at 525 West "A" Street, Hayward, California

Dear Mr. Cobb,

This office has received and reviewed Environmental Oversight, Inc.'s Quarterly Monitoring Report, dated January 8, 1993. According to the report, a seventh well, Well 1A, was discovered and determined to contain 0.04 feet of free product. **Per Section 2722 (b), Article 11, Title 23 California Code of Regulations,** you are required to implement free product recovery efforts immediately. A work plan addressing the product removal is required to be submitted **within 30 days** of the date of this letter.

Additionally, the elevation contour map included in the most recent quarterly monitoring report indicates a significant change in the behavior of the ground water gradient beneath the site. Due to these inconsistencies, this office is requiring that you begin collecting ground water level measurements and preparing elevation contour maps on a monthly basis, in addition to the quarterly ground water monitoring requirements.

If you have any questions or comments, please contact me at (510) 271-4530.

Sincerely,

Juliet Shin
Hazardous Materials Specialist

cc: Sumadhu Arigala, RWQCB

Paul Martin
Environmental Oversight, Inc.
6 Bedford Lane, Ste 100
Conroe, Texas 77384

Edgar Howell-File(JS)

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

December 31, 1992

Brian Cobb
E-Z Serve Mgmt. Co.
2550 North Loop West, Ste 600
P.O. Box 922021
Houston, Texas 77292-2021

STID 3580

RE: Work Plan for E-Z Serve #100877, located at 525 West "A"
Street, Hayward, California

Dear Mr. Cobb,

This office has received and reviewed Associated Soils Analysis' work plan, dated December 15, 1992. The work plan is acceptable to this office with the following requirements:

- o The monitoring wells should be screened 5 feet above the water table and 10 feet below (If it is certain that the water table fluctuates from 6 to 20 feet below ground surface, as stated in the work plan, than the well screening interval should account for these fluctuations).
- o The initial round of soil and ground water samples should also be analyzed for Total Petroleum Hydrocarbons (TPH) as diesel. If diesel is not detected in this round, than analysis of this constituent may be discontinued.
- o Considering the fact that out of all the site wells Well MW-2 has identified the greatest concentrations of TPH as gasoline, the proposed monitoring well MW-7 should be placed more downgradient of this well.
- o A minimum of one soil sample must be analyzed from each of the borings. Furthermore, in addition to soil samples being collected at 5 feet intervals from the borings, samples should also be collected at lithologic changes.
- o A minimum waiting period of 24 hours is required, after developing the wells, before samples can be collected.

Field work should commence within 60 days of the date of this letter. Please be reminded that a report documenting the results from work performed is due to this office within 45 days of

Phone mess. 9/29/92

E-Z SERVE
MANAGEMENT COMPANY

92 DEC 14 PM 2:23

December 8, 1992

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County
Department of Environmental Health
80 Swan Way, Rm 200
Oakland, California 94621

RE: E-Z Serve #100877
525 West "A" Street
Hayward, California

Dear Ms. Shin:

This is to advise that E-Z Serve solicited bids in accordance with the California Underground Storage Tank Reimbursement Program. Associated Soils Analysis has been selected to implement the workplan dated September 21, 1992. We are currently in the process of obtaining off-site access for monitoring well installation. We will keep you advised of our progress.

If you have any questions, please contact me at (713)684-4380.

Sincerely,



Brian Cobb, P.E.
Environmental & Construction Manager

BC/as

CC: Mr. Eddy So
CRWQCB - San Francisco Bay Region
2201 Webster Street, 4th Floor
Oakland, California 94621

bc2-877

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



EPB
RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH

State Water Resources Control Board

Division of Clean Water Programs

UST Local Oversight Program

80 Swan Way, Rm. 101

Oakland, CA 94612

(510) 271-4300

December 3, 1992

Amy Stites
E-Z Serve
Petroleum Marketing Co.
10700 North I-45, Ste 500
Houston, Texas 77037-1187

STID 3580

RE: Required work plan and investigations at 525 West A Street,
Hayward, California

Dear Ms. Stites,

In a letter dated April 24, 1992 this Department notified E-Z Serve that it was required to submit a work plan to address the delineation and containment of the ground water contaminant plume resulting from the above site. E-Z Serve did not respond, therefore, a Notice of Violation letter, dated August 27, 1992, was sent to E-Z Serve requiring that a work plan be prepared, approved, and implemented. In September 1992, E-Z Serve submitted a work plan to this office. However, this report was not submitted under the seal of a California-Registered Geologist, -Certified Engineering Geologist, or -Registered Civil Engineer as required by this Department and the California Regional Water Quality Control Board. In our phone conversation on September 29, 1992, E-Z Serve was notified of this requirement and of the fact that another work plan needed to be submitted.

In a phone conversation between us on November 5, 1992, you stated that you would call me back with an estimate as to when E-Z Serve would be submitting the new work plan. To this date, this office has received no return phone call, even though we have left numerous messages with you to contact this office within the course of the last month.

You are required to submit the required work plan, under the seal of a Certified Engineer or Geologist, **within 45 days** of the date of this letter. Please be advised that this is a formal request for technical reports pursuant to **California Water Code Section 13267 (b)**. Any extensions of the stated deadlines, or modifications of the required tasks, must be confirmed in writing by either this agency or RWQCB.

If you have any questions or comments, please contact me at (510) 271-4530.

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
MICHAEL P. WALSH
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JENNIFER J. BANKER

FITZGERALD, ABBOTT & BEARDSLEY

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1221 BROADWAY, 21ST FLOOR

OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

R. M. FITZGERALD 1858-1934
CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

STACY H. DOBRZENSKY
OF COUNSEL

BETH E. ASPEDON
SPECIAL COUNSEL

TELECOPIER: (510) 451-1527

November 20, 1992

COPY

H. E. Lambert, Esq.
Vice President and Corporate Counsel
E-Z SERVE PETROLEUM MARKETING
COMPANY OF CALIFORNIA
10700 Interstate 45 North, Suite 500
Houston, Texas 77037-1187

Re: E-Z Serve Location No. 100877 NOTICE OF DEFAULT
525 West "A" Street, Hayward, California

Dear Mr. Lambert:

This is in response to your letter of November 9, 1992. We are pleased to learn that E-Z Serve is now in a position to discuss settlement of our clients' claims against E-Z Serve.

We understand from your letter that E-Z Serve alleges that the contamination at the site occurred as a result of the operations of its predecessor. We have no proof that this is the case and certainly do not intend to rely on self-serving statements by E-Z Serve's consultants to establish this fact. Please provide us with proof that E-Z Serve is not responsible, as well as the proof that E-Z Serve took steps to remediate the contamination which it has admitted it discovered in 1986. In addition, please describe E-Z Serve's efforts to stop continuing releases from the tank dispensing systems, which systems continued to be operated by E-Z Serve until at least mid-1990. Based on the information to date, it appears that E-Z Serve's operations on the property has led to significant groundwater contamination, the off-site extent of which has not yet been determined.

Besides E-Z Serve's direct responsibility for releases and failure to comply with law regarding notice to the regulatory agencies of the release, E-Z Serve assumed responsibility and accepted the tanks in good operating condition under paragraph 19 of the lease. Accordingly, under these circumstances, our clients have no sympathy for the fact that hundreds of thousands of dollars will be spent by E-Z Serve to remediate this property, and they intend to require prompt and complete remediation of the property.

With respect to your suggestion that our clients are not "cooperating" with E-Z Serve's request for an early lease termination, I believe they are willing to discuss the same, provided that such termination includes payment of all costs and attorneys' fees incurred by them to date, and E-Z Serve purchases the property at its fair market value. Otherwise, our clients have no alternative but to insist upon E-Z Serve's full compliance with the terms of the lease, including an enforcement action for E-Z Serve's default.

With respect to E-Z Serve's violation of the lease, they are too numerous to describe in detail. However, please note the following:

1. Section 5 and California common law requires that E-Z Serve take reasonable steps to prevent waste of the property. E-Z Serve's failure to maintain and properly operate the tanks has resulted in waste of the property. Under California law, this will entitle the lessor to treble damages.

2. Section 10 requires the lessee to operate the facility in compliance with law and not to allow any nuisance to exist on the property. We have notified you that illegal dumping is occurring on the property as a result of E-Z Serve's abandonment (which violates Section 12 of the lease), but E-Z Serve refuses to erect a fence. Numerous complaints have been brought to public officials regarding the nuisance conditions on the site. Furthermore, our clients have been ordered by the County Health Department to erect a fence to secure the site. See letter from Environmental Health dated October 23, 1992, which is attached hereto as Exhibit A. Accordingly, E-Z Serve is required to remove the waste from the property and erect a fence around the site under paragraphs 6, 10 and 11 of this lease. Furthermore, failure to promptly contain and remediate known releases violates numerous provisions of the California Health and Safety Code (HSC). See, e.g., HSC § 25280 et seq.

With respect to the balance of your letter, our clients are aware that the costs of litigation, as well as the costs of an accelerated cleanup of the property, exceeds the fair market value of the property. We advised them of this possibility following our early review of their files. This is why we suggested in June, 1992, that the easiest and most reasonable solution to avoid litigation between our clients would be E-Z Serve's purchase of the property. Sale to another party would involve extensive negotiations and legal transaction costs easily exceeding \$20,000 to \$30,000. And, even if our clients could sell the property, they

would be potentially liable to the buyer for cleanup and continually exposed to a lawsuit or government order for cleanup. This is especially true since your clients have still done nothing to actually cleanup the contamination on the property, which continues to be a public nuisance and a threat to local groundwater supplies.

This letter also acknowledges receipt of Associated Soils Analysis consultant report dated March 2, 1992, and work plan dated September 21, 1992. However, we require a complete set of your files concerning this site -- the maintenance and repair records from the date you acquired the site, any records relating to your purchase of the existing business from Powerine/Mobil Oil Company, and all of the consultant reports documenting contamination on the site. E-Z Serve's statutory obligation to consult with the lessor regarding the remediation of contamination can only be met if it submits the requested documentation. See Health and Safety Code § 25359.7, which states in pertinent part as follows:

"Any lessee or renter of real property who knows or has reasonable cause to believe that any release of a hazardous substance has come or will come to be located on or beneath that real property shall, within a reasonable period of time, either prior to the release or following the discovery by the lessee or renter of the presence or believed presence of the hazardous substance release, give written notice of that condition to the owner of the real property or to the lessor under the lessee's or renter's lease or rental agreement. . . .

"If the lessee or renter has knowledge of the presence of a release of a material amount of a hazardous substance . . . and knowingly and willfully fails to provide written notice when required by this subdivision to the owner or lessor, both of the following shall apply:

"(A) The failure is deemed to constitute a default, upon the owner's or lessor's written notice to the lessee or renter, under the lessee's or renter's lease or rental agreement, except that this subparagraph does not apply to lessees and renters of property used exclusively for residential purposes.

"(B) The lessee or renter is liable for a civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation.

"(3) A lessee or renter may cure a default under the lessee's or renter's lease or rental agreement which

November 20, 1992

resulted from a violation of this subdivision, by promptly commencing and completing the removal of, or taking other appropriate remedial action with respect to, the hazardous substance release. The removal or remedial action shall be conducted in accordance with all applicable laws and regulations and in a manner which is reasonably acceptable to, and which is approved in writing by, the owner or lessor. This paragraph does not relieve the lessee or renter of any liability for actual damages or for any civil penalty for a violation of this subdivision."

