

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Randall D. Morrison (State Bar # 054183) Janet C. Absher (State Bar # 121207) Crosby, Heafey, Roach & May 1999 Harrison Street Oakland, CA 94612		TELEPHONE NO.: (510) 763-2000	CASE NUMBER: 712179-9
NAME OF COURT: Alameda County Superior Court POST OFFICE and 1225 Fallon Street STREET ADDRESS: Oakland, CA 94612		DEFENDANTS Alvin H. Bacharach and Barbara Jean Borsuk	
PLAINTIFF/PETITIONER: SCS ENGINEERS, a Virginia corporation, DEFENDANT/RESPONDENT: ALVIN H. BACHARACH and BARBARA JEAN BORSUK		DEPOSITION SUBPENA For Personal Appearance - <input checked="" type="checkbox"/> and Production of Documents and Things	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone No. of deponent, if known):
Paul M. Smith, Senior Hazardous Materials Specialist, Alameda County Health Care Services, Hazardous Materials Program, Department of Environmental Health, 80 Swan Way, Room 200, Oakland, CA 94621 (510) 271-4320

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following time and place:

Date: June 8, 1994 Time: 9:00 a.m. Address: Crosby, Heafey, Roach & May
Oakland, CA 94612

- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 3. (Code of Civil Procedure section 2025 (d)(6).)
 - b. You are ordered to produce the documents and things described in item 3.
 - c. This deposition will be recorded by audiotape videotape and stenographically.
 - d. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025 (u)(4).
2. The personal attendance of the custodian of records or other qualified witness and the production of the original documents are required by this deposition subpoena. The procedure authorized by Evidence Code sections 1560 (b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The documents and things to be produced and any testing or sampling being sought are described as follows:

All unprivileged notes, memoranda and correspondence concerning, referring or related to environmental conditions at the subject property at 1432-34 Harrison Street and 1435 Alice Street in Oakland, California, generated between January 1, 1990 and the present date.

6/3/94

as per message from Trisha Stebbins
Subpoena cancelled

Continued on attachment 3.


4. A deposition permits an attorney to ask questions of a witness who is sworn to tell the truth. An attorney for other parties may then ask questions also. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. A witness may read the written record and change any incorrect answers before signing the deposition. The witness is entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition.

5. You are ordered to appear in this civil matter in your capacity as a peace officer or other person described in Government Code section 68097.1.
Date: _____ Clerk, by _____, Deputy

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: 7/16/94

JANET C. ABSHER
(TYPE OR PRINT NAME)


(SIGNATURE OF PERSON ISSUING SUBPENA)
ATTORNEY AT LAW
(TITLE)

(See reverse for proof of service)

PLAINTIFF/PETITIONER: SCS ENGINEERS, a Virginia corporation	CASE NUMBER:
DEFENDANT/RESPONDENT: ALVIN H. BACHARACH, et al.	712179-9

PROOF OF SERVICE OF DEPOSITION SUBPENA—PERSONAL APPEARANCE

1. I served this Deposition Subpena—Personal Appearance by personally delivering a copy to the person served as follows:

a. Person served (name):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (check one):

- (1) were paid. Amount: . . . \$ _____
- (2) were not paid.

f. Fee for service: \$ _____

2. I received this subpena for service on (date):

3. Person serving:

- a. Not a registered California process server.
- b. California sheriff, marshal, or constable.
- c. Registered California process server.
- d. Employee or independent contractor of a registered California process server.
- e. Exempt from registration under Bus. & Prof. Code section 22350(b).
- f. Registered professional photocopier
- g. Exempt from registration under Bus. & Prof. Code section 22451.
- h. Name, address, and telephone number and, if applicable, county of registration and number:

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

(For California sheriff, marshal, or constable use only)—
I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)

LAW OFFICES

RANDICK & O'DEA

1800 HARRISON, SUITE 2350
OAKLAND, CALIFORNIA 94612

ROBERT A. RANDICK, JR.
BRIAN M. O'DEA
SUSAN M. TEEL
BERNARD F. ROSE, PH.D.
JULIE M. ROSE
WILLIAM J. TRINKLE

TELEPHONE
(510) 836-3555

TELECOPIER
(510) 834-4748

April 29, 1994

Mr. Thomas Peacock
Alameda County
Dept. of Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Mr. Paul Smith
Alameda County
Dept. of Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Re: 1432-1434 Franklin St., Oakland, CA 94612

Gentleman:

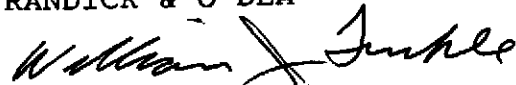
This letter is to confirm that your depositions have been continued. Mr. Smith's deposition will be taken on June 1, 1994 and Mr. Peacock's deposition will be taken on May 31, 1994. Each will begin at 10:00 a.m. at the Law Offices of Randick & O'Dea,

In view of Mr. Peacock's noting the voluminous of the documentation in the County's file, we will attempt to work out a procedure to minimize the documents necessary to be produced at the depositions.

If you have any questions, please feel free to contact us.

Sincerely,

RANDICK & O'DEA



William J. Trinkle
Attorneys for Douglas Motors

WJT:cb

LAW OFFICES
RANDICK & O'DEA
1800 HARRISON, SUITE 2350
OAKLAND, CALIFORNIA 94612

ROBERT A. RANDICK, JR.
BRIAN M. O'DEA
SUSAN M. TEEL
BERNARD F. ROSE, PH.D.
JULIE M. ROSE
WILLIAM J. TRINKLE

TELEPHONE
(510) 836-3555
TELECOPIER
(510) 834-4748

May 24, 1994

VIA FEDERAL EXPRESS

Mr. Thomas Peacock
Mr. Paul Smith
Alameda County Health Care Services
UST Oversight Program
80 Swan Way, Room 200
Oakland, California 94621

Re: Depositions in Bacharach v. Douglas Motors

Gentlemen:

All of the parties in this case have been involved in serious settlement discussions over the past couple of weeks. Due to this, we must unfortunately again continue your depositions.

New dates have not yet been agreed upon, but we will contact you as soon as that is done, if the case does not settle.

We apologize for any inconvenience to you.

Sincerely,

RANDICK & O'DEA



William J. Trinkle

WJT:cah

94 MAY 25 PM 2:03

ALCO
HAZMAT



QUESTIONS? CALL 800-238-5353 TOLL FREE

AIRBILL PACKAGE TRACKING NUMBER

5131753233

5131753233

RECIPIENT'S COPY

Date: 5/24/84

From (Your Name) Please Print: William J. Brinkie, Your Phone Number (Very Important): (510) 888-3550, To (Recipient's Name) Please Print: T. Tadcock/P. Smith, Recipient's Phone Number (Very Important): (510) 271-4530

YOUR INTERNAL BILLING REFERENCE INFORMATION (optional) (First 24 characters will appear on invoice): 534210, IF HOLD FOR PICK-UP, Print FEDEX Address Here: Street Address, City, State, ZIP Required

PAYMENT: 1 Bill Sender, 2 Bill Recipient's FedEx Acct. No., 3 Bill 3rd Party FedEx Acct. No., 4 Bill Credit Card, 5 Cash/Check

SERVICES (Check only one box): Priority Overnight, Standard Overnight, Economy Two-Day, Government Overnight, Freight Service. DELIVERY AND SPECIAL HANDLING (Check services required): 1 HOLD FOR PICK-UP, 2 DELIVER WEEKDAY, 3 DELIVER SATURDAY, 4 DANGEROUS GOODS, 5 DRY ICE, 6 OTHER SPECIAL SERVICE, 7 SATURDAY PICK-UP, 8 HOLIDAY DELIVERY. PACKAGES, WEIGHT, YOUR DECLARED VALUE, DIM SHIPMENT, Received At, Release Signature.

REVISION DATE 2/92, PART #137204, EXEM. 7/92, FORMAT #129, 126, © 1991-92 FEDEX PRINTED IN U.S.A.

