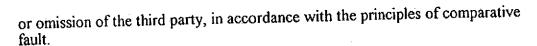
JEFFREY P. WIDMAN (#58628) 1 **DANA RITCHIE (#179683)** LAW OFFICES OF JEFFREY P. WIDMAN 2 84 West Santa Clara Street, Suite 690 San Jose, California 95113 3 (408) 288-6777 Telephone: (408) 288-7668 Facsimile: 4 5 Attorney for Petitioner MEHDÍ MOHAMMADIAN 6 STATE WATER RESOURCES CONTROL BOARD 7 8 9 MEHDI MOHAMMADIAN, 10 Petitioner, PETITION FOR REVIEW OF DECISION VS. OF THE ALAMEDA COUNTY HEALTH 11 CARE SERVICES AGENCY TO REMOVE TEXACO, INC. AND AGNES AND JESSEN 12 CALLERI AS RESPONSIBLE PARTIES 13 ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY, 14 Respondents, 15 16 17 Petitioner MEHDI MOHAMMADIAN ("Petitioner") hereby petitions for the above-18 entitled State Board to review the decision of The ALAMEDA COUNTY HEALTH CARE 19 SERVICES AGENCY ("Respondent" or "ACHCSA") to remove Texaco, Inc. ("Texaco") and 20 Agnes and Jassen Calleri (the "Calleris") as responsible parties. Petitioner states the following: 21 1. Petitioner Mehdi Mohammadian owns CALGAS, located at 15595 Washington 22 Avenue, San Lorenzo, CA 94580 (the "Property"); 23 2. Petitioner requests that the State Board review Respondent's decision to remove 24 Texaco and the Calleris as responsible parties. A true and correct copy of the Notice of Revision 25 is attached hereto as Exhibit "A." 26 3. Respondent's decision was made on of May 28, 1999; 27 // 28

Petition To Reverse
28 ACHCSA Decision

testimony, and Petitioner did not have an opportunity to respond to the letter, present any evidence or controvert any evidence. Second, the decision made by ACHCSA does not make sense in that ACHCSA essentially dismissed any liability on behalf of Texaco and the Calleris for old releases. Toxichem's letter on its face showed that there were old releases as well as new releases. The decision begs the question of why ACHCSA allowed Texaco and the Calleris to escape any liability for at least the old releases. Third, Additional evidence, the defective monitoring well caps, may link Texaco with the new releases as well.

- 5. Petitioner has been aggrieved by ACHCSA's May 28, 1999 decision in the following manner: Texaco and the Calleris may be able to avoid paying for any continued investigation of the contamination, such as submitting a SWI work plan, quarterly well sampling, monitoring and reporting, as requested by ACHCSA. Those parties may be able to avoid paying their share of any subsequent clean-up costs that may be required as a result of contamination. In addition, Texaco will be able to avoid indemnifying Petitioner as per their 1997 Indemnification Agreement and as a result of the settlement with Texaco, Petitioner released Texaco from certain liability.
- 6. Petitioner requests that the State Board reverse ACHCSA's May 28, 1999 decision to remove Texaco and the Calleris as responsible parties and that the Board conduct a hearing at which Petitioner may present the evidence that he was unable to present to ACHCSA since ACHCSA did not conduct a hearing.
- 7. The following is a statement of Points and Authorities in support of legal issues raised in the Petition.
- I. ACHCSA MADE ITS DECISION WITHOUT CONDUCTING A HEARING, WITHOUT HEARING SWORN TESTIMONY AND WITHOUT ALLOWING PETITIONER AND OTHER INTERESTED PARTIES TO PRESENT EVIDENCE

ACHCSA based its decision on a letter from Toxichem and simply adopted Toxichem's opinion that Texaco and the Calleris should be removed as responsible parties. ACHCSA did not conduct a hearing, there was no sworn testimony, and Petitioner did not have an opportunity to respond to the letter, present any evidence or controvert any evidence.