We look forward to the prompt receipt of all of E-Z Serve's relevant files and to further discussions to resolve our claims against E-Z Serve. Our clients desire to settle their claims without litigation, if possible. Please respond to this letter before December 15, 1992. Finally, please find enclosed our Proposition 65 notice concerning this site.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By

Jonathan W. Redding

JWR:lm

Enclosure

cc: Mr. and Mrs. Thomsen

(with copy of letter from E-Z Serve)

Ravi Arulanantham, Ph.D., CHMM

(with copy of letter from E-Z Serve)

Juliet Shin (with copy of letter from E-Z Serve)

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
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CHRISTOPHER E. REGGIE
MARIA I. LAWLESS
JENNIFER J. BANKER

FITZGERALD, ABBOTT & BEARDSLEY

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

92 NOV 22 MAIL 52
1221 BROADWAY, 21ST FLOOR
OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

November 20, 1992

R. M. FITZGERALD 1858-1934
CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

STACY H. DOBRZENSKY
OF COUNSEL

BETH E. ASPEDON
SPECIAL COUNSEL

TELECOPIER: (510) 451-1527

Gil Jensen, Esq.
Senior Deputy District Attorney
for the County of Alameda
7677 Oakport Street, Suite 400
Oakland, California 94621

State of California
Attorney General
455 Golden Gate Avenue
San Francisco, California 94102

H.E. Lambert
E-Z Serve Petroleum Marketing
Company of California
10700 Interstate 45 North, Suite 500
Houston, Texas 77037-1187

Re: Proposition 65 Notice of Violation
(HSC § 25249.7(d))

Ladies and Gentlemen:

This letter constitutes notice under the Safe Drinking Water and Toxic Enforcement Act of 1986 that our clients, Levonard and Margaret Thomsen, intend to initiate legal action against E-Z Serve Petroleum Marketing Company of California ("E-Z Serve Petroleum"), pursuant to Proposition 65 for pollution beneath the Thomsen's property located at 525 West "A" Street, Hayward, California. This pollution has impacted and threatens to continue to impact "sources of drinking water" as such term is defined by State Water Regional Control Board Regulation 88-63 and the San Francisco Bay Basin Regional Water Quality Control Plan.

The basis of the action is the apparent presence of petroleum constituents in the soil which are discharging to groundwater beneath the site. Free floating product, petroleum odor and petroleum sheen have been detected and observed on the groundwater surface of at least one monitoring well on site. This petroleum threatens the groundwater below the site.

COPY

Gil Jensen, Esq.
State of California, Attorney General
H.E. Lambert

Page 2

November 20, 1992

The violators, E-Z Serve Petroleum, are the former lessees and operators of the property who abandoned the site in mid-1990. It appears to us that E-Z Serve knowingly discharged or released benzene and other listed chemicals at the site since at least as early as 1986 when it knew its tank systems were leaking, but failed to remediate releases which it knew would impact groundwater. It may also have continued to operate a leaking tank system through mid-1990 knowing that it was discharging benzene to sources of drinking water. To date, although E-Z Serve has known of substantial releases of product containing benzene since at least November, 1986, it has taken no action to control the migration of the discharge of these chemicals into potential sources of drinking water or to remediate the soil contamination.

Please advise me at your earliest convenience, but not later than 60 days from the date of this notice, whether you intend to bring an action on behalf of the State of California.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By
Jonathan W. Redding

JWR:lm

cc: Levonard and Margaret Thomsen
Ravi Arulanantham, Ph.D., CHMM
Juliet Shin

E-Z SERVE PETROLEUM MARKETING COMPANY OF CALIFORNIA
10700 INTERSTATE 45 NORTH
HOUSTON, TEXAS 77037
(713) 847-4700

Writer's Direct
Dial Number
591-9805

November 9, 1992

Jonathan W. Redding, Esq.
Fitzgerald, Abbott & Beardsley
1221 Broadway, 21st Floor
Oakland, California 94612

Re: 525 West "A" Street
Hayward, California

Dear Mr. Redding:

Your correspondence regarding the above referenced property has been referred to my attention. I regret that we have not responded sooner. Our delay was not calculated, but rather the result of a series of personnel changes.

I trust you and your clients will understand that we are remediating a condition that resulted from the actions of our predecessors at a time when environmental concerns were not emphasized in the retailing of gasoline. I am certain you appreciate the expense involved. As you point out, we are doing this while paying rent at a location from which we derive no income. At the same time, your clients have not been cooperative about an early lease termination.

Under these circumstances, I trust you will understand that we have little motivation to keep the premises in the pristine condition that your clients desire. The barrels of hazardous waste about which you complain actually contain gasoline and water that is baled from the wells as part of the remediation process. The vegetation may become unsightly between cuttings; however, this does not constitute a lease violation.

As an experienced attorney, I know you will agree that this is a situation with the potential to escalate into a bitter conflict. Instead of a confrontation, however, I would like to suggest that both parties find an acceptable resolution to the matter.

Jonathan W. Redding, Esq.

November 9, 1992

Page 2

Sophisticated buyers and lenders realize that gasoline hydrocarbons are not in the same category as toxic waste; and that property can be used for other commercial purposes while undergoing remediation. They also realize there is virtually no risk in owning property which is being remediated under an approved plan which includes state reimbursement.

We are involved in numerous situations in which a property has been transferred, and is being used for other commercial purposes while undergoing remediation. If your clients are interested in offering the property for sale or lease to another party, we would be happy to cooperate in placing it in a more attractive condition. We will also provide assurances to third parties of our continued remediation in a manner which will not interfere with their ownership or use.

I am enclosing various documentation which indicates the current status of our remediation work. I trust the foregoing has answered your questions and that we will find a mutually acceptable way in which to resolve any differences between the parties.

Very truly yours,

A handwritten signature in dark ink, appearing to read "H. E. Lambert", with a stylized flourish at the end.

H. E. Lambert
Vice President and
Corporate Counsel

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
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OF COUNSEL

BETH E. ASPEDON
SPECIAL COUNSEL

TELECOPIER: (510) 451-1527

November 20, 1992

COPY

H. E. Lambert, Esq.
Vice President and Corporate Counsel
E-Z SERVE PETROLEUM MARKETING
COMPANY OF CALIFORNIA
10700 Interstate 45 North, Suite 500
Houston, Texas 77037-1187

Re: E-Z Serve Location No. 100877 NOTICE OF DEFAULT
525 West "A" Street, Hayward, California

Dear Mr. Lambert:

This is in response to your letter of November 9, 1992. We are pleased to learn that E-Z Serve is now in a position to discuss settlement of our clients' claims against E-Z Serve.

We understand from your letter that E-Z Serve alleges that the contamination at the site occurred as a result of the operations of its predecessor. We have no proof that this is the case and certainly do not intend to rely on self-serving statements by E-Z Serve's consultants to establish this fact. Please provide us with proof that E-Z Serve is not responsible, as well as the proof that E-Z Serve took steps to remediate the contamination which it has admitted it discovered in 1986. In addition, please describe E-Z Serve's efforts to stop continuing releases from the tank dispensing systems, which systems continued to be operated by E-Z Serve until at least mid-1990. Based on the information to date, it appears that E-Z Serve's operations on the property has led to significant groundwater contamination, the off-site extent of which has not yet been determined.

Besides E-Z Serve's direct responsibility for releases and failure to comply with law regarding notice to the regulatory agencies of the release, E-Z Serve assumed responsibility and accepted the tanks in good operating condition under paragraph 19 of the lease. Accordingly, under these circumstances, our clients have no sympathy for the fact that hundreds of thousands of dollars will be spent by E-Z Serve to remediate this property, and they intend to require prompt and complete remediation of the property.

With respect to your suggestion that our clients are not "cooperating" with E-Z Serve's request for an early lease termination, I believe they are willing to discuss the same, provided that such termination includes payment of all costs and attorneys' fees incurred by them to date, and E-Z Serve purchases the property at its fair market value. Otherwise, our clients have no alternative but to insist upon E-Z Serve's full compliance with the terms of the lease, including an enforcement action for E-Z Serve's default.

With respect to E-Z Serve's violation of the lease, they are too numerous to describe in detail. However, please note the following:

1. Section 5 and California common law requires that E-Z Serve take reasonable steps to prevent waste of the property. E-Z Serve's failure to maintain and properly operate the tanks has resulted in waste of the property. Under California law, this will entitle the lessor to treble damages.

2. Section 10 requires the lessee to operate the facility in compliance with law and not to allow any nuisance to exist on the property. We have notified you that illegal dumping is occurring on the property as a result of E-Z Serve's abandonment (which violates Section 12 of the lease), but E-Z Serve refuses to erect a fence. Numerous complaints have been brought to public officials regarding the nuisance conditions on the site. Furthermore, our clients have been ordered by the County Health Department to erect a fence to secure the site. See letter from Environmental Health dated October 23, 1992, which is attached hereto as Exhibit A. Accordingly, E-Z Serve is required to remove the waste from the property and erect a fence around the site under paragraphs 6, 10 and 11 of this lease. Furthermore, failure to promptly contain and remediate known releases violates numerous provisions of the California Health and Safety Code (HSC). See, e.g., HSC § 25280 et seq.

With respect to the balance of your letter, our clients are aware that the costs of litigation, as well as the costs of an accelerated cleanup of the property, exceeds the fair market value of the property. We advised them of this possibility following our early review of their files. This is why we suggested in June, 1992, that the easiest and most reasonable solution to avoid litigation between our clients would be E-Z Serve's purchase of the property. Sale to another party would involve extensive negotiations and legal transaction costs easily exceeding \$20,000 to \$30,000. And, even if our clients could sell the property, they

would be potentially liable to the buyer for cleanup and continually exposed to a lawsuit or government order for cleanup. This is especially true since your clients have still done nothing to actually cleanup the contamination on the property, which continues to be a public nuisance and a threat to local groundwater supplies.

This letter also acknowledges receipt of Associated Soils Analysis consultant report dated March 2, 1992, and work plan dated September 21, 1992. However, we require a complete set of your files concerning this site -- the maintenance and repair records from the date you acquired the site, any records relating to your purchase of the existing business from Powerine/Mobil Oil Company, and all of the consultant reports documenting contamination on the site. E-Z Serve's statutory obligation to consult with the lessor regarding the remediation of contamination can only be met if it submits the requested documentation. See Health and Safety Code § 25359.7, which states in pertinent part as follows:

"Any lessee or renter of real property who knows or has reasonable cause to believe that any release of a hazardous substance has come or will come to be located on or beneath that real property shall, within a reasonable period of time, either prior to the release or following the discovery by the lessee or renter of the presence or believed presence of the hazardous substance release, give written notice of that condition to the owner of the real property or to the lessor under the lessee's or renter's lease or rental agreement. . . .

"If the lessee or renter has knowledge of the presence of a release of a material amount of a hazardous substance . . . and knowingly and willfully fails to provide written notice when required by this subdivision to the owner or lessor, both of the following shall apply:

"(A) The failure is deemed to constitute a default, upon the owner's or lessor's written notice to the lessee or renter, under the lessee's or renter's lease or rental agreement, except that this subparagraph does not apply to lessees and renters of property used exclusively for residential purposes.

"(B) The lessee or renter is liable for a civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation.

"(3) A lessee or renter may cure a default under the lessee's or renter's lease or rental agreement which

resulted from a violation of this subdivision, by promptly commencing and completing the removal of, or taking other appropriate remedial action with respect to, the hazardous substance release. The removal or remedial action shall be conducted in accordance with all applicable laws and regulations and in a manner which is reasonably acceptable to, and which is approved in writing by, the owner or lessor. This paragraph does not relieve the lessee or renter of any liability for actual damages or for any civil penalty for a violation of this subdivision."

