

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



7

ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

November 14, 2006

Mr. Carl and Donna Graffenstatte
Graffenstatte Corporation
PO Box 1295
Eatonville, WA 98328

Subject: Fuel Leak Case No. RO0000013, New Performance, 186 East Lewelling Blvd., San Lorenzo, CA – Work Plan Approval

Dear Mr. Graffenstatte:

Alameda County Environmental Health (ACEH) staff has reviewed the fuel leak case file for the above-referenced site and the document entitled, "Work Plan For Soil and Groundwater Investigation," dated October 30, 2006. The scope of work for the SWI proposes the installation of six soil borings immediately downgradient of the subject site. Soil and grab groundwater sampling will be conducted to determine the lateral and vertical extent of residual petroleum hydrocarbon contamination in the vicinity of the former UST tank pit and fuel dispenser island. ACEH generally concurs with the proposed scope of work as stated in the Work Plan, provided the following technical comments are addressed prior to the implementation of the Work Plan.

We request that you perform the proposed work, and send us the reports described below. Please provide 72-hour advance written notification to this office (e-mail preferred to steven.plunkett@accgov.org) prior to the start of field activities.

TECHNICAL COMMENTS

- 1. Monitoring Well Rehabilitation and Redevelopment.** ACEH requests that prior to monitoring well sampling, all onsite monitoring wells should be rehabilitated and/or redeveloped; thus allowing the collection of a representative sample of formation groundwater. During well redevelopment, water quality parameter such as temperature, pH, conductivity and turbidity should be recorded after each well volume. Note that well redevelopment may require additional well volumes be removed to assure that water quality parameters are satisfied. Please present the results of the well redevelopment and rehabilitation activities in the Soil and Groundwater Investigation report requested below.
- 2. Characterization of Local Hydrogeology and Groundwater Flow Conditions**

The purpose of this characterization is to understand the physical and geochemical characteristics of the subsurface, which may affect groundwater flow, the breakdown (fate), migration (transport), and the distribution of contaminants through the subsurface.

Additionally, factors such as water level fluctuations, gradient changes, local hydrogeology, groundwater extraction, and groundwater recharge activities (natural and artificial) can significantly alter groundwater flow conditions.

ACEH requests that you properly characterize the hydrogeology and groundwater flow conditions in the vicinity of your site. During SWI activities, we request that you gather detailed lithologic information using borings or cone penetrometer together with other methods to understand the hydrogeology at your site. We recommend that you continuously core borings at this site and prepare detailed boring logs. We require that you prepare the following: detailed cross-sections, fence diagrams, and rose diagrams for groundwater gradient. The rose diagram shall be plotted on groundwater contour maps and updated in all future reports submitted for your site. Include plots of the contaminant plumes on your maps, cross-sections, and diagrams.

While geologic and lithologic data collected at nearby sites is important to understand regional hydrogeology and groundwater flow conditions, significant variations in lithology can occur over a very limited area. Therefore, ACEH considers site-specific geologic and lithologic data integral in the site characterization process. Geologic and hydrogeologic data collected during the investigation should be used to target discrete hydrogeologic units for depth discrete groundwater sampling.

We also request that you evaluate local groundwater flow conditions that are dependent on geologic conditions and reflected on detailed geologic cross-sections and fence diagrams. Additional piezometers and/or monitoring wells/well clusters may be required to understand local groundwater flow conditions. Please present the results from the soil and groundwater investigation in the SWI Report requested below.

3. **Groundwater Sampling and Analysis.** All groundwater samples to be collected during well rehabilitation and grab groundwater sampling are to be analyzed for TPHg and TPHd by EPA Method 8015M or 8260, BTEX, EDB, EDC, MtBE, TAME, ETBE, DIPE, TBA and EtOH by EPA Method 8260 and total lead. Please present the results from soil and groundwater sampling in the SWI Report requested below.
4. **Soil Boring Locations and Soil Sampling.** At present, very limited off site investigation has been conducted to determine the lateral and vertical extent of petroleum hydrocarbon impacts to soil and groundwater downgradient of the site. Please discuss in detail your rationale for choosing the soil boring locations in their current configuration.

During the soil boring installation, soil samples should be screened with a Photo-Ionizing Detector (PID) and examined for visible staining and hydrocarbon odor. If any interval where staining, odor, or elevated PID readings occur a soil sample is to be collected and submitted for laboratory analysis. If no staining, odor, or elevated PID readings are observed, soil samples are to be collected from each boring at the capillary fringe, where groundwater is first encountered, at changes in lithology and at total depth of the soil boring. All soil samples must be analyzed for the following constituents; TPHg and TPHd by EPA Method 8015M or 8260, BTEX, EDB, EDC, MtBE, TAME, ETBE, DIPE, TBA and EtOH by EPA Method 8260 and total lead.

Review of Figure 3 from the Work Plan, which identifies the proposed soil boring locations, does not delineate the site boundary as a frame of reference for the soil boring locations. Also, the aerial photo (dated 1965) does not accurately represent current land use conditions downgradient of the subject property. Furthermore, the scale of Figure 3 (1"=282') indicates that the linear distance between soil borings SB2 and SB4 would be approximately 80 feet. This linear separation may not provide accurate characterization of the dissolved petroleum hydrocarbon contamination plume. Moreover, the proposed soil boring locations may miss the dissolved petroleum hydrocarbon plume completely. Lastly, ACEH requests that you provide a detailed site plan showing the site boundary, proposed soil boring location, site buildings, former UST and fuel dispensers locations, soil boring locations from previous investigations, monitoring well locations and projected groundwater flow direction. The revised Figure 3 combined with a detailed discussion for the selection of soil boring locations must be submitted as a Revised Work Plan requested below.

5. **Sensitive Receptor Survey.** In addition to the evaluation proposed by Sierra Environmental, ACEH recommends that the well survey should include well data from California Department of Water Resource well database and Alameda County Department of Public Works. Please present the results of the sensitive receptor survey in the SWI requested below.

TECHNICAL REPORT REQUEST

Please submit technical reports to Alameda County Environmental Health (Attention: Steve Plunkett), according to the following schedule:

- **November 30, 2006** – Revised Work Plan for Soil and Groundwater Investigation
- **January 30, 2007** – Soil and Groundwater Investigation Report

These reports are being requested pursuant to California Health and Safety Code Section 25296.10. 23 CCR Sections 2652 through 2654, and 2721 through 2728 outline the responsibilities of a responsible party in response to an unauthorized release from a petroleum UST system, and require your compliance with this request.

ELECTRONIC SUBMITTAL OF REPORTS

ACEH's Environmental Cleanup Oversight Programs (LOP and SLIC) now request submission of reports in electronic form. The electronic copy is intended to replace the need for a paper copy and is expected to be used for all public information requests, regulatory review, and compliance/enforcement activities. Instructions for submission of electronic documents to the Alameda County Environmental Cleanup Oversight Program FTP site are provided on the attached "Electronic Report Upload Instructions." Submission of reports to the Alameda County FTP site is an addition to existing requirements for electronic submittal of information to the State Water Resources Control Board (SWRCB) Geotracker website. In September 2004, the SWRCB adopted regulations that require electronic submittal of information for groundwater cleanup programs. For several years, responsible parties for cleanup of leaks from underground storage tanks (USTs) have been required to submit groundwater analytical data, surveyed locations of monitoring wells, and other data to the Geotracker database over the Internet. Beginning July 1, 2005, electronic submittal of a complete copy of all reports is required in Geotracker (in PDF

format). Please visit the State Water Resources Control Board for more information on these requirements (http://www.swrcb.ca.gov/ust/cleanup/electronic_reporting).

PERJURY STATEMENT

All work plans, technical reports, or technical documents submitted to ACEH must be accompanied by a cover letter from the responsible party that states, at a minimum, the following: "I declare, under penalty of perjury, that the information and/or recommendations contained in the attached document or report is true and correct to the best of my knowledge." This letter must be signed by an officer or legally authorized representative of your company. Please include a cover letter satisfying these requirements with all future reports and technical documents submitted for this fuel leak case.

PROFESSIONAL CERTIFICATION & CONCLUSIONS/RECOMMENDATIONS

The California Business and Professions Code (Sections 6735, 6835, and 7835.1) requires that work plans and technical or implementation reports containing geologic or engineering evaluations and/or judgments be performed under the direction of an appropriately registered or certified professional. For your submittal to be considered a valid technical report, you are to present site specific data, data interpretations, and recommendations prepared by an appropriately licensed professional and include the professional registration stamp, signature, and statement of professional certification. Please ensure all that all technical reports submitted for this fuel leak case meet this requirement.

UNDERGROUND STORAGE TANK CLEANUP FUND

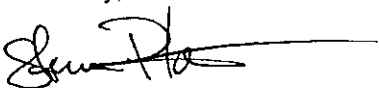
Please note that delays in investigation, later reports, or enforcement actions may result in your becoming ineligible to receive grant money from the state's Underground Storage Tank Cleanup Fund (Senate Bill 2004) to reimburse you for the cost of cleanup.

AGENCY OVERSIGHT

If it appears as though significant delays are occurring or reports are not submitted as requested, we will consider referring your case to the Regional Board or other appropriate agency, including the County District Attorney, for possible enforcement actions. California Health and Safety Code, Section 25299.76 authorizes enforcement including administrative action or monetary penalties of up to \$10,000 per day for each day of violation.

If you have any questions, please call me at (510) 383-1767.

Sincerely,



Steven Plunkett
Hazardous Materials Specialist

Mr. Carl and Donna Graffenstatte
November 11, 2006
Page 5

cc: Mr. Reza Baradaran
Sierra Environmental Inc.
980 W. Taylor Street
San Jose, Ca 95126

Donna Drogos, ACEH
Steven Plunkett, ACEH
File

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



7

ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

September 25, 2006

Mr. Carl and Donna Graffenstatte
Graffenstatte Corporation
PO Box 1295
Eatonville, WA 98328

Subject: Fuel Leak Case No. RO0000013, New Performance, 186 E Lewelling Blvd., San Lorenzo, CA

Dear Mr. Graffenstatte:

Alameda County Environmental Health Department (ACEH) staff have reviewed the case file and report entitled, "Fourth Quarter 2001 Groundwater Monitoring Report", dated June 15, 2002 and prepared on your behalf by Sierra Environmental Inc. Groundwater sampling conducted during December 2001 confirmed the presence of dissolved petroleum hydrocarbon contamination in onsite monitoring wells MW-2 and MW-3 at concentrations up to 24,000 µg/L TPHg, 8.1 µg/L benzene, 1,600 µg/L ethylbenzene and 4,000 µg/L xylenes, which all exceed -with the exception of benzene- the Environmental Screening Levels for sites with soil and groundwater contamination.

In May 1999 and again in February 2001, ACEH requested an additional soil and groundwater investigation to determine the extent of petroleum hydrocarbons contamination downgradient of the source area. ACEH does not agree with the conclusion that the site be considered as a low risk groundwater case. According to the California Regional Water Quality Control Board, San Francisco Bay Region; to consider a site a low risk groundwater case the following conditions must be satisfied:

1. The leak has been stopped and ongoing sources, including free product, removed or mitigated.
2. The site has been adequately characterized.
3. The dissolved hydrocarbon plume is not migrating.
4. No water wells, deeper drinking water aquifers, surface water or other sensitive receptor are likely to be impacted.
5. The site presents no significant risk to human health.
6. The site presents no significant risk to the environment

ACEH agrees that condition 1 has been satisfied. However, it is our opinion that conditions 2, 3, 4, 5, and 6 have not been adequately satisfied. In particular, because no investigation has been conducted immediately downgradient of the source areas, combined with extremely variable groundwater flow direction and inconsistent and incomplete groundwater analytical data, ACEH does not believe the subject site has been adequately characterized or the dissolved hydrocarbon plume has been accurately delineated.

Therefore, in the interest of moving your case through the regulatory process, ACEH request that an additional soil and groundwater investigation be completed to define the extent of soil and groundwater contamination downgradient of the source area. ACEH suggests the use of expedited site assessment techniques to delineate the vertical and horizontal extent of soil and groundwater contamination immediately downgradient of the source area. Furthermore, ACEH

considers the use of expedited site assessment an integral component in the site characterization process.

Based on ACEH staff review of the case file, we request that you address the following technical comments and prepare a work plan detailing work to be performed, and send us the reports described below. Please provide 72-hour advance written notification to this office (e-mail preferred to steven.plunkett@acgov.org) prior to the start of field activities.

TECHNICAL COMMENTS

1. **Soil and Groundwater Investigation.** Results of previous investigative work performed at the site to date have been insufficient to adequately characterize the extent of soil and groundwater contamination. Additionally, the horizontal and vertical extent of soil and groundwater contamination has not been delineated for the site. Based on the concentrations of TPH and TPH constituents detected in the soil and groundwater, an additional investigation immediately downgradient of the source area is required to assess the extent of soil and groundwater contamination beneath your site.

ACEH recommend that your investigation incorporate expedited site assessment techniques to collect soil samples and depth-discrete groundwater samples prior to the installation of groundwater monitoring wells. Expedited site assessment tools and methods are a scientifically valid and cost-effective approach to fully define the three-dimensional extent of groundwater contamination. Technical protocol for expedited site assessments are provided in the U.S. Environmental Protection Agency's "Expedited Site Assessment tools for Underground Storage Tanks: A Guide for Regulators," (EPA 510-B-97-001), dated March 1997. Other options for additional investigation or remediation may also be appropriate at your site. The Work Plan requested below is to include a detailed plan to characterize petroleum hydrocarbon contamination in soil and groundwater within the shallow soil and water bearing zones and possible deeper water-bearing zones immediately downgradient of the source area.

2. **Contamination Plume Delineation and Groundwater Flow Conditions.** The three dimensional extent of the dissolved petroleum hydrocarbon contamination has not been determined at the site. Results from the most recent groundwater monitoring conducted in December 2001 indicate that residual TPH and TPH constituents remains in groundwater beneath your site. There has been no data collected downgradient of the source area to determine the aerial extent of dissolved hydrocarbon contamination. ACEH believes the monitoring well network -in its current design- is insufficient to adequately define the extent of contamination downgradient of MW-3. To determine the extent of dissolved petroleum hydrocarbon contamination an additional soil and groundwater investigation is required downgradient of MW-3.

Considering the variability of groundwater flow conditions that have been documented at the site. It is essential to evaluate the local geologic and hydrogeologic conditions that are present at the site, and thus determine the actual groundwater flow conditions. Review of groundwater elevations data in the vicinity of the subject site suggest the flow direction is toward the southwest, confirming that additional subsurface investigation is needed immediately downgradient to MW-3. We request that you use groundwater elevation data that

is available at other sites in the vicinity and detailed hydrogeologic cross sections to evaluate the groundwater gradient and groundwater flow conditions on site and immediately downgradient of the site. Each cross section should include the following:

- a. Surface topography. The cross sections should be extended off-site where necessary to show significant breaks in slope.
- b. Soil descriptions for all borings and wells along the line of section.
- c. Screen and filter pack intervals for each monitoring well.
- d. Sampling locations and results for soil and grab groundwater samples.
- e. Site features such as the tank pit, dispensers, etc.
- f. Where appropriate, monitoring well location and soil boring locations should be projected back to the strike of the cross section line.

Please discuss in detail your proposal to perform this work in the Work Plan requested below.

3. **Soil and Groundwater Sample Analysis.** All soil and groundwater samples to be collected during the investigation are to be analyzed for TPHg and TPHd by EPA Method 8015M or 8260, BTEX, EDB, EDC, MtBE, TAME, ETBE, DIPE, TBA and EtOH by EPA Method 8260 and total lead. Please present the results from the soil and groundwater sampling in the Soil and Groundwater Investigation Report requested below.
4. **Geotracker EDF Submittals** - A review of the case file and the State Water Resources Control Board's (SWRCB) Geotracker website indicate that electronic copies of analytical data have not been submitted for your site. Pursuant to CCR Sections 2729 and 2729.1, beginning September 1, 2001, all analytical data, including monitoring well samples, submitted in a report to a regulatory agency as part of the LUFT program, must be transmitted electronically to the SWRCB Geotracker website via the internet. Additionally, beginning January 1, 2002, all permanent monitoring points utilized to collect groundwater samples (i.e. monitoring wells) and submitted in a report to a regulatory agency, must be surveyed (top of casing) to mean sea level and latitude and longitude accurate to within 1-meter accuracy, using NAD 83, and transmitted electronically to the SWRCB Geotracker website. Beginning July 1, 2005, electronic submittal of a complete copy of all reports is required in Geotracker (in PDF format). In order to remain in regulatory compliance, please upload all analytical data (collected on or after September 1, 2001), to the SWRCB's Geotracker database website in accordance with the above-cited regulation. Please perform the electronic submittals for applicable data and submit verification to this Agency by **October 30, 2006.**

TECHNICAL REPORT REQUEST

Please submit technical reports to Alameda County Environmental Health (Attention: Mr. Steven Plunkett), according to the following schedule:

- **November 1, 2006** – Work Plan for Soil and Groundwater Investigation.
- **120 Days After Completion of Work Plan** – Soil and Groundwater Investigation Report

These reports are being requested pursuant to California Health and Safety Code Section 25296.10. 23 CCR Sections 2652 through 2654, and 2721 through 2728 outline the responsibilities of a responsible party in response to an unauthorized release from a petroleum UST system, and require your compliance with this request.

ELECTRONIC SUBMITTAL OF REPORTS

The Alameda County Environmental Cleanup Oversight Programs (LOP and SLIC) require submission of all reports in electronic form to the county's ftp site. Paper copies of reports will no longer be accepted. The electronic copy replaces the paper copy and will be used for all public information requests, regulatory review, and compliance/enforcement activities. Instructions for submission of electronic documents to the Alameda County Environmental Cleanup Oversight Program ftp site are provided on the attached "Electronic Report Upload (ftp) Instructions." Please do not submit reports as attachments to electronic mail.

Submission of reports to the Alameda County ftp site is an addition to existing requirements for electronic submittal of information to the State Water Resources Control Board (SWRCB) Geotracker website. Submission of reports to the Geotracker website does not fulfill the requirement to submit documents to the Alameda County ftp site. In September 2004, the SWRCB adopted regulations that require electronic submittal of information for groundwater cleanup programs. For several years, responsible parties for cleanup of leaks from underground storage tanks (USTs) have been required to submit groundwater analytical data, surveyed locations of monitor wells, and other data to the Geotracker database over the Internet. Beginning July 1, 2005, electronic submittal of a complete copy of all necessary reports was required in Geotracker (in PDF format). Please visit the SWRCB website for more information on these requirements (http://www.swrcb.ca.gov/ust/cleanup/electronic_reporting).

PERJURY STATEMENT

All work plans, technical reports, or technical documents submitted to ACEH must be accompanied by a cover letter from the responsible party that states, at a minimum, the following: "I declare, under penalty of perjury, that the information and/or recommendations contained in the attached document or report is true and correct to the best of my knowledge." This letter must be signed by an officer or legally authorized representative of your company. Please include a cover letter satisfying these requirements with all future reports and technical documents submitted for this fuel leak case.

PROFESSIONAL CERTIFICATION & CONCLUSIONS/RECOMMENDATIONS

The California Business and Professions Code (Sections 6735, 6835, and 7835.1) requires that work plans and technical or implementation reports containing geologic or engineering evaluations and/or judgments be performed under the direction of an appropriately registered or certified professional. For your submittal to be considered a valid technical report, you are to present site specific data, data interpretations, and recommendations prepared by an appropriately licensed professional and include the professional registration stamp, signature, and statement of professional certification. Please ensure all that all technical reports submitted for this fuel leak case meet this requirement.

UNDERGROUND STORAGE TANK CLEANUP FUND

Mr. Carl Graffenstatte
September 22, 2006
Page 5

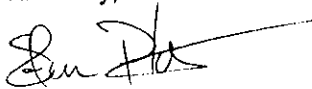
Please note that delays in investigation, later reports, or enforcement actions may result in your becoming ineligible to receive grant money from the state's Underground Storage Tank Cleanup Fund (Senate Bill 2004) to reimburse you for the cost of cleanup.

AGENCY OVERSIGHT

If it appears as though significant delays are occurring or reports are not submitted as requested, we will consider referring your case to the Regional Board or other appropriate agency, including the County District Attorney, for possible enforcement actions. California Health and Safety Code, Section 25299.76 authorizes enforcement including administrative action or monetary penalties of up to \$10,000 per day for each day of violation.

Should you have any questions, do not hesitate to call me at (510) 383-1767.

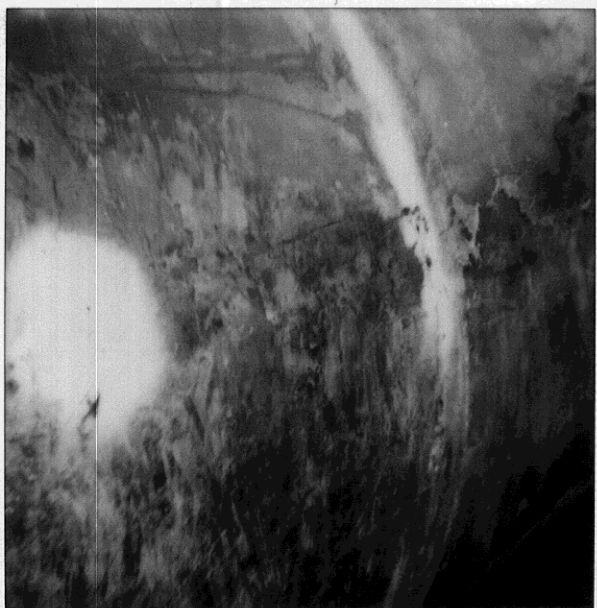
Sincerely,



Steven Plunkett
Hazardous Materials Specialist

cc: Joel Greger
Geo-logic Consulting Services
1140 5th Avenue
Crockett, CA 94525

Donna Drogos, ACEH
Steven Plunkett, ACEH
File

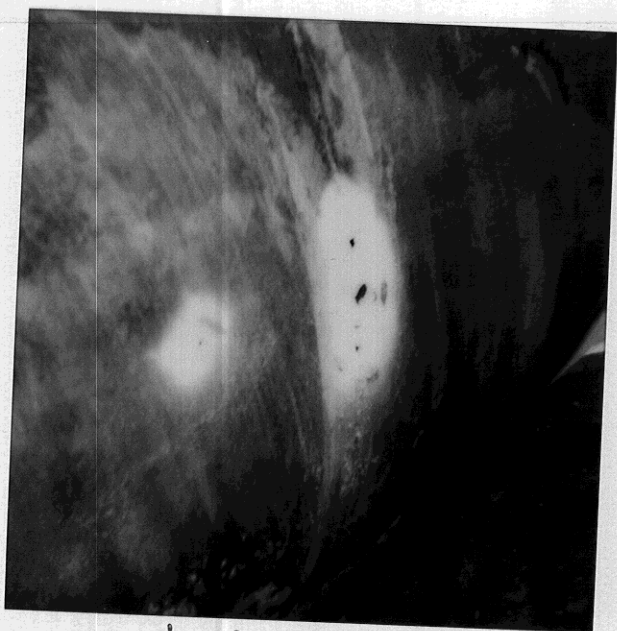


holes on the West Tank
#4376

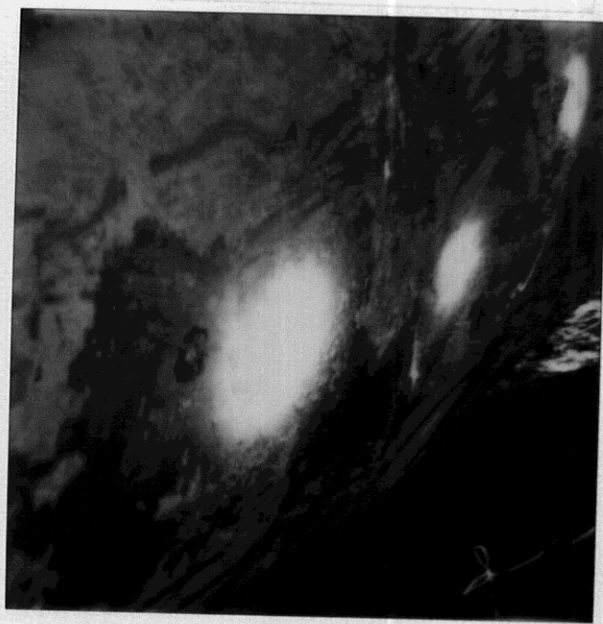


west tank

East tank



holes on the west Tank
#4376

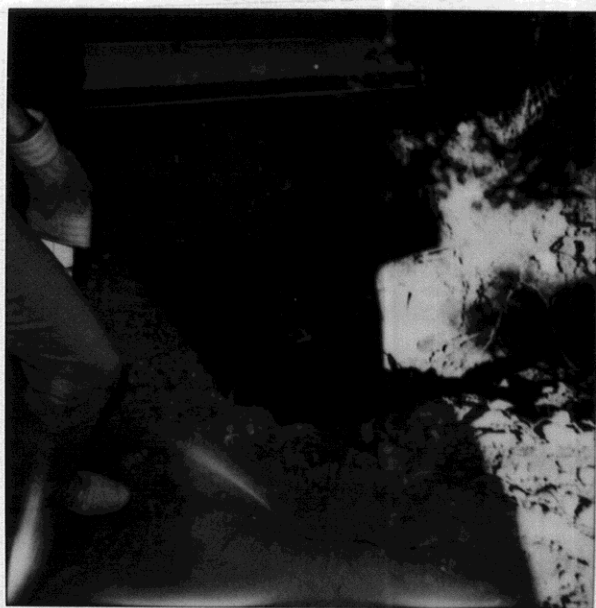


holes on the East Tank.
#4375
9/5/90



4376

holes on the west
Tank



Waste oil Tank



ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway
Alameda, CA 94502-6577
(510) 567-6700
Fax (510) 337-9335

STID 1709

October 8, 2001

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497-300

Re: Property at 186 Lewelling Blvd. San Lorenzo, CA 94577

Dear Mr. and Mrs. Graffenstatte:

I am in receipt of "Third Quarter 2001 Groundwater Monitoring" dated October 1, 2001, submitted by Mitch Hajigahai of Sierra Environmental Inc., regarding the above referenced site.

I would like to make the following comments regarding this report:

Per this report natural attenuation has reduced concentrations of the constituents within plume. Table II, reflecting chemical analysis of the samples clearly reveals such indication. However, there is inconsistency regarding the groundwater flow gradient. The latest analysis indicates that the flow gradient is to the northwest, while it had been calculated to be NE, SE, W-SW in the past. Beside inconsistency in groundwater flow gradient, there is sudden reduction in concentrations of some of the constituents such as Ethylbenzene from 2,100ppb to 1.5 ppb in MW3 and 2,100ppb Xylene to 2ppb in MW2 within three months. This might, in fact, suggest that the plume may not have been defined properly. Therefore, you may provide proper information and or a workplan to further investigate this site.

In fact, my previous correspondence had also pointed out the change in groundwater flow gradient and the need for further delineation of the plume as well as installment of of a monitoring well off site. This was required due to the presence of contaminants downgradient (southwest) toward San Lorenzo Creek, about 300 feet from the site and possibly below residences across the street. In fact, Juliet Shin, formerly of our office, had requested a workplan submittal in her letter dated May 18, 1999 as well.

I concur with the work proposed within this report by Mr. Mitch Hajiaghai of Sierra Environmental Inc. for continuation of monitoring program. However, additionally, **please submit a workplan regarding the required groundwater plume investigation as specified in the past.**

If you have any questions, please call me at (510) 567-6876.

Sincerely,



Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Mr. Mitch Hajiaghai, Sierra Environmental, Inc. 2084 Alameda Way, Suite 201, San Jose, CA 95126
Files



ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway
Alameda, CA 94502-6577
(510) 567-6700
Fax (510) 337-9335

Stid 1709

August 27, 2001

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497-300

Re: Property at 186 Lewelling Blvd. San Lorenzo, CA 94577

Dear Mr. and Mrs. Graffenstatte:

This office is in receipt of the "Second Quarter 2001 Groundwater Monitoring" dated July 2, 2001, submitted by Mitch Hajigahai of Sierra Environmental Inc., regarding the above referenced site.

Per this report natural attenuation has reduced concentrations of the constituents within plume. However, Table II, reflecting chemical analysis of the samples and as discussed within this report, is missing. Please provide a copy of Table II to this office.

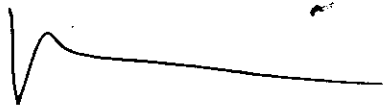
According to figure 3 within this report, groundwater flow was calculated to be moving Northeast at 0.02 ft/ft. This reflects some change in flow direction from previous times.

Please recall that this office had requested further delineation of the plume and installment of a monitoring well off site due to the presence of contaminants downgradient (southwest) toward San Lorenzo Creek, about 300 feet from the site and possibly below residences across the street. This work had been requested by my former colleague, Juliet Shin, in her letter dated May 18, 1999 as well. Therefor, **please submit a workplan regarding the required groundwater plume investigation as directed in the past.**

I concur with the work proposed within this report by Mr. Mitch Hajigahai of Sierra Environmental Inc. as far as continuation of monitoring program along with submittal of a workplan as specified above.

Should you have any questions and or concerns, please call me at (510) 567-6876.

Sincerely,

A handwritten signature in black ink, consisting of a sharp downward stroke followed by a horizontal line that tapers to the right.

Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Mr. Mitch Hajiaghai, Sierra Environmental, Inc. 2084 Alameda Way, Suite 201, San
Jose, CA 95126
Files



ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway
Alameda, CA 94502-6577
(510) 567-6700
Fax (510) 337-9335

Stid 1709

April 17, 2001

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497300

Re: Property at 186 Lewelling Blvd. San Lorenzo, CA 94577

Dear Mr. and Mrs. Graffenstatte:

I am in receipt of the "First Quarter 2001 Groundwater Monitoring" dated April 2, 2001 submitted by Mitch Hajigahai of Sierra Environmental Inc., regarding the above referenced site.

According to this report, The MW-2 well revealed 22ppb, ND, 52ppb, 1,300ppb, 3700ppb, and ND for TPHg, Benzene, Toluene, Ethylbenzene, Xylene, and MTBE respectively. The MW-3 well, on the other hand indicated 12ppb, ND, 28ppb, 2,000ppb, ND, and ND for TPHg, Benzene, Toluene, Ethylbenzene, Xylene, and MTBE respectively. The MW-1 well revealed ND for all the constituents indicated above.

Groundwater flow was calculated to be moving Southwesterly at 0.001 ft/ft.

I concur with the work proposed within this report by Mr. Mitch Hajigahai of Sierra Environmental Inc. However, additionally, **please submit a workplan regarding the required groundwater plume investigation as directed previously.** If you recall this office had requested further delineation of the plume and installment of a monitoring well off site due to the presence of contaminants downgradient (southwest) toward San Lorenzo Creek, about 300 feet from the site and possibly below residences across the street. This work had been requested by my former colleague, Juliet Shin, in her letter dated May 18, 1999 as well.

If you have any questions and or concerns, please call me at (510) 567-6876.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amir K. Gholami', followed by a horizontal line extending to the right.

Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Mr. Mitch Hajiaghai, Sierra Environmental, Inc. 2084 Alameda Way, Suite 201, San
Jose, CA 95126
Files



ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway
Alameda, CA 94502-6577
(510) 567-6700
Fax (510) 337-9335

Stid 1709

February 23, 2001

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497300

Re: Property at 186 Lewelling Blvd. San Lorenzo, CA 94577

Dear Mr. and Mrs. Graffenstatte:

I have been recently assigned to oversee the clean up process at the above referenced site. I have discussed the case with Sierra Environmental Inc., your present consultant.