Under California law, those responsible for polluting groundwater can be held liable for creating a public nuisance and for violating California's environmental laws. See Carter v. Chotiner, 210 Cal. 288, 291, 291 P. 577 (1930) (polluted water is a public nuisance); Selma Pressure Treating Co., Inc. v. Osmose Wood Preserving Co., 221 Cal. App.3d 1601, 1616-20, 271 Cal.Rptr. 596 (1990) (any person who creates or helps create and maintain a nuisance is liable for its abatement and damages); State of California v. Albert Campbell (9th Cir.1998) 138 F.3d 772, Cal. Health & Safety Code §25358.3 (those responsible for endangering the public's health or safety or the environment may have to take remedial action to protect the public and the environment). In addition, in some situations where there is more than one tortfeasor, fault must be allocated and one party may have to indemnify another party. "Equitable indemnity" allows one tort-feasor to receive either full or partial indemnity from a joint tort-feasor on a comparative fault basis. Selma Pressure Treating Company, Inc., et al. V. Osmose Wood Preserving Company of America, Inc. (1990) 221 Cal. App. 3d 1601. The concept of joint tortfeasors for the purpose of indemnity is explained in the [Restatement Second of Torts] as '... two or more persons who are liable to the same person for the same harm. It is not necessary that they act in concert or in pursuance of a common design, nor is it necessary that they be joined as defendants. Id. (State and regional water quality control board brought action against defendants, alleging that defendants improperly disposed of hazardous waste).

Thus, both Texaco and the Calleris would be responsible for old releases as joint tortfeasors.

D. Texaco Is Liable For Failing to Report GTP's Findings in 1986 And For Failure To Replace the Second Generation Tanks when they Should Have Been Replaced

Texaco should have reported the unauthorized release evidenced in the GTI report to the State Water Resources Control Board.

Petition To Reverse ACHCSA Decision

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- (a) Any operator of an underground tank system shall be liable for a civil penalty ...for each underground storage tank for each day of violation for any of the following violations:
- ... (4) Failure to report an unauthorized release, as required by Sections 25294 and 25295.
- (b) Any owner of an underground tank system shall be liable for a civil penalty... for each underground storage tank, for each day of violation, for any of the following violations:
- (2) Failure to repair or upgrade an underground tank system in accordance with this chapter.
- (3) Abandonment or improper closure of any underground tank system subject to this chapter.

## III. CONCLUSION

The procedure, or lack thereof, used by ACHCSA in making its decision was improper as there was no allowance for a hearing, sworn testimony and evidence by other interested parties. In addition, Mr. Seery did not have available to him pertinent information taken by his own inspector, information which would have undoubtedly made a difference in his decision making. Furthermore, ACHCSA actual decision was improper based on the documentation that was in front of Mr. Seery. Texaco and the Calleris are responsible parties by definition under Cal. C. Reg. §2720 and ACHCSA erred in removing them. The evidence submitted to ACHCSA by Toxichem indicated that Texaco and the Calerris were responsible for at least old releases. Additional evidence, the defective monitoring wells and caps, link Texaco with the new contamination as well. Petitioner asks this Board to reverse ACHCSA's decision, and reinstate Texaco and the Calleris as responsible parties. If the Board does not hold Texaco and the Calleris liable for their actions in the old releases and the new contamination, a grave injustice will be done in allowing them to escape liability and leaving the other responsible parties holding the bag.

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Petition To Reverse ACHCSA Decision

## PROOF OF SERVICE BY FAX AND MAIL

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STATE OF CALIFORNIA

ss. PETITION TO THE

COUNTY OF SANTA CLARA

STATE WATER RESOURCES CONTROL BOARD

I am employed in the County of Santa Clara, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is 84 West Santa Clara Street, Suite 690, San Jose, California 95113. On June 28, 1999, I served true and correct copies of PETITION FOR STAY OF THE EFFECT OF THE ACTION OF THE DECISION OF THE ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY TO REMOVE TEXACO, INC. AND AGNES AND JESSEN CALLERI AS RESPONSIBLE PARTIES; DECLARATION OF MEHDI MOHAMMADIAN IN SUPPORT OF PETITION FOR STAY OF THE EFFECT OF THE ACTION; ORDER FOR STAY OF THE EFFECT OF THE ACTION; REQUEST FOR PREPARATION OF RECORD; PETITION FOR REVIEW OF DECISION OF THE ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY TO REMOVE TEXACO, INC. AND AGNES AND JESSEN CALLERI AS RESPONSIBLE PARTIES by placing them in envelopes.