LUKENS AND DRUMMOND

One Maritime Plaza, Suite 1600
San Francisco, California 94111

Telephone: (415) 433-2261

Telecopier No.: (415) 781-1034

FAX MAT
11:10:31

TELECOPIER COVER SHEET

NUMBER OF PAGES, INCLUDING THIS PAGE: 5

TO PAUL SMITH

FAX NO. (510) 569-4755

FROM: MARK MULLEN

DATE: 5/3/94

If you do not receive all of the pages, or if the pages cannot be read due to the transmission, please telephone: LAST

The original of this facsimile message will will not be forwarded by mail.

CAUTION: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND INTENDED SOLELY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING, OR UNAUTHORIZED USE OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE NOTIFY THE SENDER IMMEDIATELY BY TELEPHONE.

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1 3. During the course of my supervision on behalf of
2 Alameda County of the site remediation at the garage, I drafted
3 and mailed numerous letters concerning the remediation
4 procedures. True and correct copies of certain of those letters
5 are attached hereto as Exhibits A through E, as follows:

6 Exhibit A: Letter dated July 31, 1990, to Mr. Alvin
7 Bacharach and Ms. Barbara Borsuk.

8 Exhibit B: Letter dated August 27, 1990, to Mr.
9 Alvin Bacharach and Ms. Barbara Borsuk.

10 Exhibit C: Letter dated October 29, 1991, to Mr.
11 John Cummings of SCS Engineers, who I
12 understood to be the expert consultants
13 hired by Mr. Bacharach and Ms. Borsuk.
14 A copy of that letter to SCS Engineers
15 was also sent to Mr. Bacharach and Ms.
16 Borsuk.

17 Exhibit D: Letter dated January 25, 1991 to
18 plaintiff's expert consultant, Mr. John
19 P. Cummings of SCS Engineers. A copy of
20 this letter was also sent to Mark Borsuk
21 and Jonathan Leo, Esq., Mr. Bacharach
22 and Ms. Borsuk's attorney at that time.

23 Exhibit E: Letter dated June 30, 1992, to
24 plaintiffs' counsel, Randall Morrison,
25 Esq.

26 4. As of February 5, 1993, when my supervision of the
27 regulatory enforcement of the garage concluded, the garage
28 owners, Alvin Bacharach and Barbara Jean Borsuk, had not complied

1 with the following federal and state statutes or County
2 directives: there was a disparity between the number of tanks for
3 which the facility held underground storage tank permits and the
4 number of tanks which existed at the site. The garage had an
5 underground tank permit for one tank. Four tanks existed at the
6 site. There were no records in Department files of annual
7 tank/pipe integrity testing or quarterly monitoring reports as
8 required by Title 23, California Code of Regulations (CCR).

9 5. Section 2652, Title 23, CCR requires that, within
10 24 hours after a unauthorized release from an underground tank
11 has been discovered, the owner/operator shall notify the local
12 agency. There is some question as to when the release was known.
13 An unauthorized released report was filed on August 21, 1994.

14 6. This section further states that a full written
15 report be submitted to the local agency within five working days
16 discussing the nature of the spill and proposed cleanup actions
17 and a time schedule for implementing the proposed work.

18 7. In a letter dated January 25, 1991, from Alameda
19 County to the Consultant for the garage, a request was made to
20 submit reports on a quarterly basis. This directive required
21 reports summarizing activities during that interval and detailing
22 the status of the groundwater contamination, interpretation of
23 results and recommendations for future additional work at the
24 site. It should be noted that the consultant to which the letter
25 was written no longer handles the case. My assumption is that

26 \\\

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1 any future consultant who handled the case would also adhere to
 2 this request.

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

5 Executed this 4th day of May, 1994, at Oakland,
 6 California.

7
 8 Paul M. Smith
 9 PAUL M. SMITH, Senior
 Hazardous Materials Specialist

10 Zc:davis:pldg:oppsumed.pms

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Post-It™ brand fax transmittal memo 7671 # of pages ▶ 1

To Mark Mullen	From Paul Smith
Co. Lukens & Drummond	Co. Ala Co. Env. Health
Dept.	Phone # (510) 569-4757 FAX
Fax # (415) 781-1034	Fax # (510) 271-4320 phone

LAW OFFICES
RANDICK & O'DEA
1600 HARRISON, SUITE 2350
OAKLAND, CALIFORNIA 94612

ALCO
HAZMAT

94 MAY -2 PM 3:02

ROBERT A. RANDICK, JR.
BRIAN M. O'DEA
SUSAN M. TEEL
BERNARD F. ROSE, PH.D.
JULIE M. ROSE
WILLIAM J. TRINKLE

TELEPHONE
(510) 836-3555
TELECOPIER
(510) 834-4748

April 29, 1994

Mr. Thomas Peacock
Alameda County
Dept. of Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Mr. Paul Smith
Alameda County
Dept. of Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Re: 1432-1434 Franklin St., Oakland, CA 94612

Gentleman:

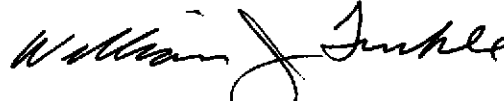
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In view of Mr. Peacock's noting the voluminous of the documentation in the County's file, we will attempt to work out a procedure to minimize the documents necessary to be produced at the depositions.

If you have any questions, please feel free to contact us.

Sincerely,

RANDICK & O'DEA



William J. Trinkle
Attorneys for Douglas Motors

WJT:cb

**Alameda County Department of Environmental Health
Hazardous Materials Division**
80 Swan Way, Rm. 200, Oakland, CA 94621
Ph: 510-271-4320

Tom
for file
ST 20 498

BILLING FOR SERVICES

STID# 498

A. Site Name Harrison Street Garage Phone _____
Site Address 1432 Harrison St Oakland CA 94612
(If no address, description of area) Number Street City Zip
Prior Business Name _____ Prior Owner's Name _____

B. Service Requestor Mark Mullen Esq Lukens & Drummond (415) 751-433-2261
Contact Person Company Name Phone
Billing Address One Maritime Plaza, San Francisco, CA 94111
Number Street City Zip

Category of Service		#Hours	x \$	Rate	\$
<input checked="" type="checkbox"/> Site Search	(Whole Hours Only)	<u>3.5</u>	x \$	<u>75</u> /Hr	\$ <u>262.50</u>
<input type="checkbox"/> File Search		<u>3</u>	x \$	<u>100</u> /Copy	\$ _____
<input type="checkbox"/> Other _____		_____	x \$	_____	\$ _____
TOTAL CHARGE:					\$ <u>262.50</u>

REMARKS: record review & project summary per April 25th, 1994
site search request
2.5 hours record review & draft revision 4/27/94
1.0 hr revision & FAX transmission 4/28/94

You will receive an invoice in accordance with Article II of Chapter 6, Title 3 of the Ordinance Code of Alameda County

Service Requestor Mark Mullen Date _____
printed name signature
HazMat Specialist Paul M. Smith Date 4/28/94
printed name signature

LAW OFFICES OF
LUKENS AND DRUMMOND
ALCOA BUILDING, SUITE 1600
ONE MARITIME PLAZA
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 433-2261
FAX (415) 781-1034

ALCO
HAZMAT

94 APR 26 AM 10:01

April 25, 1994

VIA FACSIMILE TRANSMISSION
(510) 569-4757

Mr. Paul M. Smith
Senior Hazardous Materials Specialist
Alameda County Health Services
Department of Environmental Health
80 Swan Way, Room 200
Oakland, California 94621

Re: Bacharach v. Davis/Related Actions
Alameda County Superior Court
Consolidated Case Nos. 670066-3, 666290-3

Dear Paul:

As discussed, I have been authorized by my client, Steven Davis, to pay you for the cost of your services with respect to investigating Alvin Bacharach and Barbara Jean Borsuk's compliance with County directives regarding remediation of the underground storage tanks and the attendant contamination at their Harrison Street garage.