We look forward to the prompt receipt of all of E-Z Serve's relevant files and to further discussions to resolve our claims against E-Z Serve. Our clients desire to settle their claims without litigation, if possible. Please respond to this letter before December 15, 1992. Finally, please find enclosed our Proposition 65 notice concerning this site.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By

Jonathan W. Redding

JWR:lm

Enclosure

cc: Mr. and Mrs. Thomsen

(with copy of letter from E-Z Serve)

Ravi Arulanantham, Ph.D., CHMM

(with copy of letter from E-Z Serve)

Juliet Shin (with copy of letter from E-Z Serve)

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
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ANTONIA L. MORE
CHRISTOPHER E. REGGIE
MARIA I. LAWLESS
JENNIFER J. BANKER

FITZGERALD, ABBOTT & BEARDSLEY

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OAKLAND, CALIFORNIA 94612-1837

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CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

STACY H. DOBRZENSKY
OF COUNSEL

BETH E. ASPEDON
SPECIAL COUNSEL

TELECOPIER: (510) 451-1527

November 20, 1992

COPY

Gil Jensen, Esq.
Senior Deputy District Attorney
for the County of Alameda
7677 Oakport Street, Suite 400
Oakland, California 94621

State of California
Attorney General
455 Golden Gate Avenue
San Francisco, California 94102

H.E. Lambert
E-Z Serve Petroleum Marketing
Company of California
10700 Interstate 45 North, Suite 500
Houston, Texas 77037-1187

Re: Proposition 65 Notice of Violation
(HSC § 25249.7(d))

Ladies and Gentlemen:

This letter constitutes notice under the Safe Drinking Water and Toxic Enforcement Act of 1986 that our clients, Levonard and Margaret Thomsen, intend to initiate legal action against E-Z Serve Petroleum Marketing Company of California ("E-Z Serve Petroleum"), pursuant to Proposition 65 for pollution beneath the Thomsen's property located at 525 West "A" Street, Hayward, California. This pollution has impacted and threatens to continue to impact "sources of drinking water" as such term is defined by State Water Regional Control Board Regulation 88-63 and the San Francisco Bay Basin Regional Water Quality Control Plan.

The basis of the action is the apparent presence of petroleum constituents in the soil which are discharging to groundwater beneath the site. Free floating product, petroleum odor and petroleum sheen have been detected and observed on the groundwater surface of at least one monitoring well on site. This petroleum threatens the groundwater below the site.

Gil Jensen, Esq.
State of California, Attorney General
H.E. Lambert

Page 2

November 20, 1992

The violators, E-Z Serve Petroleum, are the former lessees and operators of the property who abandoned the site in mid-1990. It appears to us that E-Z Serve knowingly discharged or released benzene and other listed chemicals at the site since at least as early as 1986 when it knew its tank systems were leaking, but failed to remediate releases which it knew would impact groundwater. It may also have continued to operate a leaking tank system through mid-1990 knowing that it was discharging benzene to sources of drinking water. To date, although E-Z Serve has known of substantial releases of product containing benzene since at least November, 1986, it has taken no action to control the migration of the discharge of these chemicals into potential sources of drinking water or to remediate the soil contamination.

Please advise me at your earliest convenience, but not later than 60 days from the date of this notice, whether you intend to bring an action on behalf of the State of California.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By

Jonathan W. Redding

JWR:lm

cc: Levonard and Margaret Thomsen
Ravi Arulanantham, Ph.D., CHMM
Juliet Shin

October 28, 1992

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County
Department of Environmental Health
80 Swan Way, Room 200
Oakland, California 94621

RE: E-Z Serve #100877
525 West "A" Street
Hayward, CA

Dear Ms. Shin:

Enclosed please find a Quarterly Monitoring Report for each of the referenced locations.

This report was prepared by E-Z Serve's consultant, Environmental Oversight, Inc., Mr. Paul Martin, Project Manager.

Should you have any questions or need additional information at this time, please advise.

Sincerely,

Diane Bils for

D. D. Waters, Jr.
Vice President
Environmental, Construction, and Real Estate

DDW:db

white -env.health
yellow -facility
pink -files

ALAMEDA COUNTY, DEPARTMENT OF ENVIRONMENTAL HEALTH

80 Swan Way, #200
Oakland, CA 94621
(415) 271-4320

Hazardous Materials Division Inspection Form

file

Site ID# _____ Site Name E-Z Serve #100877 Today's Date 10/23/92

Site Address 525 west A street EPA ID# _____

City Hayward Zip 94 Phone _____

MAX Amt. Stored > 500lbs/55g/200cf? Y N
Hazardous Waste generated per month? _____

Inspection Categories:

- ☐ I. Haz. Mat/Waste GENERATOR/TRANSPORTER
- ☐ II. Business Plans, Acute Hazardous Materials
- ☐ III. Underground Tanks

The marked items represent violations of the Calif. Administration Code (CAC) or the Health & Safety Code (HS&C)

1A GENERATOR (Title 22)

	☐ 1. Waste ID	* 66471
	☐ 2. EPA ID	66472
	☐ 3. > 90 days	66508
	☐ 4. Label dates	66508
	☐ 5. Biennial	66493
Manifest	☐ 6. Records	66492
	☐ 7. Correct	66484
	☐ 8. Copy sent	66492
	☐ 9. Exception	66484
	☐ 10. Copies Rec'd	66492
Misc.	☐ 11. Treatment	66371
	☐ 12. On-site Disp. (H.S.&C.)	26189.5
	☐ 13. Ex Haz. Waste	66570
Prevention	☐ 14. Communications	67121
	☐ 15. Aisle Space	67124
	☐ 16. Local Authority	67126
	☐ 17. Maintenance	67120
	☐ 18. Training	67105
Conf. gency	☐ 19. Prepared	67140
	☐ 20. Name List	67141
	☐ 21. Copies	67141
	☐ 22. Emg. Coord. Tmg.	67144
Containers, Tanks	☐ 23. Condition	67241
	☐ 24. Compatibility	67242
	☐ 25. Maintenance	67243
	☐ 26. Inspection	67244
	☐ 27. Buffer Zone	67246
	☐ 28. Tank Inspection	67259
	☐ 29. Containment	67245
	☐ 30. Safe Storage	67261
	☐ 31. Freeboard	67257

Comments:

MR. Jonathan Redding:

Today I reinspected the above captioned property in Hayward. I was indeed surprised to see that several of the drums and old automobiles that I found in my previous have been removed. Today I found 1. five (55gal) drums labelled as well water (monitoring well)
2. Several broken appliances
3. trash and household garbage scattered around the property.

It appears to me that this property is being used as an illegal dumping ground.

Since you mentioned to me that you are representing the owners of the property, this office is requesting the property owners to secure this site with a fence. This will prevent future dumping on this site. Please reply as soon as possible. Thank you

A.R. Arulananthan

1B TRANSPORTER (Title 22)

	☐ 32. Applic./Insurance	66428
	☐ 33. Comp. Cert./CHP Insp.	66448
	☐ 34. Containers	66465
Manifest	☐ 35. Vehicles	66465
	☐ 36. EPA ID #s	66531
	☐ 37. Correct	66541
	☐ 38. HW Delivery	66543
	☐ 39. Records	66544
Conf'r	☐ 40. Name/ Covers	66545
	☐ 41. Recyclables	66800

Rev 6/88

Contact: _____

Title: _____

Signature: _____

Inspector: _____

Signature: _____

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
MICHAEL P. WALSH
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JENNIFER J. BANKER
PAUL S. LECKY

FITZGERALD, ABBOTT & BEARDSLEY

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CHARLES A. BEARDSLEY 1882-1963

STACY H. DOBRZENSKY
OF COUNSEL

BETH E. ASPEDON
SPECIAL COUNSEL

TELECOPIER: (510) 451-1527

October 13, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

COPY

Paul Martin
Environmental Director
10700 N. I-45, Suite 500
Houston, Texas 77037-1187

Re: E-Z Serve Location No. 100877
525 West "A" Street, Hayward, California

Dear Mr. Martin:

This letter is in follow up to my letter of July 16, 1992 (copy attached). E-Z Serve has failed to respond to this letter or to my follow up calls in September, 1992. If E-Z Serve continues to ignore its responsibilities under California Health and Safety Codes respecting notification of owners and consultation with them concerning cleanup of contaminated property, and continues to breach its lease in numerous respects, our clients will have little choice but to bring a lawsuit against E-Z Serve. This is not a desirable option, but our attempts to get basic information from you have not yielded any benefits so far.

Please notify me immediately with respect to E-Z Serve's intentions regarding this site, and forward, as previously requested, all reports documenting the investigation and cleanup of hydrocarbon contamination at the property.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By
Jonathan W. Redding

JWR:mah

Enclosure

cc: Levonard and Margaret Thomsen
Harken Marketing
Alameda County Dept. of Environmental Health

Mobil
BP

JAMES C. SOPER, INC.
PHILIP M. JELLEY, INC.
GERALD C. SMITH
LAWRENCE R. SHEPP
LLEWELLYN E. THOMPSON II
RICHARD T. WHITE
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FITZGERALD, ABBOTT & BEARDSLEY

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OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

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CARL H. ABBOTT 1867-1933
CHARLES A. BEARDSLEY 1882-1963

STACY H. DOBRZENSKY
OF COUNSEL

BETH E. ASPEDON
SPECIAL COUNSEL

TELECOPIER: (510) 451-1527

July 16, 1992

Paul Martin
E-Z Serve Petroleum Marketing Co.
Environmental Director
10700 N. I-45, Suite 500
Houston, Texas 77037-1187

Re: E-Z Serve Location No. 100877
525 West "A" Street, Hayward, California

Dear Mr. Martin:

We are the attorneys for Levonard and Margaret Thomsen. We have been retained by the Thomsens because of our expertise in the area of environmental law, including the management and litigation of underground storage tank leak cases.

In reviewing the files provided to me by our clients, it appears that substantial leakage from the underground storage tanks occurred as early as November, 1986, and that Converse Environmental Consultants of California ("CECC") was retained to do a site assessment of the property, including the drilling of soil borings and groundwater monitoring wells and that subsequent investigations by parties unknown were prepared in June, 1987. Other investigations were apparently performed by E-Z Serve personnel in 1991, and Associated Soils issued a report on March 2, 1992. None of these reports have been forwarded to our clients, as required by California law, and we hereby request that you do so immediately. Please send me one copy of all the above-referenced reports and any other reports concerning the repair or removal of the tank and dispensing systems or other investigation reports.

Our clients appreciate the fact that E-Z Serve continues to timely make its rental payments under the lease, even though it is no longer conducting a business on the site. Nevertheless, the abandonment of the site in its current condition is not acceptable to our clients: there are numerous drums of hazardous waste which continue to be illegally stored on the property and there is no longer a fence on the property to prevent dumping of trash, appliances or old automobiles which now litter the property. See enclosed photos of site taken about two weeks ago. In addition, due to the removal of the paving on the site, the lot is covered with weeds and is an unsightly nuisance to the neighbors.

July 16, 1992

illegally stored hazardous wastes, to remove the trash and other debris dumped on the site, and to secure the site with a fence in order to prevent such activities from occurring in the future. If this matter is not soon taken care of, it is reasonable to anticipate neighborhood complaints and actions by the County.