I am readily familiar with the firm's practice for collection and processing of correspondence for mailing within the United States Postal Service. The envelope(s) were then sealed with postage fully prepaid thereon, by First Class Mail, on June 28, 1999 deposited in the United States mail at San Jose, California; that there is delivery service by United States mail at that place; and the envelope(s) were addressed as follows:

Attn: Marjorie Kanyer BERTRAM KUBO TRUST P.O. Box 1169 Marina, CA 93933

Julie Rose, Esq.
Attorney for Bertram Kubo Trust
RANDICK & O'DEA
1800 Harrison St., Ste. 2350
Oakland, CA 94612

Attn: Douglas A. Gravelle TEXACO, INC. 10 Universal City Plaza, 13th Floor Universal City, CA 91608-1006

Karen Fineran, Esq.
Attorney for Texaco, Inc.
MAKOFF, KINNEAR COUNCIL, P.C.
20 California St., Ste 201
San Francisco, Ca 94111

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1	Proof of Service by FAX and Mail Page 2		
2	rage 2		
3	Keith Winemiller		
4	TOXICHEM MANAGEMENT SYSTEMS, INC. 1562 44th Avenue		
5	San Francisco, CA 94122		
6	Jessen and Agnes Calleri 10901 Cliffland Ave. Oakland, CA 94605		
7			
8	Mary Taylor, Esq.		
9	Attorney for the Jessen and Agnes Calleri 101 Ygnacio Valley Rd., #330 Walnut Creek, CA 94596		
10			
11	Karen Petryna EQUIVA SERVICES LLC P.O. Box 6249		
12	Carson, CA 90749-6249		
13	I also transmitted a copy of the above documents by facsimile to Allan Patton, Manager, Underground Storage Tank Program at		
14	Facsimile No. (916) 227-4595.		
15	I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 28,		
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17	Teresita Vyce		
18	Tenesita vyce v		
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/PETITION

## PROOF OF SERVICE BY FAX AND MAIL

STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

ss. PETITION TO THE

STATE WATER RESOURCES CONTROL BOARD

I am employed in the County of Santa Clara, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is 84 West Santa Clara Street, Suite 690, San Jose, California 95113. On July 6, 1999, I served true and correct copies of PETITION FOR STAY OF THE EFFECT OF THE ACTION OF THE DECISION OF THE ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY TO REMOVE TEXACO, INC. AND AGNES AND JESSEN CALLERI AS RESPONSIBLE PARTIES; DECLARATION OF MEHDI MOHAMMADIAN IN SUPPORT OF PETITION FOR STAY OF THE EFFECT OF THE ACTION; ORDER FOR STAY OF THE EFFECT OF THE ACTION OF THE DECISION; REQUEST FOR PREPARATION OF RECORD; PETITION FOR REVIEW OF DECISION OF THE ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY TO REMOVE TEXACO, INC. AND AGNES AND JESSEN CALLERI AS RESPONSIBLE PARTIES by placing them in envelopes.

I am readily familiar with the firm's practice for collection and processing of correspondence for mailing within the United States Postal Service. The envelope(s) were then sealed with postage fully prepaid thereon, by First Class Mail, on July 6, 1999 deposited in the United States mail at San Jose, California; that there is delivery service by United States mail at that place; and the envelope(s) were addressed as follows:

Scott O. Seery, CHMM
Hazardous Materials Specialist
ALAMEDA COUNTY HEALTH CARE SERVICES
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 6, 1999, in San Jose, California.

Teresita Vyce

27 /PETITION

51:1 Nd L-70066

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JEFFREY P. WIDMAN (#58628) 1 DANA RITCHIE (#179683) LAW OFFICES OF JEFFRÉY P. WIDMAN 2 84 West Santa Clara Street, Suite 690 San Jose, California 95113 3 (408) 288-6777 Telephone: (408) 288-7668 Facsimile: 4 5 Attorney for Petitioner MEHDÍ MOHAMMADIAN 6 STATE WATER RESOURCES CONTROL BOARD 7 8 MEHDI MOHAMMADIAN, 9 Petitioner, PETITION FOR STAY OF THE EFFECT 10 VS. OF THE ACTION OF THE DECISION OF THE ALAMEDA COUNTY HEALTH 11 CARE SERVICES AGENCY TO REMOVE TEXACO, INC. AND AGNES AND JESSEN 12 CALLERÍ AS RESPONSIBLE PARTIES ALAMEDA COUNTY HEALTH 13 CARE SERVICES AGENCY, [Ca. C. Reg. §2050] 14 Respondents, 15 16 17 Petitioner MEHDI MOHAMMADIAN ("Petitioner") hereby petitions for the above-18 entitled State Board to Stay the effect of the action of the decision of The ALAMEDA COUNTY 19 HEALTH CARE SERVICES AGENCY ("Respondent" or "ACHCSA") to remove Texaco, Inc. 20 ("Texaco") and Agnes and Jassen Calleri (the "Calleris") as responsible parties. This Petition is 21 made on the grounds that: substantial harm to Petitioner will arise if the stay is not granted, no 22 substantial harm to Texaco, the Calleris, other interested parties or the public interest will arise, 23 and there are substantial questions of fact and law regarding the disputed action. This petition is 24 based on the declaration of Mehdi Mohammadian. 25 Dated: June 28, 1999 Mildmon