It is my understanding that your customary billing rate is \$75.00 per hour. Please let me know where and to whom payment should be sent.

If you have any questions, please do not hesitate to call me. Thank you again for your assistance.

Very truly yours,

Mark M. Mullen

Mark M. Mullen

cc: Mr. Steven Davis

2c:davis:corr:smith.2

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 3
To Mark mullen	From Paul Smith	
Co. Lukens & Drummond	Co.	
Dept.	Phone # (510) 271-4320	
Fax # (415) 781-1034	Fax # (510) 569-4757	

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LUKENS AND DRUMMOND
DONALD F. DRUMMOND (State E
MARK M. MULLEN (State Bar N
NATASHA L. GOLDING (State B
One Maritime Plaza, Suite 1
San Francisco, California
Telephone: (415) 433-2261
Facsimile: (415) 781-1034

Attorneys for Defendants and Cross-Complainants
Steven Davis, Leonard Davis and Robert L. Davis

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ALVIN H. BACHARACH and BARBARA
JEAN BORSUK,

Plaintiffs,

v.

STEVEN DAVIS, LEONARD DAVIS,
ROBERT L. DAVIS, and DOES 1 TO
25,

Defendants.

) Consolidated Case Nos.
) 666290-3 and 67066-3
)

) **DECLARATION OF PAUL M.**
) **SMITH (SENIOR HAZARDOUS**
) **MATERIALS SPECIALIST,**
) **ALAMEDA COUNTY)**

) Date: May __, 1994
) Time: 10:00 a.m.
) Dept: 81
) Trial Date: 10/14/94
)

AND RELATED CROSS-COMPLAINTS.

I, PAUL M. SMITH, declare as follows:

1. I am a senior hazardous materials specialist for the County of Alameda, Hazardous Materials Program. I know of the following facts of my own personal knowledge, and if called upon to testify thereto could and would competently do so.

2. From July 27, 1990 to February 5, 1993, I was assigned as the hazardous materials specialist to oversee site remediation at 1432 Harrison Street, Oakland, California 94612 (the "garage"), including the connecting Alice Street garage.

The page #s are off sequence is p 1, 3, 4

1 directives included: there was a disparity between the number of
2 tanks for which the facility held underground storage tank
3 permits and the number of tanks which existed at the site. The
4 garage had an underground tank permit for one tank. Four tanks
5 existed at the site. There were no records in Department files
6 of annual tank/pipe integrity testing or quarterly monitoring
7 reports as required by Title 23, California Code of Regulations
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10 24 hours after a unauthorized release from an underground tank
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12 agency. There is some question as to when the release was known.
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24 site. It should be noted that the consultant to which the letter
25 was written no longer handles the case. My assumption is that

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any future consultant who handled the case would also adhere to this request.

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

Executed this ___ day of April, 1994, at Oakland, California.

Paul M. Smith
PAUL M. SMITH, Senior
Hazardous Materials Specialist

Zc:davis:pldg:oppsumad.pms

LUKENS AND DRUMMOND

One Maritime Plaza, Suite 1600
San Francisco, California 94111
Telephone: (415) 433-2261
Telecopier No.: (415) 781-1034

TELECOPIER COVER SHEET

NUMBER OF PAGES, INCLUDING THIS PAGE: 2

TO: PAUL SMITH

FAX NO. (570) 569-4757

FROM: MARK MUMEN

DATE: APRIL 25, 1994

If you do not receive all of the pages, or if the pages cannot be read due to the transmission, please telephone: USA

The original of this facsimile message will ~~be~~ will not be forwarded by mail.

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LAW OFFICES OF
LUKENS AND DRUMMOND
ALCOA BUILDING, SUITE 1600
ONE MARITIME PLAZA
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 433-2261
FAX (415) 781-1034

April 25, 1994

VIA FACSIMILE TRANSMISSION
(510) 569-4757

Mr. Paul M. Smith
Senior Hazardous Materials Specialist
Alameda County Health Services
Department of Environmental Health
80 Swan Way, Room 200
Oakland, California 94621

Re: Bacharach v. Davis/Related Actions
Alameda County Superior Court
Consolidated Case Nos. 670066-3, 666290-3

Dear Paul:

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It is my understanding that your customary billing rate is \$75.00 per hour. Please let me know where and to whom payment should be sent.

If you have any questions, please do not hesitate to call me. Thank you again for your assistance.

Very truly yours,



Mark M. Mullen

cc: Mr. Steven Davis

zc:davis:corr:smf th.2

LUKENS AND DRUMMOND

One Maritime Plaza, Suite 1600
San Francisco, California 94111
Telephone: (415) 433-2261
Telecopier No.: (415) 781-1034

TELECOPIER COVER SHEET

NUMBER OF PAGES, INCLUDING THIS PAGE: 3

TO: MR. Tom Peacock FAX NO. 510 - 569 - 4757
ALAMEDA COUNTY HEALTH SERVICES

FROM: MARK M. MULLIN

DATE: 4/21/94

DEAR TOM,
AS WE DISCUSSED, ENCLOSED IS A DRAFT COPY OF
YOUR DECLARATION. AS FOR PAGE 2, INSERT, DON'T
WORRY ABOUT DETAIL. A SIMPLE STATEMENT RE:
CURRENT NON COMPLIANCE WILL BE GREAT.

THX,
Mark

If you do not receive all of the pages, or if the pages cannot be read due to the transmission,
please telephone: _____

The original of this facsimile message ___ will ___ will not be forwarded by mail.

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LUKENS AND DRUMMOND
DONALD F. DRUMMOND (State Bar No. 052986)
MARK M. MULLEN (State Bar No. 138652)
NATASHA L. GOLDING (State Bar No. 168852)
One Maritime Plaza, Suite 1600
San Francisco, California 94111
Telephone: (415) 433-2261
Facsimile: (415) 781-1034

Attorneys for Defendants and Cross-Complainants
Steven Davis, Leonard Davis and Robert L. Davis

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ALVIN H. BACHARACH and BARBARA
JEAN BORSUK,

Plaintiffs,

v.

STEVEN DAVIS, LEONARD DAVIS,
ROBERT L. DAVIS, and DOES 1 TO
25,

Defendants.

) Consolidated Case Nos.
) 665290-3 and 67066-3

) *Supervising THOMAS*
) **DECLARATION OF TOM PEACOCK**
) **(SENIOR HAZARDOUS MATERIALS**
) **SPECIALIST, ALAMEDA COUNTY)**

) Date: May ____, 1994
) Time: 10:00 a.m.
) Dept: 81
) Trial Date: June 10, 1994

AND RELATED CROSS-COMPLAINTS.

Thomas

I, TOM PEACOCK, declare as follows:

1. I am a ^{*Supervising*} ~~senior~~ hazardous ~~Materials~~ ^{*Specialist*} for
the County of Alameda, Hazardous Materials ^{*Division*} ~~Program~~. I know of
the following facts of my own personal knowledge, and if called
upon to testify thereto could and would competently do so.

2. I am currently the ^{*Supervising*} ~~senior~~ hazardous ~~Materials~~
specialist assigned to oversee site remediation at 1432 Harrison
Street, Oakland, California 94612 (the "garage"), including the

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connecting Alice Street garage.

cannot locate

~~Pursuant to the County's initial Notice of Violation dated July 31, 1990, the owners of the garage, Mr. Alvin Bacharach and Ms. Barbara Jean Borsuk, are required by State and County regulations to comply with all remediation orders regarding soil and groundwater contamination at the garage site.~~

~~4. From the date of the County's Notice of Violation, the owners of the garage have not been in compliance with those orders. In fact, as of the date of this declaration, the owners have failed to comply with the following aspects of those orders:~~

Cannot say "not in violation" at this time.

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

Executed this ____ day of April, 1994, at Oakland, California.