Based on the information available, I have noticed that you have not performed the required quarterly groundwater monitoring since April 16th, 1999 by Sierra Environmental Inc. I understand that prior to and after the April monitoring there was a dispute between the present landlord and Ms. Young, the former landlord and that this may have contributed to your inability to receive necessary cost reimbursement through State clean up fund office. However, I have been informed that this issue has been recently resolved and the parties are cooperating in order to be eligible for the state clean up fund office to provide the necessary fund to continue the clean up process at the above referenced site.

In a letter dated May 18, 1999, Juliet Shin, my former colleague, had requested further delineation of the plume due to the presence of contaminants downgradient (southwest) toward San Lorenzo Creek, about 300 feet from the site and possibly below residences across the street.

You had also been directed to install an additional monitoring well be placed off site and continue monitoring.

Please submit a workplan for this work and perform the required groundwater monitoring as directed previously.

Should you have any questions, please call me at (510) 567-6876.

Sincerely,

A handwritten signature in black ink, appearing to read "Amir K. Gholami", with a long horizontal stroke extending to the right.

Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Mr. Mitch Hajiaghai, Sierra Environmental, Inc. 2084 Alameda Way, Suite 201, San
Jose, CA 95126
Files

1709

TRANSMITTAL / FAX SHEET

TO: Mr. Amir Gholami FROM: Mitch Hajjaghai

DATE: 2-22-2001 Nº OF PAGES OR DOCUMENT: 14
(Including the Fax Sheet)

FAX Nº: 510-337-9335 DOCUMENT DESCRIPTION: _____

REMARKS:

Dear Mr. Gholami, pursuant to our telephone conversation today, with this transmittal, I am faxing you the enclosed relevant information for the property located at 186 E. Lewelling Blvd., San Lorenzo (STID 1709) for your review. The document include copies of Mr. Craig Ellis letter dated January 2, 2001, to ms. Lou Anne Rolland of State UST cleanup fund, December 20, 2000, letter from Ms. Lou Anne Rolland of State UST cleanup fund, requested information checklist dated November 16 1999, May 18, 1999, letter from Ms. Juliet Shin and plate 2 of CET Environmental Services, Inc., showing the 1995 off-site sample locations, historical background of site prepared by Craig Ellis dated February 23, 1999, conclusion and recommendations section of Sierra's first quarter 1999, groundwater monitoring, and background activities at the Site. As you will notice the first item requested by the State UST cleanup fund on the November 16, 1999, correspondence is a letter from your office stating that claimants are in compliance with current corrective action.

Sierra Environmental Inc. (Sierra) has obtained a contract from Mr. Graffenstatte to perform 4 quarters of groundwater monitoring at the Site in 2001. After obtaining the results of the first two groundwater monitoring events, Sierra will make recommendations to whether further subsurface investigation will be needed.

I will be in direct contact with you in relation to the progress of required corrective action work at the Site. I hope we have furnished you with adequate document which will enable you to issue a letter satisfying the State UST cleanup fund requirement. Please call me if you need additional information.

2084 Alameda Way, Suite 201, San Jose, CA 95126

Phone [408] 248-3700 • Fax [408] 248-4700

CRAIG S. ELLIS
ATTORNEY AT LAW
7080 BLACK BART TRAIL
REDWOOD VALLEY, CA 95470-9409
707-485-9218
FAX 707-485-9203

COPY

Ms. Lu Anne Rolland
Closure Unit
Underground Storage Tank Cleanup Fund Program
State Water Resources Control Board
P.O. Box 944212
Sacramento, California 94244-2120

January 22, 2001

Re: Claim No.: 008240
Site Address: 186 E. Lewelling Blvd., San Lorenzo

Dear Ms. Rolland:

As a follow-up to your letter of December 20, 2000, and our recent conversation, my client is taking the following actions:

1. Sierra Environmental, Inc. (Mr. Mitch Hajiaghai, REA, CAC) has been retained to complete the required corrective action at the site. Mr. Hajiaghai can be reached at 408-248-3700.

Mr. Hajiaghai is working with Mr. Graffenstatte and myself to complete the various documents in order to be added as a joint claimant. We anticipate the completed documents to be submitted within the next 30 days.

As a result of the above referenced actions, we would respectfully ask that you not deobligate the funds for this claim.

Please call if you have any questions or if the funds will be deobligated.

Sincerely,


Craig S. Ellis
CSE:kc

cc: Mr. Mitch Hajiaghai
Mr. Carl Graffenstatte

FROM ALAMEDA CO EHS HQZ-OPS

510 337 9335

05-18

16:58

#523 P.01/03

ALAMEDA COUNTY
HEALTH CARE SERVICESAGENCY
DAVID J. KEARS, Agency Director

Post-It™ br.	fax transmittal memo 7671	# of pages 3
To	Mitchel Hajiaghai	From Juliet Shin
Co.	Sierra Environmental	Alameda City
Dept.		Phone # 510-567-6763
Fax #	408-248-4700	Fax # 510-337-9335

1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
(510) 337-9335 (FAX)

May 18, 1999

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497Claim No.: 008240
STID: 1709

Re: Investigations at the site located at 186 E. Lewelling Blvd., San Lorenzo, CA

Dear Mr. & Mrs. Graffenstatte,

This office has reviewed Sierra Environmental, Inc.'s (Sierra) Groundwater Monitoring Report, dated April 29, 1999, for the above site. Although Sierra has proposed closure for the above site, this office is requiring that two additional quarters of consecutive groundwater monitoring be conducted to identify any seasonal fluctuations of contaminant concentrations and confirm the attenuation of this plume.

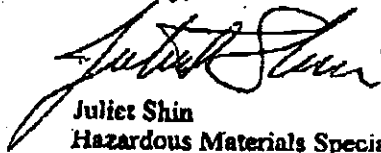
Additionally, this office received a copy of the sampling results for off-site groundwater monitoring that was conducted at the site by CET Environmental (CET) in 1995 (please refer to the attached site plan showing the "grab" groundwater sample locations and the corresponding concentrations of Total Petroleum Hydrocarbons as gasoline (TPHg) and benzene in parts per billion). The site plan was crudely drawn allegedly because CET was not paid to prepare a report. The results of this investigation indicate that elevated contaminant concentrations appear to be migrating downgradient (southwest) towards San Lorenzo Creek, located approximately 300 feet from the site, and possibly below the residences across the street at concentrations that may be posing a health hazard. "Grab" groundwater sampling is not very accurate and is generally used only for a preliminary assessment to determine where a permanent well should be placed. Based on the results of CET's investigation, and the location of sensitive receptors downgradient of the site, this office is requiring that the plume be further delineated to the southwest and that one additional permanent monitoring well be placed off site downgradient.

The next quarterly groundwater monitoring event should take place in July 1999. Please submit a proposal for the above work with the next groundwater monitoring report.

Mr. & Mrs. Graffenstatte
Re: 186 E. Lewelling Blvd.
May 18, 1999
Page 2 of 2

Thank you for your cooperation. If you have any questions or c
(510) 567-6763.

Sincerely,



Julie Shin
Hazardous Materials Specialist

ATTACHMENTS

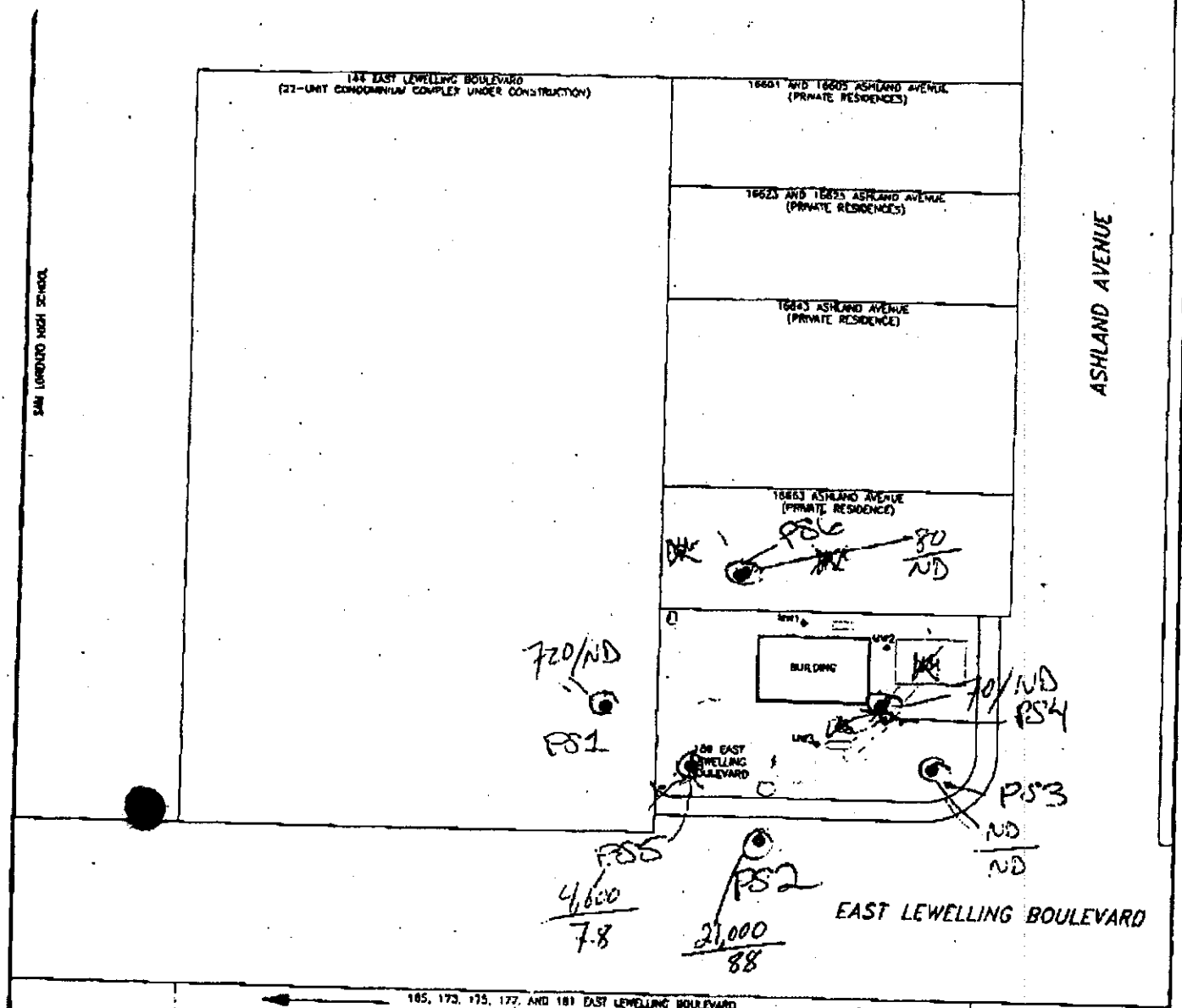
Co: Craig S. Ellis, Attorney At Law
3382 Warm Springs Road
Glen Ellen, California 95442

Mitch Hajiaghai
Sierra Environmental, Inc.
2084 Alameda Way, Ste 201
San Jose, CA 95126

Ms. Anna Torres
State Water Resources Control Board
Underground Storage Tank Cleanup Fund
P.O. Box 944212
Sacramento, CA 94244-2120

Ms. Wai Yee Young
C/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, CA 94619

Precision Sampling on 10-17-95



CET Environmental Services, Inc.

SITE VICINITY PLAN					PLATE
PROPOSED SOIL BORING LOCATION					
186 E. LEWELLING BLVD					
SAN LORENZO, CALIFORNIA					2
JOB NUMBER	DATE	DRAWING	BY	REVISION	
3602	01/95	OFFSITE	LONG	05/11/95	



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Division of Clean Water Programs

1001 I Street • Sacramento, California 95814 • (916) 341-5765
Mailing Address: P.O. Box 944212 • Sacramento, California • 94244-2120
FAX (916) 341-5806 • Internet Address: <http://www.swrcb.ca.gov/cwphome/ustcf>



Gray Davis
Governor

December 20, 2000

Francis Lan
Wai Yee Wong Young
4230 Harbor View Ave
Oakland, CA 94619

UNDERGROUND STORAGE TANK CLEANUP FUND PROPOSAL TO DEOBLIGATE ALL EXCESS FUNDS FOR CLAIM NUMBER 008240 AT SITE ADDRESS: 186 LEWELLING BLVD E, SAN LORENZO

Your last payment request was processed on April 30, 1997. Since it has been some time since your last request, we must ensure that corrective action is being performed at your site and is continuing with reasonable diligence as specified in our Letter of Commitment. It is our goal to clean up as many contaminated sites in California as possible and there are thousands of people awaiting funding from our Program.

It is noted in your file that a letter was sent to Craig S. Ellis on November 16, 1999 (copy enclosed) requesting additional documentation. To date we have not received a response to that letter.

Please submit your next reimbursement request with all of the required supporting documentation within thirty (30) calendar days.

If a request is not received within 30 calendar days from the date of this letter, your funds will automatically be deobligated. Any future funding will be subject to availability of funds at the time your reimbursement request is received.

If your site has received remediation closure from your lead oversight agency, please send us a copy of your "No Further Action" letter.

We are looking forward to hearing from you within thirty days. If you have any questions, please contact me at (916) 341-5765.

Sincerely,

o/s

Lu Anne Rolland
Closure Unit
Underground Storage Tank Cleanup Fund Program

Enclosure

cc: Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, WA 98497

Craig S. Ellis
3382 Warm Springs Road
Glen Ellen, CA 95442

California Environmental Protection Agency

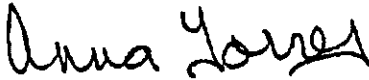


Wai Yee Wong Young

-2-

All of the above items must be properly signed, dated and completed in order to continue processing your claim. If you have any questions, call me at (916) 227-4388.

Sincerely,



Anna Torres
Payments Unit
Underground Storage Tank Cleanup Fund

Enclosures

cc without enclosures: Eva Young
Wai Yee Wong Young
4230 Harbor View Ave.
Oakland, CA 94619

Juliet Shinn
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

cc with enclosures: Mr & Mrs. Graffenstatte
P. O. Box 97397
Tacoma, WA 98497

California Environmental Protection Agency



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Division of Clean Water Programs

2014 T Street • Sacramento, California 95814 • (916) 227-4388
Mailing Address: P.O. Box 944212 • Sacramento, California • 94244-2120
FAX (916) 227-4330 • Internet Address: <http://www.swrcb.ca.gov/~cwphome/ustcf>



Gray Davis
Governor

NOV 16 1999

Craig S. Ellis
3382 Warm Springs Rd.
Glen Ellen, CA 95442

UNDERGROUND STORAGE TANK CLEANUP FUND PROGRAM, CLAIM NUMBER: 008240,
FOR SITE ADDRESS: 186 LEWELLING BLVD E, NEW PERFROMANCE AUTOMOTIVE

We have completed our review of your request to have your clients, the Graffenstatte's, added to the above-referenced claim. We apologize for the delay, there were several issues that needed to be addressed before we could respond. Since the Graffenstatte's were previous owners of the UST's and were named responsible parties, our Settlement Unit has recommended that your clients be added as joint claimants rather than co-payees.

I have enclosed several forms that must be completed in order to accomplish this. You must also provide a letter from the local agency that the site is in compliance with any directives they may have issued for corrective action. In the most recent RR that was paid to Ms. Young, we requested copies of canceled checks to the vendors where costs were made eligible. Those cancelled checks must be submitted before any future payments can be made. The following is a checklist to assist you in submitting all the required documents:

- Letter from the Local Agency stating that claimants are in compliance with current corrective action.
- Signature and certain other pages of the claim application that must be amended to reflect adding the joint claimants.
- Authorized Representative Designation (USTCF022.REP) signed and dated in ink by the claimants and their authorized representative (all claimants must agree if one or all signatures will be required).
- Non-Recovery From Other Sources Disclosure Certification (USTCF019.NON) signed and dated in ink by all claimants (not authorized representative) including any applicable settlement/insurance documentation.
- Claimant Data Record (STD 204) signed and dated in ink by the Graffenstatte's or their authorized representative.
- Canceled checks from previous Reimbursement Request No. 3 as listed on enclosed Documentation Request.
- Complete copies of the Graffenstatte's federal individual income tax returns for 1996, 1997, and 1998.

Mail the requested information to:

Anna Torres Claim Number: 008240
State Water Resources Control Board
Division of Clean Water Programs
2014 T Street, Suite 130
P.O. Box 944212
Sacramento, CA 94244-2121

California Environmental Protection Agency



First Quarter 1999 Groundwater Monitoring
A&C Auto Service
186 E. Lewelling Boulevard, San Lorenzo, California

Sierra Environmental, Inc.
Page 3

Certified analytical results and chain-of-custody documentation are presented in Appendix B.

ANALYTICAL RESULTS

The analytical result for the water sample collected from MW1 showed 0.16 ppm TPHG. No BTEX or MTBE was detected in the sample. 50 ppm and 16 ppm TPHG were detected in the samples collected from MW2 and MW3, respectively. 25 parts per billion (ppb) and 10 ppb benzene, 1900 ppb and 2300 ppb ethylbenzene, and 8000 ppb and 940 ppb total xylenes were also detected in samples collected from MW2 and MW3, respectively. 110 ppb toluene was detected in water sample collected from MW2. No toluene was detected in the sample collected from MW3. No MTBE was detected in any of the samples. Table II presents Summary of the analytical results.

CONCLUSION AND RECOMMENDATIONS

Groundwater has been monitored at the Site since 1994. The historical data have indicated that TPHG concentrations ranging from ND to 93 ppm detected in groundwater beneath the Site. Benzene concentrations in the groundwater has ranged between ND to 550 ppb. The highest concentration of gasoline constituents were detected in groundwater samples collected from MW2 and MW3.

The April 1999, groundwater monitoring event has shown no detectable concentrations of MTBE in the groundwater samples. Benzene concentrations were one order of magnitude less than the previous groundwater analytical results for the samples collected from MW2 and MW3.

Based on the historical, and the recent groundwater monitoring data, it appears that (1) concentrations of aromatic hydrocarbon compounds (BTEX) have been reduced in the groundwater beneath the Site, possibly due to natural attenuation, (2) gasoline constituents have not migrated north of the Site in the direction of MW1, and (3) groundwater beneath the Site was not impacted with MTBE.

In the absence of detectable MTBE in the groundwater samples collected during this monitoring event, Sierra recommends no further groundwater analysis for MTBE. Sierra will make its recommendations regarding a case closure process for the Site, after reviewing the CET's off-site investigation results.

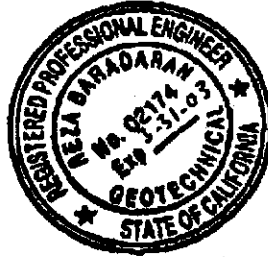
Julia Smith, Ph.D. by the author [signature] May 18, 1999

First Quarter 1999 Groundwater Monitoring
A&C Auto Service
186 E. Lewelling Boulevard, San Lorenzo, California

Sierra Environmental, Inc.
Page 4

Sierra appreciates the opportunity of serving you on this project. Please call us if you have questions.

Very Truly Yours,
Sierra Environmental, Inc.



Reza Baradaran, PE, RGE
Senior Environmental Engineer

Mitch Hajiaghai, REA, CAC
Principal

Attachments:

- Table I - Groundwater Elevation Data
- Table II - Analytical Results for Groundwater Samples
- Figure 1 - Site Location Map
- Figure 2 - Site Plan
- Figure 3 - Groundwater Elevations and Gradient
- Appendix A - QA/QC Protocol
- Appendix B - Certified Analytical Results and Chain-of-Custody Documentation

cc: Ms. Juliet Shin, Alameda County Environmental Health (1 Copy)
Mr. Craig Ellis (1 Copy)

Ms. Anna Torres
February 23, 1999
Page 2

- On September 19, 1986, Mr. and Mrs. Graffenstatte sold the property to Ms. Wai Yee Young. As a condition of the sale, Mr. and Mrs. Graffenstatte financed a portion of the sales price, and carried a note secured by a deed of trust on the property.
- On September 5, 1990, Ms. Young had the three underground storage tanks removed from the site.
- On November 6, 1990, Ms. Pamela J. Evans of the Alameda County Health Care Services wrote Ms. Young requesting certain information regarding the soil sampling results or hazardous waste manifest copies for the tanks which were removed and the associated piping which was not removed.
- On December 20, 1990, Ms. Pamela J. Evans of the Alameda County Health Care Services wrote Ms. Young requesting a work plan by January 31, 1991, as a result of the sampling results received December 14, 1990.
- On January 28, 1993, Ms. Juliet Shin of the Alameda County Health Care Services wrote Mr. and Mrs. Graffenstatte and advised them that they were a responsible party for the investigation and remediation of the property as a result of their previous ownership of the property.
- At some point Ms. Young contracted with CET Environmental to conduct soil and groundwater investigations of the property, and monitoring wells were installed, however at some point Ms. Young discontinued the groundwater monitoring program.
- As a result of Ms. Young defaulting on the promissory note with Mr. and Mrs. Graffenstatte, in October of 1996, Mr. and Mrs. Graffenstatte foreclosed on the property, and are the current owners of record.
- On January 4, 1999, Ms. Juliet Shin of the Alameda County Health Care Services wrote Mr. and Mrs. Graffenstatte and advised them that quarterly groundwater monitoring was to commence by January 31, 1999.
- On February 2, 1999, Ms. Juliet Shin of the Alameda County Health Care Services extended the resumption of quarterly groundwater monitoring to February 28, 1999.

Ms. Anna Torres
February 23, 1999
Page 3

REQUEST

- Since Mr. and Mrs. Carl Graffenstatte are a responsible party for the site, the responsible parties have agreed to add them as a co-payee on all future reimbursements issued by the fund under Claim No.: 008240.
- Change the address for future reimbursements to P.O. Box 97397, Tacoma, WA 98497

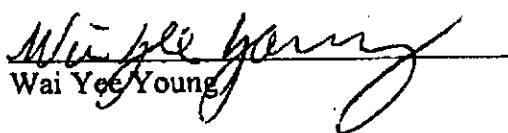
We plan on using CET Environmental Services and continuing with the original plan as previously approved for this site.



If you have any questions, please feel free to call, and we would appreciate an acknowledgment by your office so that work can begin.

Thank you for your assistance.


APPROVAL TO ADD CO-PAYEE

Ms. Wai Yee Young hereby irrevocably agrees to add Mr. Carl J. Graffenstatte and Ms. Donna P. Graffenstatte as co-payees on all future reimbursements made by the Underground Storage Tank Cleanup Fund under Claim No.: 008240, and hereby irrevocably instructs the fund to issue all future payments jointly to Wai Yee Young, Carl J. Graffenstatte and Donna P. Graffenstatte, and to mail all payments to P.O. Box 97397, Tacoma, WA 98497.


Wai Yee Young


Carl J. Graffenstatte SS 553-38-1127

Donna P. Graffenstatte SS 570-40-7839

Sincerely,


Craig S. Ellis

CSE:kc

cc: Mr. and Mrs. Carl Graffenstatte

Ms. Wai Yee Young
c/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, California 94619

Ms. Anna Torres
February 23, 1999
Page 4

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-8577

Ms. Cheryl Gordon
State Water Resources Control Board
Division of Clean Water Programs
Underground Storage Tank Cleanup Fund
P.O. Box 944212
Sacramento, California 94244-2120

Mr. Daniel McLean
Project Manager
CET Environmental Services, Inc.
3033 Richmond Parkway, Suite 300
Richmond, California 94806



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Clean Water Programs
2014 T Street • Sacramento, California 95814 • (916) 227-4388
Mailing Address: P.O. Box 944212 • Sacramento, California • 94244-2120
FAX (916) 227-4530 • Internet Address: <http://www.swrcb.ca.gov/~cwphome/ustcf>

Gray Davis
Governor

Craig S. Ellis
3382 Warm Springs Rd.
Glen Ellen, CA 95442

NOV 16 1999

STD 1709
JMS

NOV 16 2 14 PM '99

UNDERGROUND STORAGE TANK CLEANUP FUND PROGRAM, CLAIM NUMBER: 008240,
FOR SITE ADDRESS: 186 LEWELLING BLVD E, NEW PERFORMANCE AUTOMOTIVE

We have completed our review of your request to have your clients, the Graffenstatte's, added to the above-referenced claim. We apologize for the delay, there were several issues that needed to be addressed before we could respond. Since the Graffenstatte's were previous owners of the UST's and were named responsible parties, our Settlement Unit has recommended that your clients be added as joint claimants rather than co-payees.

I have enclosed several forms that must be completed in order to accomplish this. You must also provide a letter from the local agency that the site is in compliance with any directives they may have issued for corrective action. In the most recent RR that was paid to Ms. Young, we requested copies of canceled checks to the vendors where costs were made eligible. Those cancelled checks must be submitted before any future payments can be made. The following is a checklist to assist you in submitting all the required documents:

- Letter from the Local Agency stating that claimants are in compliance with current corrective action.
- Signature and certain other pages of the claim application that must be amended to reflect adding the joint claimants.
- Authorized Representative Designation (USTCF022.REP) signed and dated in ink by the claimants and their authorized representative (all claimants must agree if one or all signatures will be required).
- Non-Recovery From Other Sources Disclosure Certification (USTCF019.NON) signed and dated in ink by all claimants (not authorized representative) including any applicable settlement/insurance documentation.
- Claimant Data Record (STD 204) signed and dated in ink by the Graffenstatte's or their authorized representative.
- Canceled checks from previous Reimbursement Request No. 3 as listed on enclosed Documentation Request.
- Complete copies of the Graffenstatte's federal individual income tax returns for 1996, 1997, and 1998.

Mail the requested information to:

Anna Torres Claim Number: 008240
State Water Resources Control Board
Division of Clean Water Programs
2014 T Street, Suite 130
P.O. Box 944212
Sacramento, CA 94244-2121

California Environmental Protection Agency

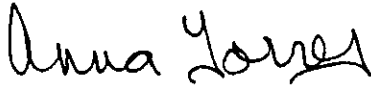


Wai Yee Wong Young

-2-

All of the above items must be properly signed, dated and completed in order to continue processing your claim. If you have any questions, call me at (916) 227-4388.

Sincerely,



Anna Torres
Payments Unit
Underground Storage Tank Cleanup Fund

Enclosures

cc without enclosures: Eva Young
Wai Yee Wong Young
4230 Harbor View Ave
Oakland, CA 94619

Juliet Shinn
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

cc with enclosures: Mr & Mrs. Graffenstatte
P. O. Box 97397
Tacoma, WA 98497

California Environmental Protection Agency

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442

(707) 938-8702
FAX (707) 938-9419

COPY

Ms. Wai Yee Young
c/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, California 94619.

July 20, 1999

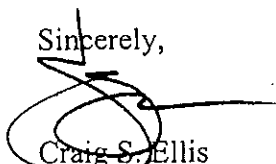
Re: Required Investigations
186 E. Lewelling Blvd., San Lorenzo, CA

Dear Ms. Young:

I have not received a response to my letter dated July 5, 1999, or the executed documents as requested.

If you have not done so already, please remit the executed documents immediately, or call me so we can discuss the matter.

Sincerely,



Craig S. Ellis
CSE:kc

cc: Mr. and Mrs. Carl Graffenstatte

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-8577

99 JUL 21 PM 3:29
ENVIRONMENTAL PROTECTION

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442

(707) 938-8702
FAX (707) 938-9419

COPY

Ms. Wai Yee Young
c/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, California 94619

July 5, 1999

Re: Required Investigations
186 E. Lewelling Blvd., San Lorenzo, CA

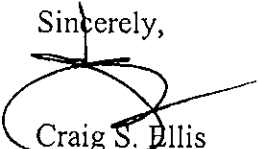
Dear Ms. Young:

I have not received a response to my letter dated May 27, 1999, or the executed documents as requested.

I have enclosed the required documents again for your execution.

You have not done so already, please sign in the presence of a notary and return in the enclosed envelope. We would appreciate receiving the documents by July 15, 1999.

Sincerely,


Craig S. Ellis
CSE:kc
Enclosures

cc: Mr. and Mrs. Carl Graffenstatte

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-8577

99 JUL -7 PM 4:47
ENVIRONMENTAL
PROTECTION

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442

(707) 938-8702
FAX (707) 938-9419

COPY

Ms. Wai Yee Young
c/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, California 94619

May 27, 1999

Re: Required Investigations
186 E. Lewelling Blvd., San Lorenzo, CA

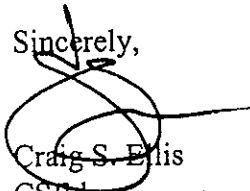
Dear Ms. Young:

I have incorporated the changes in the Power of Attorney suggested in your letter dated March 29, 1999.

Please execute the Power of Attorney at your earliest convenience and return in the enclosed envelope.

Thank you for your assistance.

Sincerely,



Craig S. Ellis

CSE:kc

Enclosures

cc: Mr. and Mrs. Carl Graffenstatte

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-8577

99 JUN -1 AM 10:04

ENVIRONMENTAL
PROTECTION

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES

1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
(510) 337-9335 (FAX)

May 18, 1999

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

Claim No.: 008240
STID: 1709

Re: Investigations at the site located at 186 E. Lewelling Blvd., San Lorenzo, CA

Dear Mr. & Mrs. Graffenstatte,

This office has reviewed Sierra Environmental, Inc.'s (Sierra) Groundwater Monitoring Report, dated April 29, 1999, for the above site. Although Sierra has proposed closure for the above site, this office is requiring that two additional quarters of consecutive groundwater monitoring be conducted to identify any seasonal fluctuations of contaminant concentrations and confirm the attenuation of this plume.

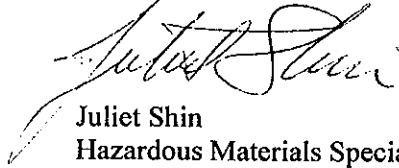
Additionally, this office received a copy of the sampling results for off-site groundwater monitoring on May 14, 1999 that was conducted at the site by CET Environmental (CET) in 1995 (please refer to the attached site plan showing the "grab" groundwater sample locations and the corresponding concentrations of Total Petroleum Hydrocarbons as gasoline (TPHg) and benzene in parts per billion). The site plan was crudely drawn allegedly because CET was not paid to prepare a report. The results of this investigation indicate that elevated contaminant concentrations appear to be migrating downgradient (southwest) towards San Lorenzo Creek, located approximately 300 feet from the site, and possibly below the residences across the street at concentrations that may be posing a health hazard. "Grab" groundwater sampling is not very accurate and is generally used only for a preliminary assessment to determine where a permanent well should be placed. Based on the results of CET's investigation, and the location of sensitive receptors downgradient of the site, this office is requiring that the plume be further delineated to the southwest and that one additional permanent monitoring well be placed off site downgradient.

The next quarterly groundwater monitoring event should take place in July 1999. Please submit a proposal for the above work with the next groundwater monitoring report.

Mr. & Mrs. Graffenstatte
Re: 186 E. Lewelling Blvd.
May 18, 1999
Page 2 of 2

Thank you for your cooperation. If you have any questions or comments, please contact me at (510) 567-6763.

