

RE 106

SELMAN • BREITMAN

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*ADMITTED IN CALIFORNIA & ARIZONA

September 16, 1997

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VENTURA, CALIFORNIA 93003
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OF COUNSEL
THOMAS A. LEARY
GARY BYRON ROACH

OUR FILE NUMBER
112.5465
112.5697

Mr. Barney M. Chan
Alameda County
Environmental Health Services
1131 Harbor Bay Parkway, #250
Alameda, CA 94502-6577

Re: City of Oakland v. Keep on Trucking, Inc., et al.
Contamination Site : Port of Oakland
Ninth Avenue Terminal
Alleged Insured : Eden National Steel
Alleged Add'l Insureds: Port of Oakland and Sam Kalman

Dear Mr. Chan:

Please be advised that this law firm represents Commercial Union Insurance Companies regarding the above-referenced site.

Pursuant to the California Public Records Act, Government Code Section 6253 et seq., please provide this office with any and all documents involving the above-referenced site. We understand that there may be certain copying costs incurred as result of this request. Please contact the undersigned prior to the production of documents in order that an estimate of costs and fees can be ascertained.

In the event that any of the requested documents or portions thereof are withheld from disclosure to us, please provide us with the specific exemption for which withholding is claimed and a brief justification for such withholding.

SELMAN • BREITMAN

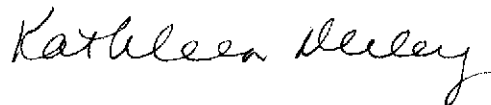
Mr. Barney M. Chan
ENVIRONMENTAL HEALTH SERVICES
September 16, 1997
Page 2

We look forward to receiving your response in the near future.
If you have any questions concerning the nature of this request,
please contact us at (310) 445-0800.

Thank you for your assistance.

Very truly yours,

SELMAN • BREITMAN



KATHLEEN T. DEELEY

KTD/at

cc: Commercial Union Insurance Companies

OAKLAND FIRE
O. E. S.

20106

1 DENNEY & OTHS LLP

Richard J. Denney, Jr., Esq. (State Bar No. 36397) ¹⁹⁹⁷ NOV 24 PM 4 26

2 Eleanor Oths, Esq. (State Bar No. 144540)

3 Joseph L. Manalili (State Bar No. 181194)

130 North Brand Boulevard, 4th Floor

Glendale, CA 91203

4 tel (818) 500-9030; fax: (818) 500-8079

5 Attorneys for Petitioner

Western Tube and Conduit Corporation

7 STATE OF CALIFORNIA

8 STATE WATER RESOURCES CONTROL BOARD

9
10 ***IN THE MATTER OF THE***

PETITION FOR REVIEW

11 **Petition of Western Tube and Conduit**
12 **Corporation for Review of Action of Alameda**
13 **County Health Care Services Agency Identifying**
14 **Petitioner as a Responsible Party for a Site**
Investigation and Cleanup at Site ID #3335

15
16 **1. Name and Address of the Petitioner:**

17 Western Tube and Conduit Corporation, c/o Richard J. Denney Jr., Esq., Denney & Oths LLP, 130
18 North Brand Blvd., Fourth Floor, Glendale, California 91203, telephone (818) 500-9030, facsimile (818)
19 500-8079.

20
21 **2. Specific Action of the Alameda County Health Care Services Agency (hereinafter the**
22 **"Agency"):**

23 Petitioner requests review of the Agency's decision to name Western Tube and Conduit
24 Corporation as a responsible party for the investigation and cleanup of Site ID #3335. *Please see*
25 *attached "Notice of Responsibility" attached hereto as Exhibit "A."*

26
27 **3. Date on Which the Agency Acted:**

28 October 23, 1997

1 **4. Reasons the Action Was Inappropriate:**

2 There is no evidence cited to support a finding that Western Tube is a responsible party. Western
3 Tube vacated the site in 1980 and there is no evidence of a release during Western Tube's tenancy of the
4 site.

5
6 **5. The Manner in Which the Petitioner is Aggrieved:**

7 Petitioner is aggrieved by the Agency's decision to name Western Tube as a responsible party for
8 site investigation and cleanup of Site ID #3335 because it would be obligated to incur investigation and
9 cleanup costs associated with alleged releases for which it is not responsible.

10
11 **6. Specific Action by the Agency Which Petitioner Requests:**

12 Petitioner requests that the State Board reverse the Agency's decision and find that Western Tube
13 is not a responsible party.