Thomas

TOM PEACOCK, Senior Hazardous Materials Specialist

Zcrdavis:pldg:oppsumed.tp

LUKENS AND DRUMMOND

One Maritime Plaza, Suite 1600
San Francisco, California 94111
Telephone: (415) 433-2261
Telecopier No.: (415) 781-1034

TELECOPIER COVER SHEET

NUMBER OF PAGES, INCLUDING THIS PAGE: 25

TO: PAUL SMITH FAX NO. 510 - 569 - 4757

ALAMEDA COUNTY HEALTH SERVICES

FROM: MARK M. MULLEN

DATE: 4/21/94

Dear Paul,
Enclosed is your Declaration and copies of letters as we discussed. Please note that we misplaced, but are looking for, signature page to 6/30/92 LTR. I hope you recognize the LTR. Any questions please call.

THH,
Mark

If you do not receive all of the pages, or if the pages cannot be read due to the transmission, please telephone: 415 433-2261

The original of this facsimile message ___ will ___ will not be forwarded by mail.

CAUTION: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND INTENDED SOLELY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING, OR UNAUTHORIZED USE OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE NOTIFY THE SENDER IMMEDIATELY BY TELEPHONE.

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LUKENS AND DRUMMOND
DONALD F. DRUMMOND (State Bar No. 052986)
MARK M. MULLEN (State Bar No. 138652)
NATASHA L. GOLDING (State Bar No. 168852)
One Maritime Plaza, Suite 1600
San Francisco, California 94111
Telephone: (415) 433-2261
Facsimile: (415) 781-1034

Attorneys for Defendants and Cross-Complainants
Steven Davis, Leonard Davis and Robert L. Davis

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ALVIN H. BACHARACH and BARBARA
JEAN BORSUK,

Plaintiffs,

v.

STEVEN DAVIS, LEONARD DAVIS,
ROBERT L. DAVIS, and DOES 1 TO
25,

Defendants.

) Consolidated Case Nos.
) 666290-3 and 67066-3
)

) DECLARATION OF PAUL M.
) SMITH (HAZARDOUS MATERIALS
) SPECIALIST, ALAMEDA COUNTY)

) Date: May ____, 1994
) Time: 10:00 a.m.
) Dept: 81
) Trial Date: June 10, 1994
)

AND RELATED CROSS-COMPLAINTS.
_____)
_____)
_____)

I, PAUL M. SMITH, declare as follows:

1. I am a hazardous materials specialist for the
County of Alameda, Hazardous Materials Program. I know of the
following facts of my own personal knowledge, and if called upon
to testify thereto could and would competently do so.

2. From _____, 199__ to
_____, 199__, I was assigned as the hazardous
materials specialists to oversee side remediation at 1432

1 Harrison Street, Oakland, California 94612 (the "garage"),
2 including the connecting Alice Street garage.

3 3. During the course of my supervision on behalf of
4 Alameda County of the site remediation at the garage, I drafted
5 and mailed numerous letters concerning the remediation
6 procedures. True and correct copies of certain of those letters
7 are attached hereto as Exhibits A through E, as follows:

8 Exhibit A: Letter dated July 31, 1990, to Mr. Alvin
9 Bacharach and Ms. Barbara Borsuk.

10 Exhibit B: Letter dated August 27, 1990, to Mr.
11 Alvin Bacharach and Ms. Barbara Borsuk.

12 Exhibit C: Letter dated October 29, 1991, to Mr.
13 John Cummings of SCS Engineers, who I
14 understood to be the expert consultants
15 hired by Mr. Bacharach and Ms. Borsuk.
16 A copy of that letter to SCS Engineers
17 was also sent to Mr. Bacharach and Ms.
18 Borsuk.

19 Exhibit D: Letter dated January 25, 1991 to
20 plaintiff's expert consultant, Mr. John
21 P. Cummings of SCS Engineers. A copy of
22 this letter was also sent to Mark Borsuk
23 and Jonathan Leo, Esq., Mr. Bacharach
24 and Ms. Borsuk's attorney at that time.

25 Exhibit E: Letter dated June 30, 1992, to
26 plaintiffs' counsel, Randall Morrison,
27 Esq.

28 4. As of _____, 1993, when my supervision of

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



CERTIFIED MAIL # P 062 128 277

DEPARTMENT OF ENVIRONMENTAL HEALTH

Hazardous Materials Program

50 Swan Way, Rm. 200

Oakland, CA 94631

(415) 271-4320

July 31, 1990

Mr. Alvin Bacharach & Ms. Barbara Borsuk
183 Diablo Road #100
Danville, CA 94536

Notice of Violation

RE: Harrison Street Garage, 1432 Harrison St., Oakland, CA 94612

Dear Mr. Bacharach and Ms. Borsuk:

This is a follow-up letter to an inspection performed on Friday, July 27, 1990, with regard to an expired underground storage tank permit at the above facility.

Upon inspection, it appears that there are additional underground tanks on the property which are currently unpermitted. You are currently in violation of the Health and Safety Code, Section 25284.

The following concerns need to be addressed regarding this location:

An investigation of this site needs to be performed to find out the correct number of tanks which currently exist at the above location.

In accordance with the California Code of Regulations (CCR), Title 23, Chapter 3, Subchapter 16 Underground Tank Regulations, you must perform one of the following actions:

1. Submit a tank closure plan to this Department as required by Article 7, 2670, or
2. Apply for a permit as required by Article 10, 2710. (Permit applications are attached)

If the single walled tanks are to be permitted, they must be precision tested annually, piping must have leak detection devices (if delivery lines are pressurized), fuel inventory must be monitored daily and quarterly monitoring reports must be sent to this office.

Mr. Alvin Bacharach & Ms. Barbara Borsuk
383 Diablo Road #100
Danville, CA 94526
July 31, 1990
Page 2 of 2

Our files show no past records of any tank tightness tests, line leak detection tests, or records of quarterly reports. You are currently in violation of Title 23 of the CA Code of Regulations, Sections 2712, 2631, 2643, 2644 & 2632.

It is our understanding that an investigation is currently underway to determine if there is contamination from the underground tanks at the site. You are required to submit copies of all laboratory analyses of borings, chain of custody, and associated reports. If a leak has occurred, you are required by law, to submit within 5 days, a full written report (including an unauthorized release form). In addition, you will be required to assess the extent of hydrocarbon contamination to soil and groundwater.

According to Section 25299 of the Health and Safety Code (HSC), any operator of an underground tank system who fails to report an unauthorized release, or fails to permit an inspection of the facility, or to perform any monitoring, testing, or reporting required, shall be liable for a civil penalty of not less than five hundred dollars or more than five thousand dollars for each underground storage tank per day.

You are requested to notify this office in writing within 10 days of the receipt of this letter of your intent with regard to the disposition of the underground tanks at the above location and to inform this office of any contamination problems associated with this site.

Should you have any questions, please contact me at (415) 371-4320.

Sincerely,

Paul M. Smith

Paul M. Smith,
Hazardous Materials Specialist

PMS:ENC

cc: Gil Jensen, Alameda County District Attorney, Consumer and
Environmental Protection Agency
Lester Feldman, ~~SPRINGERS~~
Robert Buchanan, King, Schapiro, Mittelman & Suchman
Steve Bayle, Lassa
Jonathan Redding, Fitzgerald, Abbot & Boardley
Yiles

EXHIBIT B

ALAMEDA COUNTY
HEALTH CARE SERVICES



AGENCY
DAVID J. KEARS, Director

Certified Mailer P 062 127 745

Telephone Number: (415)

August 27, 1990

Mr. Alvin Bacharach & Ms. Barbara Borsuk
383 Diablo Road #100
Danville, CA 94526

RE: Harrison Street Garage, 1432 Harrison St., Oakland, CA 94612

Dear Mr. Bacharach and Ms. Borsuk:

I have received a letter from Fitzgerald, Abbott and Beardsley dated August 22, 1990 and a Preliminary Subsurface Investigation Report from Subsurface Consultants, Inc. dated August 18, 1990. The report identified substantial leaks of petroleum products from underground tanks and probable impact to groundwater.