With respect to your May 20, 1992, letter suggesting a mutual termination of the lease, our clients would be willing to consider such termination once E-Z Serve has obtained a full and complete cleanup of the site, including a case closure letter from the San Francisco Bay Area Regional Water Quality Control Board; however, for the moment our clients intend to hold E-Z Serve to the terms of the lease. Although we do not have sufficient facts concerning the nature and extent of the contamination or the anticipated schedule for a thorough cleanup of the contamination, it may also be appropriate to discuss the terms upon which E-Z Serve would purchase the property from our clients. We do not have a current appraisal for the property at this time; however, based on my experience in the area, I would expect the appraised value to be somewhere between \$250,000.00-\$300,000.00, since the location is ideally situated in a commercial zone of Hayward in the immediate vicinity of the freeway on-ramp.

We appreciate your courtesy and cooperation in complying with the above requests and look forward to receiving your documentation and intended plans with respect to the gas station cleanup, along with your prompt abatement of the nuisance on the site. If you have any questions concerning the above, please contact me at your earliest convenience.

Finally, please send all future correspondence concerning the site to my attention, with a carbon copy to the Thomsens.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY

By

Jonathan W. Redding

JWR:mah

Enclosures: Site Photographs

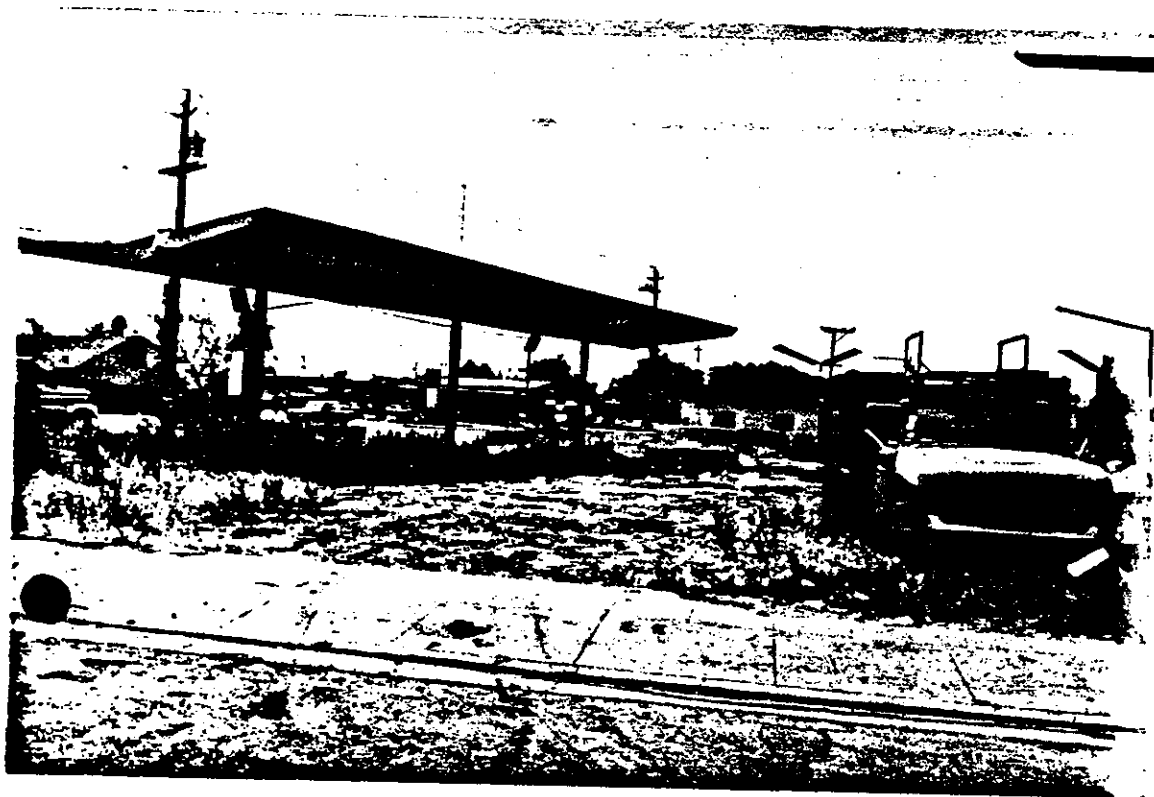
cc: M. James Pryor

Levonard and Margaret Thomsen

Harken Marketing

Alameda County Dept. of Environmental Health







92 SEP 21 PM 3:12

September 21, 1992

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County
Department of Environmental Health
80 Swan Way, Rm 200
Oakland, California 94621

RE: E-Z Serve #100877
525 West "A" Street
Hayward, California

Dear Ms. Shin:

Enclosed for your review and comments is a copy of a proposed work plan for the above referenced location. Once approved, E-Z Serve will solicit bids from qualified contractors to perform the work as outlined.

If I may be of further assistance, please contact me at (713)591-9827.

Sincerely,



Amy Stites
Environmental Coordinator

/as

Enclosure

CC: Mr. Eddy So
CRWQCB - San Francisco Bay Region
2201 Webster Street, 4th Floor
Oakland, California 94621

as97-877

September 4, 1992

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
80 Swan Way, Room 200
Oakland, California 94621

RE: E-Z Serve #100877
525 West A Street
Hayward, California

Dear Ms. Shin:

In response to your August 27 letter, E-Z Serve is preparing a workplan for your review.

In addition, E-Z Serve has contracted with Environmental Oversight, Inc. to conduct routine quarterly monitoring of the sight. Their first sampling is scheduled for September.

Please contact me if you have any questions.

Sincerely,

Amy Stites

Amy Stites
Environmental Coordinator

/as

as88-877

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

August 27, 1992

Amy Steitz
EZ Serve Petroleum Marketing
10700 North I-45, Suite 500
Houston, TX 77037-1187

STID 3580

RE: Required work plan for EZ Serve site, located at 525 West A Street, Hayward, California

NOTICE OF VIOLATION

Dear Ms. Steitz,

Ground water samples collected from all the monitoring wells at the above site have identified **very elevated** concentrations of Total Petroleum Hydrocarbons, up to 78,000 parts per billion (ppb), and benzene, as high as 13,000 ppb.

This office required the preparation and submittal of a work plan, in a letter dated April 24, 1992, addressing methods to delineate the contamination zone and to contain further migration of the ground water contaminant plume at the site. This work plan was due in June 1992, however, this office has not yet received it or any requests for an extension of this due date.

You are required to submit a work plan **within 45 days** of the date of this letter, addressing all the issues that were outlined in the letter, dated April 24, 1992, from this office (Please refer to the attached copy of this letter). Please be advised that this is a formal request for technical reports pursuant to **California Water Code Section 13267 (b)**. Any extensions of the stated deadlines, or modifications of the required tasks, must be confirmed in writing by either this agency or RWQCB.

Additionally, you are required to submit reports every quarter for the sampling of **all** the monitoring wells. The last monitoring report received by this office is dated March 2, 1992. **Per Section 2652 (d), Title 23, California Code of Regulations**, the owner or operator shall submit reports to the regulating agency every three months, or at more frequent intervals, until the investigation and cleanup are complete.

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, Assistant Agency Director

DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Division
80 Swan Way, Rm. 200
Oakland, CA 94621
(510) 271-4320

April 24, 1992

Amy Steitz
EZ Serve Petroleum Marketing
10700 North I-45, Suite 500
Houston, TX 77037-1187

STID 3580

RE: EZ Serve site, located at 525 West A Street, Hayward,
California

Dear Ms. Steitz,

This office has reviewed the recently submitted monitoring well installation report, dated March 2, 1992. Groundwater samples collected from all the newly installed monitoring wells (MW-1 through MW-6) have identified extremely high concentrations of Total Petroleum Hydrocarbons (TPH) and benzene, toluene, ethylbenzene, and xylenes (BTEX). For example, samples collected from Monitoring Well #5 (MW-5) exhibited 78,000 ppb TPH, and groundwater samples from MW-2 identified 13,000 ppb benzene.

Since all the on-site monitoring wells have identified elevated concentrations of TPH and BTEX, it appears that the contamination plume has migrated off site. You are required to submit a work plan to this office **within 45 days** of the date of this letter, which will address methods to delineate the contamination zone and to contain further migration of the contamination.

Please be advised that subsequent monitoring reports are to be submitted **quarterly** until this site qualifies for final RWQCB "sign-off". Such quarterly reports are due the first day of the second month of each subsequent quarter. Groundwater elevations are to be measured monthly for 12 consecutive months and then quarterly thereafter. Groundwater gradient maps must be developed for each water level monitoring event occurring at the site. This groundwater elevation information may be included in the quarterly reports submitted to this office.

The above reports must adhere to the technical requirements outlined in the Regional Water Quality Control Board's Staff Recommendations for the Initial Evaluation and Investigation of Underground Tanks and the State Water Board's LUFT manual. A



August 16, 1991

Ms. Pamela J. Evans
Hazardous Materials Specialist
Alameda County
Department of Environmental Health
80 Swan Way, Room 200
Oakland, California 94621

RE: EZ Serve of California
Location #100877
525 West A Street
Hayward, California

91 AUG 19 11:25

Dear Ms. Evans:

EZ Serve of California has contracted with Associated Soils Analysis, Inc. to perform the site assessments at the above listed location as outlined in EZ Serve's (formerly Harken Marketing) work plan and your letter dated June 17, 1991.

The contact person with Associated Soils is David Harris, General Manager at (209) 688-1011. The project should begin within the next seven working days.

If there are questions or more information is required, please give me a call at (713) 591-9827.

Sincerely,

A handwritten signature in cursive script that reads 'Tina Bowens'.

Tina Bowens
Environmental Coordinator

TB\

c: David Harris
Sharon Stout

011-877

E-Z SERVE
CORPORATION

July 3, 1991

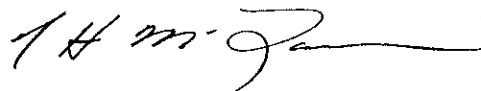
To Our Suppliers and Customers:

On May 3, 1991, E-Z Serve Corporation, parent of Harken Marketing Company, completed a Rights Offering, enabling the Company to become independent of its former owner, Harken Energy Corporation. As part of this transaction, E-Z Serve registered its shares on the American Stock Exchange (Symbol: EZS). The Rights Offering also recapitalized the Company, thereby positioning it for independence and future growth. Attached is a balance sheet at March 31, 1991 that was filed with the Securities and Exchange Commission as part of the Company's first quarter Form 10-Q. It shows the effects of the recapitalization on a pro forma basis, which effects will be reflected on an actual basis in the Company's second quarter Form 10-Q.

Consistent with the move to complete independence and to avoid possible confusion with the former parent, effective July 15, 1991, E-Z Serve Corporation will change the name of its operating subsidiary, Harken Marketing Company, and its California subsidiary, Harken Marketing Company of California, to E-Z Serve Petroleum Marketing Company and E-Z Serve Petroleum Marketing Company of California, respectively. This name change will not affect in any way the contracts or business transactions you previously conducted with these entities. All current Harken Marketing Company and Harken Marketing Company of California contracts continue in effect without change. Further, since this is a name change only, it is not necessary to replace existing contracts but, in the future, the new names will be used in all new contracts entered into by the Companies.

I am personally very enthusiastic about E-Z Serve's new-found independence and the opportunity it provides for new business and further expansion. I look forward to keeping you informed of events as they occur. In the meantime, if you have any specific questions regarding the Rights Offering or the name change, please feel free to contact either John Miller, Chief Financial Officer, at 713-591-9834 or John Hemphill, General Counsel, at 713-591-9805.