14
15 **7. Points and Authorities in Support of Legal Issues Raised in the Petition:**

16 Since there is no allegation as to why Western Tube is a responsible party, it cannot argue why it
17 is not a responsible party, except to rely on the constitutional requirement of due process of law. As
18 noted elsewhere in this petition, Western Tube has had no connection with the site since 1980 and there
19 is no evidence that a release occurred prior to that time. Prior to the Notice of Responsibility, the
20 Agency had not contacted Western Tube regarding this site nor presented Western Tube with any
21 evidence it may have regarding Western Tube's alleged liability. Absent any such evidence, no basis
22 exists to support the Agency's decision to name Western Tube as a responsible party.

23
24 **8. List of Persons Other Than the Petitioner Known by the Agency to Have an Interest in the**
25 **Subject Matter of the Petition:**

26 The Agency does not possess a list of persons who have an interest in the subject matter of this
27 petition. Therefore, Western Tube cannot provide such a list.

1 **9. Statement of Service of Petition:**

2 Western Tube has sent copies of this petition to the Agency, the Regional Board and to any
3 responsible parties known to Western Tube. Specifically, Western Tube has delivered copies of this
4 petition to the following:

5 Gordon Coleman (Chief Contract Project Director of the Agency), Barney Chan (Hazardous
6 Materials Specialist), Leroy Griffin (City of Oakland), Lori Casias (State Water Resources Control
7 Board), Kevin Braves (Regional Water Quality Control Board - San Francisco Bay Region) and
8 Jonathan Redding (counsel to the Port of Oakland). *Please see attached Proof of Service.*

9
10 **10. Copy of Request to the Agency for Preparation of the Record:**

11 A copy of Petitioner's request to the Agency for preparation of the record is attached hereto as
12 Exhibit "B."

13
14 **11. Additional Evidence**

15 The Agency did not present any evidence to Western Tube alleging a release during Western
16 Tube's tenancy of the site, which ended in 1980. If such evidence is alleged, Western Tube would like
17 an opportunity to respond to it.

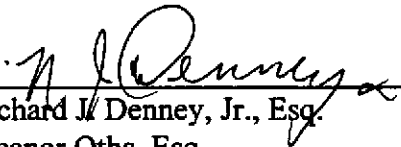
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1 **CONCLUSION**

2 For the foregoing reasons, Petitioner respectfully submits that the Agency's decision to name
3 Western Tube as a responsible party for site investigation and cleanup at Site ID #3335 was improper,
4 inappropriate, and not supported by any evidence. Petitioner respectfully requests that the state board
5 grant this petition and find that Western Tube is not a responsible party.

6
7 DATED: 11/20/97

DENNEY & OTHS LLP

8
9 
10 Richard J. Denney, Jr., Esq.
11 Eleanor Oths, Esq.
12 Joseph L. Manalili, Esq.
13 Attorneys for Petitioner Western Tube and
14 Conduit Corporation
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ALAMEDA COUNTY
HEALTH CARE SERVICES



AGENCY
DAVID J. KEARS, Agency Director

Certified Mail # P 143 588 394
10/23/97

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

Notice of Responsibility

StID# 3335
Keep on Trucking
370 8th Ave
Oakland, CA 94606

SITE

Date First Reported 12/29/94
Substance: Diesel
Source : Federally Funded
MultiRPs?: Yes

Richard Denney, Esq.
Western Tube & Conduit
130 N. Brand Blvd. 4th Fl
Glendale, Ca 91203

Responsible Party (RP) # 2
(list of all RP's attached)

You are hereby notified that pursuant to Section 25297.1 of the Health and Safety Code, the above site has been placed in the Local Oversight Program. The above individual(s) or entity(ies) has (have) been identified as the party(ies) responsible for investigation and cleanup of the above site.

Any action or inaction by this local agency associated with corrective action, including responsible party identification, is subject to petition to the State Water Resources Control Board. Petitions must be filed within 30 days from the date of the action/inaction. To obtain petition procedures, please FAX your request to the State Water Board at (916) 227-4349 or telephone (916) 227-4408.

Pursuant to Section 25299.37(c)(7) of the Health and Safety Code, a responsible party may request the designation of an administering agency when required to conduct corrective action. Please contact this office for further information about the site designation process.

Please contact Barney Chan, Hazardous Materials Specialist at this office at (510) 567-6700 if you have any further questions.