A preliminary site assessment should be conducted immediately to ascertain the extent of contamination to the groundwater. According to Section 2652 of Title 23 of the CA Code of Regulations (CCR):

Within 24 hours after the release has been detected, or should have been detected, using required monitoring, the operator shall notify the local agency and the State Office of Emergency services or the regional board.

Within 5 working days of detecting the release, the operator or permittee shall submit to the local agency a full written report to include all of the following information which is known at the time of filing the report:

- 1) List the type, quantity, and concentration of hazardous materials released.
- 2) The results of all investigations completed at that time to determine the extent of soil or groundwater or surface water contamination due to the release.
- 3) Method of cleanup implemented to date, proposed cleanup actions, and approximate cost of actions taken to date.
- 4) Method and location of disposal of the released hazardous substance and any contaminated soils or groundwater or surface water (indicate whether a hazardous waste manifest[s] is utilized).
- 5) Facility operators name and phone number.

Mr. Bacharach & Ms. Dorsuk
August 27, 1990
Page 2 of 2

Until cleanup is complete, the operator or permittee shall submit reports to the local agency and the regional board every 3 months or at a more frequent interval specified by a responsible agency. The reports shall include the information requested in 2, 3, and 4 above.

The reporting requirements of this section are in addition to any reporting requirements specified by Section 13271 of Division 7 of the Water Code and other laws and regulations.

You are requested to conduct an assessment (within 5 days of the receipt of this letter) of the extent of the contamination which has occurred at the above site. You are also requested to set a schedule within 10 days for the completion of the various phases of the remediation; including the identification of the number of tanks on the property and a schedule for tank removal or permitting.

Cases are prioritized by our department based upon the potential threat to human health and the environment to which they pose. This case is given a high priority for investigation/remediation due to the potential for the presence of free petroleum product and the contamination to groundwater.

Should you have any questions, please contact me at (415) 271-4320.

Sincerely,

Paul M. Smith

Paul M. Smith,
Hazardous Materials Specialist

PMS:mnc

cc: Gil Jensen, Alameda County District Attorney, Consumer and
Environmental Protection Agency
Lester Feldman, SPBRWQCB
Robert Buchman, King, Schapiro, Mittleman & Buchman
Steve Davis, Leasee
Jonathan Redding, Fitzgerald, Abbot & Beardley
Files

EXHIBIT C

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY
DAVID J. KEARS, Director



Telephone Number: (415)

October 29, 1991

Mr. John Cummings
SCS Engineers
6761 Sierra Court
Suite D
Dublin, CA 94568

Re: Comments of September 24, 1991 Revision to the Work
Plan proposal for 1432 Harrison and adjoining Alice
Street garages, Oakland, CA 94612

Dear Mr. Cummings:

Alameda County Environmental Health Department, Hazardous
Materials Division has received and reviewed your comments
responding to the September 3, 1991 letter from this office.

INTRODUCTION:

Our evaluation after reviewing SCS's several submittals is that
SCS apparently considers this to be just another routine
underground tank removal. There are several factors which make
this removal far from routine. These include but are not limited
to the following:

- 1) The tanks, sumps and hoists and associated ancillary
- piping are all located in confined or relatively
confined areas with either full or partial enclosure
within structures.
- 2) Chemicals which have previously been detected in or
around tanks, pipes or sump are other than those
typically found in fuel related underground tank sites.
- 3) Both garages are located in urban locations with
relatively high foot traffic from workers travelling to
and from adjacent commercial businesses. Air intake
systems from adjacent structures may collect and
circulate contaminated air produced from contaminants
at the above site to heat or cool nearby buildings.
- 4) The garage systems are currently being used to park
vehicles and it is my understanding that SCS currently
plans that they will be occupied during the proposed
removal activities. The intended use of the parking
facility coupled with knowledge obtained from previous

Mr. John Cummings
October 29, 1991
Page 2

sampling intervals raises concerns regarding the possible health and safety which might affect parking patrons, employees and the general public.

Cal-OSHA:

After reviewing SCS's September 24, 1991 letter I became concerned about SCS's monitoring proposals in relation to worker and public safety. In particular I was concerned about the issue of proper monitoring to detect the presence of exposures from all of potential chemical detected on site. As a consequence of these concerns I discussed this matter with Cal-OSHA, Oakland Enforcement Office (Jonathan Rossen, Associate Industrial Hygienist). Cal-OSHA agrees that we are justified in requiring airborne monitoring for each hazardous substance that has been reasonably shown to be associated with this site. They also stated that the monitoring instruments(s) used must be able to detect the specific substance to be monitored. They also concurred with us that monitoring for benzene will not adequately detect chlorinated hydrocarbons or PCBs.

Photo Ionization Detector:

SCS proposes to use a photo ionization detector (PID) to detect the presence of all contaminants previously found at the site including all petroleum and chlorinated compounds. We believe it can't be done with a PID. A PID normally calibrated to isobutylene, is incapable of giving an indication that the permissive exposure levels (PELs) of chlorinated solvents or benzene have not been exceeded.

It should be noted that the ionization potentials for many halocarbons are greater than 11.0 electron volts (ev) therefore, the standard 10.2 ev bulb used with a PID would not only be non-definitive for the presence of a specific compound but it is likely that it would be unable to detect its presence.

Regarding the issue of providing quantitative and qualitative air quality monitoring information you are required to employ a more definitive monitoring system than the proposed PID. Please specify the type of continuous monitoring system to be used, the frequency of monitoring and the qualifications of the personnel performing the monitoring. You are also required to maintain a monitoring log documenting the chemical monitored, the level obtained, and the frequency of monitoring.

Known Data:

To clarify the laboratory results referred to in the September 3, 1991 correspondence from this office, the results referred to were of data received by this office of July 10, 1991 via FAX transmission from SCS. The data were actually collected on

Mr. John Cummings
October 29, 1991
Page 3

Correct
October 27, 1990 by SCS. These data (from samples collected from the Alice Street waste oil tanks) revealed contamination of dibromo chloromethane as high as 13 ppm, 1-2 dichloroethene as high as 1.8 ppm, tetrachloroethene as high as 16.6 ppm, trichloroethene as high as 9.8 ppm and PCB as high as 100 ppm.

In the September 24, 1991 letter you characterize the October 19, 1990 data as "questionable. At this point, we assume the October 19, 1990 data are accurate. We don't intend to get drawn into a dispute concerning the reliability of the October 19, 1990 data. Until the tanks are removed and the site more fully characterized we will not know whether your characterization is accurate. Until we more fully understand the health and safety hazards at this site, we will insist that all data be considered as you embark upon Phase I and that includes addressing the health and safety issues raised by the October 19, 1990 data. Or to put it in more blunt terms: we don't want anyone to get hurt because SCS ignored the October 19, 1990 data.

Exposure Tolerances:

Regarding the specified PEL and STEL values which were specified in page 3 of the most recent SCS correspondence, after consulting California Code of Regulations, Title 8, Section 5155 it became apparent that the following corrections are necessary regarding allowable exposure levels.

The PEL for methylene chloride is 100 ppm and the STEL is 400 ppm, not 500 and 1000 as reported on page 3.

Tetrachloroethene (perchloroethylene) has a ceiling of 300 ppm.

The trichloroethene PEL is 25 ppm, not 50 ppm, and has a ceiling of 300 ppm.

When referring to PELs, STELs and ceiling limits, you are required to refer to Title 8.

Contingency Plan:

A Contingency Plan is required. Your 9 line contingency plan in your September 24, 1991 letter is inadequate. For example, it would be prudent to have standby level B apparatus when workers are working in level C. You are required to specify the measures which will be taken if the previously specified monitoring levels are exceeded. Site control measures should address exposure to hazardous levels to site workers, garage patrons, employees and the general public.

