



Ca/EPA

ENVIRONMENTAL PROTECTION

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Pete Wilson  
Governor

State Water  
Resources  
Control Board

CERTIFIED MAIL

JUN 19 1997

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Sacramento, CA  
95814  
(916) 227-4421  
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Craig L. Judson, Esq.  
Bold, Polisner, Maddow,  
Nelson & Judson  
Suite 325  
500 Ygnacio Valley Road  
Walnut Creek, CA 94596

Dear Mr. Judson:

IN THE MATTER OF THE PETITION OF CYPRESS STREET INVESTMENTS:  
REFUSAL TO REVIEW PETITION AND DISMISSAL OF PETITION DUE TO  
FAILURE TO RAISE ISSUES APPROPRIATE FOR REVIEW, SWRCB/CWP  
FILE P95-156

The State Water Resources Control Board (SWRCB) has decided not to review the petition. The dispute concerning responsibility for the site cleanup based on ownership of property from which an unauthorized release of hazardous substances from an underground storage tank (UST) occurred does not raise significant issues meriting the SWRCB's involvement.

The SWRCB has issued many orders involving responsibility of property owners for contamination on their property. We have frequently held owners of contaminated property liable for remediation of that contamination.

Review of your petition indicates that it arises from the SWRCB's UST Local Oversight Program. It involves property located at 1414 Third Street, Oakland, California, Alameda County. Petitioner owns a piece of property adjacent to a sidewalk under which an underground storage tank is located. The City of Oakland has an easement for the sidewalk but does not own the land on which the sidewalk is located. In June of 1995, an underground storage tank was discovered below the sidewalk while PG&E was relocating utilities for CalTrans. A string lowered into the storage tank indicated



*Our mission is to preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.*

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that the UST stored waste oil or a heavy type of fuel oil. Borings were drilled to a depth of 6 feet below ground surface. The site had the following maximum concentrations of contaminants: 2.7 parts per million (ppm) benzene, 32 ppm ethylbenzene, 690 ppm toluene, 190 total xylenes, 300 ppm oil and grease, and 37,000 ppm total petroleum hydrocarbons as gasoline (TPH-g) 0.76 ppm 1,2-dichloroethene(trans), and 1.90 ppm, 1,1,1-trichloroethane.

Prior to petitioner's ownership, the site was apparently used by a business known as Amco Chemical. Fire insurance maps indicate past use of a boiler room in the building adjacent to the UST. Alameda County named petitioner as one of the responsible parties for remediation of the site on the basis that it owns the property on which a leaking underground storage tank is located.

Petitioner is challenging its designation as a responsible party. It alleges that it (1) did not originally place the tank in the ground, (2) was unaware of the presence of the tank until it was accidentally found by PG&E, (3) never used the underground storage tank, (4) is not the owner of the property or any adjacent property under which the tank is located, and (5) Alameda County has not told petitioner which individuals or entities are responsible for original placement of the tank.

The main issue in this petition is one frequently raised in SWRCB petitions, i.e., whether or not a property owner should be named as a responsible party for remediation of contamination at the site. California Civil Code sections 831 and 1112 provide that there is a presumption that owners of parcels adjacent to a street own a fee interest to the center of the street. (See also *Long Beach Unified School District v. Godwin California Living Trust* (9th Cir. 1994) 32 F.3d 1364.) Because Cypress Street Investments, by operation of law, owned that portion of the land under the adjacent sidewalk where the tank was located, it is an "owner of property where an unauthorized release of a hazardous substance has occurred" and is clearly a responsible party under the SWRCB Regulations. See Title 23, California Code of Regulations, section 2720 which provides that a responsible party includes "(3) any owner of



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property where an unauthorized release of a hazardous substance from an underground storage tank has occurred".

The SWRCB's petition procedures provide that if the SWRCB does not act on a petition within 270 days after receipt, the petition shall be deemed denied. The SWRCB did not take action on this petition within this time period. Although the SWRCB could consider this petition on their own motion, extending the date for review in this manner is unnecessary because the petition does not raise issues which are appropriate for or which require review by the SWRCB. Accordingly, the petition will be considered dismissed as of this date.