Sincerely,



Juliet Shin
Hazardous Materials Specialist

ATTACHMENTS

Cc: Craig S. Ellis, Attorney At Law
3382 Warm Springs Road
Glen Ellen, California 95442

Mitch Hajiaghai
Sierra Environmental, Inc.
2084 Alameda Way, Ste 201
San Jose, CA 95126

Ms. Anna Torres
State Water Resources Control Board
Underground Storage Tank Cleanup Fund
P.O. Box 944212
Sacramento, CA 94244-2120

Ms. Wai Yee Young
C/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, CA 94619

Precision Sampling on 10-12-95

SAN LORENZO HIGH SCHOOL

ASHLAND AVENUE

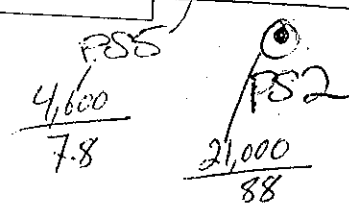
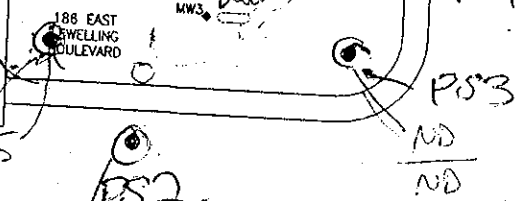
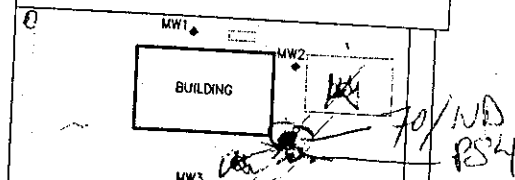
144 EAST LEWELLING BOULEVARD
(22-UNIT CONDOMINIUM COMPLEX UNDER CONSTRUCTION)

16601 AND 16605 ASHLAND AVENUE
(PRIVATE RESIDENCES)

16623 AND 16625 ASHLAND AVENUE
(PRIVATE RESIDENCES)

16643 ASHLAND AVENUE
(PRIVATE RESIDENCE)

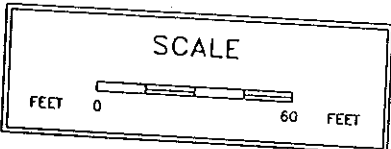
16663 ASHLAND AVENUE
(PRIVATE RESIDENCE)



EAST LEWELLING BOULEVARD

165, 173, 175, 177, AND 181 EAST LEWELLING BOULEVARD
(PRIVATE RESIDENCES)

$\frac{TPHg}{B}$ (ppB)



LEGEND

- ◆ GROUNDWATER MONITORING WELL LOCATION
- ⊙ PROPOSED SOIL BORING LOCATION



CET Environmental Services, Inc.

SITE VICINITY PLAN					PLATE 2
PROPOSED SOIL BORING LOCATION					
186 E. LEWELLING BLVD SAN LORENZO, CALIFORNIA					
JOB NUMBER	DATE	DRAWING	BY	REVISED	
3602	01/95	OFFSITE	LONG	05/11/95	

COM No.	REMOTE STATION	START TIME	DURATION	PAGES	RESULT	USER ID	REMARKS
523	14082484700	05-18 16:58	01' 08	03/03	OK		

7499402046

**ALAMEDA COUNTY
 HEALTH CARE SERVICES**

AGENCY
 DAVID J. KEARS, Agency Director



Post-It™ brand fax transmittal memo 7671 # of pages ▶ 3

To	Mitch Kajiaghai	From	Juliet Shin
Co.	Sierra Environmental	Co.	Alameda Cty
Dept.		Phone #	510-567-6763
Fax #	408-248-4700	Fax #	510-337-9335

1131 Harbor Bay Parkway, Suite 250
 Alameda, CA 94502-6577
 (510) 567-6700
 (510) 337-9335 (FAX)

May 18, 1999

Mr. & Mrs. Graffenstatte
 P.O. Box 97397
 Tacoma, Washington 98497

Claim No.: 008240
 STID: 1709

Re: Investigations at the site located at 186 E. Lewelling Blvd., San Lorenzo, CA

Dear Mr. & Mrs. Graffenstatte,

This office has reviewed Sierra Environmental, Inc.'s (Sierra) Groundwater Monitoring Report, dated April 29, 1999, for the above site. Although Sierra has proposed closure for the above site, this office is requiring that two additional quarters of consecutive groundwater monitoring be conducted to identify any seasonal fluctuations of contaminant concentrations and confirm the attenuation of this plume.

Additionally, this office received a copy of the sampling results for off-site groundwater monitoring that was conducted at the site by CET Environmental (CET) in 1995 (please refer to the attached site plan showing the "grab" groundwater sample locations and the corresponding concentrations of Total Petroleum Hydrocarbons as gasoline (TPHg) and benzene in parts per billion). The site plan was crudely drawn allegedly because CET was not paid to prepare a report. The results of this investigation indicate that elevated contaminant concentrations appear to be migrating downgradient (southwest) towards San Lorenzo Creek, located approximately 300 feet from the site, and possibly below the residences across the street at concentrations that may be posing a health hazard. "Grab" groundwater sampling is not very accurate and is generally used only for a preliminary assessment to determine where a permanent well should be placed. Based on the results of CET's investigation, and the location of sensitive receptors downgradient of the site, this office is requiring that the plume be further delineated to the southwest and the

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442
(707) 938-8702
FAX (707) 938-9419

ENVIRONMENTAL
PROTECTION
99 APR -9 PM 3:48

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-8577

April 8, 1999

Re: Required Investigations
186 E. Lewelling Blvd., San Lorenzo

Dear Ms. Shin:

We have reached an impasse with Ms. Young regarding this matter, and as result, we are taking the following action.

First, we have retained Sierra Environmental, Inc. to begin quarterly ground monitoring at the site. Work is expected to begin immediately, and we anticipate having the first report within approximately three weeks. Mr. Mitch Haliaghai, REA, CAC of Sierra Environmental is the contact person. He may be reached at 408-248-3700.

The second step is that we are preparing a claim application to the State Fund as suggested by Ms. Anna Torres. We may need your assistance with some of the site information in order to complete the application.

Sincerely,


Craig S. Ellis
CSE:kc

cc: Mr. & Mrs. Graffenstatte

Alameda County Environmental Health

1131 Harbor Bay Pkwy., #250
Alameda CA 94502-6577
Telephone (510) 567-6700 FAX (510) 337-9335

FACSIMILE COVER SHEET

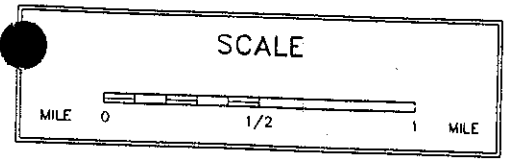
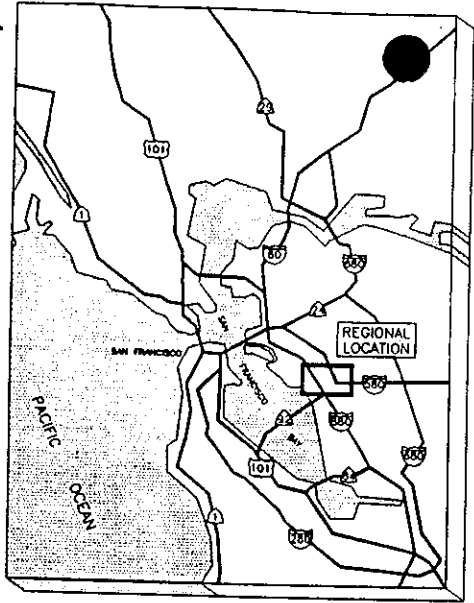
TO: Mitch , Sierra Environmental, 408-248-4700

FROM: Juliet Shin

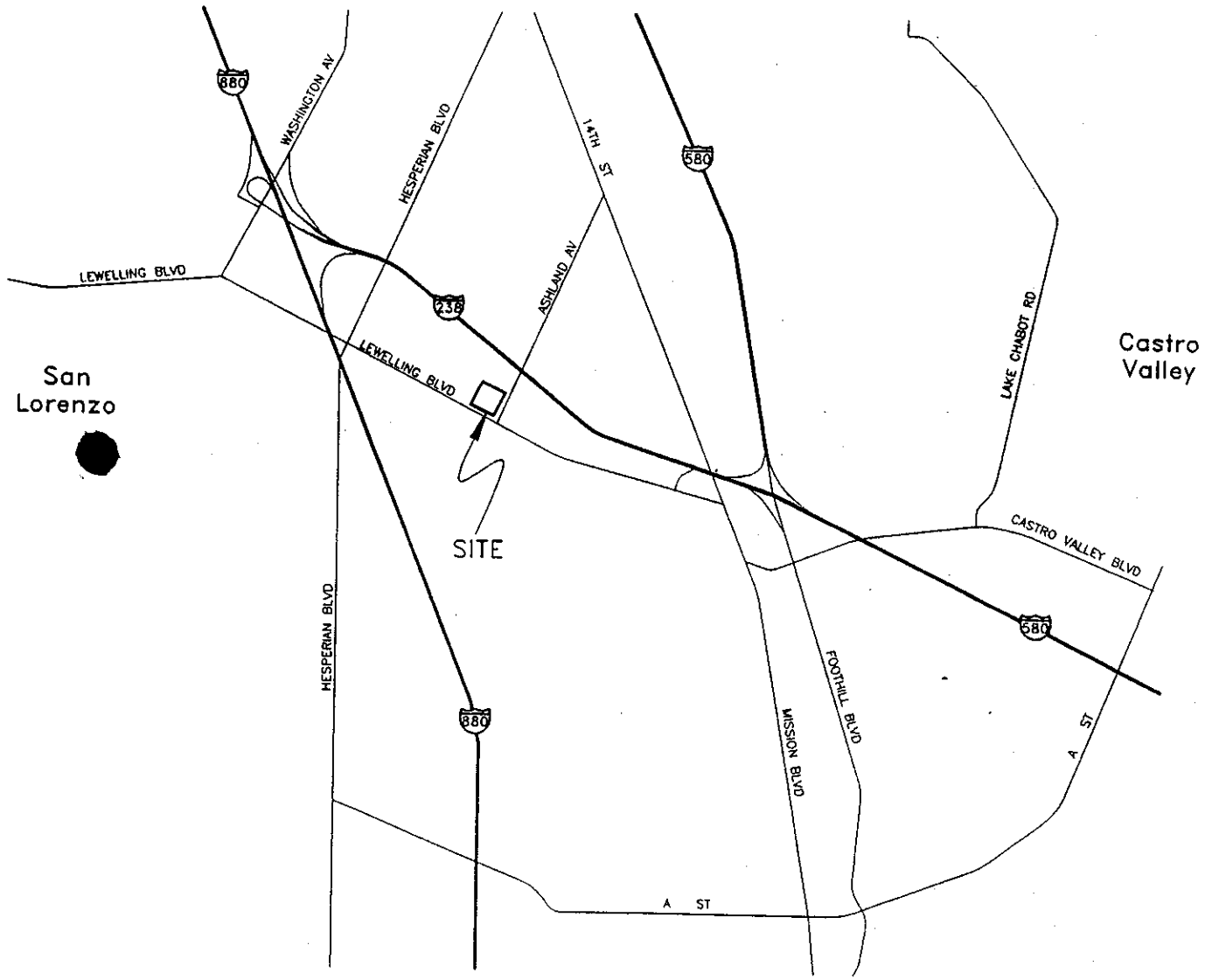
DATE: 04/26/99

Total number of pages including cover sheet 2

-NOTES- Per your request, here is a copy of
the site location map for 186 E. Lewelling.
Juliet



San Leandro



CET Environmental Services, Inc.

SITE LOCATION					PLATE 1
186 E. LEWELLING BLVD SAN LORENZO, CALIFORNIA					
JOB NUMBER	DATE	DRAWING	BY	REVISED	
3679	08/95	LOC	LONG	08/08	

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442

(707) 938-8702
FAX (707) 938-9419

ENVIRONMENTAL
PROTECTION
COPY
MAR 28 AM 9 25

Ms. Wai Yee Young
c/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, California 94619

March 24, 1999

Re: Required Investigations
186 E. Lewelling Blvd., San Lorenzo, CA

Dear Ms. Young:

I am in receipt of your letter dated March 21, 1999, and I am agreeable to making the changes suggested in your letter, except the suggestion that the power of attorney be revocable. In order for Mr. Graffenstatte to assume financial responsibility for this problem, we need to be assured that he will be reimbursed for the expenses incurred. We would be unable to have that reassurance if the power of attorney was revocable.

I have enclosed a revised power of attorney with the changes that we will agree to.

Sincerely,



Craig S. Ellis
CSE:kc
Enclosures

cc: Mr. and Mrs. Carl Graffenstatte

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-8577

Mr. Daniel McLean
Project Manager
CET Environmental Services, Inc.
3033 Richmond Parkway, Suite 300
Richmond, California 94806

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442

(707) 938-8702
FAX (707) 938-9419

ENVIRONMENTAL
PROTECTION

MAR 22 PM 4: 08
COPY

Ms. Wai Yee Young
c/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, California 94619

March 19, 1999

Re: Required Investigations
186 E. Lewelling Blvd., San Lorenzo, CA

Dear Ms. Young:

As a follow-up to my conversation with you on March 16, 1999, I have not received the executed documents mailed to you on February 23, 1999. In addition, I have not received a return call from Eva Young explaining the status of the documents.

If you have not done so already, I need you to return the documents, executed as previously instructed immediately. If there is a problem with you complying with this, I need you to contact me immediately.

Sincerely,



Craig S. Ellis

CSE:kc

Enclosures

cc: Mr. and Mrs. Carl Graffenstatte

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-8577

Mr. Daniel McLean
Project Manager
CET Environmental Services, Inc.
3033 Richmond Parkway, Suite 300
Richmond, California 94806

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700

March 01, 1999

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

Claim No.: 008240
STID: 1709

Re: Request to State Water Resources Control Board (SWRCB) to add
Mr. & Mrs. Graffenstatte to the existing State Trust Fund Reimbursement account for the
site located at 186 E. Lewelling Blvd., San Lorenzo

Dear Mr. & Mrs. Graffenstatte,

This office has received the February 23, 1999 letter from your attorney, Craig S. Ellis, explaining that you have requested Ms. Anna Torres at SWRCB to add you to the existing Trust Fund Reimbursement account for the above site. Per your request, this office will grant you an extension for the due date to resume groundwater monitoring until you receive a response from Ms. Anna Torres. Please notify us immediately after hearing from Ms. Torres. If we do not hear from you by the end of March 1999, we will contact you or your attorney for an update on the status of your request.

Thank you for your cooperation. If you have any questions or need any assistance, please contact me at (510) 567-6763.

Sincerely,

Juliet Shin
Hazardous Materials Specialist

Cc: Craig S. Ellis, Attorney At Law
3382 Warm Springs Road
Glen Ellen, California 95442

Ms. Anna Torres
State Water Resources Control Board
Payment Reimbursement Section
Underground Storage Tank Cleanup Fund
P.O. Box 944212
Sacramento, CA 94244-2120

Ms. Wai Yee Young
C/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, CA 94619

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442
(707) 938-8702
FAX (707) 938-9419

ENVIRONMENTAL
PROTECTION

99 FEB 24 PM 3:42

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-8577

February 23, 1999

Re: Required Investigations
186 E. Lewelling Blvd., San Lorenzo

Dear Ms. Shin:

I received a call from Ms. Young advising us that they will agree to the terms outlined in my letter to them dated January 25, 1999.

I have talked with Cheryl Gordon at the State Water Resources Control Board on the process for adding Mr. & Mrs. Graffenstatte to the existing account, so that future reimbursement checks will be jointly issued to Young and Graffenstatte. Ms. Gordon advised me to prepare a brief synopsis on the site, have all responsible parties sign and submit the request directly to Ms. Anna Torres in the Payment Reimbursement Section at the State Water Resources Control Board. Please find enclosed copies of the correspondence to Ms. Young and Ms. Torres.

I have also talked with Daniel McLean at CET Environmental Services, Inc., and he has provided an estimate for continuation of the groundwater monitoring.

Once we obtain notification from Ms. Torres that Mr. & Mrs. Graffenstatte have been added as a co-payee on the account, we will be in a position to resume the groundwater monitoring.

Any assistance your office can provide in expediting the approval would be appreciated.

Sincerely,


Craig S. Ellis
CSE:kc

cc: Mr. & Mrs. Graffenstatte

Ms. Wai Yee Young
c/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, California 94619

Mr. Daniel McLean
Project Manager
CET Environmental Services, Inc.
3033 Richmond Parkway, Suite 300
Richmond, California 94806

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442

(707) 938-8702
FAX (707) 938-9419

COPY

Ms. Wai Yee Young
c/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, California 94619

February 23, 1999

Re: Required Investigations
186 E. Lewelling Blvd., San Lorenzo, CA

Dear Ms. Young:

Please find enclosed the following documents for your review and execution:

- Letter to Ms. Anna Torres at the State Water Resources Control Board;
- Power of Attorney.

The letter to Ms. Torres authorizes the addition of Mr. & Mrs. Graffenstatte as co-payees on the fund, and that all future payments will be mailed to them. I need you to sign on page 3 where your name appears.

The Power of Attorney allows Mr. Graffenstatte to sign your name on the payments issued by the Underground Storage Tank Fund. On page 1, you need to initial I. On page 2 you need to sign where indicated and insert your social security number. You need to execute the form in the presence of a notary. You should retain a copy for your files.

Please return the executed documents in the enclosed a self-addressed envelope. Since time is of the essence, your assistance in completing this as soon as possible will be appreciated.

Please call if you have any questions.

Sincerely,



Craig S. Ellis

CSE:kc

Enclosures

cc: Mr. and Mrs. Carl Graffenstatte

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-8577

Mr. Daniel McLean
Project Manager
CET Environmental Services, Inc.
3033 Richmond Parkway, Suite 300
Richmond, California 94806

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442

(707) 938-8702
FAX (707) 938-9419

COPY

Ms. Anna Torres
State Water Resources Control Board
Payment Reimbursement Section
Underground Storage Tank Cleanup Fund
P.O. Box 944212
Sacramento, California 94244-2120

February 23, 1999

Re: Claim No.: 008240
Site: 186 E. Lewelling Blvd., San Lorenzo, CA

Request: Addition of Co-Payee
Change of Address for Reimbursement Checks

Dear Ms. Torres:

This office represents the current owner of record title to the property located at 186 E. Lewelling Blvd., in San Lorenzo, and pursuant to my discussions with Ms. Cheryl Gordon we are asking for your assistance with adding Mr. and Mrs. Graffenstatte as a co-payees to the above referenced approved claim and changing the address that reimbursement checks will be mailed to. Ms. Gordon advised us to provide you with a brief historical background of the site, and have to the request signed by all of the responsible parties.

HISTORICAL BACKGROUND OF SITE

- On or about July 20, 1981, Mr. and Mrs. Graffenstatte acquired the property at 186 E. Lewelling Blvd., in San Lorenzo from Mildred Smith Robello a.k.a. Mildred G. Tiller. Mobil Oil had operated a service station at the site for approximately 15 years, and their lease was with Ms. Robello. The lease expired prior to Mr. and Mrs. Graffenstatte purchasing the property. The property contained an automotive service station, and two 4000-gallon UST's and one 350-gallon waste oil UST.
- From approximately July 28, 1981, to January 21, 1982, Mr. Richard Pierce and Mr. Burhl Harwood d.b.a. Lewelling Auto Clinic leased the property.
- From approximately June 1, 1982, to May 31, 1986, the property was leased to Vernon L. Mayer and Betty Mayer.
- From June 1, 1986, to September 19, 1986, the property was not used.

- On September 19, 1986, Mr. and Mrs. Graffenstatte sold the property to Ms. Wai Yee Young. As a condition of the sale, Mr. and Mrs. Graffenstatte financed a portion of the sales price, and carried a note secured by a deed of trust on the property.
- On September 5, 1990, Ms. Young had the three underground storage tanks removed from the site.
- On November 6, 1990, Ms. Pamela J. Evans of the Alameda County Health Care Services wrote Ms. Young requesting certain information regarding the soil sampling results or hazardous waste manifest copies for the tanks which were removed and the associated piping which was not removed.
- On December 20, 1990, Ms. Pamela J. Evans of the Alameda County Health Care Services wrote Ms. Young requesting a work plan by January 31, 1991, as a result of the sampling results received December 14, 1990.
- On January 28, 1993, Ms. Juliet Shin of the Alameda County Health Care Services wrote Mr. and Mrs. Graffenstatte and advised them that they were a responsible party for the investigation and remediation of the property as a result of their previous ownership of the property.
- At some point Ms. Young contracted with CET Environmental to conduct soil and groundwater investigations of the property, and monitoring wells were installed, however at some point Ms. Young discontinued the groundwater monitoring program.
- As a result of Ms. Young defaulting on the promissory note with Mr. and Mrs. Graffenstatte, in October of 1996, Mr. and Mrs. Graffenstatte foreclosed on the property, and are the current owners of record.
- On January 4, 1999, Ms. Juliet Shin of the Alameda County Health Care Services wrote Mr. and Mrs. Graffenstatte and advised them that quarterly groundwater monitoring was to commence by January 31, 1999.
- On February 2, 1999, Ms. Juliet Shin of the Alameda County Health Care Services extended the resumption of quarterly groundwater monitoring to February 28, 1999.

Ms. Anna Torres
February 23, 1999
Page 3

REQUEST

- Since Mr. and Mrs. Carl Graffenstatte are a responsible party for the site, the responsible parties have agreed to add them as a co-payee on all future reimbursements issued by the fund under Claim No.: 008240.
- Change the address for future reimbursements to P.O. Box 97397, Tacoma, WA 98497

We plan on using CET Environmental Services and continuing with the original plan as previously approved for this site.

If you have any questions, please feel free to call, and we would appreciate an acknowledgment by your office so that work can begin.

Thank you for your assistance.

APPROVAL TO ADD CO-PAYEE

Ms. Wai Yee Young hereby irrevocably agrees to add Mr. Carl J. Graffenstatte and Ms. Donna P. Graffenstatte as co-payees on all future reimbursements made by the Underground Storage Tank Cleanup Fund under Claim No.: 008240, and hereby irrevocably instructs the fund to issue all future payments jointly to Wai Yee Young, Carl J. Graffenstatte and Donna P. Graffenstatte, and to mail all payments to P.O. Box 97397, Tacoma, WA 98497.

Wai Yee Young

Carl J. Graffenstatte SS 553-38-1127

Donna P. Graffenstatte SS 570-40-7839

Sincerely,



Craig S. Ellis

CSE:kc

cc: Mr. and Mrs. Carl Graffenstatte

Ms. Wai Yee Young
c/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, California 94619

Ms. Anna Torres
February 23, 1999
Page 4

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-8577

Ms. Cheryl Gordon
State Water Resources Control Board
Division of Clean Water Programs
Underground Storage Tank Cleanup Fund
P.O. Box 944212
Sacramento, California 94244-2120

Mr. Daniel McLean
Project Manager
CET Environmental Services, Inc.
3033 Richmond Parkway, Suite 300
Richmond, California 94806

UNIFORM STATUTORY FORM POWER OF ATTORNEY

(California Probate Code Section 4401)

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA PROBATE CODE SECTIONS 4400-4465). IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTHCARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, Wai Yee Young, of Oakland, California, appoint Carl J. Graffenstatter, of Tacoma, Washington, as my agent (attorney in fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

- (A) Real property transactions.
- (B) Tangible personal property transactions.
- (C) Stock and bond transactions.
- (D) Commodity and option transactions.
- (E) Banking and other financial institution transactions.
- (F) Business operating transactions.
- (G) Insurance and annuity transactions.
- (H) Estate, trust, and other beneficiary transactions.
- (I) Claims and litigation.
- (I) Personal and family maintenance.
- (K) Benefits from social security, medicare, medicaid, and other governmental programs, or civil or military service.
- (L) Retirement plan transactions.
- (M) Tax matters.
- (N) ALL OF THE POWERS LISTED ABOVE.

YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

This Power of Attorney shall be limited to payments issued by the State of California Underground Storage Tank Fund for Claim Number 008240 and relating to 186 E. Lewelling Blvd., San Lorenzo, California and is irrevocable.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney will continue to be effective even though I become incapacitated.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME INCAPACITATED.

EXERCISE OF POWER OF ATTORNEY WHERE MORE, THAN ONE AGENT DESIGNATED.

If I have designated more than one agent, the agents are to act n/a

IF YOU APPOINTED MORE THAN ONE AGENT AND YOU WANT EACH AGENT TO BE ABLE TO ACT ALONE WITHOUT THE OTHER AGENT JOINING, WRITE THE WORD "SEPARATELY" IN THE BLANK SPACE ABOVE. IF YOU DO NOT INSERT ANY WORD IN THE BLANK SPACE, OR IF YOU INSERT THE WORD "JOINTLY," THEN ALL OF YOUR AGENTS MUST ACT OR SIGN TOGETHER.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this _____ day of _____, 1999.

_____ [your signature]
_____ [your social security number]

State of California

County of _____

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

ACKNOWLEDGMENT

State of California County of _____

On _____, before me, _____, personally appeared Wai Yee Young, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES

1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
(510) 337-9335 (FAX)

February 02, 1999

Craig S. Ellis
Attorney At Law
3382 Warm Springs Road
Glen Ellen, California 95442

STID: 1709

Re: Extension of due date for required groundwater monitoring at 186 E. Lewelling Blvd.,
San Lorenzo, California

Dear Mr. Ellis,

In response to your request outlined in your January 25, 1999 letter, Mr. & Mrs. Graffenstatte will be granted an extension to the deadline for groundwater monitoring requirements at the above site. It is our understanding that groundwater monitoring will be initiated at the site by February 28, 1999.

Based on your phone message to me on January 25, 1999, you have contacted Ms. Wai Yee Young to request her involvement in the required investigations. Ms. Wai Yee Young is a Responsible Party, in addition to Mr. & Mrs. Graffenstatte, and is required to participate in the investigations.

If you have any questions or comments, please contact me at (510) 567-6763.

Sincerely,

Juliet Shin
Hazardous Materials Specialist

Cc: Ms. Wai Yee Young
C/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, CA 94619

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES

1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
(510) 337-9335 (FAX)

February 02, 1999

Craig S. Ellis
Attorney At Law
3382 Warm Springs Road
Glen Ellen, California 95442

STID: 1709

Re: Extension of due date for required groundwater monitoring at 186 E. Lewelling Blvd.,
San Lorenzo, California

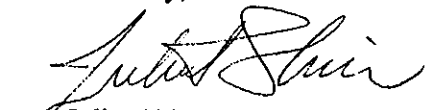
Dear Mr. Ellis,

In response to your request outlined in your January 25, 1999 letter, Mr. & Mrs. Graffenstatte will be granted an extension to the deadline for groundwater monitoring requirements at the above site. It is our understanding that groundwater monitoring will be initiated at the site by February 28, 1999.

Based on your phone message to me on January 25, 1999, you have contacted Ms. Wai Yee Young to request her involvement in the required investigations. Ms. Wai Yee Young is a Responsible Party, in addition to Mr. & Mrs. Graffenstatte, and is required to participate in the investigations.

If you have any questions or comments, please contact me at (510) 567-6763.

Sincerely,


Juliet Shin
Hazardous Materials Specialist

Cc: Ms. Wai Yee Young
C/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, CA 94619

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442
(707) 938-8702
FAX (707) 938-9419

ENVIRONMENTAL
PROTECTION

99 JAN 26 PM 4: 57

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Health Care Services
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-8577

January 25, 1999

Re: Required Investigations
186 E. Lewelling Blvd., San Lorenzo

Dear Ms. Shin:

On behalf of Mr. & Mrs. Graffenstatte, I am responding to your letter dated January 4, 1999, on the above referenced matter.

In your letter you request monitoring begin by the end of January, unfortunately, there are a variety of reasons why Mr. & Mrs. Graffenstatte will be unable to meet that deadline, and it appears that the end of February is a more realistic target date.

I have talked with Cheryl Gordon at the State Water Resources Control Board on this matter, and she has advised me that we have the following options available to us. The first is to add Mr. & Mrs. Graffenstatte to the existing account, in which case reimbursement checks will be jointly issued to Young and Graffenstatte. Due to the fact we were forced to foreclose on Ms. Young, it is unclear on the viability of this option, however, I have written Ms. Young with a proposal and have asked for a response within the next 10 days. In talking with Ms. Gordon, I was hopeful that given the nature of the case and the named parties, the fund could transfer the account to Mr. & Mrs. Graffenstatte since they are now the owners of the property, unfortunately this is not an option. The second option is for Mr. & Mrs. Graffenstatte to apply to the fund, and as you are aware this is a time consuming process. I have asked Ms. Gordon to mail us a current application package.

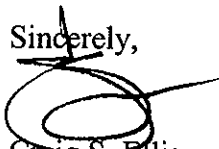
I have also talked with Daniel McLane at CET Environmental Services, Inc., and while they contracted with Ms. Young, he was very helpful in bringing us up to date. Since the site has not been monitored for approximately three years, it is unclear on the condition of the wells. Before the monitoring can continue a site visit, evaluation and cost proposal will need to be made and accepted. We have asked Mr. McLane for pricing and a timeline.

Ms. Juliet Shin
January 25, 1999
Page 2

We will need to resolve the above referenced matters in order to begin the monitoring process, and we are cautiously optimistic that we can do that by the end of February.

I will keep you advised on our progress.

Sincerely,



Craig S. Ellis
CSE:kc

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES

1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
(510) 337-9335 (FAX)

January 4, 1999

Ms. Wai Yee Young
C/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, CA 94619

STID: 1709

Claim #: 008240

Re: Required investigations at 186 E. Lewelling Blvd., San Lorenzo, CA

Dear Ms. Young,

I, Juliet Shin, am a Hazardous Materials Specialist with Alameda County Health Department and have recently been reassigned as the lead case worker for the above site. If you may recall, I was the case worker for the site until 1994 when the case was transferred to Amy Leech in our office.

On September 5, 1990, two 4,000-gallon gasoline underground storage tanks (USTs) and one 350-gallon waste oil UST were removed from the above site. Soil samples collected from below the USTs identified up to 4,000 parts per million (ppm) Total Petroleum Hydrocarbons as gasoline (TPHG), 1.3ppm benzene, and lower levels of other petroleum constituents.

In response to this observed contamination, the release was reported to the State. This office, the San Francisco Bay Regional Water Quality Control Board (RWQCB), and the State Water Resources Control Board (SWRCB) identified Wai Yee Wong Young and Mr. & Mrs. Graffenstatte as the Responsible Parties for investigating and mitigating the observed contamination after an extensive number of meetings, panel reviews, and correspondences with SWRCB and the attorneys for both parties.

After establishing the Responsible Parties, groundwater investigations were initiated at the site through the installation of three groundwater monitoring wells, MW-1 through MW-3, in 1994. These wells were sampled for four consecutive quarters between June 1994 and August 1995, identifying elevated levels of benzene in Wells MW-2 and MW-3. Monitoring of these wells abruptly ceased in 1995 due to unresolved payment issues between CET and Wai Yee Wong Young. Per RWQCB's guidelines, groundwater monitoring must resume at the site until sufficient information can be gathered to conclude that the plume is fully characterized, the plume has stabilized (i.e., is no longer migrating), and the site presents no significant risk to human health or the environment. According to vicinity maps, the site is located immediately upgradient of a residential area. Benzene concentrations identified in Wells MW-2 and MW-3 have consistently exceeded the residential human-health protective threshold value of 240 parts per billion (ppb), which is listed in the Tier 1 table of the American Society for Testing and Materials' Risk-Based Corrective Action Guidelines (E 1739-95). Therefore, due to the potential risk to adjacent properties, and to ascertain whether the plume has stabilized, the plume must continue to be monitored.

Ms. Young
Re: 186 E. Lewelling Blvd.
January 4, 1999
Page 2 of 3

Quarterly groundwater monitoring must resume by January 31, 1999. Groundwater samples shall be analyzed for TPHG, and benzene, toluene, ethylbenzene, and total xylenes. Additionally, per Senate Bill 521 (Mountjoy, Ch 816, 1997), you are required to include the analysis for Methyl Tertiary Butyl Ether (MTBE) using Method 8240 or 8260.

Per my recent conversation with you, Eva Young, it is my understanding that the above property was returned to Mr. & Mrs. Graffenstatte through foreclosure. As I stated to you during our conversation, this does not affect the State's listing of Wai Yee Wong Young and Mr. & Mrs. Graffenstatte as Responsible Parties. However, if a new party has recently purchased the above property, then that party will also be listed as a Responsible Party. Please submit the name, address, and phone number of the new property owner, if any, to this office.