Ventilation:

Another issue of concern to this Department and also to Cal-OSHA

Mr. John Cummings
October 29, 1991
Page 4

is the use of an appropriate monitoring device and to provide specific volume measurements to include carbon monoxide, particularly within the Alice Street garage basement area during both the excavation and removal of the underground storage tanks. According to the American Conference of Governmental Industrial Hygienists, Industrial Ventilation Manual (1984) when diesel equipment is used in a basement, 100 cubic feet per meter of fresh air should be provided for each horsepower which the vehicle produces.

Accordingly, you are required to provide more detailed information specifying the volume of ventilation which will be provided in this area, including the number of air exchanges.

You are required to perform work in compliance with all State and Federal Worker Safety laws. Specifically we direct your attention to California Code of Regulations Title 8, Section 5155 (e) and (f) requiring personal monitoring and medical surveillance for all employees whenever it is reasonable to suspect that employees may be exposed to concentrations of airborne contaminants in excess of levels permitted in 5155 (c).

The air monitoring should be continuous while work is underway. This is to determine if the PELs and STELs are exceeded and if air purifying respirators are used to insure that the break through values for each substance have not been exceeded.

Stockpiled Soil:

Regarding stockpiled soil sampling, 4 discrete soil samples are required per 50 cubic yards. Samples collected from 4 locations per 50 cubic yards may then be composited into one in the laboratory. Please specifically acknowledge this point in your response.

Analyses Required:

Table 2 page 17 of the August 19, 1991 Modified Work Plan lists different laboratory analysis for the gasoline tanks and the waste oil tanks than those found on attachment 5a and 5b of your most recent correspondence. We assume listed analyses on Table 2 are what you will follow as these conform with the Tri-Regional Recommendations. Please specifically acknowledge this point in your response.

Phase II:

Additionally, as specified in the July 12, 1991 correspondence from this office you are required to submit a Phase II Work Proposal within 10 days of the completion of the laboratory analysis from the groundwater monitoring well installation. The Phase II report is to include, among other things, a proposal to

Mr. John Cummings
October 29, 1991
Page 5

install additional monitoring wells on and off site as warranted by the results of the Phase I investigation and consistent with the Tri-Regional Recommendations.

CONCLUSION:

The work at the 1432 Harrison Street and Alice Street sites has many serious risks and hazards that are not encountered at other underground storage tank removals. These include working in an enclosed environment, the surrounding high density office buildings, the possibility of encountering very toxic hazardous substances (chlorinated hydrocarbons and other carcinogens), and high concentrations of other hazardous substances associated with gasoline.

The County will not allow any work that results in an improper exposure, even for short period of time, of hazardous substances to the public. We consider an improper exposure to a hazardous substance for site workers to be any violation of the Cal-OSHA PEL's or other regulations, and that exposure to the general public (both inside and outside the garage) to be any exposure to hazardous substances originating from work at the above site.

The work plan is properly the product of the consultant, SCS Consultants and John Cummings. You have represented your firm and yourself as experts in underground storage tank removal and the related health and safety concerns. We expect that you are qualified to properly handle the specific and unique hazards of this site and will have qualified personnel on site to assist you. The County's role is not to write the work plan or to function as the health and safety experts but to provide general review and oversight.

The work plan includes many safety measures including air blowers to increase air exchanges, continuous air monitoring with instruments that will monitor all substances that may be on site, the covering of contaminated soil with plastic and the exclusion of the general public from certain parts of the garage. Many of these measures were placed in the work plan at the insistence of the County. We expect that you will take whatever additional safety and health measure are needed to ensure there are no improper exposures. You are the health and safety expert, we are not.

We further expect that SCS put additional measures into place if improper exposures are anticipated, and before the improper exposure occurs. Some examples of these measures may include, but are not limited to, such things as complete closure of the garage, negative air pressure to prevent escape of vapors from the garage, emergency removal of contaminated soil and removal

Mr. John Cummings
October 29, 1991
Page 6

and exclusion of the public from neighboring areas and buildings.

If SCS does not have the resources or expertise to protect the health and safety of site workers and the general public we expect that you will obtain these prior to the start of work. We will not tolerate your use of cost as justification for not providing adequate health and safety protection. We are concerned that your recent request that monitoring only be conducted for benzene (which will not allow for full monitoring of substances in the air that the record shows we have reason to be on site) is based upon cost.

We expect that if you are unable to provide a safe and healthy work site because of cost constraints or lack of expertise that you will disassociate yourself from this work plan. If you proceed with the work plan we expect that there will be no improper exposures. If there are we will hold you and the owner responsible to the full extent allowed by law.

Sincerely,

Paul M. Smith

Paul M. Smith
Hazardous Materials Specialist

- cc:
- Alvin Bacharach
 - Barbara Borsuk
 - Mark Borsuk Esq.
 - Jonathan Leo Esq., Heller Ehrman, White and McAuliffe
 - Randall Morrison Esq., Crosby, Heafy, Roach and May
 - Mark Thomson Esq., Alameda County District Attorney's office
 - Lester Feldman, SFRWQCB
 - Charlene Williams, DHS

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 W.C. 9/15/96

EXHIBIT D

ALAMEDA COUNTY
HEALTH CARE SERVICESAGENCY
DAVID J. KEARS, Agency DirectorDEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

January 25, 1991

Certified Mailer # P 062 127 954

Mr. John P. Cummings
SCS Engineers
6761 Sierra Court, Suite D
Dublin, CA 94568Re: Oakland Parking Garage, 1432 Harrison Street
including connecting Alice Street garage, Oakland, CA 94612

Dear Mr. Cummings:

This letter follows telephone conversations I shared on January 17, 1991, with Mr. Jonathan Leo, and yourself, outlining criteria required by this office for the preparation of a Site Characterization/Assessment Proposal.

As you know, Subsurface Consultant's 10/19/90 report disclosed various areas of contamination and abandoned underground storage tanks at the above sites. In brief summary, the report indicates that abandoned underground storage tanks exist in the basement of the parking structure near Alice Street as well as under the sidewalk on Harrison Street. An "anomalous" radar image also revealed a suspected former underground storage tank (ust) location next to the engine-hoist area. Laboratory results from seven soil borings indicated contamination levels of Total Petroleum Hydrocarbon as high as 9300 ppm, and benzene concentrations as high as 99,000 pph. Lab analysis revealed contaminant sources of gasoline, diesel and PCBs.

Clearly, this preliminary data strongly suggests groundwater has been impacted and the probability that contamination has migrated off-site. More detail than that provided in the 10/19/90 report with regard to definition of the nature and extent of the problem is required.

It is my understanding that attorneys for the property owners and the District Attorney's office have agreed to the following time table:

Within 15 days of the date of this letter, you shall submit a proposal for site characterization/assessment for my review.

Within 5 days of my receipt of that proposal, I shall have completed my review and if the proposal is adequate, give my consent to commence site assessment. If the proposal is deficient, I shall apprise you of the deficiencies.

Within 45 days of my consent for you to commence site characterization/assessment, you shall provide this office a report of the results of that site characterization/assessment.

D000075

Mr. Cummings
January 25, 1991
Page 2 of 4

This Department will oversee the site assessment for the referenced facility. This oversight will include our review and comment on work proposals and technical guidance on appropriate investigative approaches. The issuance of well drilling permits, however, will be through the Alameda County Flood Control and Water Conservation District, Zone 7.

All reports and proposals must be submitted under seal of a California-Registered Geologist, Certified Engineering Geologist, or Registered Civil Engineer. Please include a statement of qualifications for each lead professional involved with this project.

Your proposal for site characterization/assessment shall be consistent with RWQCB Staff Recommendations for the Initial Evaluation and Investigation of Underground Tanks. The major elements of such an investigation are summarized in the attached Appendix A.

Essentially your proposal for site characterization/ assessment is a plan for investigative work which will identify and delimit areas of contamination. That investigative work will define the vertical and lateral impact upon groundwater and soils resulting from underground tanks and other contamination sources.