Very truly yours,



N. H. McLaurin
Chairman

Attachment

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

June 17, 1991

Tina Bowens
Harken Marketing
10700 North Freeway Suite 500
Houston TX 77037

RE: Proposed Work Plan for Former Underground Storage Tank Site
BP Station, 525 West A St., Hayward CA 94541

Dear Ms. Bowens:

I have reviewed the proposed work plan for installation of monitoring wells at the above referenced property. The proposal is acceptable to this office, however, I have the following comments and questions regarding the site and planned monitoring activities:

1. Supply this office and the Regional Water Quality Control Board with a copy of a work plan reviewed and stamped by a California-Certified Engineering Geologist, California-Registered Geologist, or a California-Registered Civil Engineer. Your stamped proposal must be submitted to this office, however, you should implement your proposal without delay.
2. No groundwater monitoring frequency or duration was specified in your proposal. Sample monitoring wells monthly for a minimum of three months. After three months of monthly sampling, sample wells on a quarterly basis for a minimum of one year.
3. Describe any work that has been done at the site to investigate the full depth and lateral extent of soil contamination. Provide information to this office on the status of stockpiled soil.
4. Supply quarterly reports that describe the status of the investigation and work performed during the reporting period. These reports must also interpret sampling data and should include recommendations or plans for further investigation and/or remediation.

HARKEN
MARKETING

May 20, 1991

Ms. Pamela J. Evans
Hazardous Materials Specialist
Alameda County
Department of Environmental Health
80 Swan Way, Room 200
Oakland, California 94621

RE: HMCC Location #100877
525 West A. Street
Hayward, California

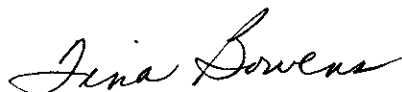
Dear Ms. Evans:

Enclosed for your review and file is a copy of the proposed work plan on the above referenced site.

Once approved, Harken Marketing Company will contract with a contractor licensed in the State of California (within 21-days after approval of work plan) to perform the scope of work outlined.

If there are questions or more information is required, please give me a call.

Sincerely,



Tina Bowens
Environmental Coordinator

TB\
Enclosure

c: Don Malone
Richard Hiatt - CRWQCB

tb64-877

Sticker

91 MAY 28 PM 2:25

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



April 24, 1991

Chuck Collins
Harken Marketing
P.O. Box 5657
Riverside CA 92517-9933

DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

RE: Contamination from Former Underground Storage Tanks at
BP Station, 525 West A St., Hayward CA 94541

NOTICE OF VIOLATION

Dear Mr. Collins:

On June 15, 1990, underground fuel storage tanks were removed from the above referenced property. Sampling results showed that gasoline constituents in native and stockpiled soils exceeded Regional Water Quality Control Board (RWQCB) action limits. You were instructed in writing by this office to submit a workplan for investigation and remediation of this contamination by December 30, 1990. Your representative, Tina Bowens, stated in correspondence that a work plan for the installation of five monitoring wells would be submitted to this office by January 15, 1991. To date, no work plan of any kind has been received for the site.

California Health and Safety Code Section 25298 (c) requires that you demonstrate to this agency that any releases from your underground tank have been investigated and that corrective or remedial action has been taken. You are required to investigate the full lateral and vertical extent of petroleum contamination affecting soil and groundwater at and beyond your site. **We require that you submit a work plan to this office by May 24, 1991.** This work plan must, at a minimum, address the following items:

1. Site History: Site use, any known hazardous materials spills, leaks, or accidents
2. Site Description: Hydrogeologic setting, including soil type(s), depth to groundwater, direction of groundwater flow, and characteristics of the aquifer(s)
3. Investigation Method: Method by which full lateral and vertical extent of contamination will be determined
 - a. A minimum of three groundwater monitoring wells is required in order to determine groundwater flow direction.
 - b. Groundwater samples from monitoring wells must be collected by a qualified person familiar with EPA and DHS sampling protocol. Samples must be analyzed by a state certified laboratory for TPH and BTEX constituents.

4. Planned Remediation or Disposal of Stockpiled Soil
5. Site Safety Plan

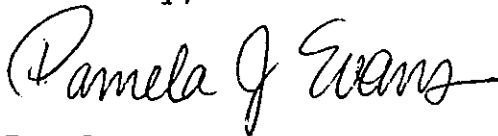
This is a formal request for technical reports pursuant to California Water Code Section 13267 (b). This office is working in conjunction with the RWQCB. All proposals, reports, and analytical results pertaining to this investigation and remediation must be sent to this office and to:

Richard Hiett
Regional Water Quality Control Board
2201 Webster St., 4th Floor
Oakland CA 94612

Be aware that Section 13268 (a) of the State Water Code states that failure to furnish reports as required by section 13267 (b) is a misdemeanor and provides for civil penalties.

You may contact me with any questions at 271-4320.

Sincerely,



Pamela J. Evans
Hazardous Materials Specialist

c: Gil Jensen, Alameda County District Attorney's Office
Richard Hiett, RWQCB

HARKEN
MARKETING

December 13, 1990

Sticker Rec'd Workplan 1/17/91

Ms. Pamela J. Evans
Hazardous Materials Specialist
Alameda County Health Care Services
Department of Environmental Health
80 Swan Way, Room 200
Oakland, California 94621

RE: HMC Location #100877
525 West A Street
Hayward, California

Dear Ms. Evans:

In response to your letter dated November 27, 1990, attached for your review and file are copies of the Hazardous Waste Manifest forms requested by your office.

In reference to sampling of the six monitoring wells at the site; the wells were destroyed during demolition.

Harken's will submit a work plan by January 15, 1991 to install five (5) new wells at the site.

If there are questions or more information is required, please give me a call at (713) 591-9827.

Sincerely,

Tina Bowens

Tina Bowens
Environmental Director

TB/
Attachments

1266-877

90 DEC 17 PM 11:28

UNIFORM HAZARDOUS
WASTE MANIFEST

Generator's US EPA ID No. CA 09016594260
Manifest Document No. 00000000000000000000

2. Page 1 of 1
Information in the shaded areas is not required by Federal law.

3. Generator's Name and Mailing Address
HARKEN MARKETING
P.O. Box 3657, Riverside, CA 92517-9933
4. Generator's Phone (714) 369-7050
5. Transporter 1 Company Name
H & H Ship Service Company
6. US EPA ID Number
CA 0004701168
7. Transporter 2 Company Name
8. US EPA ID Number
9. Designated Facility Name and Site Address
H & H Ship Service Company
220 China Basin Street
San Francisco, CA 94107
10. US EPA ID Number
CA 0004771168

A. State Manifest Document Number
90038048
B. State Generator ID
C. State Transporter ID
D. Transporter's Phone
E. State Transporter ID
F. Transporter's Phone
G. State Facility ID
H. Facility's Phone

11. US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)		12. Containers No.	Type	13. Total Quantity	14. Unit Wt/Vol	15. State Hazardous Waste Code	16. EPA/Other Hazardous Waste Code
a. RESIDUE GASOLINE TANK NON-RCRA HAZARDOUS WASTE SOLID		001	TP	1000000	F		
b.							
c.							
d.							

1. Additional Description of Materials Listed Above
PUMPED OUT 10,000 gallon tank last containing
gasoline. Tank inserted with 10,000 gallon
residue.

K. Handling Codes for Wastes Listed Above
a.
b.
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15. Special Handling Instructions and Additional Information
JOB #4710
APPROPRIATE PROTECTIVE CLOTHING AND RESPIRATOR.
JOB SITE: B.P. STATION
525 West "A" Street
Hayward, California

16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.
If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name: BILL TUNES
Signature: [Signature]
Month Day Year: 06/15/96

17. Transporter 1 Acknowledgement of Receipt of Materials
Printed/Typed Name: MARTIN J. COSTELLO
Signature: [Signature]
Month Day Year: 06/15/96

18. Transporter 2 Acknowledgement of Receipt of Materials
Printed/Typed Name: [Blank]
Signature: [Blank]
Month Day Year: [Blank]

19. Discrepancy Indication Space
[Blank]

20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in item 19.
Printed/Typed Name: [Blank]
Signature: [Blank]
Month Day Year: [Blank]

IN CASE OF AN EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8802; WITHIN CALIFORNIA CALL 1-800-852-7650

**UNIFORM HAZARDOUS
WASTE MANIFEST**

1. Generator's US EPA ID No.

Manifest
Document No.

2. Page 1

Information in the shaded areas
is not required by Federal law.

3. Generator's Name and Mailing Address

HARKEN MARKETING

P. O. Box 5657, Riverside, CA 92517-9933

4. Generator's Phone (714) 369-7050

A. State Manifest Document Number
90038047

B. State Generator's ID Number

5. Transporter 1 Company Name

H & H Ship Service Company

6. US EPA ID Number

CAD004771168

C. State Transporter's ID Number

D. Transporter's Phone

7. Transporter 2 Company Name

8. US EPA ID Number

E. State Transporter's ID Number

F. Transporter's Phone

9. Designated Facility Name and Site Address

H & H Ship Service Company

220 China Basin Street

San Francisco, CA 94109

10. US EPA ID Number

CAD004771168

G. State Facility's ID Number

H. Facility's Phone

11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)

12. Containers

No.

Type

13. Total
Quantity

14. Unit
Wt/Vol

RESIDUE GASOLINE TANK

NON-RCRA HAZARDOUS WASTE SOLID

01

1

100

P

State
EPA/Other
State
EPA/Other
State
EPA/Other
State
EPA/Other

15. Additional Descriptions of Materials Listed Above

PUMPED OUT 10,000 gallon tank last containing
gasoline. Tank inerted with dry ice for
transport.

K. Handling Codes for Wastes Listed Above

01

16. Special Handling Instructions and Additional Information

JOH 14710

JOB SITE: B.P. STATION

APPROPRIATE PROTECTIVE CLOTHING AND RESPIRATOR.

535 West "A" Street
Hayward, California

GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.

If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment. OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name

JOHN JONES

Signature

Month Day Year

06/15/90

17. Transporter 1 Acknowledgement of Receipt of Materials

Printed/Typed Name

NORMAN L. BERG

Signature

Month Day Year

06/15/90

18. Transporter 2 Acknowledgement of Receipt of Materials

Printed/Typed Name

Signature

Month Day Year

19. Discrepancy Indication Space

20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 10.

