

Postfile

**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

Mr. Barney Chan

November 20, 1997

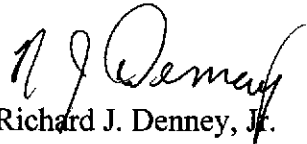
Page 2

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

A handwritten signature in cursive script, appearing to read "R. J. Denney, Jr.", is written over the typed name.

Richard J. Denney, Jr.

RJD:br

1 DENNEY & OTHS LLP  
Richard J. Denney, Jr., Esq. (State Bar No. 36337)  
2 Eleanor Oths, Esq. (State Bar No. 144540)  
Joseph L. Manalili (State Bar No. 181194)  
3 130 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  
6

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.

28

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.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

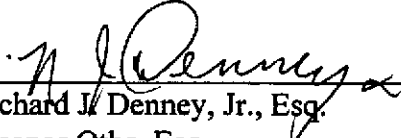
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CONCLUSION**

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

DATED: 11/20/97

DENNEY & OTHS LLP

  
Richard J. Denney, Jr., Esq.  
Eleanor Oths, Esq.  
Joseph L. Manalili, Esq.  
Attorneys for Petitioner Western Tube and  
Conduit Corporation

1 DENNEY & OTHS LLP  
Richard J. Denney, Jr., Esq. (State Bar No. 36337)  
2 Eleanor Oths, Esq. (State Bar No. 144540)  
Joseph L. Manalili (State Bar No. 181194)  
3 130 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  
6

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.

28



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.

18 ///  
19 ///  
20 ///  
21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

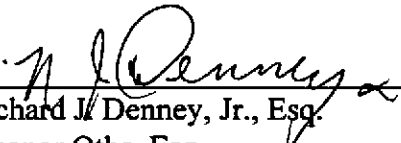
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CONCLUSION**

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

DATED: 11/20/97

DENNEY & OTHS LLP

  
Richard J. Denney, Jr., Esq.  
Eleanor Oths, Esq.  
Joseph L. Manalili, Esq.  
Attorneys for Petitioner Western Tube and  
Conduit Corporation

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

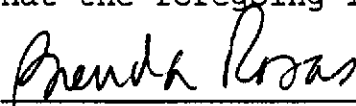
15  BY HAND-DELIVERY

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