In October 1994, SWRCB granted Wai Yee Wong Young a Letter of Commitment to reimburse her for investigation and cleanup costs. Per my conversation with Cheryl Gordon, State Trust Fund, her claim number at the SWRCB Trust Fund is still active and may be used for future investigation costs. I strongly suggest that Wai Yee Wong Young and Mr. & Mrs. Graffenstatte work together to complete investigations in a manner that will assure full reimbursement by SWRCB for all costs. Please be reminded that the State Trust Fund recommends their review and approval of all workplans prior to implementing work to insure full reimbursement for costs. Additionally, the State Trust Fund requires a minimum of three bids for each workplan, with the work going to the lowest bidder or another bidder if it can be justified based on greater knowledge, experience, etc. If you have any specific questions regarding the Trust Fund, please contact Cheryl Gordon at (916) 227-4539.

Per a letter from CET Environmental Services, Inc. (CET), dated February 11, 1997, it appears that CET drilled additional exploratory borings both on and off site in 1995 to delineate the extent of the plume. The details of this investigation and the analytical results were never submitted to this office based on unresolved payment issues between CET and Wai Yee Wong Young. This information would be valuable in assisting this office to determine the extent of the plume and whether it is posing a threat to adjacent properties. In order to prevent redundant work, this office is requesting that you work with CET to submit all details of this investigation to this office.

As stated above, quarterly groundwater monitoring must resume at the site by January 31, 1999. A quarterly groundwater monitoring report must be submitted within 45 days after completing sampling activities. The quarterly groundwater monitoring report must include, among others, the following elements:

- 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.
- Status of groundwater contamination characterization

Ms. Young
Re: 186 E. Lewelling Blvd.
January 4, 1999
Page 3 of 3

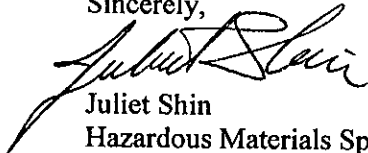
- Interpretations of results: water level contour maps showing gradients, free and dissolved product, plume definition maps for each target component, geologic cross sections, etc.
- Recommendations or plans for additional investigative work or remediation

Please be advised that this is a formal request for a work plan pursuant to Section 2722(c)(d) of Title 23 California Code of Regulations. Any extensions of the stated deadlines, or modifications of the required tasks, must be confirmed in writing by either this agency or RWQCB.

Your cooperation is essential in expediting investigations and ultimate closure of the site, which will benefit all parties involved, in that they can move on and put this burden behind them.

If you have any questions or comments, please contact me at (510) 567-6763.

Sincerely,



Juliet Shin
Hazardous Materials Specialist

Cc: Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

Cheryl Gordon
State Water Resources Control Board
Division of Clean Water Programs
Underground Storage Tank Cleanup Fund
P.O. Box 944212
Sacramento, CA 94244-2120

Dan McLane
CET Environmental Services, Inc.
3033 Richmond Parkway, Ste 300
Richmond, CA 94806

Files-JMS

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES

1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
(510) 337-9335 (FAX)

January 4, 1999

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

STID: 1709

Claim #: 008240

Re: Required investigations at 186 E. Lewelling Blvd., San Lorenzo, CA

Dear Mr. & Mrs. Graffenstatte,

I, Juliet Shin, am a Hazardous Materials Specialist with Alameda County Health Department and have recently been reassigned as the lead case worker for the above site. If you may recall, I was the case worker for the site until 1994 when the case was transferred to Amy Leech in our office. Several attempts were made to contact you by phone at (253) 584-2600 to no avail. Please notify this office of any changes in your phone number.

On September 5, 1990, two 4,000-gallon gasoline underground storage tanks (USTs) and one 350-gallon waste oil UST were removed from the above site. Soil samples collected from below the USTs identified up to 4,000 parts per million (ppm) Total Petroleum Hydrocarbons as gasoline (TPHG), 1.3ppm benzene, and lower levels of other petroleum constituents.

In response to this observed contamination, the release was reported to the State. This office, the San Francisco Bay Regional Water Quality Control Board (RWQCB), and the State Water Resources Control Board (SWRCB) identified you and Ms. Wai Yee Wong Young as the Responsible Parties for investigating and mitigating the observed contamination after an extensive number of meetings, panel reviews, and correspondences with SWRCB and the attorneys for both parties.

After establishing the Responsible Parties, groundwater investigations were initiated at the site through the installation of three groundwater monitoring wells, MW-1 through MW-3, in 1994. These wells were sampled for four consecutive quarters between June 1994 and August 1995, identifying elevated levels of benzene in Wells MW-2 and MW-3. Monitoring of these wells abruptly ceased in 1995 due to unresolved payment issues between CET and Wai Yee Wong Young. Per RWQCB's guidelines, groundwater monitoring must resume at the site until sufficient information can be gathered to conclude that the plume is fully characterized, the plume has stabilized (i.e., is no longer migrating), and the site presents no significant risk to human health or the environment. According to vicinity maps, the site is located immediately upgradient of a residential area. Benzene concentrations identified in Wells MW-2 and MW-3 have consistently exceeded the residential human-health protective threshold value of 240 parts per billion (ppb), which is listed in the Tier 1 table of the American Society for Testing and Materials' Risk-Based Corrective Action Guidelines (E 1739-95). Therefore, due to the potential risk to adjacent properties, and to ascertain whether the plume has stabilized, the plume must continue to be monitored.

Mr. & Mrs. Graffenstatte
Re: 186 E. Lewelling Blvd.
January 4, 1999
Page 2 of 3

Quarterly groundwater monitoring must resume by January 31, 1999. Groundwater samples shall be analyzed for TPHG, and benzene, toluene, ethylbenzene, and total xylenes. Additionally, per Senate Bill 521 (Mountjoy, Ch 816, 1997), you are required to include the analysis for Methyl Tertiary Butyl Ether (MTBE) using Method 8240 or 8260.

Per my recent conversation with Eva Young, Wai Yee Wong Young's daughter, it is my understanding that the above property was returned to your ownership through foreclosure. As I stated to Eva Young, this does not affect the State's listing of you and Wai Yee Wong Young as Responsible Parties. However, if a new party has recently purchased the above property, then that party will also be listed as a Responsible Party. Please submit the name, address, and phone number of the new property owner, if any, to this office.

In October 1994, SWRCB granted Ms. Young a Letter of Commitment to reimburse her for investigation and cleanup costs. Per my conversation with Cheryl Gordon, State Trust Fund, her claim number at the SWRCB Trust Fund is still active and may be used for future investigation costs. I strongly suggest that you and Ms. Young work together to complete investigations in a manner that will assure full reimbursement by SWRCB for all costs. Please be reminded that the State Trust Fund recommends their review and approval of all workplans prior to implementing work to insure full reimbursement for costs. Additionally, the State Trust Fund requires a minimum of three bids for each workplan, with the work going to the lowest bidder or another bidder if it can be justified based on greater knowledge, experience, etc. If you have any specific questions regarding the Trust Fund, please contact Cheryl Gordon at (916) 227-4539.

Per a letter from CET Environmental Services, Inc. (CET), dated February 11, 1997, it appears that CET drilled additional exploratory borings both on and off site in 1995 to delineate the extent of the plume. The details of this investigation and the analytical results were never submitted to this office based on unresolved payment issues between CET and Wai Yee Wong Young. This information would be valuable in assisting this office to determine the extent of the plume and whether it is posing a threat to adjacent properties. In order to prevent redundant work, this office is requesting that you work with CET to submit all details of this investigation to this office.

As stated above, quarterly groundwater monitoring must resume at the site by January 31, 1999. A quarterly groundwater monitoring report must be submitted within 45 days after completing sampling activities. The quarterly groundwater monitoring report must include, among others, the following elements:

- 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.
- Status of groundwater contamination characterization

Mr. & Mrs. Graffenstatte
Re: 186 E. Lewelling Blvd.
January 4, 1999
Page 3 of 3

- Interpretations of results: water level contour maps showing gradients, free and dissolved product, plume definition maps for each target component, geologic cross sections, etc.
- Recommendations or plans for additional investigative work or remediation

Please be advised that this is a formal request for a work plan pursuant to Section 2722(c)(d) of Title 23 California Code of Regulations. Any extensions of the stated deadlines, or modifications of the required tasks, must be confirmed in writing by either this agency or RWQCB.

Your cooperation is essential in expediting investigations and ultimate closure of the site, which will benefit you by increasing the value of your property, and benefit all parties involved, in that they can move on and put this burden behind them.

If you have any questions or comments, please contact me at (510) 567-6763.

Sincerely,


Juliet Shin
Hazardous Materials Specialist

Cc: Ms. Wai Yee Young
C/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, CA 94619

Cheryl Gordon
State Water Resources Control Board
Division of Clean Water Programs
Underground Storage Tank Cleanup Fund
P.O. Box 944212
Sacramento, CA 94244-2120

Dan McLane
CET Environmental Services, Inc.
3033 Richmond Parkway, Ste 300
Richmond, CA 94806

Files-JMS



**CET Environmental
Services, Inc.**

3033 Richmond Parkway, Suite 300
Richmond, California 94806
Telephone: (510) 243-9500
Facsimile: (510) 243-9501

February 11, 1997

Ms. Wai Yee Young,
c/o Ms. Eva Young
4230 Harbor View Avenue
Oakland, CA 94619

Subject: Response to your letter dated November 22, 1996 and recent telephone conversations requesting back-up information for outstanding invoices (CET Project Numbers 3669-001 and 3679-001)

Dear Ms. Young:

CET Environmental Services, Inc. (CET) is pleased to submit the enclosed information as you requested in the subject letter. The enclosed information includes subcontractor invoices to CET, and CET labor, equipment and materials for the specific invoices requested in the subject letter. Also enclosed is the Field Activity Daily Report for the most recent field investigation performed during October 1995.

The only other back-up information which CET has in our files are copies of workplans, quarterly groundwater monitoring reports, and agency correspondence; copies of which were routinely sent to you either by CET or the Alameda County Health Care Services Agency (ACHCSA). Workplans (and Proposals) describe proposed work in detail, ACHCSA correspondence includes requests to perform work and approvals for workplans. Quarterly reports provide detailed descriptions and documentation for quarterly groundwater sampling activities performed to date (CET Project No. 3679-001).

It was anticipated that detailed descriptions and documentation for the most recent field investigation activities performed (CET Project No. 3669-001), would be provided in a proposed comprehensive field investigation report. However, this report has not yet been written due to lack of payment on your accounts (the field investigation was never completed). Work performed during the most recent field investigation included drilling and sampling six (6) exploratory boreholes (see enclosed Field Activity Daily Report) using Precision Sampling, Inc.; and attempting to gain legal access and permits to install three (3) additional groundwater monitoring wells at off-site locations (the three proposed off-site wells have not yet been installed).

Please call me or Vicki Staten, at (510) 243 -9500, if you have any questions or comments regarding the contents of this letter.

Sincerely,

CET Environmental Services, Inc.

A handwritten signature in black ink, appearing to read 'B. B.', with a long horizontal flourish extending to the right.

Benjamin Berman
Staff Scientist

BB:bb

Enclosures

cc: Ms. Amy Leech, ACHCSA (w/o enclosures)

November 22, 1996

Wai Yee Young
4230 Harbor View Avenue
Oakland, CA 94619

Mr. Benjamin Berman
CET Environmental Services, Inc.
3033 Richmond Parkway, Suite 300
Richmond, CA 94806

Re: Account No. 3669, 3679

Dear Benjamin:

Please find enclosed a check in the amount of \$2,303.25, this check pays off the following invoices:

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Amount</u>
03/30/95	2	\$591.00
09/25/95	367908	\$702.00
11/20/95	10	\$670.25
11/02/95	9	<u>\$340.00</u>
	Total:	\$2303.25

The UST fund was only able to approve these costs at this time. The outstanding invoices we have with you are still pending and require additional information. The UST fund is requesting that all invoices include the following:

"Invoices needs to have breakdown by task description. It is unclear what exactly was done during this time period. ALL technical reports need to be submitted. In addition, written directives from the local regulatory agency approving this work need to be submitted along with a narrative work description giving a chronology of the work performed to date. These items are required with all reimbursement requests."

Mr. Benjamin Berman
CET Environmental Services, Inc.
Page: 2

I have enclosed a copy of their comments for information for your convenience.

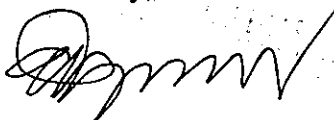
Therefore, please provide this information to me for the following invoices:

<u>Invoice Date</u>	<u>Invoice Number</u>
11/20/95	366909
03/30/95	2
10/02/95	366908
01/02/96	10
01/12/96	367911
01/12/96	367912

Please send this to me ASAP, for I would like to resolve our account with you and continue the clean up process immediately. I look forward to hearing from you.

Thank you.

Sincerely,



Eva Young for Wai Yee Young

Enclosures

cc: Amy Leech, Alameda County ✓

ENVIRONMENTAL
PROTECTION

96 JUN 19 PM 3: 17

June 17, 1996

Wai Yee Young
4230 Harbor View Avenue
Oakland, CA 94619

Mr. Benjamin Berman
CET Environmental Services, Inc.
3033 Richmond Parkway, Suite 300
Richmond, CA 94806

Re: Account No. 3669, 3679

Dear Benjamin:

Thank you for taking the time to gather all the subcontractor invoices. However, after review of your package, I have found that there were 3 invoices that were over looked and did not include copies of the subcontractor invoices. For your convenience, I have enclosed copies of these invoices and have highlighted the outside vendor's invoice that I require before I may submit my reimbursement to the State, thus, please send me this information ASAP.

Also, enclosed is a check for \$1,487.50 to pay Invoice 4 (5/29/95).

Once again, thank you for your patience and your timely response. I look forward to receiving this information.

Sincerely,

Eva Young

Enclosures

cc: Amy Leech, Alameda County ✓

Meeting on June 10, 1996 at ALCO DEH offices

StId 1709
New Performance
186 E Lewelling Blvd, San Lorenzo

Meeting Attendees:

Wai Yee Young, Property Owner; Eva Young, daughter of Wai Yee; and Amy Leech with ACDEH

Met w/the Young's to discuss status of site and plans for future action.

- We discussed the delays associated w/work at the site. Last work plan was approved in 3/95 and to date it has only been partially implemented on 10/95. Consultant has not submitted any final reports on work completed since 10/95. Eva was not sure why this was but it most likely is because they have not been paying CET.

Eva stated that she just received the needed copies of invoices from CET and will now submit those to the Fund for reimbursement. She expects to get checks out to CET over the next two weeks, and we can therefore plan for work to move ahead within the next 30 days.

- The Young's informed me that they are planning to foreclose on this property and that Mr. and Mrs. Graffenstatter will likely take ownership again. They asked if they would still be a RP and I told her that they would still be listed as a RP. It was their intentions to continue to work with the Cleanup Fund to get the site closed.
- Eva Young asked if we had a list of consultants that were experienced in getting sites cleaned up and closed in a timely/efficient manner. I told her we could not recommend consultants but would see if I could get a list of consultants that were used to working with the Fund and that could devise a corrective action plan based on risk assessment (ASTM/RWQCB's guidelines).
- We discussed the possibility of completing overexcavation at the site. They said they are renting the property on a month to month basis and could authorize such activity.
- I recommended that if they decided to go with another consultant to set up a meeting within the next 30 days so that we could develop an efficient work plan/schedule. If they continue to go with CET, I told them that we could probably plan over the phone.
- Eva stated that they plan to continue with CET through the completion of the work plan which was approved on 3/95.

RECORDING REQUESTED BY

T.D. SERVICE COMPANY

T.D. SERVICE COMPANY

737 Arnold Drive,
Suite C
Martinez, CA 94553-6526

The following copy of "Notice", the original of which was filed for record on 5/24/96 in the office of the County Recorder of said County, is sent to you inasmuch as an examination of the title to said trust property shows you may have an interest in the Trustee's Sale Proceedings.

SPACE ABOVE THIS LINE FOR RECORDERS USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

T.S. No. Q235082
Unit Code Q
Loan No. YOUNG

"IMPORTANT NOTICE"

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$17,187.75
as of May 24, 1996
and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your Note and Deed of Trust or Mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the Note and Deed of Trust or Mortgage, the Beneficiary or Mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the Beneficiary or Mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the Beneficiary or Mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Beneficiary or Mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

THIS IS PAGE ONE OF A THREE PAGE DOCUMENT.

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

T.S. No. Q235082
Unit Code: Q
Loan No. YOUNG

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

Carl J. Graffenstatte, Jr.
Donna P. Graffenstatte
P.O. Box 97397
Tacoma, WA 98497
206 584 2600

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. Remember,

YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: THAT T.D. SERVICE COMPANY

is duly appointed Trustee under the following described Deed of Trust:

TRUSTOR: WAI YEE WONG YOUNG

BENEFICIARY:

CARL J. GRAFFENSTATTE, JR.
DONNA P. GRAFFENSTATTE

Recorded September 17, 1986 as Instr. No.86-226978 In Book
Page of Official Records in the office
of the Recorder of Alameda County;

THIS IS PAGE TWO OF A THREE PAGE DOCUMENT

T.S. No. Q235082
Unit Code Q
Loan No. YOUNG

said Deed of Trust secures certain obligations including one Note for the sum of \$85,000.00

That the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE MARCH 17, 1995 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL AND INTEREST.

That by reason thereof, the present Beneficiary under such Deed of Trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for Sale, and has deposited with said duly appointed Trustee, such Deed of Trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

DATED May 21, 1996

CURRENT BENEFICIARY:

BY
CARL J. GRAFFENSTATTE, JR.

BY
DONNA P. GRAFFENSTATTE

We are assisting the Beneficiary to collect a debt and any information we obtain will be used for that purpose whether received orally or in writing.

THIS IS PAGE THREE OF A THREE PAGE DOCUMENT

ALAMEDA COUNTY
HEALTH CARE SERVICES



AGENCY
DAVID J. KEARS, Agency Director

Alameda County CC4580
Environmental Health Services
1131 Harbor Bay Pkwy., #250
Alameda CA 94502-6577
(510)567-6700 FAX(510)337-9335

Std 1709

May 29, 1996

c/o Eva Young
Ms. Wai Yee Wong Young
4230 Harbor View Ave
Oakland CA 94619

Subject: Meeting regarding investigations at 186 E Lewelling Blvd., San Lorenzo, CA

Dear Ms. Young:

Per our conversation this morning, this letter is to confirm a meeting date to discuss the status of past investigations and the direction of future investigations at the subject site. Topics to discuss during the meeting should include items discussed in our letter (see attached) to you, dated January 30, 1996.

The meeting will be held at the Alameda County Department of Environmental Health on June 10, 1996 at 2:00 P.M.. We are located at 1131 Harbor Bay Parkway, Alameda, CA. Please see the attached map for directions. Please enter the building through the front door and check in at the reception desk downstairs.

If you have questions or comments, please call me at (510)567-6755.

Sincerely,

Amy Leech
Hazardous Materials Specialist

ATTACHMENTS

c: CET Environmental Services, Inc., 5845 Doyle St., Suite 104, Emeryville CA 94608
w/attachments
Gordon Coleman - File (ALL)

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



ARNOLD PERKINS, DIRECTOR
RAFAT A. SHAHID, DEPUTY DIRECTOR

StId 1709

January 30, 1996

c/o Eva Young
Ms. Wai Yee Wong Young
4230 Harbor View Ave
Oakland CA 94619

Alameda County Environmental Health Dept.
Environmental Protection Division
1131 Harbor Bay Parkway, Room 250
Alameda CA 94502-6577
(510)567-6700 fax: (510)337-9335

Subject: Investigations at 186 E Lewelling Blvd., San Lorenzo, CA

Dear Ms. Young:

As you know, your consultant CET Environmental completed a soil and groundwater investigation at the subject site on October 17, 1995 to further delineate the extent of soil and groundwater contamination. Although we have not received the results of this investigation in final report format, CET has forwarded to this office preliminary analytical results of soil and groundwater samples collected from five boring locations advanced in October 1995, and have asked us to review their proposal for determining the proper location for installing three additional monitoring wells.

The purpose of installing the additional monitoring wells is to define the extent of groundwater contamination emanating from this site. Because this office has no records that removal of contaminated soil ever occurred at this site, another purpose of the October 1995 investigation was to verify the extent of soil contamination to assist in determining if source removal is an appropriate corrective action proposal.

CET has proposed to install additional monitoring wells to the north of your property at 16663 Ashland Avenue, to the west at 144 East Lewelling Blvd., and directly south across East Lewelling Blvd.. This office concurs with the proposed locations to the west and to the south; analytical results of "grab" groundwater samples to the west collected from boring PS1 were 720 ppb TPHg and non-detect for benzene, and to the south 21 ppb TPHg and 88 ppb benzene was identified in boring PS2. In addition, the west and south locations are in the assumed downgradient direction of monitoring well MW-3 which has historically had elevated levels of TPHg and benzene.

At this time, we do not believe there is a need for a monitoring well north of the site at 16663 Ashland Avenue because "grab" groundwater samples collected from PS6 detected relatively low levels (TPHg at 80 ppb and benzene was non-detect) and there is currently a permanent monitoring well MW-1 located approximately 30 feet southeast of PS6. However based on my conversation with Christopher Stevens with the State Cleanup Fund, it would be worthwhile to have a monitoring well located upgradient, east of the site, in order to establish site-specific background biodegradation parameters.

Our records indicate that a well survey within the vicinity of your site has *not* yet been completed. It has recently come to my attention that a domestic well may be located at 16643 Ashland Avenue. This information should be verified and the well should be sampled and analyzed for TPHg, MTBE, and BTEX. In addition, a well survey should be completed that encompasses at least a one-quarter

Young
Re: 186 E Lewelling Blvd
January 30, 1996
Page 2 of 2

(1/4) mile radius around this site. Of particular concern, is the potential that domestic wells downgradient from your site may be impacted. It is your responsibility to identify any domestic wells that may be impacted from the release of petroleum hydrocarbons emanating from your site even if the wells are not on record with Alameda County Zone 7 or Alameda County Public Works.

Please submit a report documenting the most recent soil and groundwater investigations, including the installation and sampling of the monitoring wells, no later than March 13, 1995. Groundwater samples should be analyzed for TPHg, BTEX, and Methyl Tertiary Butyl Ether (MTBE). (See attached letter regarding MTBE reporting requirements.) In addition, continue quarterly monitoring of all monitoring wells and report the results of those monitoring events to this office. Please submit the most recent quarterly report, for the 4th quarter 1995, to this office by February 2, 1996.

Based on the information obtained from soil and groundwater investigations (including soil results obtained during the UST removals) completed at this site, cleanup goals for soil and groundwater should be established by evaluating the health and safety risks/environmental impact to potential receptors (e.g. residential exposure to humans, impact to surface waters, etc.). An initial risk evaluation can be completed using the 3-Tier approach of the *ASTM Emergency Standard Guide for Risk-Based Corrective Action (RBCA) Applied at Petroleum Release Sites*. The most cost-effective Corrective Action Plan should then be developed and recommended to this office based on the established cleanup goals. In order to be considered for reimbursement, we recommend that you obtain pre-approval from the State Cleanup Fund *prior to* completing a risk evaluation and developing a Corrective Action Plan .

If you have questions or comments, please call me at (510)567-6755.

Sincerely,



Amy Leech
Hazardous Materials Specialist

cc
ATTACHMENT

- c: CET Environmental Services, Inc., 5845 Doyle St., Suite 104, Emeryville CA 94608
w/attachment
Mr. & Mrs. Graffenstatte, PO Box 97397, Tacoma, WA 98497
Christopher Stevens, State Water Resources Control Board Division of Clean Water Programs
PO Box 944212, Sacramento CA 94244-2120
Walid Saba, Alameda County Planning Dept., 399 Elmhurst St., Hayward, CA 94544
Gordon Coleman - File (ALL)

62005-62047 (-27) (15)

white -env.health
yellow -facility
pink -files

ALAMEDA COUNTY, DEPARTMENT OF ENVIRONMENTAL HEALTH

Hazardous Materials Inspection Form

1131 Harbor Bay Pkwy.
Suite 250
Alameda, CA 94502-6577
(510) 567-6700

II, III

Site ID # 1709 Site Name New Performance Today's Date 10/17/95

II.A BUSINESS PLANS (Title 19)

- 1. Immediate Reporting 2703
- 2. Bus. Plan Stds. 25503(b)
- 3. RR Cars > 30 days 25503.7
- 4. Inventory Information 25504(a)
- 5. Inventory Complete 2730
- 6. Emergency Response 25504(b)
- 7. Training 25504(c)
- 8. Deficiency 25505(a)
- 9. Modification 25505(b)

Site Address 186 E Jewelling Blvd

City San Lorenzo Zip 94580 Phone _____

___ MAX AMT stored > 500 lbs, 55 gal., 200 cft.?

Inspection Categories:

- I. Haz. Mat/Waste GENERATOR/TRANSPORTER
- II. Business Plans, Acute Hazardous Materials
- III. Underground Tanks LOP investigation

* Calif. Administration Code (CAC) or the Health & Safety Code (HS&C)

Comments:

An-site to survey sample locations to further delineate groundwater impact within & off-site. Met w/ Benjamin Berman w/ C.E.T. to confirm sample locations.

They are planning to delete boring from within the UST pit & relocate the boring located just North of the fuel island to ~~the~~ a location along the pipe line leading from fuel island to the UST pit. Mr. Berman stated that based on utility line survey, he believes this pipe-line is still in place.

Witnessed 1st boring of the day located West of property @ 144 E. Jewelling.

Encountered silty sand, clay sand, sand & saturated layer @ ~ 15'. A very stiff clay (aquifer) was encountered at ~ 50' ft. A 10' screen was placed in boring to collect gw - saturated sediments did not appear too permeable

II, III

II.B ACUTELY HAZ. MATLS

- 10. Registration Form Filed 25533(a)
- 11. Form Complete 25533(b)
- 12. RMPP Contents 25534(c)
- 13. Implement Sch. Req'd? (Y/N)
- 14. OffSite Conseq. Assess. 25524(c)
- 15. Probable Risk Assessment 25534(d)
- 16. Persons Responsible 25534(g)
- 17. Certification 25534(f)
- 18. Exemption Request? (Y/N) 25536(b)
- 19. Trade Secret Requested? 25538

III. UNDERGROUND TANKS (Title 23)

- General**
- 1. Permit Application 25284 (H&S)
 - 2. Pipeline Leak Detection 25292 (H&S)
 - 3. Records Maintenance 2712
 - 4. Release Report 2651
 - 5. Closure Plans 2670

- Monitoring for Existing Tanks**
- 6. Method
 - 1) Monthly Test
 - 2) Daily Vadose Semi-annual groundwater One time soils
 - 3) Daily Vadose One time soils Annual tank test
 - 4) Monthly Gndwater One time soils
 - 5) Daily Inventory Annual tank testing Cont pipe leak det Vadose/gndwater mon.
 - 6) Daily Inventory Annual tank testing Cont pipe leak det
 - 7) Weekly Tank Gauge Annual tank testing
 - 8) Annual Tank Testing Daily Inventory
 - 9) Other _____

- 7. Precs Tank Test Date: _____ 2643
- 8. Inventory Rec. 2644
- 9. Soil Testing 2646
- 10. Ground Water. 2647

- New Tanks**
- 11. Monitor Plan 2632
 - 12. Access. Secure 2634
 - 13. Plans Submit Date: _____ 2711
 - 14. As Built Date: _____ 2635

Rev 6/88

Contact: _____

Title: _____

Signature: _____

Inspector: _____

Signature: Addeet

SAN LORENZO HIGH SCHOOL

ASHLAND AVENUE

144 EAST LEWELLING BOULEVARD
(22-UNIT CONDOMINIUM COMPLEX UNDER CONSTRUCTION)

16601 AND 16605 ASHLAND AVENUE
(PRIVATE RESIDENCES)

16623 AND 16625 ASHLAND AVENUE
(PRIVATE RESIDENCES)

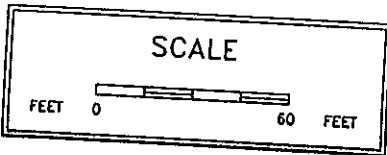
16643 ASHLAND AVENUE
(PRIVATE RESIDENCE)

16663 ASHLAND AVENUE
(PRIVATE RESIDENCE)

186 EAST LEWELLING BOULEVARD

EAST LEWELLING BOULEVARD

165, 173, 175, 177, AND 181 EAST LEWELLING BOULEVARD
(PRIVATE RESIDENCES)



LEGEND

- ◆ GROUNDWATER MONITORING WELL LOCATION
- ⊙ PROPOSED SOIL BORING LOCATION



165 SA 27 4
 TOT

CET Environmental Services, Inc.

SITE VICINITY PLAN					PLATE 2
PROPOSED SOIL BORING LOCATION					
186 E. LEWELLING BLVD SAN LORENZO, CALIFORNIA					
JOB NUMBER	DATE	DRAWING	BY	REVISED	
3602	01/95	OFFSITE	LONG	05/11/95	

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, DIRECTOR

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
(510) 567-6700

StId 1709

September 6, 1995

Attn: Walid Saba
Alameda County Planning Department
399 Elmhurst St
Hayward CA 94544

Subject: 186 East Lewelling Blvd., San Lorenzo, CA 94580

Dear Mr. Saba:

This letter is in reference to your August 30, 1995 inquiry regarding this Department's comments on an application for a conditional use permit to operate an automotive repair facility for the subject site. This office is the oversight agency for soil and groundwater investigations and cleanup at this site.

Investigations of soil and groundwater, subsequent to the removal of three (3) underground storage tanks (USTs) in September 1990 and the installation of three groundwater monitoring wells in 1994, have identified that an unauthorized release(s) of gasoline has impacted soil and groundwater at this site. Per Article 11, Title 23 California Code of Regulations, the responsible parties for this release, Wai Yee Wong Young and Mr. & Mrs. Graffenstatte, are required to conduct investigations. These investigations are to include the assessment of the vertical and lateral extent of contamination to soil and groundwater and the submittal of a Corrective Action Plan.

The extent of gasoline contamination to soil and groundwater has *not* yet been determined at this site. A workplan has been submitted by Ms. Young's consultant which proposes to continue to investigate the extent of soil and groundwater contamination within the property boundaries, as well as, adjoining properties located at 16663 Ashland Avenue, 144 East Lewelling Blvd., and East Lewelling Blvd. located south of the subject property. According to the consultant, this workplan is to be implemented as soon as off-site access is granted.

Hence based on the information submitted to us to date, this Department cannot determine if contamination at this site poses a risk to public health and safety. Should there be any plans for construction at this site please notify our office.

This Department, also, oversees the permitting of businesses that use, store, and dispose of hazardous materials. I am forwarding your inquiry to Don Atkinson-Adams with this Department who is the Hazardous Materials Field Inspector for the business currently

ALCO Planning Dept./Saba
Re: 186 E. Lewelling Blvd.
September 6, 1995
Page 2 of 2

operating at the subject site. Please contact me at (510)576-6755/X36755 or Don Atkinson-Adams at (510)567-6734/X36734 if you have questions or need additional information.

Sincerely,



Amy Leech
Hazardous Materials Specialist

c: Ms. Wai Yee Wong Young
4230 Harbor View Ave
Oakland CA 94619

Don Atkinson-Adams, Sr. Registered Environmental Health Specialist

Acting Chief of Environmental Protection - Files(ALL)

• Development Planning • Housing & Community Development • Policy Planning & Research • Zoning Administration & Enforcement

399 Elmhurst Street, Hayward, CA 94544 • (510) 670-5400 FAX (510) 785-8793

FAX TRANSMITTAL

Date: 8/30/95 FAX Number: 337-9335

To: AMY LEECH

Organization: ENVIRONMENTAL HEALTH

Address: Dept./Floor:

City: State/ZIP:

Document Name:

From: WALID SABA Total Pages Including Cover: 5

MESSAGE

[Empty lines for message content]

If you do not receive all pages or if they are not legible, please call us at the above number.