Printed/Typed Name

Signature

Month Day Year

IN CASE OF AN EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8802; WITHIN CALIFORNIA CALL 1-800-852-7850

UNIFORM HAZARDOUS WASTE MANIFEST		Generator's US EPA ID No.	Manifest Document No.	Page 1 of 1	Information in the shaded areas is not required by Federal law.
3. Generator's Name and Mailing Address HARKEN MARKETING P. O. Box 5657, Riverside, CA 92517-9933		1. Generator's US EPA ID No. CA 0901659428		A. State Manifest Document Number 90038048	
4. Generator's Phone (714) 369-7050		5. Transporter 1 Company Name H & H Ship Service Company		B. State Generator's ID No. 0000000000	
6. Transporter 1 US EPA ID Number CA 0004771168		7. Transporter 2 Company Name 		C. State Transporter's ID No. 0000000000	
8. Transporter 2 US EPA ID Number 		9. Designated Facility Name and Site Address H & H Ship Service Company 220 China Basin Street San Francisco, CA 94107		D. Transporter's Phone (415) 447-4000	
10. US EPA ID Number CA 0004771168		11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number) HAZARDOUS WASTE LIQUID, N.O.S. ORM-Z NA 9189		E. State Transporter's ID No. 0000000000	
12. Containers No. Type 0 10 11 T 11		13. Total Quantity 7400		F. Facility's Phone (415) 447-4000	
14. Unit Wt/Vol 0		15. Additional Descriptions for Materials Listed Above FUEL OIL AND WATER		G. State Facility's ID No. 0000000000	
16. Special Handling Instructions and Additional Information JOB #4697 APPROPRIATE PROTECTIVE CLOTHING AND RESPIRATOR		17. Handling Codes for Wastes Listed Above 101		H. Facility's Phone (415) 447-4000	
18. Special Handling Instructions and Additional Information JOB SITE: B.P. STATION 525 West "A" Street Hayward, California		19. Discrepancy Indication Space 		I. Facility's Phone (415) 447-4000	
20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19. Printed/Typed Name MARTIN J. COSTELLO		Signature Martin J. Costello		Month Day Year 10/6/11 5/9/0	

IN CASE OF AN EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8802; WITHIN CALIFORNIA CALL 1-800-652-7650

UNIFORM HAZARDOUS WASTE MANIFEST

Generator's US EPA ID No.

Manifest Document No.

Page 1 of 1

Information in the shaded areas is not required by Federal law.

3. Generator's Name and Mailing Address

MARKEN MARKETING
P. O. Box 5657, Riverside, CA 92517-9953

4. Generator's Phone (714) 369-7050

6. Transporter 1 Company Name

H & H Ship Service Company

7. US EPA ID Number

CA0004771168

7. Transporter 2 Company Name

8. US EPA ID Number

9. Designated Facility Name and Site Address

H & H Ship Service Company
220 China Basin Street
San Francisco, CA 94107

10. US EPA ID Number

CA0004771168

11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)

RESIDUAL DIESEL TANK
NON-RCRA HAZARDOUS WASTE SOLID

12. Containers

No. Type

10 11 T P

13. Total Quantity

10 10 10 10

14. Unit

Wt/Vol

P

15. Additional Descriptions for Materials Listed Above

PUMPED OUT OF DIESEL TANK AND CONTAINING
GEL. WHEN TANKED WAS FOR THE
GENERATOR.

16. Handling Codes for Waste Listed Above

01

15. Special Handling Instructions and Additional Information

JOB #4710

JOB SITE:

B.P. STATION

525 West "A" Street

Hayward California

APPROPRIATE PROTECTIVE CLOTHING AND RESPIRATOR.

16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.

If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, If I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name

JOHN JONES

Signature

[Signature]

Month Day Year

10/6/15/90

17. Transporter 1 Acknowledgement of Receipt of Materials

Printed/Typed Name

JAMES R. MORGAN

Signature

[Signature]

Month Day Year

10/6/15/90

18. Transporter 2 Acknowledgement of Receipt of Materials

Printed/Typed Name

Signature

Month Day Year

19. Discrepancy Indication Space

20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.

Printed/Typed Name

Signature

Month Day Year

IN CASE OF AN EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8602. WITHIN CALIFORNIA CALL 1-800-852-7680

UNIFORM HAZARDOUS WASTE MANIFEST

1. Generator's US EPA ID No. **CA0001000128000000**
Manifest Document No. **1**

2. Page 1 of 1
Information in the shaded areas is not required by Federal law.

3. Generator's Name and Mailing Address
HARKEN MARKETING INC.
P. O. Box 5697, Riverside, CA 92517-9935
4. Generator's Phone **(714) 369-7050**

A. State Manifest Document Number
90038049
B. State Generator ID
CA0001000128000000

5. Transporter 1 Company Name
H & H Ship Service Company
6. US EPA ID Number
CA00010001168

C. State Transporter ID
CA00010001168

7. Transporter 2 Company Name
H & H Ship Service Company
8. US EPA ID Number
CA00010001168

D. State Transporter ID
CA00010001168

9. Designated Facility Name and Site Address
H & H Ship Service Company
220 China Basin Street
SAN FRANCISCO, CA 94107
10. US EPA ID Number
CA00010001168

E. State Facility ID
CA00010001168

11. US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)

12. Containers

a. **RESIDUE GASOLINE TANK**
NON-RCRA HAZARDOUS WASTE SOLID
b. **0** c. **1** d. **1** e. **1** f. **1** g. **1** h. **1** i. **1** j. **1** k. **1** l. **1** m. **1** n. **1** o. **1** p. **1** q. **1** r. **1** s. **1** t. **1** u. **1** v. **1** w. **1** x. **1** y. **1** z. **1**

13. Total Quantity
1 14. Unit
P

15. Special Handling Instructions and Additional Information
JOB #4710
APPROPRIATE PROTECTIVE CLOTHING AND RESPIRATOR.
JOB SITE: B.P. STATION
525 West "A" Street
Hayward, California

16. Generator's Certification: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.
If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment. OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name
JOHN JONES
Signature
[Signature]
Month Day Year
10 6 15 90

17. Transporter 1 Acknowledgement of Receipt of Materials
Printed/Typed Name
JOSE J. MORENO
Signature
[Signature]
Month Day Year
10 6 15 90

18. Transporter 2 Acknowledgement of Receipt of Materials
Printed/Typed Name
JOSE J. MORENO
Signature
[Signature]
Month Day Year
10 6 15 90

19. Discrepancy Indication Space

20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.
Printed/Typed Name
JOSE J. MORENO
Signature
[Signature]
Month Day Year
10 6 15 90

21. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.
Printed/Typed Name
JOSE J. MORENO
Signature
[Signature]
Month Day Year
10 6 15 90

90038049
IN CASE OF AN EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8802; WITHIN CALIFORNIA CALL 1-800-452-7550

UNIFORM HAZARDOUS WASTE MANIFEST

1. Generator's US EPA ID No.

Manifest Document No.

2. Page 1 of 1

Information in the shaded areas is not required by Federal law.

3. Generator's Name and Mailing Address

HARKEN MARKETING

P.O. Box 3657, Riverside, CA 92517-9933

4. Generator's Phone (714) 369-7050

5. Transporter 1 Company Name

H & H Ship Service Company

6. US EPA ID Number

EAD0004771168

7. Transporter 2 Company Name

8. US EPA ID Number

9. Designated Facility Name and Site Address

H & H Ship Service Company

220 China Basin Street

San Francisco, CA 94107

10. US EPA ID Number

EAD0004771168

11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)

a. RESIDUE GASOLINE TANK

NON-RCRA HAZARDOUS WASTE SOLID

12. Containers

No. Type

13. Total Quantity

14. Unit

Wt/Vol

10 11 7 12

1 10 10 10

P

15. State

16. EPA/Other

17. State

18. EPA/Other

19. State

20. EPA/Other

14. Additional Descriptions for Materials Listed Above

FILLED OUT 10,000 gallon tank last containing gasoline. Tank inerted with dry ice for transport.

15. Handling Codes for Wastes Listed Above

15. Special Handling Instructions and Additional Information

JOB #4710

JOB SITE: B.P. STATION

APPROPRIATE PROTECTIVE CLOTHING AND RESPIRATOR

525 West "A" Street
Hayward California

16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.
If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name

Signature

Month Day Year

17. Transporter 1 Acknowledgment of Receipt of Materials

Printed/Typed Name

MARTIN J. COSTELLO

Signature

Month Day Year

18. Transporter 2 Acknowledgment of Receipt of Materials

Printed/Typed Name

Signature

Month Day Year

19. Discrepancy Initiation (Date)

20. Facility Owner or Operator Certification of Receipt of Hazardous Materials Covered by this Manifest except as noted in Item 14

Printed/Typed Name

Signature

Month Day Year

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

November 27, 1990

Chuck Collins
Harken Marketing
P.O. Box 5657
Riverside CA 92517-9933

RE: Contamination at BP Station, 525 W. A St., Hayward CA 94541

Dear Mr. Collins:

I have reviewed the analysis results of the soil samples taken August 24 from the former pump and piping area at the A St. site. Fuel constituent levels (TPHg, TPHd, and BTEX) found in this area and previously in the former tank pit require further investigation and remediation. As was stated in the last correspondence from this office, you are required to submit a workplan **no later than January 15, 1991**, that addresses the following issues:

1. How contaminated stockpiled soil will be remediated and/or disposed of
2. The manner in which the full lateral and vertical extent of contamination will be defined and remediated
3. Hydrogeologic conditions and the manner in which possible groundwater contamination, on and offsite, will be investigated

In your last correspondence, you stated your intention to sample the six monitoring wells at the site. Please supply this office with the geologist's/engineer's report of the well locations and well construction data, as well as the complete sampling and analysis history for each well. This information must be submitted **no later than December 15, 1990**. Also required by that date are copies of the Hazardous Waste Manifests for the removed tanks signed by a representative of the treatment facility that received them. You may contact me with any questions at (415)271-4320.

Sincerely,

A handwritten signature in cursive script that reads "Pamela J. Evans".

Pamela J. Evans
Hazardous Materials Specialist

c: Richard Hiett, Regional Water Quality Control Board

HARKEN
MARKETING

Sticker #1

August 7, 1990

90 AUG 16 AM 1:10

Ms. Pamela Evans
Hazardous Materials Specialist
Alameda County Health Care
Services Agency
P. O. Box 28924
Oakland, CA 94612

RE: HMC LOCATION #100877
525 WEST A STREET
HAYWARD, CA

Dear Ms. Evans:

In response to your July 12, 1990 letter regarding the subject location, Harken Marketing Company is in the process of preparing an environmental assessment plan at the site and currently proposes the following:

- 1) Line the existing tank excavation with visqueen and replace the contaminated soil back into the hole until the extent of additional soil contamination can be determined and a remediation plan developed.
- 2) Remove the underground piping and sample in appropriate areas to determine the presence, if any, of additional soil contamination.
- 3) Sample and laboratory analyze the six monitoring wells currently installed on site to determine the impact to the existing groundwater.

Harken Marketing is currently completing plans for a new tank installation at the site and will forward them to your department for review prior to any installation work proceeds.

Please contact me should you have any further questions.

Sincerely,



Paul R. Martin
Environmental Director

PRM/cad

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Director



Telephone Number: (415)

July 12, 1990

Chuck Collins
Harken Marketing
P.O. Box 5657
Riverside CA 92517-9933

Stick #2

RE: ✓ Remediation Activity at BP Station, 525 W. A St., Hayward

Dear Mr. Collins:

My staff has reviewed the sampling results submitted by Consolidated Testing Laboratories, Inc. for the A Street site. Total Petroleum Hydrocarbon (TPH) soil concentrations exceeded levels that would allow immediate backfilling and closure. Therefore, this office will expect a remediation work plan for the site. Please submit this work plan by August 12, 1990 and address the following issues:

1. How stockpiled soil will be remediated and/or removed to an appropriate disposal facility.
2. The manner in which the full lateral and vertical extent of the contamination will be defined and remediated.
3. How piping associated with the tank removals was dismantled and disposed of, and whether any sampling has been done beneath the pipes.

It has come to my attention that new tanks may be installed at this site at some point in time. To date, this office has not received installation plans. This Department must review and accept any underground storage tank installation plans before work proceeds. If installation work is planned, please inform us of the approximate date and submit plans before proceeding. You may contact Hazardous Materials Specialist Pamela Evans with any questions at 271-4320.