Gordon Coleman, Chief
Contract Project Director

Please Circle One Add Delete Change

Reason: New RP

Attachment

C: Lori Casias, SWRCB
Barney Chan, Hazardous Materials Specialist

Report: ReImb97M 1/97

EXHIBIT A

ALAMEDA COUNTY - DEPARTMENT OF ENVIRONMENTAL HEALTH
HAZARDOUS MATERIALS DIVISION

10/23/97

LIST OF RESPONSIBLE PARTIES FOR

SITE

StID: 3335
Keep on Trucking
370 8th Ave
Oakland, CA 94606

Date First Reported 12/29/94
Substance: Diesel
Petroleum (X) Yes
Source: F

Mr. Dale Klettke
Port of Oakland
P. O. Box 2064
Oakland C A 94604-2064

Responsible Party #1
Property Owner

Richard Denney, Esq.
Western Tube & Conduit
130 N. Brand Blvd. 4th Fl
Glendale, Ca 91203

Responsible Party #2
Contact Person
Contact Company

DENNEY & OTHS LLP

130 NORTH BRAND BOULEVARD
FOURTH FLOOR
GLENDALE, CALIFORNIA 91203
TELEPHONE (818) 500-9030
FACSIMILE (818) 500-8079

November 20, 1997

Mr. Barney Chan
Hazardous Materials Specialist
Alameda County Health Care Services Agency
Environmental Protection (LOP)
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

Re: StID# 3335, Notice of Responsibility

Dear Mr. Chan:

We represent Western Tube and Conduit Corporation ("Western Tube") in matters regarding the Port of Oakland's Ninth Avenue Terminal located in Oakland, California. We received a letter from the Alameda County Health Care Services Agency ("ACHCSA") dated October 23, 1997 naming Western Tube a responsible party for Site ID #3335.

We are filing a Petition with the State Water Resources Control Board ("SWRCB") contesting the ACHCSA's decision. Petition procedures require that a copy of the local agency record, i.e. ACHCSA's file on Western Tube, be submitted to the SWRCB. In addition, we would like a copy of the record. Please prepare the record and deliver copies to the following:

Richard J. Denney, Jr., Esq.
Eleanor Oths, Esq.
Denney & Oths LLP
130 N. Brand Blvd., 4th Floor
Glendale, CA 91203

Lori Casias
State Water Resources Control Board
UST Program
P.O. Box 944212
Sacramento, CA 94244-2120

EXHIBIT B

Mr. Barney Chan

November 20, 1997

Page 2

Re: Western Tube & Conduit

Thank you for your help in this matter. Please contact me with any questions you may have regarding this request.

Very truly yours,,

DENNEY & OTHS LLP



Richard J. Denney, Jr.

RJD:br

1 PROOF OF SERVICE

1013A (3) CCP Revised 5/1/88

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of
4 California. I am over the age of 18 and not a party to the within
5 action; my business address is 130 North Brand Boulevard, 4th
6 Floor, Glendale, California 91203.

7 On November 20, 1997, I served the foregoing document
8 described as PETITION FOR REVIEW on the interested parties in this
9 action.

10 by placing the true copies thereof enclosed in sealed
11 envelopes addressed as stated on the attached mailing list.

12 || || by placing the original || || a true copy thereof enclosed
13 in sealed envelopes addressed as follows:

14 BY MAIL

15 BY HAND-DELIVERY

16 * I deposited such envelope in the mail at Glendale,
17 California. The envelope was mailed with postage
18 thereon fully prepaid.

19 As follows: I am "readily familiar" with the firm's
20 practice of collection and processing correspondence for
21 mailing. Under that practice it would be deposited with the U.S.
22 postal service on that same day with postage thereon fully prepaid
23 at Glendale, California in the ordinary course of business. I am
24 aware that on motion of the party served, service is presumed
25 invalid if postal cancellation date or postage meter date is more
26 than one day after date of deposit for mailing in affidavit.

27 Executed on November 20, 1997, at Glendale, California.

28 I declare under penalty of perjury under the laws of the State
of California that the foregoing is true and correct.


Brenda Rosas

* (By mail signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

SERVICE LIST

- 1) Gordon Coleman
Chief Contract Project Director
Alameda County Health Care Services Agency
Environmental Health Services
Environmental Protection (LOP)
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
- 2) Barney Chan
Hazardous Materials Specialist
Alameda County Health Care Services Agency
Environmental Health Services
Environmental Protection (LOP)
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
- 3) Leroy Griffin
Supervisor, Hazardous Materials Inspections
City of Oakland
Office of Emergency Services
Hazardous Materials Management Program
505 14th Street, Suite 702
Oakland, CA 94612
- 4) Lori Casias
State Water Resources Control Board
UST Program
2014 "T" Street, Suite 130
Sacramento, CA 95814
- 5) Kevin Braves
Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612
- 6) Port of Oakland
c/o Jonathan Redding
Fitzgerald, Abbott & Beardsley LLP
1221 Broadway, 21st Floor
Oakland, CA 94612-1837