CONFIDENTIALITY NOTICE

The documents accompanying this FACSIMILE transmission may contain confidential information which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, or the person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in this transmission is strictly PROHIBITED. If you have received this transmission in error, please immediately notify us by telephone and mail the original transmission to us. Thank you.

ALAMEDA COUNTY PLANNING DEPARTMENT

• Development Planning • Housing & Community Development • Policy Planning & Research • Zoning Administration & Enforcement

399 Elmhurst Street, Hayward, CA 94544 (510) 670-5400 FAX (510) 785-8793

RE: C-6577

DATE: April 27, 1995

DUE DATE: May 5, 1995

HEARING DATE: May 24, 1995

ENVIRONMENTAL HEALTH (FAXED 8/30/95)
Public Works Land
Building Inspection
Alameda County Fire Dept.
Ashland Area Community Association

The attached application is referred to you for your information and recommendations.

Receipt of your comments by the indicated due date will enable their inclusion in this written report; otherwise, please comment by the indicated hearing date.

The Zoning Administrator public hearings are held Wednesdays at 1:30 p.m. in the County of Alameda Public Works Building, Auditorium, 399 Elmhurst Street, Hayward, California.

If you have any questions, please contact me at the above number.

Very truly yours,

Walid Saba, III

Walid Saba, Planner III

Attachments

FILE COPY

APPLICATION INTAKE/SUMMARY

Application: C 6577

Date Rcvd:04/20/95 Fee Rcvd: 375.00 RecBy: RH

AP1:413 -0019-004-02

AP2: - - -

AP3: - - -

AP4: - - -

Location: 186 E. Lewelling Blvd.

Located: N Side Cornr NW of Ashland Ave.

San Lorenzo 94580

District:AS Census Tract: 9999.99

Request: to allow the operation of a minor automotive repair facility

Zoning: C-1

Descript.:Retail Business

R-O-W: 66

FWL: 47'CL SBL: 60'CL

Site area: 9,348 (ft) 0.21 (ac)

Concapp1:

Concapp2:

History1:ZU-1992 History2:OTHR HIS

APPLICANT: Steve, Joseph Kwong, Carroll

Address: 186 E. Lewelling Blvd.

City: San Lorenzo, CA 94580

Phone:(510)317-0836

OWNER: Wai Yee Young

Address: 4230 Harbor View Avenue

City: Oakland, CA 94619

Phone:(510)531-0356

LESSEE:

Address:

City:

Phone() -

CONTACT: Eva Young

Address: 4230 Harbor View Avenue

City: Oakland, CA 94619

Phone:(510)531-0356

ARCH/ENGR:

Address:

City:

Phone:() -

Printed: 08/30/95

Alameda County Planning Department

Application: C 6577

Next Action:ZA Next HearDate:08/30/95 DueDate:08/11/95 PostDate: / /
 Planner: WS EnvDisp:5I Prints:10 Sepia: 0 Mailing Labels: N

CVMAC ZONING ADMIN PLNG DIRECTOR
 Ref?: N HearDate: / /
 Date: / / Action: / /
 Rec: HearDate:07/19/95 Res: / /
 Action: C ActDate: / /

PLNG COMMISSION BOARD OF SUPS FINAL ACTION
 Date: / / HearDate: / / FinalAct: / /
 Rec: Action: / / FinalActDate: / /
 Res: Ord #: / / EffectDate: / /
 Appealed?:N Appealed?:N ExpDate: / /
 AppBy: AppBy:

ADD REQTS	COMMENTS	COST	Hours:	0.0
WhatDue1:			Cost:	0.00
DueDate1: / /			Totcost:	0.00
WhatDue2:				
DueDate2: / /				

REFERRALS

PW Land Dvlpt	Y	Sanitary	N	
Bldg Insp	Y	Chmbr Comm	N	
Geologist	N	Postmaster	N	
Health Dept	N	City	N	
PPR	N	School	N	
CVMAC	N	County	N	
PG&E	N	Park	N	
RWQCB	N	Water	N	
Sheriff	N	Fire	Y	Alameda County Fire Patrol
Sone7	N	Homes	Y	AACA
HCD	N	Other1	N	
Caltrans	N	Other2	N	
Pacbell	N	Other3	N	

Date Referred: 04/27/95

Printed: 08/30/95
 Alameda County Planning Department



ACC
Rec'd
8/17/95

**CET Environmental
Services, Inc.**

5845 Doyle Street, Suite 104
Emeryville, California 94608
Telephone: (510) 652-7001
Fax: (510) 652-7002

August 4, 1995

Mr. John A. Bowen
2454 Bourbon Drive
Hayward, CA 94545

**Subject: Request for Access to the property located at
16663 Ashland Avenue, San Lorenzo, CA
(CET Project No. 3669)**

Dear Mr. Bowen:

CET Environmental Services, Inc. (CET) is submitting this letter to request access to the subject property on behalf of our client, Ms. Wai Yee Young, to perform a subsurface investigation on the subject property. Ms. Young owns the property at 186 East Lewelling Boulevard, San Lorenzo, California. The Young property is currently occupied by New Performance, an auto repair facility. The Young property is located immediately adjacent to and south of the subject property. The purpose of our request is to drill exploratory borings at the locations shown on the attached Site Vicinity Plan.

The Alameda County Health Care Services Agency (ACHCSA) is requiring that Ms. Young define the vertical and horizontal impact to soil and groundwater associated with possible releases from underground storage tanks (USTs) formally located on her property. The ACHCSA is acting under the authority of the State of California as per Article 11 of Title 23, California Code of Regulations.

Access to the subject property is requested to perform subsurface investigation work complying with the requirements outlined in the CET February 27, 1995 *Workplan for Delineation of Extent of Petroleum Hydrocarbons at 186 East Lewelling Boulevard, San Lorenzo, California* and the CET June 7, 1995 *Workplan Addendum 186 East Lewelling Boulevard San Lorenzo, California* (collectively referred to herein as the Workplan). These documents were approved by, and are in compliance with the requirements of the ACHCSA. Subsurface investigation work includes the following tasks:

- Limited access to the subject property for CET personnel (and our subcontractors), vehicles, and equipment
- Access would probably be required on only three separate occasions
- Access would be limited to the southeast portion of the subject property in the area adjacent to the Young property
- Miscellaneous materials, vehicles, and other potential obstructions may need to be temporarily moved in order to gain access to designated sampling locations



Mr. John A. Bowen

August 4, 1995

Page 2

- One time collection of soil, vapor, and/or grab groundwater samples.

A limited access drilling rig will be used to drill a maximum of three exploratory soil borings to a maximum depth of 25 feet below the ground surface (bgs). The proposed sampling locations will be checked for underground utilities prior to initiating field activities. At least one soil and one groundwater sample will be collected from each borehole. The test holes will be backfilled with a neat cement slurry on the day they are drilled. All soil cuttings, wash water, wastes, and other materials generated by CET and our subcontractors as a result of the investigation will be placed in appropriate containers and stored on the Wai Yee Young property.

CET is requesting a letter from you granting us conditional access to the subject property for the purposes stated above. Please sign the enclosed Access Agreement and return a copy with your original signature to our office to act as your authorization to grant CET limited access to the subject property for the purposes described above. Please do not hesitate to contact the undersigned at (510) 652-7001, if you have any questions or comments regarding the contents of this letter.

Sincerely,

CET ENVIRONMENTAL SERVICES, INC.

Matthew B. Paschke for

Benjamin Berman
Staff Scientist

Aaron Stessman

Aaron Stessman, PE, REA
Project Manager

Enclosure

cc: Ms. Wai Yee Young, c/o Eva Young
Ms. Amy Leech, ACHCSA



ACCESS AGREEMENT

John A. Bowen (herein known as the 'Owner') concurs that this Access Agreement ("Agreement"), executed as of this day of August ____, 1995, grants to CET Environmental Services, Inc. (CET) and their employees and subcontractors the right to enter onto the real property located at 16663 Ashland Avenue, San Lorenzo, California (Alameda County Assessor's Map Parcel No. 413-19-5) herein referred to as the 'Property', to comply with the Workplan required and approved by the Alameda County Health Care Services Agency (ACHCSA).

AGREEMENT

Subject to the limitations and conditions set forth below, this Agreement grants to CET the right to enter onto the Property for the limited purposes set forth below.

1. This agreement authorizes CET to collect soil, vapor, and/or groundwater samples on the Property pursuant to the Workplan at no cost to the Owners, subject to the terms and conditions set forth herein.
2. The commencement date of this Agreement shall be the date on which it is fully executed by the parties hereto.
3. Prior to implementation of the Workplan, CET shall be responsible to obtain required permits, authorizations, and approvals. Work performed pursuant to this Agreement shall be completed in compliance with applicable codes, ordinances, laws, regulations, and orders in effect at the time of performance, and in a workman-like and professional manner, so as not to unreasonably interfere with any of the uses of the property. CET shall not disturb the condition of the Property beyond that which is reasonably necessary to perform the investigation as summarized in the Workplan. The Owners shall receive 48-hour advance notice prior to commencement of any work on the Property.
4. Disposal of drill cuttings, extracted water, and other materials or wastes generated in implementing the Workplan shall be the responsibility of CET.
5. At the completion of the work, CET shall undertake steps reasonably necessary to restore the Property to the condition it existed in prior to undertaking the work required by the Workplan.
6. CET shall be responsible for disposal of debris, solid waste, hazardous waste, and any other materials generated by CET as a result of the investigation. These materials shall be disposed of at locations off of the Property and will be removed within 10 working days from the Property.
7. CET shall make available to the Owners at their request, for informational purposes only, soil, vapor, and/or water quality sample test results from the Property gathered by CET.
8. All work performed by CET under this Agreement shall be performed at no cost to the Owners.
9. CET shall require that all persons performing work under the Workplan procure, or have in place, a policy or policies of comprehensive liability insurance that covers the activities to be



performed in implementing the Workplan. Such insurance shall provide personal and broad form property damage coverage for not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death, and property damage liability.

- 10. The authorization granted herein to CET to enter onto the Property shall continue until December 31, 1995.
- 11. The access granted herein is exclusive to CET, their employees, and subcontractors and is not assignable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first written above.

OWNER(S)

Mr. John A. Bowen

By: _____ Date: _____

Title: _____

Owners Mailing Address:

Mr. John A. Bowen
2454 Bourbon Drive
Hayward, CA 94545

CET ENVIRONMENTAL SERVICES, INC.

By: *[Signature]* Date: 8/4/95

Title: Project Manager

CET ENVIRONMENTAL SERVICES, INC.

5845 Doyle Street, Suite 104
Emeryville, CA. 94608
Telephone: (510) 652-7001

SAN LORENZO HIGH SCHOOL

144 EAST LEWELLING BOULEVARD
(22-UNIT CONDOMINIUM COMPLEX UNDER CONSTRUCTION)

16601 AND 16605 ASHLAND AVENUE
(PRIVATE RESIDENCES)

16623 AND 16625 ASHLAND AVENUE
(PRIVATE RESIDENCES)

16643 ASHLAND AVENUE
(PRIVATE RESIDENCE)

16663 ASHLAND AVENUE
(PRIVATE RESIDENCE)

MW1

MW2

BUILDING

186 EAST
LEWELLING
BOULEVARD

SAN LORENZO HIGH SCHOOL

ASHLAND AVENUE

EAST LEWELLING BOULEVARD

165, 173, 175, 177, AND 181 EAST LEWELLING BOULEVARD
(PRIVATE RESIDENCES)



LEGEND

- ◆ GROUNDWATER MONITORING WELL LOCATION
- ⊙ PROPOSED SOIL BORING LOCATION

Handwritten signature



CET Environmental Services, Inc.

SITE VICINITY PLAN
PROPOSED SOIL BORING LOCATION
186 E. LEWELLING BLVD
SAN LORENZO, CALIFORNIA

PLATE

JOB NUMBER	DATE	DRAWING	BY	REVISED



ENVIRONMENTAL
PROTECTION

95 AUG -7 PM 3:45

**CET Environmental
Services, Inc.**

5845 Doyle Street, Suite 104
Emeryville, California 94608
Telephone: (510) 652-7001
Fax: (510) 652-7002

August 4, 1995

Mr. John Rogers
Permit Engineer
Alameda County Public Works Agency
399 Elmhurst Street
Hayward, CA 94544

**Subject: Request for Encroachment Permit
186 East Lewelling Boulevard, San Lorenzo, CA
(CET Project No. 3669-001)**

Dear Mr. Rogers:

CET Environmental Services, Inc. (CET) is submitting this letter, in accordance with our August 2, 1995 telephone conversation, on behalf of our client, Ms. Wai Yee Young. Ms. Young owns the subject property at 186 East Lewelling Boulevard, San Lorenzo, California. The Young property is currently occupied by New Performance, an auto repair facility.

The enclosed map shows the subject property and proposed sampling locations. One of the proposed sampling locations is in the public road (E. Lewelling Blvd.) immediately south of the subject property. CET is requesting an encroachment permit, from the Alameda County Public Works Agency (ACPWA), to collect soil and groundwater samples from the location(s) in the public road. A check for \$25 to cover the permit fee is enclosed.

The Alameda County Health Care Services Agency (ACHCSA) is requiring that Ms. Young define the vertical and horizontal impact to soil and groundwater associated with possible releases from underground storage tanks (USTs) formally located on her property. The ACHCSA is acting under the authority of the State of California as per Article 11 of Title 23, California Code of Regulations.

Subsurface investigation work will comply with the requirements outlined in the CET February 27, 1995 *Workplan for Delineation of Extent of Petroleum Hydrocarbons at 186 East Lewelling Boulevard, San Lorenzo, California* and the CET June 7, 1995 *Workplan Addendum 186 East Lewelling Boulevard San Lorenzo, California* (collectively referred to herein as the Workplan). These documents were approved by, and are in compliance with the requirements of the ACHCSA.

A limited access drilling rig will be used to drill a maximum of three exploratory soil borings in the public road to a maximum depth of 25 feet below the ground surface (bgs). The drilling equipment is hydraulically powered and produces a borehole approximately 2.5 inches in diameter. The proposed sampling locations will be checked for underground utilities, including notification to Underground Service Alert (USA), and a drilling permit will be



Mr. John Rogers
Alameda County Public Works Agency

August 4, 1995
Page 2

obtained from the Alameda County Flood Control & Water Conservation District (ACFCWCD) - Zone 7, prior to initiating field activities.

At least one soil and one groundwater sample will be collected from each borehole. The test holes will be backfilled with a neat cement slurry on the day they are drilled, and finished with asphalt or concrete to match the existing road surface. All soil cuttings, wash water, wastes, and other materials generated by CET and our subcontractors as a result of the investigation will be placed in appropriate containers and stored on the Wai Yee Young property.

Please do not hesitate to contact the undersigned at (510) 652-7001, if you have any questions or comments regarding the contents of this letter.

Sincerely,

CET ENVIRONMENTAL SERVICES, INC.

Matthew A. Raschke for

Benjamin Berman
Staff Scientist

Aaron Stessman

Aaron Stessman, PE, REA
Project Manager

Enclosures

cc: Ms. Wai Yee Young, c/o Eva Young
Ms. Amy Leech, ACHCSA

SAN LORENZO HIGH SCHOOL

SAN LORENZO HIGH SCHOOL

144 EAST LEWELLING BOULEVARD
(22-UNIT CONDOMINIUM COMPLEX UNDER CONSTRUCTION)

16601 AND 16605 ASHLAND AVENUE
(PRIVATE RESIDENCES)

16623 AND 16625 ASHLAND AVENUE
(PRIVATE RESIDENCES)

16643 ASHLAND AVENUE
(PRIVATE RESIDENCE)

16683 ASHLAND AVENUE
(PRIVATE RESIDENCE)

ASHLAND AVENUE

MW1



BUILDING



MW2

188 EAST LEWELLING BOULEVARD

MW3

EAST LEWELLING BOULEVARD

165, 173, 175, 177, AND 181 EAST LEWELLING BOULEVARD
(PRIVATE RESIDENCES)

SCALE



LEGEND

- ◆ GROUNDWATER MONITORING WELL LOCATION
- ⊙ PROPOSED SOIL BORING LOCATION



CET Environmental Services, Inc.

SITE VICINITY PLAN
PROPOSED SOIL BORING LOCATION
186 E. LEWELLING BLVD
SAN LORENZO, CALIFORNIA

PLATE

2

JOB NUMBER	DATE	DRAWING	BY	REVISED
3602	01/95	OFFSITE	LONG	05/11/95



Rec'd
8/7/95



**CET Environmental
Services, Inc.**

5845 Doyle Street, Suite 104
Emeryville, California 94608
Telephone: (510) 652-7001
Fax: (510) 652-7002

August 4, 1995

Victoriano P. & Gloria Y. Dungca
27675 Vista Bahia Way
Hayward, CA. 94542

In care of: Gary Gornick
Western General Contractors, Inc.
144 E. Lewelling Blvd.
San Lorenzo, CA. 94580

**Subject: Request for Access to the property located at
144 East Lewelling Boulevard, San Lorenzo, CA
(CET Project No. 3669)**

Dear Victoriano P. & Gloria Y. Dungca:

CET Environmental Services, Inc. (CET) is submitting this letter to request access to the subject property on behalf of our client, Ms. Wai Yee Young, to perform a subsurface investigation of the subject property. Ms. Young owns the property at 186 East Lewelling Boulevard, San Lorenzo, California. The Young property is currently occupied by New Performance, an auto repair facility. The Young property is located immediately adjacent to and east of the subject property. The purpose of our request is to drill exploratory borings at the locations shown on the attached Site Vicinity Plan.

The Alameda County Health Care Services Agency (ACHCSA) is requiring that Ms. Young define the vertical and horizontal impact to soil and groundwater associated with possible releases from underground storage tanks (USTs) formally located on her property. The ACHCSA is acting under the authority of the State of California as per Article 11 of Title 23, California Code of Regulations.

Access to the subject property is requested to perform subsurface investigation work complying with the requirements outlined in the CET February 27, 1995 *Workplan for Delineation of Extent of Petroleum Hydrocarbons at 186 East Lewelling Boulevard, San Lorenzo, California* and the CET June 7, 1995 *Workplan Addendum 186 East Lewelling Boulevard San Lorenzo, California* (collectively referred to herein as the Workplan). These documents are in compliance with, and were approved by, the requirements of the ACHCSA. Subsurface investigation work includes the following tasks:

- Limited access to the subject property for CET personnel (and our subcontractors), vehicles, and equipment
- Access would probably be required on only three separate occasions



Victoriano P. and Gloria Dungca
c/o Gary Gornick, Western General Contractors, Inc.

August 4, 1995
Page 2

- Access would be limited to the southeast portion of the subject property in the area adjacent to the Young property
- Miscellaneous materials, vehicles, and other potential obstructions may need to be temporarily moved in order to gain access to designated sampling locations
- One time collection of soil, vapor, and/or grab groundwater samples.

A limited access drilling rig will be used to drill a maximum of three exploratory soil borings to a maximum depth of 25 feet below the ground surface (bgs). The proposed sampling locations will be checked for underground utilities prior to initiating field activities. At least one soil and one groundwater sample will be collected from each borehole. The test holes will be backfilled with a neat cement slurry on the day they are drilled. All soil cuttings, wash water, wastes, and other materials generated by CET and our subcontractors as a result of the investigation will be placed in appropriate containers and stored on the Wai Yee Young property.

CET is requesting a letter from you granting us conditional access to the subject property for the purposes stated above. Please sign the enclosed Access Agreement and return a copy with your original signature to our office to act as your authorization to grant CET limited access to the subject property for the purposes described above. Please do not hesitate to contact the undersigned at (510) 652-7001, if you have any questions or comments regarding the contents of this letter.

Sincerely,

CET ENVIRONMENTAL SERVICES, INC.

Matthew Maschke for

Benjamin Berman
Staff Scientist

Aaron Stessman

Aaron Stessman, PE, REA
Project Manager

Enclosure

cc: Ms. Wai Yee Young, c/o Eva Young
Ms. Amy Leech, ACHCSA



ACCESS AGREEMENT

Victoriano P. & Gloria Y. Dungca & Avio Group USA (herein known as the 'Owners') concur that this Access Agreement ("Agreement"), executed as of this day of August _____, 1995, grants to CET Environmental Services, Inc. (CET) and their employees and subcontractors the right to enter onto the real property located at 144 East Lewelling Boulevard, San Lorenzo, California (Alameda County Assessor's Map Parcel No. 413-19-3-2) herein referred to as the 'Property', to comply with the Workplan required and approved by the Alameda County Health Care Services Agency (ACHCSA).

AGREEMENT

Subject to the limitations and conditions set forth below, this Agreement grants to CET the right to enter onto the Property for the limited purposes set forth below.

1. This agreement authorizes CET to collect soil, vapor, and/or groundwater samples on the Property pursuant to the Workplan at no cost to the Owners, subject to the terms and conditions set forth herein.
2. The commencement date of this Agreement shall be the date on which it is fully executed by the parties hereto.
3. Prior to implementation of the Workplan, CET shall be responsible to obtain required permits, authorizations, and approvals. Work performed pursuant to this Agreement shall be completed in compliance with applicable codes, ordinances, laws, regulations, and orders in effect at the time of performance, and in a workman-like and professional manner, so as not to unreasonably interfere with any of the uses of the property. CET shall not disturb the condition of the Property beyond that which is reasonably necessary to perform the investigation as summarized in the Workplan. The Owners shall receive 48-hour advance notice prior to commencement of any work on the Property.
4. Disposal of drill cuttings, extracted water, and other materials or wastes generated in implementing the Workplan shall be the responsibility of CET.
5. At the completion of the work, CET shall undertake steps reasonably necessary to restore the Property to the condition it existed in prior to undertaking the work required by the Workplan.
6. CET shall be responsible for disposal of debris, solid waste, hazardous waste, and any other materials generated by CET as a result of the investigation. These materials shall be disposed of at locations off of the Property and will be removed within 10 working days from the Property.
7. CET shall make available to the Owners at their request, for informational purposes only, soil, vapor, and/or water quality sample test results from the Property gathered by CET.
8. All work performed by CET under this Agreement shall be performed at no cost to the Owners.
9. CET shall require that all persons performing work under the Workplan procure, or have in place, a policy or policies of comprehensive liability insurance that covers the activities to be



performed in implementing the Workplan. Such insurance shall provide personal and broad form property damage coverage for not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death, and property damage liability.

10. The authorization granted herein to CET to enter onto the Property shall continue until December 31, 1995.
11. The access granted herein is exclusive to CET, their employees, and subcontractors and is not assignable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first written above.

OWNER(S)

Victoriano P. & Gloria Y. Dungca & Avio Group USA, or Authorized Representative

By: _____ Date: _____

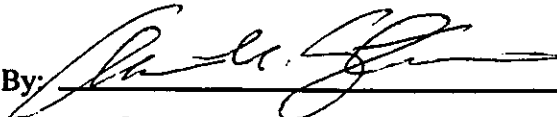
Title: _____

Owners Mailing Address:

Victoriano P. & Gloria Y. Dungca
27675 Vista Bahia Way
Hayward, CA. 94542

In care of: Gary Gornick
Western General Contractors, Inc.
144 E. Lewelling Blvd.
San Lorenzo, CA. 94580

CET ENVIRONMENTAL SERVICES, INC.

By:  Date: 8/4/95

Title: Project Manager

CET ENVIRONMENTAL SERVICES, INC.

5845 Doyle Street, Suite 104
Emeryville, CA. 94608
Telephone: (510) 652-7001

SAN LORENZO HIGH SCHOOL

144 EAST LEWELLING BOULEVARD
(22-UNIT CONDOMINIUM COMPLEX UNDER CONSTRUCTION)

16601 AND 16605 ASHLAND AVENUE
(PRIVATE RESIDENCES)

16623 AND 16625 ASHLAND AVENUE
(PRIVATE RESIDENCES)

16643 ASHLAND AVENUE
(PRIVATE RESIDENCE)

16663 ASHLAND AVENUE
(PRIVATE RESIDENCE)

MW1

BUILDING

MW2

186 EAST
LEWELLING
BOULEVARD

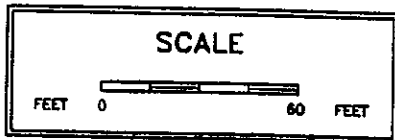
MW3

SAN LORENZO HIGH SCHOOL

ASHLAND AVENUE

EAST LEWELLING BOULEVARD

165, 173, 175, 177, AND 181 EAST LEWELLING BOULEVARD
(PRIVATE RESIDENCES)



LEGEND	
◆	GROUNDWATER MONITORING WELL LOCATION
⊙	PROPOSED SOIL BORING LOCATION

Handwritten signature



CET Environmental Services, Inc.

SITE VICINITY PLAN
PROPOSED SOIL BORING LOCATION
186 E. LEWELLING BLVD
SAN LORENZO, CALIFORNIA

PLATE

2

JOB NUMBER	DATE	DRAWING	BY	REVISED
5000	01/08	PROJECT	LONG	05/11/08

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RÁFAT A. SHAHID, DIRECTOR

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
(510) 567-6700

June 22, 1995

Mr. & Mrs. Graffenstatte
PO Box 97397
Tacoma WA 98497

Ms. Wai Yee Wong Young
4230 Harbor View Ave
Oakland CA 94619

StId 1709

Subject: Addendum to Workplan for investigations at 186 E.
Lewelling Blvd., San Lorenzo, CA

This office has reviewed CET Environmental Services, Inc.'s Addendum to their Workplan, dated June 7, 1995. The Addendum and proposed schedule are acceptable to this office with the following comments:

- o This office lacks quantitative soil data for areas along the pipe trench(es) and pump island. However, we have soil data, dated September 1990, on file representing four sampling points within the former gasoline tank pit.
- o This office agrees that the current monitoring wells MW1-MW3 are accurately screened to intercept the free surface of groundwater. Further, we agree that the future installation of monitoring wells should not extend through laterally extensive impermeable zones that are below the water table and that are at least five feet thick. In these situations, the well should be terminated one to two feet into the impermeable zone to prevent potential cross contamination.

The guideline we use for screen placement of five feet above and ten feet below the water table is meant only as a guideline for within the first encountered water bearing layer.

Please notify me at least 72 hours before work begins. If you have questions or comments, please call me at (510)567-6755.

Sincerely,

A handwritten signature in cursive script that reads "Amy Leech".

Amy Leech
Hazardous Materials Specialist

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF CLEAN WATER PROGRAMS
2014 T STREET, SUITE 130
P.O. BOX 944212
SACRAMENTO, CALIFORNIA 94244-2120
(916) 227-4360
(916) 227-4530 (FAX)

Stid 1709
All



March 27, 1995

W. Young
Attn: Jason Young
4230 Harbor View Avenue
Oakland, CA 94619

UNDERGROUND STORAGE TANK CLEANUP FUND PROGRAM, NOTICE OF PROPOSED WITHDRAWAL OF LETTER OF COMMITMENT: CLAIM NUMBER 008240; FOR SITE ADDRESS: 186 E. Lewelling Blvd., San Lorenzo, CA 94580

A Letter of Commitment (LOC) was issued to you on September 22, 1994. Pursuant to its terms and conditions, an LOC may be withdrawn at any time if the claimant is found to be not in compliance with any applicable state rules and regulations, and with all of the terms, conditions, and commitments contained in the claimant's application.

This letter is to notify you that the Underground Storage Tank Cleanup Fund is proposing to withdraw your LOC for the following reason(s):

You were sent a "No Response to Letter of Commitment (LOC)" notice on February 27, 1995 requesting you to submit a reimbursement request or a written explanation as to the status of the cleanup and why we had not received a request from you. To date, we have not received a reimbursement request, nor have we heard from you.

If you are not in agreement with this decision, you may request a review of the decision by the Manager of the Underground Storage Tank Cleanup Fund Program within thirty (30) calendar days of the date of this Notice. Please send any request for review to:

Mr. Dave Deaner, Manager Claim No. 008240
Underground Storage Tank Cleanup Fund Program
State Water Resources Control Board
Division of Clean Water Programs
P. O. Box 944212
Sacramento, CA 94244-2120

If a request for review of this decision is not received within thirty (30) calendar days of the date of this Notice, your LOC will be withdrawn.

If you have any questions, please contact Cheryl Gordon at (916) 227-4539.

Sincerely,

Cheryl Gordon for
Francine Aguirre, Team Leader, Region 2
Underground Storage Tank Cleanup Fund

cc:

Tom Peacock
Alameda County
1131 Harbor Bay Pkwy, 2nd Floor
Alameda, CA 94502-6577

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

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

March 14, 1995

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program

Mr. & Mrs. Graffenstatte
PO Box 97397
Tacoma, WA 98497

ALAMEDA COUNTY-ENV. HEALTH DEPT.
ENVIRONMENTAL PROTECTION DIV.
1131 HARBOR BAY PKWY., #250
ALAMEDA CA 94502-6577
(510)567-6700

Ms. Wai Yee Wong Young
4230 Harbor View Ave.
Oakland, CA 94619

StId 1709

Subject: Work plan for investigations at 186 E. Lewelling Blvd.,
San Lorenzo, CA

This office has reviewed CET Environmental Services, Inc.'s (CET) work plan, dated February 27, 1995. This work plan is acceptable to this office provided that the following items are addressed and/or included:

- o Please be reminded that in order to qualify for reimbursement from the State Trust Fund, you must obtain three bids for the work proposed in the approved work plan.
- o Prior to submitting an addendum to the work plan as requested below, please submit a report of the recent quarterly ground water monitoring event. The quarterly report is due to this office by March 17, 1995.
- o Per my conversations with Karel Detterman of CET on March 6 and 10, 1995, this office is not clear on the rationale for collecting soil and groundwater samples in close proximity to monitoring wells MW2 and MW3 and within the former tank pit, since soil and groundwater samples were previously collected from these areas. Please submit justification for these data points and/or a revision of Plate 2.
- o Soil samples were not collected from the pipe trench location(s), and our records indicate that the product piping between the tank pit and the pump island was never removed. If the product piping is, in fact, still in place, the work plan should propose the removal of the product piping and the sampling of soil along the pipe trench. If the product piping was removed, submit documentation/manifests for disposal of the product piping and soil sampling results of the pipe trench.
- o The work plan indicated that if off-site access was not possible, then the proposed downgradient investigations would remain within the property boundaries of the subject site. Per Article 11 Title 23 California Code of Regulations, you are required to define the extent and severity of the ground water contaminant plume emanating from this site. Since ground water samples collected in July 1994 from monitoring well MW-1, located adjacent to the

4230 Harbor View Avneue
Oakland, CA 94619
March 3, 1995

Ms. Amy Leech
Alameda County Environmental Health Department
1131 Harbor Bay Parkway, Room 250
Alameda, CA 94502

Re: 186 E. Lewelling Boulevard
San Lorenzo, California

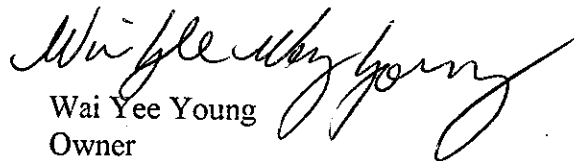
Dear Ms. Leech:

This is to notify your office that I am rendering the services of CET Environmental Services, Inc., in Emeryville, California, to cleanup the property located at 186 E. Lewelling Boulevard in San Lorenzo, California.

Please do not hesitate to contact me if you have any further questions.

Thank you for your attention to this matter.