If you have any questions concerning this matter, please contact Dorothy Jones in the Office of Chief Counsel at (916) 227-4421.

Sincerely,

**ORIGINAL SIGNED BY:**

Walt Pettit  
Executive Director

cc: Mr. Ray Cherry  
D.C. Metals, Inc.  
1414 Third Street  
Oakland, CA 94607

D.C. Metals, Inc.  
1414 Third Street  
Oakland, CA 94607

✓ Mr. Tom Peacock  
LOP Manager  
Alameda County Health Care  
Services Agency  
Department of Environmental Health  
1131 Harbor Bay Parkway  
Alameda, CA 94502-6577

(Continued next page)

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cc: (Continued)

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

Ms. Loretta Barsamian  
Executive Officer  
San Francisco Bay Regional Water  
Quality Control Board  
2101 Webster Street, Suite 500  
Oakland, CA 94612

Ms. Lori Casias  
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P.O. Box 944212  
Sacramento, CA 94244-2120

Ms. Dorothy M. Jones  
Staff Counsel  
Office of Chief Counsel  
State Water Resources  
Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

<b>Case Number</b> <b>96-70460 tk</b>	<b>United States Bankruptcy Court</b> <b>Chapter 7 Discharge of Debtor</b>	
<b>In re</b> June Mildred Nagy, 550-40-4035, dba AMCO Chemical Corporation	<b>Soc. Sec./Tax ID Nos.</b>	<b>Address of Debtor</b> 2133 Pine Knoll Dr. #7 Walnut Creek, CA 94595

It appearing that a petition commencing a case under title 11, United States Code, was filed by or against the person named above on 12/5/96, and that an order for relief was entered under chapter 7, and that no complaint objecting to the discharge of the debtor was filed within the time fixed by the court (or that a complaint objecting to discharge of the debtor was filed and, after due notice and hearing, the objection was not sustained);

IT IS ORDERED that:

1. The above-named debtor is released from all dischargeable debts.
2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:
  - a. debts dischargeable under 11 U.S.C. § 523;
  - b. unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2), (4), (6), and (15) of 11 U.S.C. § 523(a);
  - c. debts determined by this court to be discharged.
3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named debtor.

U.S. Bankruptcy Court 1300 Clay St. P.O. Box 2070 Oakland, CA 94604	<b>By the Court:</b>  Leslie Tchaikovsky Bankruptcy Judge <div style="text-align: right;">Date 03/12/97</div>
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(23/95) DIS



<b>Case Number</b> <b>96-70460 tk</b>	<b>United States Bankruptcy Court</b> <b>Chapter 7 Discharge of Debtor</b>	
<b>In re</b> <b>Juno Mildred Nagy, 550-40-4035, dba AMCO</b> <b>Chemical Corporation</b>	<b>Soc. Sec./Tax ID Nos.</b>	<b>Address of Debtor</b> <b>2133 Pine Knoll Dr. #7</b> <b>Walnut Creek, CA 94595</b>

It appearing that a petition commencing a case under title 11, United States Code, was filed by or against the person named above on 12/5/96, and that an order for relief was entered under chapter 7, and that no complaint objecting to the discharge of the debtor was filed within the time fixed by the court (or that a complaint objecting to discharge of the debtor was filed and, after due notice and hearing, the objection was not sustained);

IT IS ORDERED that:

1. The above-named debtor is released from all dischargeable debts.
2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:
  - a. debts dischargeable under 11 U.S.C. § 523;
  - b. unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2), (4), (6), and (15) of 11 U.S.C. § 523(a);
  - c. debts determined by this court to be discharged.
3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named debtor.

U.S. Bankruptcy Court 1300 Clay St. P.O. Box 2070 Oakland, CA 94604	By the Court:  Leslie Tchaikovsky Bankruptcy Judge  Date 03/12/97
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(2395) DIS