Your proposal for site characterization/ assessment shall also include:

- o A risk assessment addressing the human health issues likely to occur resulting from exposure of contaminants emanating from the above site, and any mitigative measures proposed in association with the preliminary investigative assessment work.
- o A subsurface assessment to determine the correct number of underground tanks or other sources of contamination at the Harrison/ Alice street sites.
- o A plan for evaluation for PCB contamination and halogenated substances in the down gradient direction of the waste oil tanks located near Alice street.

Upon implementation of the site characterization/ assessment proposal, and as earlier noted, you will be submitting a report of the site characterization/ assessment to this office. The site characterization/ assessment report shall include, but shall not be limited to, the following information:

Information gathered to develop a strategy for further delimiting and effectively remediating subsurface contamination at the site.

D000076

Mr. Cummings
January 25, 1991
Page 3 of 4

A discussion of the human health issues associated with the removal of the UST's, and during site remediation may need to be conducted.

A tank closure/ modification plan for the removal of any additional underground storage tanks (USTs). The current closure plan approved by this office is for 2 UST's.

With the re-submitted tank closure plan, a revised Health & Safety Plan to address all issues of concern of the project.

A time schedule for the completion of the various phases of work including site characterization, plan implementation, tank removal, monitoring well installation, and soil and groundwater remediation.

After the completion of the site characterization/ assessment report subsequent reports must be submitted quarterly until this site qualifies for final RWQCB "sign off". Such quarterly reports are due the first day of the third month of each subsequent quarter (i.e., March 1, June 1, September 1, and December 1). These reports should describe the status of the investigation and must include, among others, the following elements:

- o Details and results of all work performed during the designated period of time: records of field observations and data, boring and well construction logs, water level data, chain-of-custody forms, laboratory results for all samples collected and analyzed, tabulations of free product thicknesses and dissolved fractions, etc.
- o Status of ground water contamination characterization
- o Interpretation of results: water level contour maps showing gradients, free and dissolved product plume definition maps for each target component, geologic cross sections, etc.
- o Recommendations or plans for additional investigative work or remediation

D000077

Mr. Cummings
January 25, 1991
Page 4 of 4

Should you have any questions about the content of this letter,
please call me at 415/271-4320.

Sincerely,

Paul M. Smith

Paul M. Smith
Hazardous Materials Specialist

cc:

Mark Borsuk, Attorney at Law
Jonathan Leo, Heller, Ehrman, White & McAuliffe
Mark Thomson, Alameda County District Attorney's office of
Consumer and Environmental Affairs
Rafat A. Shahid, Assistant Agency Director, Alameda County
Environmental Health Department
Lester Feldman, SFRWQCB
Charlene Williams, SWS

AL

D000078

EXHIBIT E

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID L. KEARS, Agency Director



June 30, 1992

Mr. Randall Morrison
Crosby, Hoagy, Beach and May
1999 Harrison Street
Oakland, CA 94612-3573

ALAMEDA COUNTY HEALTH CARE SERVICES

DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Division
80 Swan Way, Rm. 200
Oakland, CA 94621
(510) 271-1320

Re: Review of Preliminary Site Assessment and Site Safety Plan
for Harrison Street Parking Garage located at 1432 Harrison
Street and 1432 Alice Street, Oakland, CA 94612

Dear Mr. Morrison,

Alameda County Environmental Health Department, Hazardous Materials Division has received and reviewed the Preliminary Site Assessment (PSA) Report and also the Site Safety Plan (SSP) prepared by RGA Environmental Inc. The PSA involved the completion of 23 soil borings located around existing underground storage tanks (UST's), pipes, sumps and hoists throughout the above facility.

Significant results from the PSA are outlined below:

Waste oil USTs and pipelines located in the Alice St basement
The RGA sampling proposal (January 9, 1992) specified that four soil borings would be drilled to 15 feet below the surface of the basement. Auger refusal was experienced at 5 feet, 8 feet, 3 feet and 4 feet in borings B-9 through B-12 respectively, presumably due to the presence of an underground vault surrounding the two USTs.

A soil sample at B-10 indicated the presence of 109 ppm of Total Petroleum Hydrocarbons as diesel (TPHD). It was reported that oil and grease results, although collected, are unavailable for samples B-9 or B-10.

Total Oil and Grease (TOG) contamination of 221 ppm was measured in basement pipeline sample B-5.

Reported values of mercury at levels of 49.7 to 74.2 ppm were obtained in borings B-1 through B-10. Selenium levels in samples B-5 through B-9 also exceeded ten times the soluble threshold limit concentration (stlc).

Hydraulic Lift and Sump

Soil sample B-13-15', placed in between the hydraulic lifts, indicated the presence of 136 ppm Total Petroleum Hydrocarbons as gasoline (TPHg). Sample B-13-15' was not tested for benzene and ethyl benzene as was specified in the approved proposal. Additionally, B-14-15' was not tested for benzene, toluene, and xylene. The January 9, 1992 proposal specified that these constituents would be analyzed. You are requested to specify why this was not done.

0000034

Mr. Morrison
June 30, 1992
page 2 of 4

Borings performed around the sump and hoists indicated levels of chromium, mercury and selenium exceeding ten times the allowable soluble threshold limit value for each metal.

Soil collected from B-13 indicated the presence of polychlorinated biphenyls (PCB's) at 245 ppm at a five foot depth.

Preliminary water samples collected from B-13 indicated concentrations of TPHg at 60,200 ppb, benzene at 55 ppb and TOC at 9721 ppb.

Harrison Street Underground Storage Tanks and Piping
A soil sample collected from B-22 indicated TPHg at 1540 ppm and benzene at 0.987 ppm.

Groundwater samples collected from B-20, B-22 and B-23 each indicated benzene at 5 ppb and the presence of TPHg at 96 ppb, 72 ppb and 1020 ppb respectively. Total lead detected in groundwater in each of these borings was 0.81, 1.38 and 8.29 ppb.

A water sample collected from B-17 indicated the presence of bromodichloromethane at 2.4 ppb and chloroform at 30.0 ppb

After review of the Site Safety Plan the following questions and concerns remain which require further written clarification or elaboration:

1) The SSP does not include monitoring for the presence of heavy metals encountered in soil and groundwater nor does it mention the detection of or monitoring for chlorinated hydrocarbons.

2) The name of the consultant, Industrial Hygienist and Site Safety Officer responsible has been deleted from the SSP. You are requested to specify this information and also to resolve the lines of responsibility between the Site Safety Officer and how he/she will interface with the consultant (page 12 of the SSP).

3) The SSP recommends that the asbestos piping located in the Alice Street basement be removed prior to the ust/pipeline removal. If you intend to implement this phase of work please specify the time schedule for its completion.

4) The SSP recommends that after excavation is completed soil will be removed off-site. If you intend to stockpile soil on site for any length of time you are requested to specify the location(s) of the stockpile storage, methodology for sampling and frequency of monitoring particularly in areas of enclosed space.

Based upon the various pollutants contained in the soils at this site it is apparent that the excavated soils may be hazardous wastes and so require proper disposal as such. Please clarify how you will determine whether soil is hazardous or not. In lieu of this

0000095

Mr. Morrison
June 30, 1992
page 3 of 4

categorization, any soil hauled off site shall be considered hazardous and shall be hauled off by an appropriate hauler under manifest to an appropriate facility.

If feasible, it is recommended that any contaminated soil found at the time of the tank, pipe, sump or hoist be removed. Confirmation soil samples, following over excavation, must be taken at appropriate intervals in order to indicate the levels of contamination remaining at the limits of excavation.

5) You are required to address how excavated soils will be surveyed to determine and segregate contamination from PCBs, or heavy metals and also to specify how and where the contaminated soils will be stored.

6) Other SSP recommendations such as the use of vapor suppressing foam, mobile laboratory services, a vacuum truck need to be clarified. You are required to specify whether these recommendations will be implemented.

7) The drawings in the SSP portray areas where partitioning will occur and refers to areas where ventilation will be provided. You are required to elaborate as to the type of ventilation to be utilized, site control measures involving garage patrons, entrances and exits selected to remain open and to be closed off.