Sincerely,


Wai Yee Young
Owner

**CET Environmental
Services, Inc.**

5845 Doyle Street, Suite 104
Emeryville, California 94608
Telephone: (510) 652-7001
Fax: (510) 652-7002

LETTER OF TRANSMITTAL

DATE: JANUARY 25, 1995

**TO: AMY LEECH
 HAZARDOUS MATERIALS SPECIALIST
 ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
 DEPARTMENT OF ENVIRONMENTAL HEALTH
 1131 HARBOR BAY PARKWAY, 2ND FLOOR
 ALAMEDA, CA 94502-6577**

**FROM: BENJAMIN BERMAN
 CET ENVIRONMENTAL SERVICES**

**SUBJECT: YOUNG PROPERTY
 186 E. LEWELLING BLVD.
 SAN LORENZO, CALIFORNIA
 (CET PROJECT NO. 3664)**

Transmitted herewith is the information regarding Gore Sorber Surveys as per our telephone conversation this morning with yourself and Juliett Shin. CET would like to propose the use of this new technology as a screening tool to determine placement of offsite monitoring wells in the vicinity of the subject property. CET would like to know if your agency would accept this new technology if proposed in the workplan required for additional characterization of the subject property and vicinity. Please contact myself or Karol Detterman at our office if you have any questions or comments regarding this transmittal. Thank you.

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF CLEAN WATER PROGRAMS

2014 T STREET, SUITE 130

P.O. BOX 944212

SACRAMENTO, CALIFORNIA 04244-2120

(916) 227-4307

(916) 227-4530 (FAX)



stid 1709
ALL

February 27, 1995

W. Young
Attn: Jason Young
4230 Harbor View Avenue
Oakland, CA 94619

**UNDERGROUND STORAGE TANK CLEANUP FUND PROGRAM, NO RESPONSE TO
LETTER OF COMMITMENT (LOC): CLAIM NUMBER 008240; FOR SITE ADDRESS: 186 E.
Lewelling Blvd., San Lorenzo, CA 94580**

It has come to my attention that the LOC issued to you on September 22, 1994 in the amount of \$30,000 has not been responded to with a request for reimbursement.

Please submit your reimbursement request with all of the required supporting documentation, or a written explanation as to the status of the cleanup and why you have not requested reimbursement to date. If a request or adequate explanation is not received within thirty (30) calendar days from the date of this letter, I will take steps to begin the withdrawal process of your LOC.

Please send your reimbursement request or explanation to:

Francine Aguirre, Team Leader Claim No. 008240
State Water Resources Control Board
Division of Clean Water Programs
Underground Storage Tank Cleanup Fund Program
P. O. Box 944212
Sacramento, CA 94244-2120

If you have any questions, please contact Cheryl Gordon at (916) 227-4539.

Sincerely,

Cheryl Gordon for

Francine Leader, Team Leader
Regions 1 and 2
Underground Storage Tank Cleanup Fund

cc:

Alameda County EHD
Attn: Tom Peacock
1131 Harbor Bay Pkwy, 2nd Floor
Alameda, CA 94502-6577

STID 1709

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

StId # 1709

January 31, 1995

Mr. & Mrs. Graffenstatte
PO Box 97397
Tacoma, WA 98497

Ms. Wai Yee Wong Young
4230 Harbor View Ave.
Oakland, CA 94619

Subject: Required investigations at 186 E. Lewelling Blvd.,
San Lorenzo, CA

This office has not received 1994 Third and Fourth Quarterly Monitoring Reports for the subject site. You were notified in our letter, dated August 16, 1994, that quarterly ground water monitoring should continue at the site. Please be aware that failure to collect this data undermines efforts to accurately delineate the direction and extent of contaminant migration.

Per California Code of Regulations, Title 23, Division 3, Chapter 16, Article 5, and guidelines established by the California Regional Water Quality Control Board (RWQCB), ground water samples are to be collected and analyzed quarterly, including water level measurements and elevation contours. A report of each quarterly monitoring event is due to this office the first day of the second month of each subsequent quarter until this site qualifies for final RWQCB "sign-off".

You are directed to begin quarterly monitoring at the site within 30 days and submit the first report to this office by March 17, 1995.

A work plan addressing the delineation of the contaminant plume was due November 30, 1994. However, CET Environmental Services, Inc. notified our office on January 25, 1995, that they are in the process of preparing a work plan on your behalf. This work plan is due to this office by March 3, 1995, and must have attached a signed cover letter from you indicating your review and approval of the proposed plan.

Please be reminded that to be eligible for the UST Cleanup Fund reimbursement, you must comply with all regulatory time schedules and requirements. Any extensions of stated deadlines, or modifications of required tasks, must be confirmed in writing by either this agency or RWQCB.

Young/Graffenstatte
186 E. Lewelling Blvd.
January 31, 1995
Page 2 of 2

If you have any questions or comments, please contact me at
(510)567-6755.

Sincerely,



Amy Leech
Hazardous Materials Specialist

cc: Benjamin Berman
CET Environmental Services, Inc.
5845 Doyle St., Ste 104
Emeryville, CA 94608

Cheryl Gordon
State Water Resources Control Board
Division of Clean Water Programs
UST Cleanup Fund Program
PO Box 944212
Sacramento, CA 94244-2120

Ed Howell

GORE-SORBERSM SCREENING SURVEYS

For Soil and Ground Water



ADVANTAGES

- High sensitivity to SVOCs and VOCs
- Easy installation requires hand tools and no special training
- Successful in difficult applications including clays, saturated soils and ground water

REDUCE TOTAL ENVIRONMENTAL INVESTIGATION COSTS

The GORE-SORBERSM Screening Survey is a unique, comprehensive program offered by W. L. Gore & Associates, Inc. (Gore) that reduces overall impacted site characterization costs, while providing important information for the subsequent location of monitoring wells and remedial systems. The surveys are based on an innovative GORE-SORBER[®] Module that acts as the sensing element and is constructed of a GORE-TEX[®] membrane container surrounding special sorbent material. The modules are inserted directly into the ground and available soil-gases transfer through the membrane and onto the sorbent material. The modules are analyzed with specialized analytical procedures at Gore's state-of-the-art laboratory that combines chromatographic separation with mass selective detection. Results are mapped as overlays on customer-supplied CAD maps.

The unique combination of the GORE-SORBER Modules and specialized analysis allows for the successful application of the GORE-SORBER Screening Surveys in dry, wet and saturated soils. Compared to other survey methods, this technology allows for the sensitive detection of both volatile and semivolatile organic compounds (VOCs and SVOCs). Applications of GORE-SORBER Screening Surveys include chemical plants, refineries, gasoline stations and bulk storage facilities.

FOR MORE INFORMATION, CONTACT:

W. L. Gore & Associates, Inc.
Environmental Products Group
101 Lewisville Rd.
P.O. Box 1100
Elkton, MD, 21922-1100
Phone: (410)392-3300
FAX: (410)398-6624



Teflon is a Du Pont registered trademark.

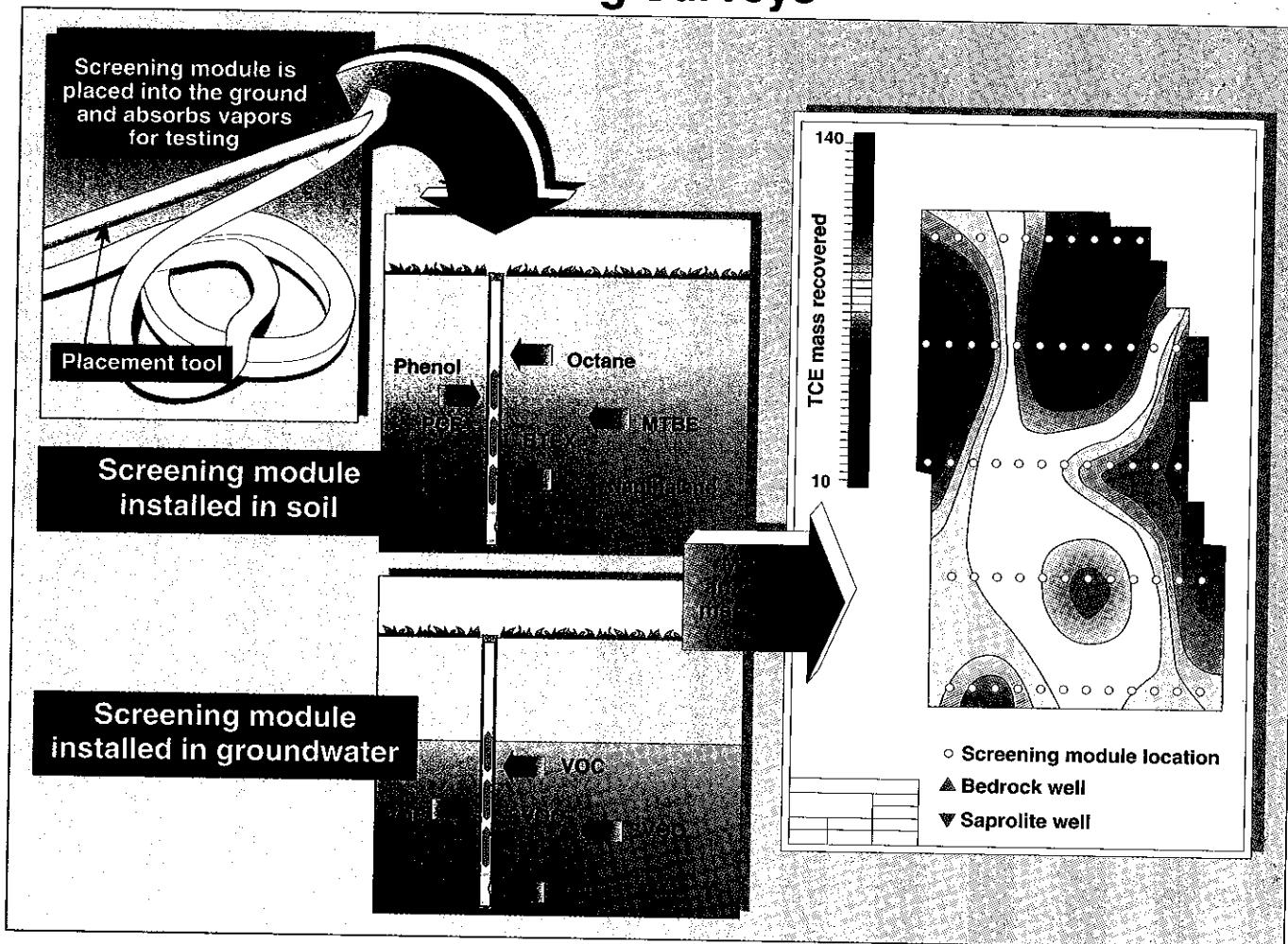
GORE-TEX and GORE-SORBER are trademarks of W. L. Gore & Associates, Inc.
GORE-SORBER Screening Surveys is a service mark of W. L. Gore & Associates, Inc.

© 1993 W. L. Gore & Associates, Inc.



HERE'S HOW IT WORKS...

GORE-SORBERSM Screening Surveys



● The GORE-SORBER Screening Survey is a passive soil vapor collection technique that can unearth a wealth of information about the subsurface at a low cost, says the company, W.L. Gore & Associates, Inc., Elkton, Md. The heart of the system is the screening module sensing element which is constructed of GORE-TEX[®] expanded polytetra-fluoroethylene tubing. Its entire surface area, as well as the surrounding retrieval cord facilitates vapor transfer. The module is packed with suitable granular adsorbent materials and resins, depending on the contaminant of concern and inserted into a pilot hole created with a slide

hammer and tile probe or an electric rotary hammer auger. Modules have been installed in holes ranging from 14 mm to 25 mm in diameter typically to a depth of about a meter, although exact installation requirements are site specific. After a site specific exposure interval, typically two weeks or so, modules are collected and sent to Gore's lab for analysis. At the lab, gas chromatography and mass selective detection analyze the module to detect semivolatile organic compounds and volatile organic compounds. Data are presented by overlaying contamination patterns detected onto CAD maps of the site. Various maps can be developed

from the data. The surveys have been used in applications with low permeability soils and in detection of contaminants with low vapor pressures. Soil vapor technologies traditionally are not considered to assess these types of sites due to the limitations of active soil vapor methods. Gore's lab incorporates an automated thermal desorption unit for analyte recovery from the sorbent. This step contributes to the superior sensitivity of the technology, says the company. ■

W.L. Gore & Associates, Inc.
Elkton, Maryland
Phone: (410)392-3300
Fax: (410)996-3325

GORE-SORBER Screening Surveys is a service mark of W.L. Gore & Associates, Inc. GORE-TEX is a registered trademark of W.L. Gore & Associates, Inc.

August/September 1994 Soils

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF CLEAN WATER PROGRAMS
 2014 T STREET, SUITE 130
 P.O. BOX 944212
 SACRAMENTO, CALIFORNIA 94244-2120
 (916) 227-4307
 (916) 227-4530 FAX



OCT 04 1994

W. Young
 Attn: Jason Young
 4230 Harbor View Avenue
 Oakland, CA 94619

UNDERGROUND STORAGE TANK CLEANUP FUND, CLAIM NO. 008240, FOR SITE ADDRESS: 186 E. Lewelling Blvd., San Lorenzo, CA 94580

The State Water Resources Control Board (SWRCB) takes pleasure in issuing the attached Letter of Commitment in an amount not to exceed \$30,000. This Letter of Commitment is based upon our review of the corrective action costs incurred to date and your application received on January 3, 1994 and may be modified by the SWRCB in writing by an amended Letter of Commitment.

The SWRCB will take steps to withdraw this Letter of Commitment after 90 calendar days from the date of this transmittal letter unless you proceed with due diligence with your cleanup effort. This means that you must take positive, concrete steps to ensure that corrective action is proceeding with all due speed. For example, if you have not started your cleanup effort, you must obtain three bids and sign a contract with one of these bidders within 90 calendar days. If your cleanup effort has already started and was delayed, you must resume the expenditure of funds to ensure that your cleanup is proceeding in an expeditious manner. You are reminded that you must comply with all regulatory agency time schedules and requirements. We constantly review the status of all active claims, and failure to proceed with due diligence will be grounds for withdrawal of this Letter of Commitment.

You should read the terms and conditions listed in the Letter of Commitment. Also attached you will find:

- A "Reimbursement Request Instructions" package. You should retain this package for future reimbursement requests. Among other information, the package includes instructions for completion of the "Reimbursement Request" form and the "Spreadsheet". These instructions must be followed when seeking reimbursement for corrective action costs incurred after January 1, 1988. Included in these instructions are samples of Reimbursement Request forms and completed Spreadsheets. Within the package also included are:
 - A "Bid Summary Sheet" to document data on bids received.
 - Recommended Minimum Invoice Cost Breakdown.
 - A "Certification of Non-Recovery From Other Sources" which must be returned before any reimbursements can be made.
- "Reimbursement Request" forms which you must use to request reimbursement of costs incurred.
- "Spreadsheet" forms which you must use in conjunction with your Reimbursement Request.
- "Vendor Data Record" (Std. Form 204) which must be completed and returned with your first Reimbursement Request.

If you have any questions regarding the Letter of Commitment or the Reimbursement Request package, please contact Blessy Torres at (916) 227-4535.

Sincerely,



Dave Deaner, Manager
 Underground Storage Tank
 Cleanup Fund Program

Attachments

cc: Alameda County EHD
 Attn: Ed Howell
 1131 Harbor Bay Pkwy, 2nd Floor
 Alameda, CA 94502-6577

ALCO
 HAZMAT
 94 OCT -5 PM 2:14

LETTER OF COMMITMENT FOR REIMBURSEMENT OF COSTS

CLAIM NO: 008240

AMENDMENT NO: 0

CLAIMANT: W. Young

BALANCE FORWARD: \$0

CO-PAYEE: None

THIS AMOUNT: \$30,000

CLAIMANT ADDRESS: **Attn: Jason Young**
4230 Harbor View Avenue
Oakland, CA 94619

NEW BALANCE: \$30,000

TAX ID / SSA NO.: 553-92-0301

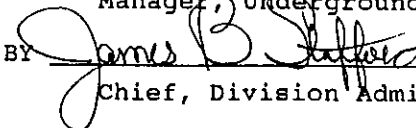
Subject to availability of funds, the State Water Resources Control Board (SWRCB) agrees to reimburse W. Young (Claimant) for eligible corrective action costs at New Performance Automotive 186 E. Lewelling Blvd., San Lorenzo, CA 94580 (Site). The commitment reflected by this Letter is subject to all of the following terms and conditions:

1. Reimbursement shall not exceed \$30,000 unless this amount is subsequently modified in writing by an amended Letter of Commitment.
2. The obligation to pay any sum under this Letter of Commitment is contingent upon availability of funds. In the event that sufficient funds are not available for reasons beyond the reasonable control of the SWRCB, the SWRCB shall not be obligated to make any disbursements hereunder. If any disbursements otherwise due under this Letter of Commitment are deferred because of unavailability of funds, such disbursements will promptly be made when sufficient funds do become available. Nothing herein shall be construed to provide the Claimant with a right of priority for disbursement over any other claimant who has a similar Letter of Commitment.
3. All costs for which reimbursement is sought must be eligible for reimbursement and the Claimant must be the person entitled to reimbursement thereof.
4. Claimant must at all times be in compliance with all applicable state laws, rules and regulations and with all terms, conditions, and commitments contained in the Claimant's Application and any supporting documents or in any payment requests submitted by the Claimant.
5. No disbursement under this Letter of Commitment will be made except upon receipt of acceptable Standard Form Payment Requests duly executed by or on behalf of the Claimant. All Payment Requests must be executed by the Claimant or a duly authorized representative who has been approved by the Division of Clean Water Programs.
6. Any and all disbursements payable under this Letter of Commitment may be withheld if the Claimant is not in compliance with the provisions of Paragraph 5 above.
7. Neither this Letter of Commitment nor any right thereunder is assignable by the Claimant without the written consent of the SWRCB. In the event of any such assignment, the rights of the assignee shall be subject to all terms and conditions set forth in this Letter of Commitment and the SWRCB's consent.
8. This Letter of Commitment may be withdrawn at any time by the SWRCB if completion of corrective action is not performed with reasonable diligence.

IN WITNESS WHEREOF, this Letter of Commitment has been issued by the SWRCB this 22nd day of September, 1994.

STATE WATER RESOURCES CONTROL BOARD

BY 
Manager, Underground Storage Tank Cleanup Fund Program

BY 
Chief, Division Administrative Services

STATE USE :
CALSTARS CODING :
0550 - 569.02 - 30530

\$ _____

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, Assistant Agency Director

August 16, 1994

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

STID 1709

Re: Investigations at 186 E. Lewelling Blvd., San Lorenzo, CA

Dear Mr. & Mrs. Graffenstatte,

This office has reviewed CET Environmental's Ground Water Monitoring Well Installation Report, dated July 26, 1994. Ground water samples collected from the newly installed wells identified elevated levels of Total Petroleum Hydrocarbons as gasoline (TPHg), as high as 93,000 parts per billion (ppb), and benzene, toluene, ethylbenzene, and xylenes (BTEX). Benzene concentrations were noted to be as high as 550 ppb. Benzene is a known carcinogen and the Maximum Contaminant Level for benzene is 1 ppb.

Based on the elevated levels of contaminants identified in all three monitoring wells, it appears that the extent of the ground water contaminant plume has not yet been delineated. Per Article 11 Title 23 California Code of Regulations, you are required to define the extent and severity of the ground water contaminant plume at the site. Per the Regional Water Quality Control Board's guidelines, the installation of permanent monitoring wells is required for delineation purposes. A work plan addressing the delineation of the contaminant plume is due to this office within 90 days of the date of this letter.

Quarterly ground water monitoring reports, including water level measurements and corresponding elevation contours, shall continue to be submitted.

If you have any questions or comments, please contact me at (510) 567-6763.

Sincerely,

Juliet Shin
Hazardous Materials Specialist

Alameda County CC 4580
Health Care Services Agency
Dept. Of Environmental Health
1131 Harbor Bay Pkwy 2nd Flr.
Alameda, CA 94502-6577

Mr. & Mrs. Graffenstatte
Re: 186 E. Lewelling Blvd.
August 16, 1994
Page 2 of 2

cc: Benjamin Berman
CET Environmental Services, Inc.
5845 Doyle St., Ste 104
Emeryville, CA 94608

Ms. Wai Yee Wong Young
4230 Harbor View Ave.
Oakland, CA 94619

Edgar Howell

DETAILED REVIEW CHECKLIST

PAGE 3

Claimant: Wai Yee Wong Young
 Claim #: 8240

STID # 1709

Address: 186 Lewelling Blvd., San Lorenzo

<u>Date</u>	<u>Action Required/Response</u>
3/19/90	Co. ltr: Submit Plan of Correction for tank removal by 4/18/90
7/9/90	Co. ltr: Submit WO tank test result by 7/31/90; submit closure plan by 9/15/90.
7/19/90	UST Closure/Modification Plan-3 tanks.
9/5/90	Superior Analytical Lab Certificate of Analysis
11/6/90	Co. ltr: Submit by 11/15/90 sample analysis results, proposals for remediation work.
12/20/90	Co. ltr: Submit WP to define plume by 1/31/91.
3/6/91	Co. ltr: Submit WP by 3/27/90.
3/26/91	WHF Environ. Site WP
5/9/91	Normoyle & Newman ltr to Graffenstatte's atty re contributing to cleanup cost.
6/6/91	Co. ltr req. Addendum to WP and timeline by 7/10/91.
12/4/92	Co. ltr: granting extension of work time until approved by USTCF.
1/28/93	Co ltr: Graffenstatte named RP; PSA due w/in 45 days, field work commence w/in 60 days.
3/11/93	Co. ltr to Graffenstatte: NOV-Submit or implement PSA w/in 30 days
8/17/93	Reg 2. ltr: Both Graffenstatte and Young are RPs; submit WP of soil and GW investigation w/in 30 days.
8/27/93	Atty ltr to Mobil requesting their participation as past operator.
9/14/93	Affidavit from James L. Jaffe, atty for Carl Graffenstatte (previous owner) and Petition for Stay of Order for Graffenstatte's.

9/15/93 Co. ltrs to Graffenstatte and CL: Extension for submittal of WP to 10/17/93, and submit monthly status reports.

1/20/94 Co. ltr to CL: NOV-extension was granted to WP deadline to 10/17/93, but no WP received. Submit WP within 30 days.

1/20/94 Co. ltr to Graffenstatte: NOV - same as ltr to CL.

2/17/94 CET Environmental Req. for Extension of WP Due Date.

2/28/94 CET Environ. WP-MW Installations and Soil Sample Collection.

3/1/94 Co. ltr to GRAFFENSTATTE: Reviewed CET 2/28/94 WP, OK with requirements.

3/2/94 CET Environ. WP-MW Installations and Soil Sample Collection.

7/27/94 CET Environ. GW MW Installation & 2nd Qtr GWMR.

8/16/94 Co. ltrs to Graffenstatte and CL: Submit WP re delineation of plume w/in 90 days. Continue submitting QMRs.

STATE WATER RESOURCES CONTROL BOARD

PAUL R. BONDERSON BUILDING
 901 P STREET
 P.O. BOX 100
 SACRAMENTO, CALIFORNIA 95812-0100

(916) 657-0941
 FAX: 657-0935



CERTIFIED MAIL

APR 25 1994

Mr. R. Allan Payne
 Jaffe, Trutanich, Scatena & Blum
 250 Montgomery Street, Suite 900
 San Francisco, CA 94104

Dear Mr. Payne:

IN THE MATTER OF THE PETITION OF MR. AND MRS. CARL GRAFFENSTATTE FOR REVIEW AND STAY OF REQUEST FOR SUBMITTAL OF A TECHNICAL REPORT TO THE ALAMEDA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION; OUR FILE NO. A-860

The State Water Resources Control Board (SWRCB) will not review this petition. The petition fails to raise significant issues which merit the SWRCB's review. (See People v. Barry, 194 Cal.App.3d 158, 239 Cal.Rptr. 349.)

If you have any questions about this decision, please call Philip Wyels at (916) 657-2424.

Sincerely,

Walt Pettit
 Walt Pettit
 Executive Director

Enclosure

cc: Interested Persons
 Mailing List

PS Form 3800, June 1991

Sent to	Mr & Mrs Graffenstatte
Street and No.	P.O. Box 97397
P.O., State and Zip Code	Tacoma WA 98497
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	



No Insurance Coverage Provided
 Do not use for International Mail
 (See Reverse)

Receipt for Certified Mail

JMS #1709 P 029 244 573

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, Assistant Agency Director

August 16, 1994

Ms. Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

Alameda County CC 4580
Health Care Services Agency
Dept. Of Environmental Health
1131 Harbor Bay Pkwy 2nd Flr.
Alameda, CA 94502-6577

STID 1709

Re: Investigations at 186 E. Lewelling Blvd., San Lorenzo, CA

Dear Ms. Young,

This office has reviewed CET Environmental's Ground Water Monitoring Well Installation Report, dated July 26, 1994. Ground water samples collected from the newly installed wells identified elevated levels of Total Petroleum Hydrocarbons as gasoline (TPHg), as high as 93,000 parts per billion (ppb), and benzene, toluene, ethylbenzene, and xylenes (BTEX). Benzene concentrations were noted to be as high as 550 ppb. Benzene is a known carcinogen and the Maximum Contaminant Level for benzene is 1 ppb.

Based on the elevated levels of contaminants identified in all three monitoring wells, it appears that the extent of the ground water contaminant plume has not yet been delineated. Per Article 11 Title 23 California Code of Regulations, you are required to define the extent and severity of the ground water contaminant plume at the site. Per the Regional Water Quality Control Board's guidelines, the installation of permanent monitoring wells is required for delineation purposes. A work plan addressing the delineation of the contaminant plume is due to this office within 90 days of the date of this letter.

Quarterly ground water monitoring reports, including water level measurements and corresponding elevation contours, shall continue to be submitted.

If you have any questions or comments, please contact me at (510) 567-6763.

Sincerely,

Juliet Shin
Hazardous Materials Specialist

Ms. Wai Yee Wong Young
Re: 186 E. Lewelling Blvd.
August 16, 1994
Page 2 of 2

cc: Benjamin Berman
CET Environmental Services, Inc.
5845 Doyle St., Ste 104
Emeryville, CA 94608

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

Edgar Howell

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

In Re The Property Known As :) Proof of Service
 186 E. Lewelling Blvd.)
 San Lorenzo, California)

I Juliet Shin, do hereby certify that I served Ms. Wai Yee Wong Young with a copy of the attached SWRCB letter on May 3, 1994 by certified mailer # P 029 244 574.

Dated: 5/3/94

Juliet Shin
 (signature)

PS Form 3800, June 1991

Street and No.	Ms. Wai Yee Wong Young
4230 Harbor View Ave.	
P.O., State and ZIP Code	Oakland CA 94619
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

JMS #1709 P 029 244 574
Receipt for Certified Mail
 No Insurance Coverage Provided
 Do not use for International Mail
 (See Reverse)

ALCO
HAZMAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

94 MAY -9 PM 1:38

FRESNO
2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1752
FRESNO, CA 93717-1752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8171

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES
2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

May 2, 1994

PLEASE REPLY TO: SAN FRANCISCO

Ms. Juliet Shin
Alameda County Department of
Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Office of the Chief Counsel
California Regional Water Quality Control Board
2101 Webster Street, Suite 500
Oakland, CA 94612

Mr. Philip Wyels
California State Water Quality Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Mr. Carl Graffenstatte
186 E. Lewelling Blvd., San Lorenzo, CA
File 2198.17 (UST)
RB File Number: 01-1041

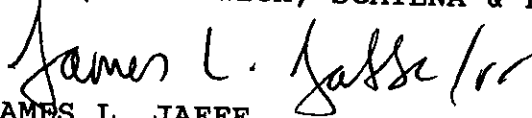
Ladies/Gentlemen:

This correspondence is intended to inform you that this Firm has withdrawn from the representation of Mr. Carl Graffenstatte in his dispute regarding the above-referenced property with your agency. Unless otherwise notified, all further correspondence directed to Mr. Graffenstatte should be forwarded directly to him, or any other representative he designates, and not to this Firm.

If you have any questions or comments, please do not hesitate to contact myself or R. Allan Payne of this office at your earliest convenience.

Very truly yours,

JAFFE, TRUTANICH, SCATENA & BLUM


JAMES L. JAFFE

JLJ/rap
310-0687/cor/parties.rap

cc: Mr. Carl Graffenstatte

INTERESTED PERSONS LIST
PETITION OF MR. AND MRS. CARL GRAFFENSTATTE
OUR FILE NO. A-860

R. Allen Payne
Jaffe, Trutanich, Scatena
and Blum
250 Montgomery Street, Suite 900
San Francisco, CA 94104

Gil Jensen
Alameda County District
Attorney's Office
7677 Oakport St, Ste 400
Oakland, CA 94621

Mr. and Mrs. Carl Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

Mobil Oil Corporation
1450 Enea Circle, Suite A-100
Concord, CA 94520

Juliet Shin
Alameda County Health Agency
Division of Hazardous Materials
80 Swan Way
Oakland, CA 94621

Steven R. Ritchie
Executive Officer
San Francisco Bay
Regional Water Board
Suite 500
2101 Webster Street
Oakland, CA 94612

Gil Jensen
Alameda County District
Attorney's Office
7677 Oakport Street, Suite 400
Oakland, CA 94621

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH

State Water Resources Control Board

Division of Clean Water Programs

UST Local Oversight Program

80 Swan Way, Rm 200

Oakland, CA 94621

(510) 271-4530

March 1, 1994

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington

STID 1709

Re: Work plan for 186 E. Lewelling Blvd., San Lorenzo, California

Dear Mr. & Mrs. Graffenstatte,

This office received and reviewed CET Environmental Services, Inc.'s (CET) work plan, dated February 28, 1994. This work plan is acceptable to this office with the following requirements/reminders:

- o Although you proposed to collect a soil sample from the former waste oil tank pit, please be aware that further work related to the former waste oil tank is not required at this time. This is due to the fact that the soil sample collected from the waste oil tank pit in September 1990, which was analyzed for TPHg, BTEX, TPHd, Total Oil & Grease (TOG), and lead, only identified 3 ppb toluene, 6 ppb xylenes, 38 ppm TOG, and 20 ppm lead, which were determined to be acceptable levels. However, if you still wish to collect a sample from the former waste oil tank, you should probably analyze for the waste oil constituents that were not analyzed for in the past, such as chlorinated hydrocarbons, heavy metals, PCB, PCP, creosote, and PNAs.
- o Please be reminded that the monitoring wells should be screened from 5 feet above and 10 feet below the water table.
- o Lastly, per Article 11, Title 23 California Code of Regulations, please be reminded that further work will need to be conducted to delineate the extent of soil contamination, found predominantly on the west side of the former gasoline tank pit.

If you have any questions or comments, please contact me at (510) 271-4530.

**CET Environmental
Services, Inc.**

5845 Doyle Street, Suite 104
Emeryville, California 94608
Telephone: (510) 652-7001
Fax: (510) 652-7002

February 17, 1994

Ms. Juliet Shin
Alameda County Health Care Services Agency
Division of Hazardous Materials
Department of Environmental Health
80 Swan Way, Room 350
Oakland, CA 94621

ALCO
HAZMAT
94 FEB 18 PM 2:33

**Subject: Request for File Review and
Request for Extension of Workplan Due Date for the
Graffenstatte Property at
186 East Lewelling Boulevard
San Lorenzo, California
(CET Project No. 3602)**

Dear Ms. Shin:

CET Environmental Services, Inc. (CET) is submitting this letter to the Alameda County Health Care Services Agency (ACHCSA) in accordance with our February 16, 1994 telephone conversation. CET understands that an appointment for file review has been scheduled for next Wednesday, February 23, 1994 at 2:00 pm at the ACHCSA offices. CET is interested in reviewing the files for sites at the following addresses:

- 16501 Ashland Avenue*
- 16550 Ashland Avenue*
- 15444 Hesperian Boulevard
- 15526 Hesperian Boulevard
- 15599 Hesperian Boulevard
- 15884 Hesperian Boulevard
- 15900 Hesperian Boulevard
- 16450 Kent Avenue
- 44 Lewelling Boulevard*

3602/ACHCSA.LTR

Ms. Juliet Shin
Alameda County Health
Care Services Agency
February 17, 1994
Page 2

- 100 Lewelling Boulevard*
- 376 Lewelling Boulevard
- 508 East Lewelling Boulevard*
- 17771 Meekland Avenue

The sites of highest priority are those followed by an asterisk (*), which are the closest to the subject site. CET is specifically interested in data indicating the direction of groundwater flow, during 1992 and 1993, in the vicinity of the subject site.

