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December 2, 1988

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BY FEDERAL EXPRESS

Mr. Ariu Levi
Hazardous Materials Program
Alameda County Health Care
Services Agency
Department of Environmental Health
470 27th Street, Third Floor
Oakland, California 94612

RECEIVED
DEC 05 1988
HAZARDOUS MATERIALS/
WASTE PROGRAM

Re: Proposed Compliance Plan for Learner Company
Property at 768 46th Avenue in Oakland, California

Dear Mr. Levi:

As we discussed by telephone today, I am writing on behalf of my client, the Learner Company ("Learner"), to confirm our scheduled meeting on Tuesday, December 6, 1988, at 4:30 p.m. in your offices at 80 Swan Way, Room 200, in Oakland. This letter will serve as our agenda for that meeting.

As you know, the soil analysis and results at the above-captioned site were submitted to in the form of a site characterization study performed by Dames and Moore and set forth in their report dated August 26, 1988. Learner has studied carefully both the legal and scientific ramifications of this report. We respectfully submit on Learner's behalf the following conclusions.

1) PCBs As Potential Hazardous Waste - Under the U.S. Environmental Protection Agency's ("EPA") rules regarding PCB spill cleanup policies, the cleanup standard for PCBs in areas such as this site ["other restricted access areas" as defined by EPA; 40 CFR 761.123] for soils contaminated with PCBs would arguably be 25 ppm [40 CFR 761.125(c)(3)(v)], a level this site already meets [see Table 2 of the Dames and Moore report.] In addition, the State Water Resources Control Board's Resolution 87-22 (July 30, 1987) indicates that body's adoption of the general EPA action level of 50 ppm, a standard this site meets

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quite handily. In short, while the presence of PCBs was observed at this site, the maximum empirical observation level (e.g., 25.2 mg/kg) does not trigger any remedial response standard under applicable California or Federal law.

2) Elevated TPH as Hazardous Waste - Levels of total petroleum hydrocarbon ("TPH"), probably hydraulic oils from the machinery operated on site, were empirically observed at levels ranging from 2290 to 3920 mg/kg at the site. [See Tables 1 through 3 in the Dames and Moore report.] California law requires that hazardous waste be properly and lawfully treated and disposed. [Cal. Health and Safety Code Section 25142] Hazardous wastes are to be defined by the California Department of Health Services ("DHS"). [Cal. Health and Safety Code Section 25141] Regulations adopted by the DHS, while not crystal clear, suggest that "waste (or slop) oil" as well as "oil and water" may constitute hazardous wastes. [22 Cal.Admin.Code Section 66680(e)]

Whether hydraulic fluid or its resultant total hydrocarbon contamination in soils meets this regulatory definition is ambiguous. Generally the regulations have been interpreted to create a rebuttable assumption that such contamination is a hazardous waste. [22 Cal.Admin.Code Section 66300(a)(2) and (3)] To assess what facts would permit this assumption to be rebutted, an analysis of the soils pursuant to so-called "Article 11" standards would be required. [22 Cal.Admin.Code Sections 66693-66746] In capsule these standards would require a waste extraction test and/or certain toxicity tests to assess the potential leaching of listed hazardous wastes into groundwater. [22 Cal.Admin.Code Section 22-66700]

Historically DHS has used as a rule-of-thumb a figure of 1,000 ppm for total hydrocarbons as a threshold definition of TPH as hazardous waste. While the 1,000 ppm is not written into regulation or statute, DHS has applied this standard in cleanups and site closure requirements. However, the 1,000 ppm standard was originally based on experimental findings that tank bottoms containing 1,000 ppm of gasoline showed some ignition flashes when heated to 1200-1400 degrees Fahrenheit. Although that temperature is well above the regulatory standard defining ignitability, DHS decided to use the 1,000 ppm as a conservative indicator of ignitability of soil contaminated with gasoline (notwithstanding the criticism of EPA and others). Apparently DHS applies the 1,000 ppm standard to TPH generally, including fuel and bunker oil as well as gasoline and diesel fuels.

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As you can imagine, the most common occurrence of soils contaminated with TPH occurs in the context of leaking underground tanks. The State and Regional Water Quality Control Boards ("Board") are charged with the enforcement of California's Leaking Underground Tank law, [Cal. Health and Safety Code Section 25280] To facilitate the application of this law, the State Board issued the "Leaking Underground Fuel Tank Field Manual: Guidelines for Site Assessment, Cleanup, and Underground Storage Tank Closure" in May of 1988 ("LUFT Manual"). Strictly speaking, the LUFT Manual does not apply to our situation, yet it is important to note that the LUFT Manual suggests a figure of 10,000 ppm for diesel fuel contamination as the ceiling for permitting TPH-contaminated soils to be left in place, though such allowable levels are dependent on specific site characteristics which influence the migration of contaminants to the water table. The Regional Board for the Oakland area has utilized the LUFT Manual to provide guidance for soil cleanup standards, including issuing on June 2, 1988, a document entitled "Regional Board Staff Recommendations for Initial Evaluation and Investigation of Underground Tanks," which notes that "the level of cleanup is to be determined by assessing the potential impact of residual soil contamination on the ground water." [Id., at 7]

Based on the information available from the Dames and Moore report, there appears to be no apparent impact on ground water at this site. The levels of THP become non-detectable at approximately the 4 to 4.5 foot level in the excavated soil samples, and excavation to the 6 foot level revealed no ground water, according to the Dames and Moore report.

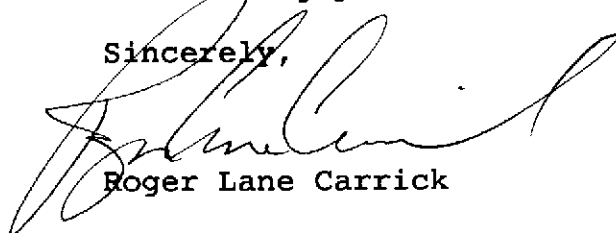
In short, a reasonable conclusion to be derived from these facts and applicable law would be that the observed levels of TPH in the soils at this site are not subject to cleanup or remediation under the above-noted principles of California law, largely owing to their non-likelihood of negatively impacting groundwater. Particularly in a heavily industrialized zone as is the case with this site, the comparable nature of surrounding site materials and marginal impact on non-industrial land use would also mitigate against a lawful cleanup requirement.

We respectfully submit that in light of our scientific submission and this initial analysis of law, no further action is required at this site. However, we look forward to a candid discussion of these issues with you on Tuesday, and we stand ready to comply with all reasonable and lawful requirements.

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If you have any questions, please give me a call at
(213) 689-7507. I look forward to seeing you on Tuesday.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roger Lane Carrick". The signature is written in black ink and is positioned above the printed name.

Roger Lane Carrick