Specific details for monitoring of all contaminants formerly or currently identified at this site, for the removal of asbestos, and details of a ventilation system at this site are required to be reviewed and formally approved by a Certified Industrial Hygienist

Specify the degree of garage use and site control measures employed during each proposed phase of work regarding parking garage patrons and the general public. The revised safety plan must specify threshold levels and when certain actions will be taken.

Drawing G-1 indicates that the entire single level Harrison structure is a confined space. There is no mention in the SSP that work will occur on the weekend. In speaking with you recently it was my understanding that this is the plan. Please clarify. I assume that there will be no parking permitted in the first floor of the Harrison facility when work in it is being conducted.

Drawing G-1 also depicts a visqueen barrier separating the multilevel structure from the single level structure. Describe specific measures to provide adequate ventilation from vapor exposures in excavations and also from carbon monoxide produced from the operation of removal and excavation equipment. Specify ventilation intake and exhaust locations.

0000096

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): William J. Trinkle RANDICK & O'DEA 1800 Harrison Street, Suite 2350 Oakland, California 94612 ATTORNEY FOR (Name): Cross-defendants	TELEPHONE NO.: (510) 836-3555	FOR COURT USE ONLY
NAME OF COURT: Alameda County Superior Court STREET ADDRESS: MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland, California 94612 BRANCH NAME:		
PLAINTIFF/PETITIONER: ALVIN H. BACHARACH and BARBARA JEAN BORSUK DEFENDANT/RESPONDENT: STEVEN DAVIS, LEONARD DAVIS, et al.		
DEPOSITION SUBPENA For Personal Appearance <input checked="" type="checkbox"/> and Production of Documents and Things		CASE NUMBER: 670066-3 and 666290-3

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
Mr. Tom Peacock, Alameda County Dept. of Environmental Health
80 Swan Way, Room 200, Oakland, California

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following time and place:

Date: **April 28, 1994** Time: **10:00 am** Address: **Randick & O'Dea, 1800 Harrison, Suite 2350, Oakland, CA**

- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 3. (Code of Civil Procedure section 2025 (d)(6).)
- b. You are ordered to produce the documents and things described in item 3.
- c. This deposition will be recorded stenographically and by audiotape videotape.
- d. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025 (u)(4).
2. The **personal attendance** of the custodian of records or other qualified witness and the **production of the original documents** are required by this deposition subpoena. The procedure authorized by Evidence Code sections 1560 (b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The **documents and things to be produced and any testing or sampling being sought are described as follows:**
1. All files and documents related to the Harrison St. Garage, 1432 Harrison Street, Oakland, CA, owned by Alvin Bacharach and Barbara Borsuk, contained in the records of Alameda County Department of Environmental Health.
- Continued on attachment 3.
4. A deposition permits an attorney to ask questions of a witness who is sworn to tell the truth. An attorney for other parties may then ask questions also. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. A witness may read the written record and change any incorrect answers before signing the deposition. The witness is entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition.

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: **March 23, 1994**

William J. Trinkle

(TYPE OR PRINT NAME)



(SIGNATURE OF PERSON ISSUING SUBPENA)

Attorney for Cross-defendants

(TITLE)

(See reverse for proof of service)

1 TIME: 10:00 a.m.
2 PLACE: Law Offices of RANDICK & O'DEA
3
4 WITNESS: Mr. Mark Borsuk
5 87 Rico Way
6 San Francisco, CA 94123
7
8 DATE: April 19, 1994, and continuing from day to day
9 thereafter.
10
11 TIME: 10:00 a.m.
12 PLACE: Law Offices of RANDICK & O'DEA
13
14 WITNESS: Mr. Stephen Davis
15
16 DATE: April 20, 1994, and continuing from day to day
17 thereafter.
18
19 TIME: 10:00 a.m.
20 PLACE: Law Offices of RANDICK & O'DEA
21
22 WITNESS: Mr. Phillip W. Musser
23 Robert Miller & Co.
24 3261 Grove St.
25 Oakland, CA 94609
26
27 DATE: April 21, 1994, and continuing from day to day
28 thereafter.
29
30 TIME: 10:00 a.m.
31 PLACE: Law Offices of RANDICK & O'DEA
32
33 WITNESS: Mr. Al Stephens
34 GRUBB & ELLIS
35
36 DATE: April 22, 1994, and continuing from day to day
37 thereafter.
38
39 TIME: 10:00 a.m.
40 PLACE: Law Offices of RANDICK & O'DEA

1 WITNESS: RGA, Inc.
2 1260 45th Ave.
3 Emeryville, CA 94608
4 (510) 547-7771

5 DATE: April 25, 1994, and continuing from day to day
6 thereafter.

7 TIME: 10:00 a.m.

8 PLACE: Law Offices of RANDICK & O'DEA

9 WITNESS: Mr. John Cummings
10 SCS Engineers
11 6761 Sierra Court, Suite D
12 Dublin, CA 94568

13 DATE: April 26, 1994, and continuing from day to day
14 thereafter.

15 TIME: 10:00 a.m.

16 PLACE: Law Offices of RANDICK & O'DEA

17 WITNESS: Mr. James P. Bowers
18 Subsurface Consultants, Inc.
19 171 12th Street
20 Oakland, CA 94607

21 DATE: April 27, 1994, and continuing from day to day
22 thereafter.

23 TIME: 10:00 a.m.

24 PLACE: Law Offices of RANDICK & O'DEA

25 WITNESS: Mr. Tom Peacock
26 Alameda County Dept. of Environmental Health
27 80 Swan Way, Room 200
28 Oakland, CA 94621

DATE: April 28, 1994, and continuing from day to day
thereafter.

TIME: 10:00 a.m.

PLACE: Law Offices of RANDICK & O'DEA

1 WITNESS: Mr. Paul Smith
2 Alameda County Dept. of Environmental Health
3 80 Swan Way, Room 200
4 Oakland, CA 94621
5 DATE: April 29, 1994, and continuing from day to day
6 thereafter.
7 TIME: 10:00 a.m.
8 PLACE: Law Offices of RANDICK & O'DEA

9 WITNESS: Mr. John Sturman
10 Levine-Fricke
11 1900 Powell St.
12 Emeryville, CA 94608
13 DATE: May 3, 1994, and continuing from day to day
14 thereafter.
15 TIME: 10:00 a.m.
16 PLACE: Law Offices of RANDICK & O'DEA

17 WITNESS: Mr. Michael Stoll
18 Levine-Fricke
19 1900 Powell St.
20 Emeryville, CA 94608
21 DATE: May 4, 1994, and continuing from day to day
22 thereafter.
23 TIME: 10:00 a.m.
24 PLACE: Law Offices of RANDICK & O'DEA


25 WITNESS: Allright Parking
26 1432 Harrison St.
27 Oakland, CA 94612
28 DATE: May 5, 1994, and continuing from day to day
thereafter.
TIME: 10:00 a.m.
PLACE: Law Offices of RANDICK & O'DEA

1 PLEASE TAKE NOTICE that at the time, date and place set forth
2 above, Plaintiff and Cross-defendant herein represented by Randick
3 & O'Dea, will take the depositions of the above-named witnesses
4 pursuant to Section 2025 of the California Code of Civil Procedure
5 at the Law Offices of Randick & O'Dea located at 1800 Harrison
6 St., Suite 2350, Oakland, California 94612.

7 PLEASE TAKE FURTHER NOTICE that deponents Miller & Co., SCS
8 Engineers, RGA, Inc., Subsurface Consultants, Inc., Department of
9 Environmental Health and Levine-Fricke will be required to produce
10 the documents listed in the subpoenas which will supplement this
11 notice.

12 Date: March 17, 1994

RANDICK & O'DEA

13
14
15 By: 
16 William J. Frinkle
17 Attorneys for
18 Cross-defendants DOUGLAS
19 MOTOR SERVICE, LELAND
20 DOUGLAS and DAVID FLETT

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27 douglas2.nod
28 plead#6.wjt