The data obtained during the file review will be used to determine proposed monitoring well locations for the Workplan required by the ACHCSA for the subject site. The ACHCSA has required the workplan to be submitted by February 20, 1994 in accordance with your January 20, 1994 letter to Mr. Graffenstatte. CET requests an extension of the workplan due date to March 1, 1994. The extension will facilitate the inclusion of groundwater flow direction data in the required workplan.

Please contact me at (510) 652-7001 if you have any questions or comments regarding the contents of this letter.

Sincerely,

CET ENVIRONMENTAL SERVICES, INC.



Benjamin Berman
Staff Scientist

BB:kaa

cc: Mr. Carl Graffenstatte

CET Environmental Services, Inc.
5845 Doyle Street, Suite 104
Emeryville, CA 94608
Tel. (510) 652-7001
Fax. (510) 652-7002

FAX TRANSMITTAL FORM

Date: 2-16-94

Fax Trans To: Juliet Shin

Location: Alameda County Health Agency

Fax Number: 569-4757

From: Benjamin Berman

CET Job Number: 3602-201

Number of Pages: 3
(including cover)

Comments: letter, as per our 2-16-94
telephone conversation

If transmitting problems occur, call Benjamin at (510) 652-7001.

February 16, 1994

Ms. Juliet Shin
ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
Division of Hazardous Materials
Department of Environmental Health
80 Swan Way, Room 350
Oakland, CA 94621

**Subject: Request for File Review and
Request for Extension of Workplan Due Date for the
Graffenstette Property at
186 East Lewelling Boulevard
San Lorenzo, California
(CET Project No. 3602)**

Dear Ms. Shin:

CET Environmental Services, Inc. (CET) is submitting this letter to the Alameda County Health Care Services Agency (ACHCSA) in accordance with our February 16, 1994 telephone conversation. CET understands that an appointment for file review has been scheduled for next Wednesday, February 23, 1994 at 2:00 pm at the ACHCSA offices. CET is interested in reviewing the files for sites at the following addresses:

- \ o 16501 Ashland Avenue*
- \ o 16550 Ashland Avenue*
- \ o 15444 Hesperian Boulevard ? *St. San Leandro*
- \ o 15526 Hesperian Boulevard
- \ o 15599 Hesperian Boulevard ? *San Leandro*
- \ o 15884 Hesperian Boulevard
- \ o 15900 Hesperian Boulevard
- \ o 16450 Kent Avenue
- \ o 44 Lewelling Boulevard*
- \ o 100 Lewelling Boulevard*

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

M E M O R A N D U M

Date: November 9, 1993

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

To: Philip Wyels, Staff Counsel
State Water Resources Control Board

From: Juliet Shin, Hazardous Materials Specialist
Alameda County Health Department
Hazardous Materials Division
80 Swan Way, Rm. 200
Oakland, CA 94621

Subject: Statement of Facts in Response to the Petition For
Review-File No A-860

Alameda County Health Department cited Mr. and Mrs. Graffenstatte, along with Ms. Wai Yee Wong Young, as Responsible Parties for the above site, based on the State's Underground Storage Tank regulations, more specifically, section 2720, Article 11, Title 23 California Code of Regulations, which defines a "Responsible Party" as "any person who owned or operated the underground storage tank immediately before the **"discontinuation of its use"**.

Subsequently, a pre-enforcement Review Panel meeting was held on July 27, 1993 at the Offices of Alameda County Health Department attended by Mr. Richard Hiatt from RWQCB, Mr. James Jaffe and Mr. Allan Payne representing Mr. and Mrs. Graffenstatte, and Ms. Young and Mr. Francis Lan. Based on extensive presentations by the parties, documents, and legal arguments received on behalf of Mr. and Mrs. Graffenstatte during the Panel meeting, Ms. Young and Mr. and Mrs. Graffenstatte have been designated as a "Responsible Party".

The panel found that Mr. & Mrs. Graffenstatte were the last owners of the two gasoline underground storage tanks (USTs) from which the observed release has occurred, and prior to selling the property at 186 E. Lewelling Blvd. in 1986, Mr. & Mrs. Graffenstatte had the tanks pumped "bone dry". The property was subsequently purchased by Ms. Young who stated, along with her tenants who used the site for an Automobile Repair store, that they never used the gasoline tanks and never had any reason to use these tanks. Additionally, Ms. Young stated that the dispensers connected to the gas tanks were rendered unuseable when the property was sold to her. The panel found that the above activities are consistent with the definition of **"discontinuation of use"** as established in the federal court case law G.J. Leasing et al v. Union Electric, 825 F. Supp. 1363, which includes the following as the definition of **"discontinuation of use"**:

"...b) if there is reason to believe that [the tank] will not be used in the future (e.g., the owner abandoned the tank,

intakes and vents are paved over, access piping is disconnected or removed, or the tank was sold to a person who had no use for the tank such as a residential real estate developer)."

The evidence established that the two gasoline USTs were removed from the site in September 1990, at the direction of Alameda County Health Department, with a representative from the County, Ravi Arulanathanam, out at the site observing the removals. These tanks were removed properly in compliance with the guidelines. Photos in the Alameda County files indicate that a number of large holes, along with extensive corrosion, were noted on both the gas USTs, which is consistent with operating tanks. Additionally, elevated levels of petroleum contamination were identified in the soils beneath these two tanks. Evidence presented on behalf of Mr. & Mrs. Graffenstatte established that these tanks were pumped "bone dry" prior to the sale of the property to Ms. Young. The panel found that the observed contamination was released from these tanks prior to Ms. Young's ownership of the property.

The findings of the panel were that it is common knowledge that current technology for tank tightness tests cannot achieve an accuracy of 100 percent. Even Title 23 California Code of Regulations only requires a 95 percent probability of detection from its test requirements. The panel additionally considered as common knowledge the overfilling of tanks as a common occurrence at tank sites and a potential source of soil contamination. Therefore, it is possible for releases to be discovered from tanks that have passed tank tightness tests.

Alameda County Health Department has no evidence presently, nor has the panel received any evidence to indicate that a leak occurred from the gas USTs when Mobil operated at the site. Therefore, the County could not designate Mobil as a Responsible Party for the site.

If you have any questions or comments, please contact me at (510) 271-4530.

cc: Rich Hiett, RWQCB

Gil Jensen, Alameda County District Attorney's Office

Mr. R. Allen Payne
Jaffe, Trutanich, Scatena
and Blum
250 Montgomery St., Ste 900
San Francisco, CA 94104

Ms. Wai Yee Wong Young
4230 Harbor View Ave.
Oakland, CA 94619


Edgar Howell-File(JS)

State of California

M O R A N D U M

To: Philip Wyels, Staff Counsel
State Water Resources Control Board

Date: November 1, 1993

From: 
Steven R. Ritchie, Executive Officer
Regional Water Quality Control Board,
San Francisco Bay Region
2101 Webster, Suite 500
Oakland, CA 94612

Subject: Response to Petition For Review - File No. A-860

We have reviewed the subject Petition For Review filed on behalf of Mr. and Mrs. Carl Graffenstatte by attorney R. Allen Payne. We have also discussed this matter with staff of the Alameda County Local Oversight Program, who had referred this matter to the Board for enforcement under their contract with the State Board. Prior to the referral staff attended a meeting (otherwise referred to as a Pre-Enforcement Review Panel) with the County and the Petitioner's representative, attorney J. Jaffe.

I issued a technical report request letter dated August 17, 1993 under authority provided by Section 13267 (b) of the Water Code after consideration of all of the facts and other information presented in the Petition and additional information discussed with the County. The file on this matter is being kept by the County under the terms of their contract with the State Board. The letter was addressed to the Petitioners as well as the current property owner, a Ms. Wai Yee Wong Young.

I issued the letter to the Petitioners in that they were the last known owners of record of the tanks while they were used to store the petroleum hydrocarbons known to have been released to the environment. It is not clear whether required operating permits were held by the Petitioners during this period. While staff was presented with the results of tank tightness tests it is common engineering knowledge supported by this and numerous other cases that tank tightness tests are not accurate enough to prove a negative (no release) during the time Petitioners owned the site. In addition, even with a "tight" tank releases are common to the environment from overfilling and spills which are usually detected once the tanks are removed and the soil tested. These types of releases occur during tank usage. Lastly, my understanding is that the tanks in question were pumped dry prior to sale to Ms. Young, who eventually legally removed the tanks, made the proper soil tests and reported the soil pollution to Alameda County staff. Based upon current site ownership we have named Ms. Young as a responsible party.

This Regional Board has not received the required technical report, which was due my office on September 17, 1993. I am now considering enforcement options for this continued non-compliance. As you know, a Workplan for site investigation was approved by the County June 6, 1991, submitted by Ms. Young. My understanding is that Ms. Young does not have the financial resources to independently implement this approved Workplan. I urge resolution of this Petition as soon as possible.

Please contact Richard Hiatt of my staff at (510) 286-4359 if you require further clarification.

cc: Julie Shin, ACDEH
Gil Jensen, ACDA
R. Allen Payne, Attorney
Ms. Wai Yee Wong Young

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

FRESNO
2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1752
FRESNO, CA 93717-1752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8171

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES
2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

93 OCT 29 AM 11:41

PLEASE REPLY TO: SAN FRANCISCO

October 27, 1993

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Dept. of
Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Re: 186 E. Lewelling Blvd., San Lorenzo, CA

Dear Ms. Shin:

Enclosed please find copies of the petitions you requested per our phone conversation on October 26, 1993.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

JAFFE, TRUTANICH, SCATENA & BLUM

Richard Allan Payne

RICHARD ALLAN PAYNE

RAP/dj
0687\cor\shin-1\rap

Enclosures

STATE WATER RESOURCES CONTROL BOARD

PAUL R. BONDERSON BUILDING

901 P STREET

P. O. BOX 100

SACRAMENTO, CALIFORNIA 95812-0100



(916) 657-2424

93 OCT 29 AM 11:51

FAX: (916) 653-0428

OCT 19 1993

Mr. R. Allen Payne
Jaffe, Trutanich, Scatena
and Blum
250 Montgomery Street, Suite 900
San Francisco, CA 94104

Dear Mr. Payne:

IN THE MATTER OF THE PETITION OF MR. AND MRS. CARL GRAFFENSTATTE FOR REVIEW OF REQUEST FOR SUBMITTAL OF A TECHNICAL REPORT TO THE ALAMEDA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION; OUR FILE NO. A-860

The petition you have filed on behalf of Mr. and Mrs. Carl Graffenstatte is complete. The State Water Board will now begin review of the petition and the issues it raises. You filed a petition for a stay and a petition for review of the Regional Water Board's action. As they raise similar issues, they will be considered together as one petition.

All interested parties are hereby notified that they have 20 days from the date of this letter within which to file with the State Water Board any comments or responses to this petition. Copies of the petition should be obtained from the petitioner. Alameda County and the Regional Water Board shall file with the State Water Board, within 20 days of this letter, the administrative record pertaining to this petition.

If any interested person has questions about this process, please contact me at the above number.

Sincerely,

Philip Wyels
Staff Counsel

cc: Interested Persons
Mailing List

INTERESTED PERSONS LIST

PETITION OF MR. AND MRS. CARL GRAFFENSTATTE
OUR FILE NO. A-860

R. Allen Payne
Jaffe, Trutanich, Scatena
and Blum
250 Montgomery Street, Suite 900
San Francisco, CA 94104

Mr. and Mrs. Carl Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

Mobil Oil Corporation
1450 Enea Circle, Suite A-100
Concord, CA 94520

Juliet Shin
Alameda County Health Agency
Division of Hazardous Materials
80 Swan Way
Oakland, CA 94621

Steven R. Ritchie
Executive Officer
San Francisco Bay
Regional Water Board
Suite 500
2101 Webster Street
Oakland, CA 94612

1. L.F.
2. P

DD

STATE WATER RESOURCES CONTROL BOARD

PAUL R. BONDERSON BUILDING
901 P STREET
P. O. BOX 100
SACRAMENTO, CALIFORNIA 95812-0100



DD

(916) 657-2424

FAX: (916) 653-0428

OCT 19 1993

CALIFORNIA REGIONAL WATER

OCT 20 1993

QUALITY CONTROL BOARD

Mr. R. Allen Payne
Jaffe, Trutanich, Scatena
and Blum
250 Montgomery Street, Suite 900
San Francisco, CA 94104

Dear Mr. Payne:

IN THE MATTER OF THE PETITION OF MR. AND MRS. CARL GRAFFENSTATTE FOR REVIEW OF REQUEST FOR SUBMITTAL OF A TECHNICAL REPORT TO THE ALAMEDA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION; OUR FILE NO. A-860

The petition you have filed on behalf of Mr. and Mrs. Carl Graffenstatte is complete. The State Water Board will now begin review of the petition and the issues it raises. You filed a petition for a stay and a petition for review of the Regional Water Board's action. As they raise similar issues, they will be considered together as one petition.

All interested parties are hereby notified that they have 20 days from the date of this letter within which to file with the State Water Board any comments or responses to this petition. Copies of the petition should be obtained from the petitioner. Alameda County and the Regional Water Board shall file with the State Water Board, within 20 days of this letter, the administrative record pertaining to this petition.

If any interested person has questions about this process, please contact me at the above number.

Sincerely,

Philip Wyels
Staff Counsel

cc: Interested Persons
Mailing List

STATE WATER RESOURCES CONTROL BOARD

PAUL R. BONDERSON BUILDING

901 P STREET

P. O. BOX 100

SACRAMENTO, CALIFORNIA 95812-0100

93 OCT 28 AM 10:43

(916) 657-2424

FAX: (916) 653-0428



OCT 19 1993

Mr. R. Allen Payne
 Jaffe, Trutanich, Scatena
 and Blum
 250 Montgomery Street, Suite 900
 San Francisco, CA 94104

Dear Mr. Payne:

IN THE MATTER OF THE PETITION OF MR. AND MRS. CARL GRAFFENSTATTE FOR REVIEW OF REQUEST FOR SUBMITTAL OF A TECHNICAL REPORT TO THE ALAMEDA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION; OUR FILE NO. A-860

The petition you have filed on behalf of Mr. and Mrs. Carl Graffenstatte is complete. The State Water Board will now begin review of the petition and the issues it raises. You filed a petition for a stay and a petition for review of the Regional Water Board's action. As they raise similar issues, they will be considered together as one petition.

All interested parties are hereby notified that they have 20 days from the date of this letter within which to file with the State Water Board any comments or responses to this petition. Copies of the petition should be obtained from the petitioner. Alameda County and the Regional Water Board shall file with the State Water Board, within 20 days of this letter, the administrative record pertaining to this petition.

If any interested person has questions about this process, please contact me at the above number.

Sincerely,

Philip Wyels
 Staff Counsel

cc: Interested Persons
 Mailing List

CALIFORNIA REGIONAL WATER
 OCT 20 1993
 QUALITY CONTROL BOARD

STATE WATER RESOURCES CONTROL BOARD

PAUL R. BONDERSON BUILDING
901 P STREET
P. O. BOX 100
SACRAMENTO, CALIFORNIA 95812-0100



(916) 657-0406
FAX: 653-0428

CALIFORNIA REGIONAL WATER

SEP 23 1993

QUALITY CONTROL BOARD

SEP 22 1993

Mr. R. Allan Payne
Jaffe, Trutanich, Scatena & Blum
250 Montgomery Street, Suite 900
San Francisco, CA 94104

Dear Mr. Payne:

ACKNOWLEDGEMENT OF PETITION FOR REVIEW

This will acknowledge receipt on September 15, 1993, of the petition to review request for a submittal of a workplan and technical report to the Alameda County Department of Environmental Health addressing required soil and groundwater investigations by the California Regional Water Quality Control Board, San Francisco Region; Mr. and Mrs. Carl Graffenstatte, petitioners.

You will be notified of further action by the State Water Board on this matter.

On all future correspondence regarding this petition, please use File No. A-860.

Sincerely,

A handwritten signature in cursive script that reads "Craig M. Wilson".

Craig M. Wilson
Assistant Chief Counsel

cc: Mr. Steven Ritchie, Executive Officer ✓
California Regional Water Quality
Control Board, San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

September 15, 1993

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

STID 1709

Re: Required investigations at 186 E. Lewelling Blvd., San
Lorenzo, California

Dear Mr. & Mrs. Graffenstatte,

Per my conversation with Allan Payne, an attorney with Jaffe, Trutanich, Scatena, & Blum, on September 13, 1993, it is the understanding of this office that you have begun soliciting estimates from consultants to prepare a work plan for further investigations at the site. Per the above conversation, this office is granting a one month extension for the submittal of the required work plan to **October 17, 1993**. Additionally, this office is requesting that **monthly status reports** or summaries be submitted outlining the progress being made towards meeting the investigation/cleanup requirements at the site.

If you have any questions or comments, please contact me at (510) 271-4530.

Sincerely,

A handwritten signature in cursive script that reads "Juliet Shin".

Juliet Shin
Hazardous Materials Specialist

cc: Ms. Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

James L. Jaffe
Jaffe, Trutanich,
Scatena, & Blum
250 Montgomery St., Ste 900
San Francisco, CA 94104

Edgar Howell-File(JS)

UNDERGROUND TANKS

Access to Cleanup Fund Allowed Where Use of Tank Is Not Feasible Absent Great Effort

On August 19 the State Water Resources Control Board reversed a decision by its Underground Storage Tank staff and allowed the operators of a Monterey mortuary access to the Underground Storage Tank Cleanup Fund despite the failure of the mortuary to obtain a permit for the tank prior to 1990. The current owners of the mortuary (the petitioners in this action) purchased the site in 1977 unaware that the buried tank was located on the premises. In 1978 they were informed of the tank's existence by a former owner of the site who had installed the tank. He told them that the tank had been used only briefly for fueling mortuary vehicles and that it had been abandoned and emptied in the late 1940's. Although the dispensing pump and the tank remained on the property the handle to the pump was frozen in place and the cap to the fill pipe was rusted in place. The petitioners presented evidence to the Board staff that making the tank operational would have required a significant amount of time and expense.

In 1991 the petitioners tried to sell the property. When concern over the tank was raised by a prospective buyer the petitioners removed it and discovered extensive contamination beneath it. They applied for reimbursement from the cleanup fund for the approximately \$450,000 which they anticipated spending on site cleanup. The UST staff denied the claim because the petitioners had failed to obtain a permit for the tank by January 1, 1990; a condition precedent to access to the fund (Health and Safety Code §25284).

Although the petitioners conceded that they had failed to obtain the required permit, they claimed that they should be given access to the fund anyway under a Board regulation allowing the permit requirement to be excused if enforcement of it would be "inequi-

table or unreasonable." [Title 23 §22811(a)(2) of the California Code of Regulations]. The petitioners cited an earlier Board decision, In the Matter of the Petition of Lloyd Properties, Board Order No. WQ 93-1-UST, which held that a UST owner might recover from the fund, despite lack of a permit, if it could show that the tank had been "closed or decommissioned" prior to January 1, 1984 and that it could not be reopened without significant effort. The theory behind the Lloyd decision is that there was no permitting requirement prior to 1984 and the requirement should not be retroactively imposed on a closed tank. The petitioners contended because the tank had been closed in the 1940's and reuse would be extremely expensive they fell within the Lloyd exception. The Board staff, however, contended that to be decommissioned or closed a tank must be incapable of being filled or being used. In this instance the fill pipe was still in place thus the tank was not considered by the staff to be fully closed.

In overruling its staff, the Board accepted the petitioners' evidence that the fill pipe was frozen shut and that to open it would be extremely expensive. Thus in effect the tank was unusable and falls within the Lloyd exception. Other factors cited by the Board as supporting fund access were the lack of use of the tank since the 1940's, the fact that cap was frozen in place, and the fact that the petitioner was in a field totally unrelated to the petroleum industry.

Petition of Mission Mortuary, Board Order #93-11-UST.

Claim Against Cleanup Fund Upgraded to Priority B

In another decision on August 19 the State Board again overruled its staff's decision to place a claim against the cleanup fund in the lowest category (Class D) due to the size of the petitioner's business. The case involved property in Santa Ana on which a leaking underground tank was discovered. Approximately \$100,000 was spent in removing the tank and in cleaning up the property. The petitioner filed for reimbursement of its expenditures from the fund.

The petitioner and owner of the property in this instance was a trust set up by an individual as an estate planning device. The individual who set up the trust was both its income beneficiary and the trustee. He had the authority to revoke the trust at any time and revest title to the assets in the trust in himself. In addition to the real estate the trust contained 68.9% of the voting stock of United California Savings Bank. Because the petitioner trust did not fit neatly within any of the four categories for fund priority, the Water Board UST staff characterized it as a "real estate operator" for assignment purposes. The staff then applied the Division of General Services, Office of Small and Minority Business Rules to determine whether the petitioner's real estate business qualified as a "small business" for purposes of a Class B priority as required by Health and Safety Code §25299.52. Applying the OSMB rules the staff determined that the individual creating the trust, the petitioner trust itself, and the Savings Bank were all "affiliates" and therefore that their combined receipts had to be considered in deciding whether the business met the \$3 million three year receipt limit imposed on real estate operators. Since the Savings Banks alone had \$203 million in receipts over the three year period the staff determined that the business was not a small business and assigned the claim to Class D.

The State Board, finding that the case involved "unusual circumstances", reversed the staff and directed that the claim be assigned to Class B. The Board found that the staff was correct in using the OSMB regulations on "affiliate" income to determine gross receipts for classification purposes. It also determined that the individual who set up the trust should be considered as the claimant and that the gross receipts attributable to him and the trust should be combined to determine whether Class B or D was the proper classification. The Board then noted that the staff was correct that normally when a claimant owns 50% or more of the voting stock of a corporation the receipts of that corporation are attributable to the claimant in determining classification. However in this instance

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

FRESNO
2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1752
FRESNO, CA 937171752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8171

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

93 OCT 29 AM 11:41

LOS ANGELES
2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

PLEASE REPLY TO: SAN FRANCISCO

VIA FEDERAL EXPRESS

September 14, 1993

California State Water Quality Control Board
Office of the Chief Counsel
901 P Street
Sacramento, CA 95812-0100

PETITION TO THE CALIFORNIA STATE WATER QUALITY CONTROL BOARD
FOR REVIEW OF AN ORDER OF THE CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION

(1) Name and Address of the Petitioners

Mr. & Mrs. Carl Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

The petitioners are represented by

James L. Jaffe, Esq.
R. Allan Payne, Esq.
Jaffe, Trutanich, Scatena & Blum
A Professional Law Corporation
250 Montgomery Street, Suite 900
San Francisco, CA 94104
(415) 397-9006

(2) The Disputed Order of the Regional Board

This petition seeks review of an order as it relates to Mr. & Mrs. Carl Graffenstatte (the "Graffenstattes") that was issued on August 17, 1993 by the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"). This order requires the Graffenstattes, as alleged "Responsible Parties," to cooperate with an admitted responsible party, Ms. Wai Yee Wong Young, in conducting a soil and groundwater investigation at 186 E. Lewelling Blvd., San Lorenzo, California. This investigation must be pursuant to or consistent with a work plan approved by the Regional Board which calls for the installation of three monitoring wells. A copy of the order is presented in Exhibit A.

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 2

Pursuant to California Water Code § 13320(a), Mr & Mrs Carl Graffenstatte hereby petition the State Water Quality Control Board ("State Board") for review of the above referenced order.

(3) The Factual Background

In July of 1981, the Graffenstattes purchased the property which is the subject of the current action, (186 E. Lewelling Boulevard, San Lorenzo, California), from a Mrs. Robello, now deceased. Formerly, Mrs. Robello leased the site to Mobil Oil Company, which in turn sub-leased it to independent gasoline station owners. We understand that Mobil Oil installed the underground tanks which were eventually removed in 1990. Sub-lessees operated the underground storage tanks ("USTs").

When the Graffenstattes purchased the property the two USTs in question were already present at the site. At the time of the Graffenstattes purchase, the USTs were tested for leaks and found to be "tight." See Exhibit B. When the Graffenstattes purchased the property, they had neither actual nor constructive knowledge of the presence of any contamination at the site, either from the USTs or any other source.

On June 27, 1986, Mr. Graffenstatte hired Hunter Environmental Services to conduct tank tightness tests on the USTs in anticipation of sale of the property to Ms. Wai Yee Wong Young. The two USTs and piping system tested tight. See Exhibit C. Furthermore, the USTs were emptied and were "bone dry" subsequent to the tank testing. Thereafter, the Graffenstattes sold the property to Ms. Young. As part of this sale Ms. Young acknowledged and was put on notice that the sale placed obligations on her with respect to the tanks. See Exhibit D.

In February, 1990, four years subsequent to the sale of the property by the Graffenstattes to Ms. Young, an inspection of the property by the Alameda County Department of Environmental Health, Hazardous Materials Division ("Hazardous Division") discovered the existence of the USTs which Ms. Young failed to obtain the required permit to abandon. Ms. Young claimed, despite her acknowledgement to the contrary, that she was unaware that the USTs required permits. The USTs were thereafter pulled on September 5, 1990 and two were found to be in a deteriorated condition. Soil samples taken at this time indicated that the two deteriorated USTs had leaked. Ms. Young had a work plan prepared regarding investigation of the site. At no time was the source of the contamination identified, or during whose period of ownership the contamination occurred.

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 3

On January 28, 1993, the Hazardous Division, sent the Graffenstattes a letter. This letter ordering them to either submit a Preliminary Site Assessment work plan to determine the vertical and lateral extent of soil and ground water contamination from past releases from the former USTs, or begin implementing Ms. Young's already approved work plan. The Department's order appears to stem primarily from two basis. First, Mrs. Young's alleged financial inability to pay for the implementation of the work plan.¹ Second, the Graffenstattes' alleged liability based on the allegation that the contamination occurred while they owned the property or that they were the owners just prior to the USTs' abandonment.²

The Graffenstattes protested their designation as responsible parties and on July, 27, 1993 a "Review Panel Meeting" was convened by the Hazardous Division; the Regional Board sent one staff member as a representative. Without issuing a finding of facts or a report of any kind, the Panel determined the Graffenstattes were a responsible party. The Regional Board adopted the Panel's view and

¹ Ms. Young claims that she is financially unable to undertake the work plan she has had prepared and has been approved by your department. However, at the Panel Review meeting, she admitted that she has not made her mortgage payments to Mr. Graffenstatte in over a year in the hope that he might foreclose on the property and become the present owner. During this time she has charged her tenants on the property \$1,380.00 per month for rent and with her husband continues to own two other properties in Oakland and appears to operate an unlicensed and unregistered business at 421 15th Street in Oakland.

². The Department's "evidence" of the contamination occurring while Mr. Graffenstatte owned the property is that when the tanks were removed by Ms. Young they were in a deteriorated condition. However the objective evidence known to the parties at this time point to the deterioration of the tanks occurring after the sale of the property to Ms. Young. First, the Hunter Environmental Services test results show unequivocally that the tanks and piping were tight at the time of the sale of the property to Ms. Young. Second, there is evidence to suggest that during her ownership of the tanks, prior to having them pulled, she failed to render them inert as required by Health and Safety Code § 25298. It is well established that the failure to render USTs inert for a substantial period of time will allow them to corrode/deteriorate, much in the same fashion as the tanks here were found when removed.

issued its disputed order. This Petition followed.

(4) The Reasons the Order was Improper and Inappropriate

The Order is improper because it names the Graffenstattes as "responsible parties" when in fact they are not. The Order is inappropriate because the Regional Board has failed to name other clearly responsible parties, unfairly shouldering the two named parties with the entire burden. Furthermore, the Graffenstattes have not been granted a fair and adequate hearing as required by the due process guarantees of the state and federal constitution before being deprived of their property. The following is a brief outline of these issues.

Chapters 6.7 and 6.75 (the Barry Keene Underground Storage Tank Clean-up Trust Fund Act of 1989, hereinafter the "Keene Act") of the California Health and Safety Code (§§ 25280 through 25299.82) provide the state statutory framework for the regulation of underground tanks in general and those holding petroleum products in particular. The federal regulation of underground storage tanks is found in 42 U.S.C. § 6991 et seq. (hereinafter the "federal act"). Article 4 of the Keene Act (§ 25299.37) requires "owners, operators or other responsible parties" to take corrective actions whenever issued an order by a local agency.

The Keene Act defines owner as "the owner of an underground storage tank" and operator as "any person in control of, or having responsibility for, the daily operations of an underground storage tank." Use of the definite article "the" in the definition of "owner" denotes that "owner" is a single entity - the present owner of the underground storage tank. The Graffenstattes are not the present owners and there is no evidence to suggest that they are in daily control of the operation of the underground storage tanks. It is clear that the Graffenstattes are not the "owner or operator" of the underground storage tanks. The Graffenstattes can only be required to respond to orders issued with respect to these underground storage tanks if they are found to be a "responsible party" as the term is used in § 25299.37.

Below, we present four independent reasons, each sufficient in itself, to conclude that the Graffenstattes are not a "responsible party." These include:

- 1) The statutory use of "responsible party" cannot yield a meaning different than that of "owner" or "operator;"
- 2) If the legislature intended "responsible party" to have a separate meaning, it is clear that the federal

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 5

definition under CERCLA should be used;

- 3) The state regulation defining "responsible party" is not consistent with the authorizing legislation and is hence invalid and;
- 4) Even assuming the validity of the state regulation, the Graffenstattes do not fall within its definition of "responsible party."

Under each of these headings, the result is the same, the Graffenstattes are not responsible parties.

1) THE STATUTORY USE OF "RESPONSIBLE PARTY CANNOT YIELD A MEANING DIFFERENT THAN THAT OF "OWNER" OR "OPERATOR."

While the Keene Act does define "owner" and "operator" it does not define "responsible parties." Nor is it defined in Chapter 6.7 or in the federal act. In fact, a close examination of the Keene Act reveals the legislature could not have intended "responsible party" to have a definition separate or different than that of "owner" or "operator."

As stated above, the term "owner, operator or other responsible party" is used in § 25299.37 to describe persons who must take corrective action in response local agency orders. Under the rule of statutory construction, "[w]here general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated." 58 Cal Jur 3d, 525. In our case, "owner" and "operator" enumerates a class of persons with a present possessory interest in the property and an ability to effect the operation of the tanks. The general term "other responsible parties" must be interpreted to mean persons of that same general class. The Graffenstattes do not have a present possessory interest in the property and could not affect the operation of the tanks; the Graffenstattes are not a "responsible party" within the statutory definition.

Furthermore, § 25299.53 authorizes local agencies and Regional Boards to take corrective action themselves only when the "owner or operator" not when the "owner, operator or other responsible parties" fail to do so. Also, under § 25299.70 cleanup, oversight and corrective action costs can only be recovered from "the owner or operator" not "the owner, operator or other responsible parties." Because the Keene Act imposes strict liability, due process requires that the legislature clearly and with particularity define who is liable; they have done so with clarity

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 6

and particularity and that definition does not include the Graffenstattes.

If "other responsible parties" has a definition different from that of "owner" or "operator," as the Regional Board has claimed (see below), then suit cannot be brought against such parties to force compliance with such orders, nor can they be held liable for agency response costs, corrective action or oversight fees. If this is the State Board's position, please inform us, otherwise, it is clear that "other responsible parties" does not have a separate and different definition and must simply be a reiteration of "owner or operator." Therefore, as the Graffenstattes are not an owner or operator within the statutory definition, they are not a responsible party.