Sincerely,

Edgar B. Howell III, Chief
Hazardous Materials Division

EBH:PJE

c: Richard Hiett, Regional Water Quality Control Board
Howard Hatayama, Department of Health Services
James Ferdinand, Eden Fire Protection District
John Jones, Triple "J" Construction

white -env.health
yellow -facility
pink -files

ALAMEDA COUNTY, DEPARTMENT OF
ENVIRONMENTAL HEALTH

80 Swan Way, #200
Oakland, CA 94621
(415) 271-4320

Hazardous Materials Inspection Form

II, III

II.A BUSINESS PLANS (Title 19)

1. Immediate Reporting	2703
2. Bus. Plan Stds.	25503(b)
3. RR Cars > 30 days	25503.7
4. Inventory Information	25504(a)
5. Inventory Complete	2730
6. Emergency Response	25504(b)
7. Training	25504(c)
8. Deficiency	25505(a)
9. Modification	25505(b)

II.B ACUTELY HAZ. MATLS

10. Registration Form Filed	25533(a)
11. Form Complete	25533(b)
12. RMPP Contents	25534(c)
13. Implement Sch. Req'd? (Y/N)	
14. OffSite Conseq. Assess.	25524(c)
15. Probable Risk Assessment	25534(d)
16. Persons Responsible	25534(g)
17. Certification	25534(f)
18. Exemption Request? (Y/N)	25536(b)
19. Trade Secret Requested?	25538

III. UNDERGROUND TANKS (Title 23)

General	1. Permit Application	25284 (H&S)
	2. Pipeline Leak Detection	25292 (H&S)
	3. Records Maintenance	2712
	4. Release Report	2651
	5. Closure Plans	2670

Monitoring for Existing Tanks	6. Method	
	1) Monthly Test	
	2) Daily Vadose	
	Semi-annual groundwater	
	One time soils	
	3) Daily Vadose	
	One time soils	
	Annual tank test	
	4) Monthly Groundwater	
One time soils		
5) Daily Inventory		
Annual tank testing		
Cont pipe leak det		
Vadose/groundwater mon.		
6) Daily Inventory		
Annual tank testing		
Cont pipe leak det		
7) Weekly Tank Gauge		
Annual tank testing		
8) Annual Tank Testing		
Daily Inventory		
9) Other		

7. Precs Tank Test	2643
Date:	
8. Inventory Rec.	2644
9. Soil Testing	2646
10. Ground Water	2647

New Tanks	11. Monitor Plan	2632
	12. Access, Secure	2634
	13. Plans Submit	2711
	Date:	
14. As Built	2635	
Date:		

Site ID # _____ Site Name BP Station Today's Date 6/15/90

Site Address 525 W. A St

City Hayward Zip 94545 Phone _____

MAX AMT stored > 500 lbs, 55 gal., 200 cft.?

Inspection Categories:

- ☐ I. Haz. Mat/Waste GENERATOR/TRANSPORTER
☐ II. Business Plans, Acute Hazardous Materials
☒ III. Underground Tanks

* Calif. Administration Code (CAC) or the Health & Safety Code (HS&C)

Comments:

John
Tank pull was scheduled for today by Jones
of Triple J Construction. However, Fire Depart-
ment had not been notified of the tank
removal as of the time I arrived. (~ 2:30 pm)
Captain Anderson with Eden fire arrived ~ 3:50 pm.
all four tanks were still in the tank pit. Overfill
had been excavated and tanks had been
washed and rendered inert. Explosimeter
had been used to take lower explosive limit
readings. Diesel tank (at west end of pit)
appeared to have been contaminated on outside,
possibly by ~~rain~~ spillage during filling. Petroleum
odor was quite apparent from various sections
of soil piles, particularly from pile at west end
of excavation. Observed 3 tanks being pulled.
No visible holes or corrosion. No water in pit.
H+H hauled the tanks to their S.F. facility
and the waste rinse water as well.
Consolidated Soils Laboratory sampled soil piles beneath
tanks - Sal Espinosa did sampling.

II, III

Contact: John Jones - Triple "J" Construction

Title: Contractor

Signature: [Signature]

Inspector:

Signature: Pamela J Evans

June 13, 1990

Levonard A. and Margaret S. Thomsen
307 Black Oak Dr.
Chico, California 95926

Reference: Leased premises - 525 West "A" St., Hayward, CA.

Dear Mr. and Mrs Thomsen:

As you may be aware we have had the above referred to station location, which we lease from you, closed for quite some time. We were forced to close because the underground storage tanks would not pass the required tank tightness tests. In order to remedy the current situation we must remove the underground tanks and related piping and conduct an investigation. The removal is taking place this week.

At the time of the extensive excavation we would like to completely upgrade and remodel the facility. The upgrade will include the installation of new underground storage tanks and piping, new automated gasoline dispensing equipment and a convenience store building. We plan to use the existing canopy structure and to resurface the entire lot. The equipment installed will be of the latest approved design, to accommodate constant monitoring of tanks and lines.

Pursuant to Section Four B. of our lease agreement, your agreement to the alterations is required. Therefore, I ask that you sign a copy of this letter where indicated, and return it to me in the enclosed envelope.

If you have any questions, please call me.

Sincerely,

Sharon A. Stout
Sharon A. Stout
Vice President

SAS:bas

cc: Chuck Collins
Lease file

APPROVED:

Levonard A. Thomsen
Levonard A. Thomsen
Margaret S. Thomsen
Margaret S. Thomsen

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



COPY 1

DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

May 23, 1990

no 10w 5/24

Chuck Collins
Harken Marketing
P.O. Box 5657
Riverside CA 92517-9933

RE: Closure Plan for Fuel Storage Tank Removal at BP Station,
525 W. A St., Hayward

Dear Mr. Collins:

My staff has reviewed the closure plan submitted by Triple "J" Construction for the above referenced site. As discussed today by telephone with John Jones of Triple "J" Construction, the following additional information and documents are needed in order for the plan to be accepted:

my mistake & we do have copy on file

1. This office does not have on file an unauthorized release report form which is required once a hazardous material leak has been discovered. A form has been enclosed for your convenience, and one also will be sent to Triple "J".

We got this info on 6-1-90

2. A description of the chemical analysis methods must be included in the plan (item #17). John Jones with Triple "J" has agreed to supply this information.

Pen and ink changes to the original closure plan and Site Safety Plan include the following:

1. Quality Vacuum will transport any product that may be left in the tanks along with the rinsate generated from cleaning them.

2. Site workers will be briefed on hazards and safety procedures prior to tank removal.

3. Safety goggles and gloves resistant to petrochemicals will be available onsite to workers.

4. An explosimeter will be used to monitor hazardous vapors and oxygen levels. Meters are calibrated offsite with hexane as the test gas.

5. Three fire extinguishers will be placed onsite in marked spots near the excavations.

May 23, 1990
Chuck Collins
Harken Marketing
RE: Closure Plan for 525 W. A St., Hayward
Page 2 of 2

Final acceptance of your closure plans may occur once the Release Report and chemical analysis information is received by this office. Please contact Hazardous Materials Specialist Pamela Evans with any questions at 271-4320.

Sincerely,

Edgar B. Howell III, Chief
Hazardous Materials Division

EBH:PJE

enclosures

c: Lester Feldman, Regional Water Quality Board
Howard Hatayama, Department of Health Services
James Ferdinand, Eden Fire Protection District
John Jones, Triple "J" Construction

**ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
DEPARTMENT OF ENVIRONMENTAL HEALTH
HAZARDOUS MATERIALS DIVISION
80 SWAN WAY, ROOM 200
OAKLAND, CA 94621**

PHONE NO. 415/271-4320

ATTN: PAM EVAN'S

ACCEPTED
DEPARTMENT OF ENVIRONMENTAL HEALTH
400 - 27th Street, Third Floor
Oakland, CA 94612
Telephone: (415) 374-7237

These plans have been reviewed and found to be acceptable and comply with the requirements of State and local laws. Changes to your plans indicated by this Department are to assure compliance with State and local laws. This project proposed herein is now eligible for issuance of any required building permits for construction.

The owner of these accepted plans must be on the job site at all times during construction and operation involving the removal.

Any changes or alterations of these plans and specifications must be submitted to this Department and to the Building Inspection Department to determine if such changes meet the requirements of State and local laws. Notify this Department at least 48 hours prior to the following required inspections:

- _____ Removal of Tank and Piping
- _____ Sampling
- _____ Final Inspection

Issuance of a permit to operate is dependent on compliance with accepted plans and all applicable regulations.

THERE IS A FINANCIAL PENALTY FOR NOT OBTAINING THESE INSPECTIONS

Pe 6-1-90

UNDERGROUND TANK CLOSURE/MODIFICATION PLANS

1. Business Name B.P STATION
Business Owner HORIZEN MARKETING
2. Site Address 525 WEST 'A' ST.
City HAYWARD Zip _____ Phone NONE (CLOSED UNIT)
3. Mailing Address P.O. BOX 5657
City RIVERSIDE, CA. Zip 92517-9933 Phone 714-369-7050
4. Land Owner B-P AMERICA
Address _____ City, State _____ Zip _____
5. EPA I.D. No. CA0981659428
6. Contractor TRIPLE 'J' CONSTRUCTION
Address 1232 FAIRVIEW
City TOLARE, CA. 93274 Phone 209-686-6203
License Type A-P-61/040 ID# 569970
7. Consultant, _____
Address _____
City _____ Phone _____

Project # 568883

Fee Paid \$31.00

Date 5/13/90

8. Contact Person for Investigation

Name CHUCK COLLINS Title AREA REP - HARKEN MFG.
Phone 805-832-9339-02-714-369-7050

9. Total No. of Tanks at facility 4

10. Have permit applications for all tanks been submitted to this office?
Yes [☒] No [☐]

11. State Registered Hazardous Waste Transporters/Facilities

a) Product/Waste Transporter - (TANK'S EMPTY NO PRODUCT)

Name same as (b) if necessary EPA I.D. No. _____

Address _____

City _____ State _____ Zip _____

b) Rinsate Transporter

Name QUALITY VACUUM EPA I.D. No. CA0980818702

Address 6904 JENNIFER ST.

city BAKERSFIELD State CA. Zip 93308

c) Tank Transporter

Name H & H ENVIRONMENTAL EPA I.D. No. CAD004771168

Address 220 CHINA BASIN ST.

city SAN FRANCISCO State CA. Zip 94107

d) Contaminated Soil Transporter - UNKNOWN @ THIS TIME

Name _____ EPA I.D. No. _____

Address _____

City _____ State _____ Zip _____

12. Sample Collector

Name CONSOLIDATED TESTING

Company CONSOLIDATED TESTING

Address 101 W. MORTON

city PORTLAND State CA. Zip 93257 Phone 209-781-0571

13. Sampling Information for each tank or area

Tank or Area		Material sampled	Location & Depth
Capacity	Historic Contents (past 5 years)		
10,000	DIESEL	(800) TPH + OIL + GREASE	2'-4' BELOW TANK ✓
10,000	UNLEAD	TPH + BTX	✓
10,000	REGULAR	TPH + BTX	✓
10,000	U/L PREM.	TPH + BTX	✓
		(and ground-water if present)	

14. Have tanks or pipes leaked in the past? Yes ☒ No ☐

If yes, describe. REGULAR LINE LEAK

APPROX 1 1/2 YR'S AGO

15. NFPA methods used for rendering tank inert? Yes ☒ No ☐

If yes, describe. DOOR RINSE TANK WITH HOT WATER

REMOVE RINSATE USE COPUS BLOWER (45 MIN PER TANK)

TO REDUCE L.E.L ADD DRY ICE 15 LB'S PER 1000 GAL.