Attorney for Petitioner

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2	JEFFREY P. WIDMAN (#58628) DANA RITCHIE (#179683) LAW OFFICES OF JEFFREY P. WIDMAN		
3	84 West Santa Clara Street, Suite 690 San Jose, California 95113		
4	Telephone: (408) 288-6777 Facsimile: (408) 288-7668		
5	Attorney for Petitioner		
6	MEHDI MOHAMMADIAN		
7	STATE WATER RESOURCES CONTROL BOARD		
8			
9	MEHDI MOHAMMADIAN, )		
10	Petitioner, ) DECLARATION OF MEHDI		
11	) DECLARATION OF MEDDI ) MOHHAMMADIAN IN SUPPORT OF ) PETITION FOR STAY OF THE EFFECT		
12	OF THE ACTION OF THE DECISION OF THE ALAMEDA COUNTY HEALTH		
13	) CARE SERVICES AGENCY TO REMOVE TEXACO, INC. AND AGNES AND JESSEN		
14	) CALLERI AS RESPONSIBLE PARTIES		
15	ALAMEDA COUNTY HEALTH ) CARE SERVICES AGENCY, )		
16.	Respondents,		
17	<b>\</b>		
18			
19	I, MEHDI MOHAMMADIAN, declare:		
20	1. I am the Petitioner in the above action;		
21	2. I own CALGAS, located at 15595 Washington Avenue, San Lorenzo, CA 94580 (th		
22	"Property");		
23	3. Agnes and Jassen Calleri (the "Calleris") owned the Property from 1974 to 1983;		
24	4. Texaco, Inc. ("Texaco") owned the Property from 1983 to 1986 and then sold it to		
25	Bertram Kubo ("Kubo"),		
26	5. In June of 1990, I bought the Property from Bertram Kubo;		
27			
28	Petition for Stav		

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DANA RITCHIE (#179683) LAW OFFICES OF JEFFREY P. WIDMAN 84 West Santa Clara Street, Suite 690			
			Telephone: (408) 288-6777
MEHDI MOHAMMADIAN			
STATE WATER RESOURCES CONTROL BOARD			
	ALLO ON CLO CONTROL BOARD		
MEHDI MOHAMMADIAN, )			
Petitioner,			
vs.	ORDER FOR STAY OF THE EFFECT OF THE ACTION OF THE DECISION		
}.	OF THE ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY TO REMOVE		
AT AMEDA COUNTY HEAT TH	TEXACO, INC. AND AGNES AND JESSEN CALLERI AS RESPONSIBLE PARTIES		
CARE SERVICES AGENCY,			
Respondents,			
<b>\</b>			
To Respondent ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY			
("ACHCSA"):			
Based on the Petition for Review of Decision of the Alameda County Health Care			
Services Agency to remove Texaco, Inc. and Agnes and Jessen Calleri as responsible parties, the			
Petition to Stay the effect of the action of the decision, and the declaration of Mehdi			
Mohammadian served herewith,			
YOU ARE HEREBY ORDERED TO disregards your decision of May 28, 1999 until this			
Board reviews Petitioner's Petition to reverse.			
PENDING HEARING on the above Petition to reverse the decision, you, your agents,			
Petition for Stay	5		
	DANA RITCHIE (#179683) LAW OFFICES OF JEFFREY P. WIDN 84 West Santa Clara Street, Suite 690 San Jose, California 95113 Telephone: (408) 288-6777 Facsimile: (408) 288-7668  Attorney for Petitioner MEHDI MOHAMMADIAN  STATE WATER I  MEHDI MOHAMMADIAN,  Petitioner,  Vs.  ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY,  Respondents,  To Respondent ALAMEDA COU ("ACHCSA"):  Based on the Petition for Review Services Agency to remove Texaco, Inc. Petition to Stay the effect of the action of Mohammadian served herewith,  YOU ARE HEREBY ORDERED  Board reviews Petitioner's Petition to rev PENDING HEARING on the about		