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FREDERICK BOLD, JR.
(RETIRED)

December 15, 1995

Alameda County Health Care Services Agency
Department of Environmental Health
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
1131 Harbor Bay Parkway
Alameda, CA 94502-6577

Attention: Thomas Peacock, Acting Chief

RE: Petition for Review of Decision by
Alameda County Health Care Services

Dear Mr. Peacock:

As you are aware, this office represents both D.C. Metals, Inc. a corporation conducting business at 1414 Third Street in Oakland and the property owner Cypress Street Investments, a California limited partnership. On November 22, 1995, your office sent to our clients a Notice of Requirement to Reimburse. This Notice is substantially the same as the one served upon D.C. Metals, Inc. in August, 1995.

For the same grounds stated in our previous correspondence and Petition for Review to the State Board, an amended Petition responding to the new Notice has been filed. A copy of the Amended Petition is enclosed.

As required for this review, we request that your agency prepare the local agency record for use in this petition. A copy of the local agency record should be sent to this office upon completion.

I have been in contact with Jennifer Eberle of your office and we are trying to unravel the facts of this matter in hope of finding a mutual resolution.

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Thomas Peacock, Acting Chief
Alameda County Health Care Services Agency
December 15, 1995
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If you have any questions or comments, please feel free to contact me.

Yours very truly,



CRAIG L. JUDSON

CLJ:mcl
Enclosure as noted.
cc: Client
Lori Casias, SWRCB

AMENDED

Petition by D.C. Metals, Inc.

of Decision by Alameda County Health Care Services Agency

**Re: Notice of Requirement to Reimburse for costs associated
with Removal of Underground Storage Tank**

1. Petitioner:

D.C. Metals, Inc., A California Corporation
1414 Third Street, Oakland, CA 94607
(510) 836-1655

Ray Cherry, Vice President
D.C. Metals, Inc., A California Corporation
1414 Third Street, Oakland, CA 94607
(510) 836-1655

Cypress Street Investments,
A California Limited Partnership
1414 Third Street, Oakland, CA 94607
(510) 836-1655

Legal Counsel:

Craig L. Judson, Esq.
Bold, Polisner, Maddow, Nelson & Judson
A Professional Corporation
500 Ygnacio Valley Road, Suite 325
Walnut Creek, CA 94596
(510) 933-7777

2. Action Taken by local agency:

The Alameda County Health Care Services Agency, Department of Environmental Health, State Water Resources Control Board, Division of Clean Water Programs, UST Local Oversight Program has determined that Petitioner is the Responsible Party - Property Owner charged with responsibility to reimburse the State Water Resources Control Board (SWRCB) for oversite costs actually incurred in overseeing the removal and clean-up of an underground storage tank (UST) located under the sidewalk adjacent to the property located at 1414 Third Street, Oakland, California. That agency has also demanded that Petitioner remove that underground storage tank.

3. Date of Action By Local Agency:

August 1, 1995

4. Statement of Reasons Local Agency Action is Inappropriate:

Petitioner is not responsible for removal of the underground storage tank or for payment of the cost to remove the tank because (1) Petitioner did not originally place the tank in the ground; (2) Petitioner was unaware of the presence of the tank until recently accidentally found by PG&E who was relocating utilities for Cal-Trans; (3) Petitioner has never made use of the underground storage tank; (4) Petitioner is not the owner of the property under which the tank is located - the tank is located under the public sidewalk which is owned and controlled by the City of Oakland; and (5) The local agency has not shown which individuals or entities are responsible for original placement of the tank because the local agency officials do not know which individuals or entities are responsible for original placement of the tank.

*1, 2, 3, 5
irrelevant
4 is arguable*

5. Manner In Which Petitioner is Aggrieved:

Petitioner is aggrieved because Petitioner will incur substantial costs and time associated with the removal of the underground storage tank (UST) and in reimbursing the local agency up to 150 percent of the total amount of site specific oversight costs actually incurred while overseeing the cleanup of the underground storage tank site, as set forth in the attached Notice of Requirement to Reimburse. The actual costs to be incurred have yet to be determined.

6. Specific Action by the State Board or Local Agency Requested by Petitioner:

Petitioner requests the State Board to order the local agency to rescind its decision requiring Petitioner to reimburse for oversight costs and ordering the removal of the tank at Petitioner's cost.

7. Points and Authorities in Support of Petition:

Petitioner is not responsible for removal of the underground storage tank or for payment of the cost to remove the tank because (1) Petitioner did not originally place the tank in the ground; (2) Petitioner was unaware of the presence of the tank until recently accidentally found by PG&E who was relocating utilities for Cal-Trans; (3) Petitioner has never made use of the underground storage tank; (4) Petitioner is not the owner of the property under which the tank is located. The tank is located under the public sidewalk

which is owned and controlled by the City of Oakland; and
(5) The local agency has not shown Petitioner which
individuals or entities are responsible for original

placement of the tank because the local agency officials do
not know which individuals or entities are responsible for
original placement of the tank.

It is the stated standard procedure of the local agency to
consider the property owner of land under which or land
adjacent to underground storage tanks found below sidewalks
to be the responsible party.

This determination by the local agency is arbitrary and
capricious, violates Petitioner's right to due process, and
denies Petitioner its legal property rights without adequate
proof having been first made by the local agency of
petitioner's responsibility.

The local agency has the burden of proving Petitioner is the
responsible party, which burden has not been met by the
local agency.

**8. Persons Known by Local Agency Having an Interest in the
Subject Petition:**

It is unknown at this time who the local agency knows to
have an interest in the subject petition.

9. Statement of Transmittal of Petition to Responsible Parties.

A copy of this Petition has been sent to the following
persons or entities:

Alameda County Health Care Services Agency
Department of Environmental Health
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
1131 Harbor Bay Parkway
Alameda, CA 94502-6577

City of Oakland
City Clerk
505 Fourteenth Street
Suite 609
Oakland, CA 94612

Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612

June Nagy (Former owner of Petitioner's property)
2133 Pine Knoll Drive #7
Walnut Creek, CA 94595

added

The responsible party, besides the City of Oakland, is unknown to Petitioner.

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

See Attached letter dated August 30, 1995.

11. Request for Hearing

Petitioner ~~requests~~ requests a hearing for the purpose of presenting additional evidence in support of Petitioner's position. This matter is presently being investigated by Petitioner, and Petitioner will have additional evidence to present upon completion of its independent investigation.

Respectfully Submitted on December 15, 1995.

CRAIG L. JUDSON
Attorney for Petitioner