An explosion proof combustible gas meter shall be used to verify tank inertness.

16. Laboratories

Name B-C LAB'S

Address 4100 PIERCE

City BAKERSFIELD, State CA. Zip 93308

State Certification No. DOTS # 102

17. Chemical Methods to be used for Analyzing Samples

Contaminant Sought	EPA, DHS, or Other Sample Preparation Method Number	EPA, DHS, or Other Analysis Number
Unleaded tank: BTXE TPH as gasoline	5030	8020 GCFID
Regular tank: BTXE TPH as gasoline Lead	5030	8020 GCFID DHS - as specified in LWF manual
Deisel tank: TPH diesel BTXE	3550	GCFID 8020

18. Submit Site Safety Plan

19. Workman's Compensation: Yes ☒ No []

Copy of Certificate enclosed? Yes ☒ No []

Name of Insurer TRANSAMERICA

20. Plot Plan submitted? Yes ☒ No []

21. Deposit enclosed? Yes ☒ No []

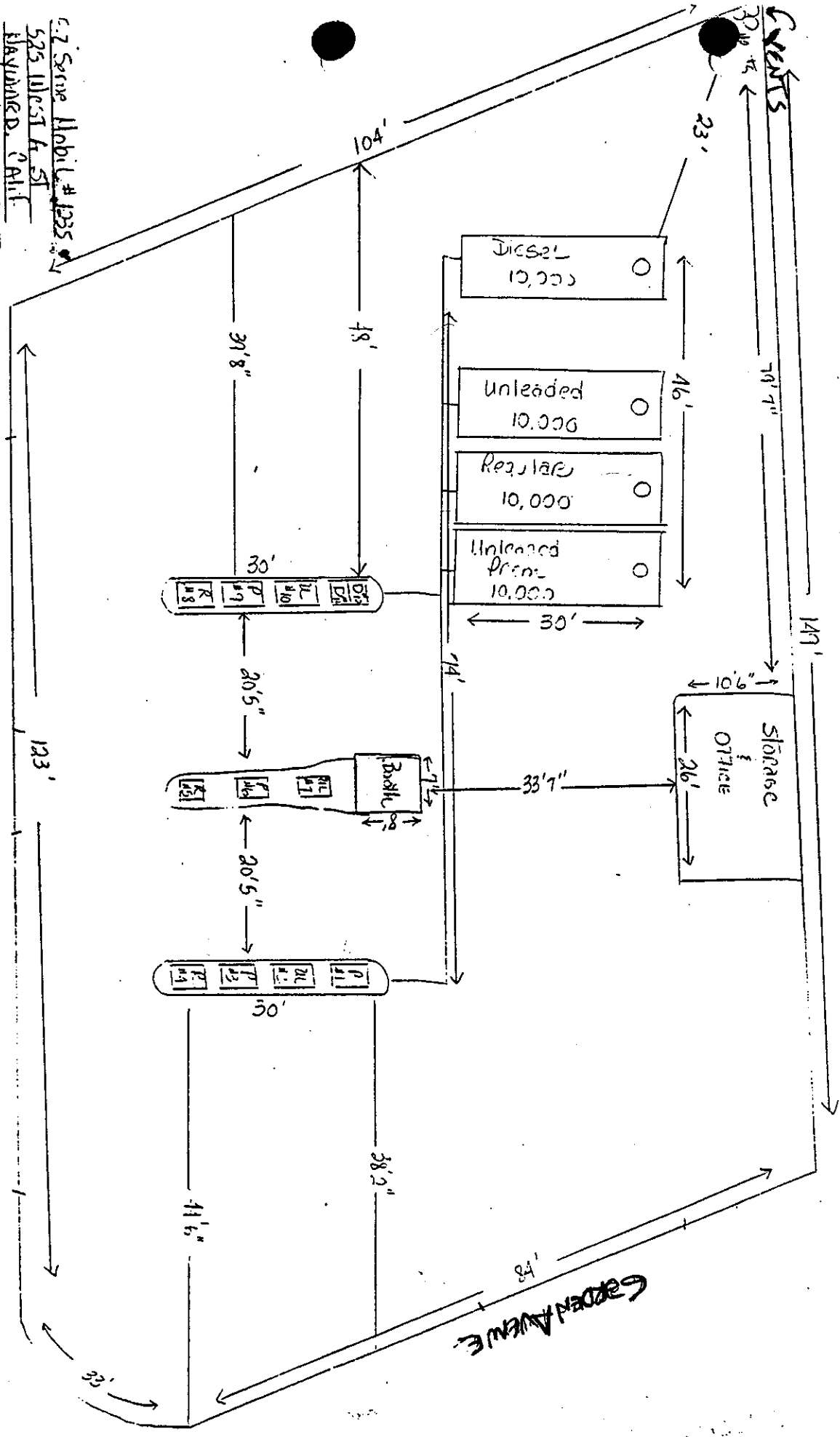
22. Please forward to this office the following information within 60 days after receipt of sample results.

- a) Chain of Custody Sheets
- b) Original Signed Laboratory Reports
- c) TSD to Generator copies of wastes shipped and received
- d) Attachment A summarizing laboratory results

525 Sore Mobil #1235
 525 West A St
 Hayward, Calif.
 100877

'A' STREET

GARDEN AVENUE



I declare that to the best of my knowledge and belief the statements and information provided above are correct and true. I understand that information in addition to that provided above may be needed in order to obtain an approval from the Department of Environmental Health and that no work is to begin on this project until this plan is approved.

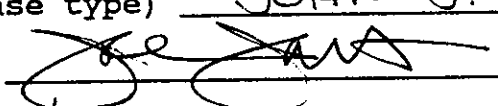
I understand that any changes in design, materials or equipment will void this plan if prior approval is not obtained.

I understand that all work performed during this project will be done in compliance with all applicable OSHA (Occupational Safety and Health Administration) requirements concerning personnel and safety.

I will notify the Department of Environmental Health at least two (2) working days (48 hours) after approval of this closure plan in advance to schedule any required inspections. I understand that site and worker safety are solely the responsibility of the property owner or his agent and that this responsibility is not shared nor assumed by the County of Alameda.

Signature of Contractor

Name (please type) JOHN J. JONES

Signature 

Date 5/7/90

Signature of Site Owner or Operator

Name (please type) CHUCK COLLIN'S - HAZARD MGT

Signature Charles Collins

Date 5/8/90

ACORD. CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

5-8-90

PRODUCER

Palmer Company
P.O. Box 1455
Tulare, CA 93275

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

COMPANIES AFFORDING COVERAGE

COMPANY
LETTER A

Aetna

COMPANY
LETTER B

Transamerica

COMPANY
LETTER CCOMPANY
LETTER DCOMPANY
LETTER E

CODE

SUB-CODE

INSURED

John Jones
DBA: Triple J Construction
1232 Fairview
Tulare, CA 93274

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS
A	GENERAL LIABILITY	063AE0020299598	7-23-89	7-23-90	GENERAL AGGREGATE \$ 1,000,
	COMMERCIAL GENERAL LIABILITY				PRODUCTS-COMP/OPS AGGREGATE \$ 1,000,
	CLAIMS MADE ☒ OCCUR.				PERSONAL & ADVERTISING INJURY \$ 500,
	OWNER'S & CONTRACTOR'S PROT.				EACH OCCURRENCE \$ 500,
					FIRE DAMAGE (Any one fire) \$ 50,
					MEDICAL EXPENSE (Any one person) \$ 5,
					COMBINED SINGLE LIMIT \$
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE \$
B	AUTOMOBILE LIABILITY	R135544	8-3-89	8-3-90	EACH OCCURRENCE \$
	ANY AUTO				AGGREGATE \$
	ALL OWNED AUTOS				
	SCHEDULED AUTOS				
	HIRED AUTOS				
	NON-OWNED AUTOS				
	GARAGE LIABILITY				
	EXCESS LIABILITY				
	OTHER THAN UMBRELLA FORM				
	WORKER'S COMPENSATION				
AND		\$ 2,000, (DISEASE—POLICY LIMIT)			
EMPLOYERS' LIABILITY		\$ 2,000, (DISEASE—EACH EMPLOYEE)			
OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

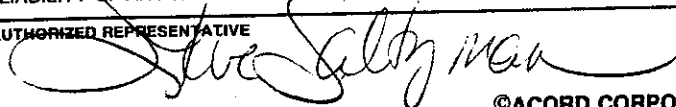
CERTIFICATE HOLDER

Alameda County Department of
Environmental Health
80 Swan Way Room 200
Oakland, CA 94621

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



SITE SAFETY PLAN

5-8-90

TO : ALL WORKING PERSONAL
AT → B-P STATION
525 WEST 'A' STREET
HAYWARD, CA.

Onsite safety meeting will take place the day the project begins and before tanks are pulled. All onsite workers to attend.

I KEY SAFETY PEOPLE,
JOHN JONES, DICK WHITTEN

II ① CARE MUST BE TAKEN DURING
PHASES OF EXCAVATION - HARD HAT'S
MUST BE WORN WHEN ON JOB SITE
AND ESPECIALLY WHEN HEAVY EQUIPMENT IS
OPERATING - THERE IS A CHANCE OF MECHANICAL
FAILURE WITH POSSIBLE INJURY RESULTING.

② DECONTAMINATION WILL BE HANDLED WITH
EXTREM CARE NO SMOKING OR OPEN FLAMES
WITH IN 75' - THE TANKS ARE EXTREMELY
VOLATILE. WITH DANGEROUS VAPOR'S PRESENT.
DECONTAMINATION SHALL BE PERFORMED WITH
DISPOSABLE COVER ALL'S - CHEMICAL RESISTANCE
BOOTS & ORGANIC VAPOR RESPIRATOR.
Also available onsite to workers: safety goggles and neoprene
gloves.

III SITE TO BE FENCED ON 'A' STREET
AND GARDEN AVE. - BARRICADES AND
SAFETY TAPE FOR REST OF LOT
TO SECURE AREA.

LEL/O₂ meter will be used on site to monitor explosive conditions. Meters are calibrated offsite using hexane every 3 months.

IV

TANKS TO BE UNCOVERED, & EACH
END OF TANK TO BE OPEN. TANK
TO BE RINSED WITH HOT WATER, RINSATE
TO BE MANIFESTED OFF (EPA # CAD 981659428)
TANKS WILL BE HAULED OFF TO H&H ENVIRO-
-MENTAL.

V

3 type ABC fire extinguishers will be kept on site.

IF AN ACCIDENT SHOULD OCCUR
THE VICTIM SHOULD BE TAKEN TO
ST. ROSE HOSPITAL, 27200 CALAROGA
AVE. HARWARD, CA. 94545 - (415) 783-1123

→ DIRECTION'S

EAST ON 'A' ST. TO HWY 880
GO SOUTH, TO TENNYSON RD WEST
ON TENNYSON TO CALAROGA, TURN
RIGHT HOSPITAL WILL BE VISIABLE
AT THIS POINT. IF VICTIM SERIOUS
INJURED CALL 911 - THEN POLICE
OR FIRE DEPT. WHICH EVER APPLICABLE
THEN O.S.H.A. IF REQUIRED.

VI

NO ENTRY WILL BE ALLOWED
IN EXCAVATION - SOIL SAMPLES
WILL BE RETRIEVED BY BACKHOE.