2) IF THE LEGISLATURE INTENDED "RESPONSIBLE PARTY TO HAVE A SEPARATE MEANING, IT IS CLEAR THAT THE FEDERAL DEFINITION UNDER CERCLA SHOULD BE USED.

If the legislature did have a separate definition in mind when they employed the term "responsible party" in the statute, it is only reasonable that this important term of art has been defined elsewhere in the statutes. In fact, in the very next Chapter of the Health and Safety Code (Chapter 6.8, California Superfund) § 25323.5 adopts the federal government CERCLA definition of parties liable found in 42 U.S.C. § 9607(a) as its definition for "responsible party".

Finally, there is further evidence of the intended definition of "responsible parties." The state legislature appears to have borrowed the use of the words "owners, operators or other responsible parties" for H&S § 25299.37 directly from CERCLA's use of the wording "owner or operator or other responsible person" found in 42 U.S.C. § 9607(c)(1) and (2).

Basically, for our purposes, this federal definition includes present owners and operators and past owners and operators at the time of disposal (release). Under this definition, the Graffenstattes are not a responsible party because they are not a present owner and the only direct evidence (the tank tightness tests) demonstrate that no releases occurred under their past ownership. The Regional Board may feel that there is evidence to support the supposition that a release occurred during the Graffenstatte's ownership. However, in any civil action to enforce any Regional Board orders against the Graffenstattes, the state must prove by the preponderance of the evidence - that it is more likely than not - that the Graffenstattes are a responsible party because a release occurred during their ownership.

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 7

No evidence has been produced to date to support such a finding. As no releases occurred during their ownership, the Graffenstattes are not a "responsible party."

3) THE STATE REGULATION DEFINING "RESPONSIBLE PARTY" IS NOT CONSISTENT WITH THE AUTHORIZING LEGISLATION AND IS HENCE INVALID.

The Regional Board has cited Title 23 § 2720 of the California Code of Regulations (hereinafter 23 CCR § 2720) as its source of authority for holding the Graffenstattes as a responsible party. 23 CCR § 2720 defines a "responsible party" as one or more of the following:

- (1) Any person who owns or operates an underground storage tank used for the storage of any hazardous substance;
- (2) In the case of any underground storage tank no longer in use, any person who owned or operated the underground storage tank immediately before the discontinuation of its use;
- (3) Any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred; and
- (4) Any person who had or has control over a (sic) underground storage tank at the time of or following an unauthorized release of a hazardous substance.

The State Board adopted 23 CCR § 2720 under authority of the Health and Safety Code § 25299.77 which requires the Board to implement regulations consistent with Chapter 6.7, the Keene Act and requirements for state programs implementing the federal act. As shown above, "responsible party" cannot have a definition different from that of the statutory definitions of "owner" or "operator." While 23 CCR § 2720(1) is likely consistent with the Keene Act, the Graffenstattes are not an "owner" or "operator." It is debatable whether or not 23 CCR § 2720 (3) and (4) above fall within the statutory definition of "owner" or "operator" and even if they do, no releases occurred during the Graffenstattes' ownership. Finally, 23 CCR § 2720 (2) does not fall within the statutory definition of "owner" or "operator."

Furthermore, 23 CCR § 2720(2) may be a misapplication of the federal act's definition of "owner." It appears that the State Board borrowed 23 CCR § 2720(2) from the definition of "owner" in the federal act found in 42 U.S.C. § 6991(3). Section 6991(3)

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 8

defines two types of owners depending on whether or not the UST in question was in use on November 8, 1984. If the tank was not in use on November 8, 1984, the definition found in § 6991(3)(B) applies, and defines "owner" as a person who owned the property "immediately before the discontinuation of its use." If, on the other hand, the tank was in use on November 8, 1984, the definition found in § 6991(3)(A) applies which defines an "owner" as "any person who owns an underground storage tank."

This federal definition apportions liability for tanks no longer in use based on the effective date of the federal act. Those owners who discontinued use of their tanks before the effective date of the act remain solely liable for past releases from the tanks while the present owners of tanks in use after the effective date are solely liable for all releases from their tanks. The board's 23 CCR § 2720 (2) definition adds a whole new class of responsible parties not found in the federal or state acts - all past owners who discontinued use of their tanks.

Fear of future liability will encourage tank owners to keep their tanks in operation that might otherwise be taken out of service. By keeping their tanks in operation until after they have sold the tanks, such owners can escape 23 CCR § 2720 (2) classification as a responsible party but at the cost of placing the environment at greater risk. Arbitrarily creating such a new class of responsible parties and increasing the risk to the environment is not "consistent with" the Keene Act or the federal act. The Graffenstattes cannot be found to be a responsible party under an invalid state regulation.

4) EVEN ASSUMING THE VALIDITY OF THE STATE REGULATION, THE GRAFFENSTATTES DO NOT FALL WITHIN ITS DEFINITION OF "RESPONSIBLE PARTY."

Even assuming that 23 CCR § 2720(2) is valid, the Graffenstattes are still not a "responsible party" under that provision. Before closure, abandonment or discontinuing use of an underground storage tank is allowed, § 25298 of the Health and Safety Code requires certain acts and procedures be undertaken. Even if use of the underground storage tank is temporarily discontinued, certain requirements must still be met.

Under state law and regulations, "use" is a term of art. Whether or not a tank is in "use" is not dependant on what is or is not in the tank but what permits have been filed. Even though she knew she had obligations with respect to the tank, Ms. Young never undertook any of the required acts or procedures to permanently or temporarily discontinue the use of the tanks. It was not until she

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 9

had them removed from the ground some four years after the Graffenstattes' ownership ceased, that her ownership of the USTs was in compliance with the law. Therefore the Graffenstattes were not the owner of the underground storage tanks immediately before the discontinuation of their use and therefore are not a responsible party under 23 CCR § 2720(2).

Even if the Graffenstattes are validly named responsible parties, the Order is inappropriate because the Regional Board has refused to name other potentially responsible parties. During the Panel Review Meeting, the Panel refused to investigate or name other potentially responsible parties. In particular, the Panel has refused to name a long-time lessee of the subject property, Mobil Oil. When such a readily identifiable, clearly responsible party is not named in such an order, it unfairly burdens the named parties and is an abuse of discretion.

Finally, the due process of law guarantees of the state and federal constitutions require notice and a hearing before an impartial trier of fact that before one can be deprived of property. The Regional Board did not hold a hearing before issuing its order to the Graffenstattes. Instead, its executive officer issued the order based on the findings of a "Panel Review Meeting." In fact, the only hearing granted the Graffenstattes was this Panel Review Meeting ("Panel") convened by the Alameda County Hazardous Materials Division ("Hazardous Division") with one staff member of the Regional Board present.

Notice of this Panel was given in a letter from Thomas Peacock to the Graffenstattes dated July 13, 1993. See Exhibit C. This notice did not state who would compose the Panel, what evidence could be presented, whether witnesses could testify or be cross-examined nor what, if any, rules or methods of fact finding would apply.

This Panel was an informal ad hoc committee without statutory basis consisting of three employees of the Hazardous Division, a Deputy District Attorney and a representative from the Regional Board's staff. This body was not an impartial trier of fact. Juliet Shin, the enforcement officer on the case and her supervisor, Thomas Peacock, served as members of the Panel. It was Juliet Shin who first asserted that the Graffenstattes were responsible parties.

The Panel was chaired by Gil Jensen, the Alameda County Deputy District Attorney in charge of enforcement in these cases. It is also our understanding that the three employees of the Hazardous Division directly receive portions of their salary from the

oversight fees the Hazardous Division collects from responsible parties. It was in their personal financial interest to designate solvent individuals as responsible parties.

At the conclusion of the Panel meeting, the Panel stated that it would release its findings in 30 days. However, by August 17, 21 days after the Panel, the Regional Board had issued its order. The Regional Board claims to have relied on the findings of the Panel. Therefore, it can be surmised that in a very short period of time, the Panel had made its decision, reported it to the Regional Board, and the Regional Board made its decision and issued the order. To allow all these events to happen in 21 days, the Panel must have made its decision very quickly, likely before the meeting occurred. This Panel was not an impartial trier of fact, but convened specifically to find the Graffenstattes responsible parties.

(5) The Manner in Which the Petitioners are Aggrieved

The Regional Board's Order requires the Graffenstattes to "cooperate" with Ms. Young in conducting the investigation. Ms. Young claims to have no funds at the present time to assist in the investigation, therefore most if not all the costs to implement the work plan may have to be provided by the Graffenstattes. Furthermore, Ms. Young's alleged lack of funds will mean that if the Graffenstattes are later determined not to be responsible party by the State Board, reimbursement of the spent funds will be difficult if not impossible.

Ms. Young obtained a price estimate to conduct an earlier version of the work plan where only one monitoring well was to be installed. This estimate placed the price of such an investigation at over \$19,000.00. The Graffenstattes are presently requesting estimates from consultants for the approved work plan with its required three monitoring wells.

Under § 13268 of the Water Code, failure to comply with implementing the work plan will expose the Graffenstattes to criminal liability as misdemeanants and fines of up to \$1,000.00 per day. Therefore, if the order is not vacated, the Graffenstattes will be forced to pay for an expensive investigation for which they are not liable and for which they may never be reimbursed.

(6) Actions the Petitioners Request of the State Board.

The Petitioners request that the State Board issue a finding that the Graffenstattes are not a responsible party with respect to

the property in question and vacate the Regional Board's order. Furthermore, the Petitioners request the State Board order the Regional Board to reimburse the Petitioners for their expenses in defending themselves from the order.

In the alternative, the Petitioners request that the State Board issue a stay of the order until such time as the Regional Board or its designated local agency has investigated and added all responsible parties to the order.

(7) Points and Authorities

Please see part (4) The Reasons the order was Improper and Inappropriate.

(8) List of Interested Parties

Below is a list of known interested parties other than the Petitioners.

Ms. Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

Mobil Oil Corp.
1450 Geneva Circle, A-100
Concord, CA 94520

Alameda County Health Agency
Division of Hazardous Materials
80 Swan Way
Oakland, CA 94621

A request has been made to the Regional Board to provide names and addresses of any additional interested parties.

(9) Notice to the Regional Board

A copy of this petition has been sent to the Regional Board.

(10) Request for Regional Board's Record

Exhibit F is a copy of a letter sent to the Regional Board requesting preparation of the Regional Board's record, including a copy of the tape recording of the Regional Board action or a transcript, if available. Because the Regional Board did not hold a hearing on this matter, it is unknown what transcripts or records they may produce, nor is it clear what evidence they considered in

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 12

their decision.

During the Panel meeting, the legal basis the Hazardous Division was relying in claiming that the Graffenstattes were responsible parties was finally revealed. On August 16, 1993, 20 days after the Panel meeting and 10 days before its report was due, the Graffenstattes, through their attorneys, submitted much the same arguments as presented in this petition to the members of the Panel for their consideration. Because the Regional Board issued its decision the next day, it is unlikely these issues were considered. To the extent that the Regional Board did not consider or were not presented with all the evidence contained or supported by this petition, the Petitioners make a special request that this evidence be presented to the State Board and be considered by that body.

Dated: September 14, 1993

JAFFE, TRUTANICH, SCATENA & BLUM

BY: R. Allan Payne
R. ALLAN PAYNE, Attorneys for
Mr. & Mrs Carl Graffenstatte

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES
2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

FRESNO
2340 FURBER STREET, SUITE 400
FRESNO, CA 93721
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

September 13, 1993

PLEASE REPLY TO: SAN FRANCISCO

Office of the Chief Counsel
California Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612

CALIFORNIA REGIONAL WATER
SEP 16 1993
QUALITY CONTROL BOARD
DOD

Re: 186 E. Lewelling Blvd., San Lorenzo, CA
File 2198.17 (UST)
RB File No.: 01-1041

Dear Sir or Madam:

This firm represents Mr. and Mrs. Carl Graffenstatte (the "Graffenstattes") regarding the above referenced matter. Your agency issued an order to the Graffenstattes on August 17, 1993, see enclosures. This office has filed petitions for a stay and review of this order with the State Water Quality Control Board ("State Board"). See enclosures.

The Graffenstattes hereby request that your agency provide the names and addresses of all known interested parties to this office and to the State Board. The Graffenstattes further request that your agency prepare its record in this matter, including any transcript or tape recording of the Regional Board's actions in this matter.

Finally, it is our understanding that the Regional Board did not hold a hearing in this matter. If the Regional Board would agree to grant a stay and review of the order the Graffenstattes would withdraw their petitions to the State Board. If you have any questions or wish to discuss this matter please contact me.

EO Action -
No RR. action
No Tape -
JK
9/13/93

Sincerely,

JAFFE, TRUTANICH, SCATENA & BLUM

R. Allan Payne

R. ALLAN PAYNE

cc: Mr. & Mrs. Carl Graffenstatte

Enclosures: Pettitions for Stay and Review

310-0687/cor/RWQCB.rap

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

FRESNO
2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1752
FRESNO, CA 93721752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8177

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES
2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

PLEASE REPLY TO: SAN FRANCISCO

VIA FEDERAL EXPRESS

September 14, 1993

California State Water Quality Control Board
Office of the Chief Counsel
901 P Street
Sacramento, CA 95812-0100

PETITION TO THE CALIFORNIA STATE WATER QUALITY CONTROL BOARD
FOR REVIEW OF AN ORDER OF THE CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION

(1) Name and Address of the Petitioners

Mr. & Mrs. Carl Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

The petitioners are represented by

James L. Jaffe, Esq.
R. Allan Payne, Esq.
Jaffe, Trutanich, Scatena & Blum
A Professional Law Corporation
250 Montgomery Street, Suite 900
San Francisco, CA 94104
(415) 397-9006

(2) The Disputed Order of the Regional Board

This petition seeks review of an order as it relates to Mr. & Mrs. Carl Graffenstatte (the "Graffenstattes") that was issued on August 17, 1993 by the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"). This order requires the Graffenstattes, as alleged "Responsible Parties," to cooperate with an admitted responsible party, Ms. Wai Yee Wong Young, in conducting a soil and groundwater investigation at 186 E. Lewelling Blvd., San Lorenzo, California. This investigation must be pursuant to or consistent with a work plan approved by the Regional Board which calls for the installation of three monitoring wells. A copy of the order is presented in Exhibit A.

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 2

Pursuant to California Water Code § 13320(a), Mr & Mrs Carl Graffenstatte hereby petition the State Water Quality Control Board ("State Board") for review of the above referenced order.

(3) The Factual Background

In July of 1981, the Graffenstattes purchased the property which is the subject of the current action, (186 E. Lewelling Boulevard, San Lorenzo, California), from a Mrs. Robello, now deceased. Formerly, Mrs. Robello leased the site to Mobil Oil Company, which in turn sub-leased it to independent gasoline station owners. We understand that Mobil Oil installed the underground tanks which were eventually removed in 1990. Sub-lessees operated the underground storage tanks ("USTs").

When the Graffenstattes purchased the property the two USTs in question were already present at the site. At the time of the Graffenstattes purchase, the USTs were tested for leaks and found to be "tight." See Exhibit B. When the Graffenstattes purchased the property, they had neither actual nor constructive knowledge of the presence of any contamination at the site, either from the USTs or any other source.

On June 27, 1986, Mr. Graffenstatte hired Hunter Environmental Services to conduct tank tightness tests on the USTs in anticipation of sale of the property to Ms. Wai Yee Wong Young. The two USTs and piping system tested tight. See Exhibit C. Furthermore, the USTs were emptied and were "bone dry" subsequent to the tank testing. Thereafter, the Graffenstattes sold the property to Ms. Young. As part of this sale Ms. Young acknowledged and was put on notice that the sale placed obligations on her with respect to the tanks. See Exhibit D.

In February, 1990, four years subsequent to the sale of the property by the Graffenstattes to Ms. Young, an inspection of the property by the Alameda County Department of Environmental Health, Hazardous Materials Division ("Hazardous Division") discovered the existence of the USTs which Ms. Young failed to obtain the required permit to abandon. Ms. Young claimed, despite her acknowledgement to the contrary, that she was unaware that the USTs required permits. The USTs were thereafter pulled on September 5, 1990 and two were found to be in a deteriorated condition. Soil samples taken at this time indicated that the two deteriorated USTs had leaked. Ms. Young had a work plan prepared regarding investigation of the site. At no time was the source of the contamination identified, or during whose period of ownership the contamination occurred.

This only means less likely that leaks occurred before the Graffenstattes purchased property.

So, no leaks could have occurred after Ms. Young purchased the site.

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 3

On January 28, 1993, the Hazardous Division, sent the Graffenstatte a letter. This letter ordering them to either submit a Preliminary Site Assessment work plan to determine the vertical and lateral extent of soil and ground water contamination from past releases from the former USTs, or begin implementing Ms. Young's already approved work plan. The Department's order appears to stem primarily from two basis. First, Mrs. Young's alleged financial inability to pay for the implementation of the work plan.¹ Second, the Graffenstatte's alleged liability based on the allegation that the contamination occurred while they owned the property or that they were the owners just prior to the USTs' abandonment.²

The Graffenstatte protested their designation as responsible parties and on July, 27, 1993 a "Review Panel Meeting" was convened by the Hazardous Division; the Regional Board sent one staff member as a representative. Without issuing a finding of facts or a report of any kind, the Panel determined the Graffenstatte were a responsible party. The Regional Board adopted the Panel's view and

¹ Ms. Young claims that she is financially unable to undertake the work plan she has had prepared and has been approved by your department. However, at the Panel Review meeting, she admitted that she has not made her mortgage payments to Mr. Graffenstatte in over a year in the hope that he might foreclose on the property and become the present owner. During this time she has charged her tenants on the property \$1,380.00 per month for rent and with her husband continues to own two other properties in Oakland and appears to operate an unlicensed and unregistered business at 421 15th Street in Oakland.

². The Department's "evidence" of the contamination occurring while Mr. Graffenstatte owned the property is that when the tanks were removed by Ms. Young they were in a deteriorated condition. However the objective evidence known to the parties at this time point to the deterioration of the tanks occurring after the sale of the property to Ms. Young. First, the Hunter Environmental Services test results show unequivocally that the tanks and piping were tight at the time of the sale of the property to Ms. Young. Second, there is evidence to suggest that during her ownership of the tanks, prior to having them pulled, she failed to render them inert as required by Health and Safety Code § 25298. It is well established that the failure to render USTs inert for a substantial period of time will allow them to corrode/deteriorate, much in the same fashion as the tanks here were found when removed.

issued its disputed order. This Petition followed.

(4) The Reasons the Order was Improper and Inappropriate

The Order is improper because it names the Graffenstattes as "responsible parties" when in fact they are not. The Order is inappropriate because the Regional Board has failed to name other clearly responsible parties, unfairly shouldering the two named parties with the entire burden. Furthermore, the Graffenstattes have not been granted a fair and adequate hearing as required by the due process guarantees of the state and federal constitution before being deprived of their property. The following is a brief outline of these issues.

Chapters 6.7 and 6.75 (the Barry Keene Underground Storage Tank Clean-up Trust Fund Act of 1989, hereinafter the "Keene Act") of the California Health and Safety Code (§§ 25280 through 25299.82) provide the state statutory framework for the regulation of underground tanks in general and those holding petroleum products in particular. The federal regulation of underground storage tanks is found in 42 U.S.C. § 6991 et seq. (hereinafter the "federal act"). Article 4 of the Keene Act (§ 25299.37) requires "owners, operators or other responsible parties" to take corrective actions whenever issued an order by a local agency.

The Keene Act defines owner as "the owner of an underground storage tank" and operator as "any person in control of, or having responsibility for, the daily operations of an underground storage tank." Use of the definite article "the" in the definition of "owner" denotes that "owner" is a single entity - the present owner of the underground storage tank. The Graffenstattes are not the present owners and there is no evidence to suggest that they are in daily control of the operation of the underground storage tanks. It is clear that the Graffenstattes are not the "owner or operator" of the underground storage tanks. The Graffenstattes can only be required to respond to orders issued with respect to these underground storage tanks if they are found to be a "responsible party" as the term is used in § 25299.37.

Below, we present four independent reasons, each sufficient in itself, to conclude that the Graffenstattes are not a "responsible party." These include:

- 1) The statutory use of "responsible party" cannot yield a meaning different than that of "owner" or "operator;"
- 2) If the legislature intended "responsible party" to have a separate meaning, it is clear that the federal

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 5

definition under CERCLA should be used;

- 3) The state regulation defining "responsible party" is not consistent with the authorizing legislation and is hence invalid and;
- 4) Even assuming the validity of the state regulation, the Graffenstattes do not fall within its definition of "responsible party."

Under each of these headings, the result is the same, the Graffenstattes are not responsible parties.

1) THE STATUTORY USE OF "RESPONSIBLE PARTY CANNOT YIELD A MEANING DIFFERENT THAN THAT OF "OWNER" OR "OPERATOR."

While the Keene Act does define "owner" and "operator" it does not define "responsible parties." Nor is it defined in Chapter 6.7 or in the federal act. In fact, a close examination of the Keene Act reveals the legislature could not have intended "responsible party" to have a definition separate or different than that of "owner" or "operator."

As stated above, the term "owner, operator or other responsible party" is used in § 25299.37 to describe persons who must take corrective action in response local agency orders. Under the rules of statutory construction, "[w]here general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated." 58 Cal Jur 3d, 525. In our case, "owner" and "operator" enumerates a class of persons with a present possessory interest in the property and an ability to effect the operation of the tanks. The general term "other responsible parties" must be interpreted to mean persons of that same general class. The Graffenstattes do not have a present possessory interest in the property and could not affect the operation of the tanks; the Graffenstattes are not a "responsible party" within the statutory definition.

Furthermore, § 25299.53 authorizes local agencies and Regional Boards to take corrective action themselves only when the "owner or operator" not when the "owner, operator or other responsible parties" fail to do so. Also, under § 25299.70 cleanup, oversight and corrective action costs can only be recovered from "the owner or operator" not "the owner, operator or other responsible parties." Because the Keene Act imposes strict liability, due process requires that the legislature clearly and with particularity define who is liable; they have done so with clarity

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 6

and particularity and that definition does not include the Graffenstattes.

If "other responsible parties" has a definition different from that of "owner" or "operator," as the Regional Board has claimed (see below), then suit cannot be brought against such parties to force compliance with such orders, nor can they be held liable for agency response costs, corrective action or oversight fees. If this is the State Board's position, please inform us, otherwise, it is clear that "other responsible parties" does not have a separate and different definition and must simply be a reiteration of "owner or operator." Therefore, as the Graffenstattes are not an owner or operator within the statutory definition, they are not a responsible party.

2) IF THE LEGISLATURE INTENDED "RESPONSIBLE PARTY TO HAVE A SEPARATE MEANING, IT IS CLEAR THAT THE FEDERAL DEFINITION UNDER CERCLA SHOULD BE USED.

If the legislature did have a separate definition in mind when they employed the term "responsible party" in the statute, it is only reasonable that this important term of art has been defined elsewhere in the statutes. In fact, in the very next Chapter of the Health and Safety Code (Chapter 6.8, California Superfund) § 25305.5 adopts the federal government CERCLA definition of party liable found in 42 U.S.C. § 9607(a) as its definition for "responsible party".

Finally, there is further evidence of the intended definition of "responsible parties." The state legislature appears to have borrowed the use of the words "owners, operators or other responsible parties" for H&S § 25299.37 directly from CERCLA's use of the wording "owner or operator or other responsible person" found in 42 U.S.C. § 9607(c)(1) and (2).

Basically, for our purposes, this federal definition includes present owners and operators and past owners and operators at the time of disposal (release). Under this definition, the Graffenstattes are not a responsible party because they are not a present owner and the only direct evidence (the tank tightness tests) demonstrate that no releases occurred under their past ownership. The Regional Board may feel that there is evidence to support the supposition that a release occurred during the Graffenstatte's ownership. However, in any civil action to enforce any Regional Board orders against the Graffenstattes, the state must prove by the preponderance of the evidence - that it is more likely than not - that the Graffenstattes are a responsible party because a release occurred during their ownership.

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 7

No evidence has been produced to date to support such a finding. As no releases occurred during their ownership, the Graffenstattes are not a "responsible party."

3) THE STATE REGULATION DEFINING "RESPONSIBLE PARTY" IS NOT CONSISTENT WITH THE AUTHORIZING LEGISLATION AND IS HENCE INVALID.

The Regional Board has cited Title 23 § 2720 of the California Code of Regulations (hereinafter 23 CCR § 2720) as its source of authority for holding the Graffenstattes as a responsible party. 23 CCR § 2720 defines a "responsible party" as one or more of the following:

(1) Any person who owns or operates an underground storage tank used for the storage of any hazardous substance;

(2) In the case of any underground storage tank no longer in use, any person who owned or operated the underground storage tank immediately before the discontinuation of its use;

(3) Any owner of property where an unauthorized release of a hazardous substance from an underground storage tank occurred; and

(4) Any person who had or has control over a (sic) underground storage tank at the time of or following an unauthorized release of a hazardous substance.

The State Board adopted 23 CCR § 2720 under authority of the Health and Safety Code § 25299.77 which requires the Board to implement regulations consistent with Chapter 6.7, the Keene Act and requirements for state programs implementing the federal act. As shown above, "responsible party" cannot have a definition different from that of the statutory definitions of "owner" or "operator." While 23 CCR § 2720(1) is likely consistent with the Keene Act, the Graffenstattes are not an "owner" or "operator." It is debatable whether or not 23 CCR § 2720 (3) and (4) above fall within the statutory definition of "owner" or "operator" and even if they do, no releases occurred during the Graffenstattes' ownership. Finally, 23 CCR § 2720 (2) does not fall within the statutory definition of "owner" or "operator."

Furthermore, 23 CCR § 2720(2) may be a misapplication of the federal act's definition of "owner." It appears that the State Board borrowed 23 CCR § 2720(2) from the definition of "owner" in the federal act found in 42 U.S.C. § 6991(3). Section 6991(3)

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 8

defines two types of owners depending on whether or not the UST in question was in use on November 8, 1984. If the tank was not in use on November 8, 1984, the definition found in § 6991(3)(B) applies, and defines "owner" as a person who owned the property "immediately before the discontinuation of its use." If, on the other hand, the tank was in use on November 8, 1984, the definition found in § 6991(3)(A) applies which defines an "owner" as "any person who owns an underground storage tank."

This federal definition apportions liability for tanks no longer in use based on the effective date of the federal act. Those owners who discontinued use of their tanks before the effective date of the act remain solely liable for past releases from the tanks while the present owners of tanks in use after the effective date are solely liable for all releases from their tanks. The board's 23 CCR § 2720 (2) definition adds a whole new class of responsible parties not found in the federal or state acts - all past owners who discontinued use of their tanks.

Fear of future liability will encourage tank owners to keep their tanks in operation that might otherwise be taken out of service. By keeping their tanks in operation until after they have sold the tanks, such owners can escape 23 CCR § 2720 (2) classification as a responsible party but at the cost of placing the environment at greater risk. Arbitrarily creating such a new class of responsible parties and increasing the risk to the environment is not "consistent with" the Keene Act or the federal act. The Graffenstatte cannot be found to be a responsible party under an invalid state regulation.

4) EVEN ASSUMING THE VALIDITY OF THE STATE REGULATION, THE GRAFFENSTATTE DO NOT FALL WITHIN ITS DEFINITION OF "RESPONSIBLE PARTY."

Even assuming that 23 CCR § 2720(2) is valid, the Graffenstatte are still not a "responsible party" under that provision. Before closure, abandonment or discontinuing use of an underground storage tank is allowed, § 25298 of the Health and Safety Code requires certain acts and procedures be undertaken. Even if use of the underground storage tank is temporarily discontinued, certain requirements must still be met.

Under state law and regulations, "use" is a term of art. Whether or not a tank is in "use" is not dependant on what is or is not in the tank but what permits have been filed. Even though she knew she had obligations with respect to the tank, Ms. Young never undertook any of the required acts or procedures to permanently or temporarily discontinue the use of the tanks. It was not until she

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 9

had them removed from the ground some four years after the Graffenstattes' ownership ceased, that her ownership of the USTs was in compliance with the law. Therefore the Graffenstattes were not the owner of the underground storage tanks immediately before the discontinuation of their use and therefore are not a responsible party under 23 CCR § 2720(2).

Even if the Graffenstattes are validly named responsible parties, the Order is inappropriate because the Regional Board has refused to name other potentially responsible parties. During the Panel Review Meeting, the Panel refused to investigate or name other potentially responsible parties. In particular, the Panel has refused to name a long-time lessee of the subject property, Mobil Oil. When such a readily identifiable, clearly responsible party is not named in such an order, it unfairly burdens the named parties and is an abuse of discretion.

Finally, the due process of law guarantees of the state and federal constitutions require notice and a hearing before an impartial trier of fact that before one can be deprived of property. The Regional Board did not hold a hearing before issuing its order to the Graffenstattes. Instead, its executive officer issued the order based on the findings of a "Panel Review Meeting." In fact, the only hearing granted the Graffenstattes was this Panel Review Meeting ("Panel") convened by the Alameda County Hazardous Materials Division ("Hazardous Division") with one staff member of the Regional Board present.

Notice of this Panel was given in a letter from Thomas Peacock to the Graffenstattes dated July 13, 1993. See Exhibit C. This notice did not state who would compose the Panel, what evidence could be presented, whether witnesses could testify or be cross-examined nor what, if any, rules or methods of fact finding would apply.

This Panel was an informal ad hoc committee without statutory basis consisting of three employees of the Hazardous Division, a Deputy District Attorney and a representative from the Regional Board's staff. This body was not an impartial trier of fact. Juliet Shin, the enforcement officer on the case and her supervisor, Thomas Peacock, served as members of the Panel. It was Juliet Shin who first asserted that the Graffenstattes were responsible parties.

The Panel was chaired by Gil Jensen, the Alameda County Deputy District Attorney in charge of enforcement in these cases. It is also our understanding that the three employees of the Hazardous Division directly receive portions of their salary from the

oversight fees the Hazardous Division collects from responsible parties. It was in their personal financial interest to designate solvent individuals as responsible parties.

At the conclusion of the Panel meeting, the Panel stated that it would release its findings in 30 days. However, by August 17, 21 days after the Panel, the Regional Board had issued its order. The Regional Board claims to have relied on the findings of the Panel. Therefore, it can be surmised that in a very short period of time, the Panel had made its decision, reported it to the Regional Board, and the Regional Board made its decision and issued the order. To allow all these events to happen in 21 days, the Panel must have made its decision very quickly, likely before the meeting occurred. This Panel was not an impartial trier of fact, but convened specifically to find the Graffenstattes responsible parties.

(5) The Manner in Which the Petitioners are Aggrieved

The Regional Board's Order requires the Graffenstattes to "cooperate" with Ms. Young in conducting the investigation. Ms. Young claims to have no funds at the present time to assist in the investigation, therefore most if not all the costs to implement the work plan may have to be provided by the Graffenstattes. Furthermore, Ms. Young's alleged lack of funds will mean that if the Graffenstattes are later determined not to be responsible party by the State Board, reimbursement of the spent funds will be difficult if not impossible.

Ms. Young obtained a price estimate to conduct an earlier version of the work plan where only one monitoring well was to be installed. This estimate placed the price of such an investigation at over \$19,000.00. The Graffenstattes are presently requesting estimates from consultants for the approved work plan with its required three monitoring wells.

Under § 13268 of the Water Code, failure to comply with implementing the work plan will expose the Graffenstattes to criminal liability as misdemeanants and fines of up to \$1,000.00 per day. Therefore, if the order is not vacated, the Graffenstattes will be forced to pay for an expensive investigation for which they are not liable and for which they may never be reimbursed.

(6) Actions the Petitioners Request of the State Board.

The Petitioners request that the State Board issue a finding that the Graffenstattes are not a responsible party with respect to

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 11

the property in question and vacate the Regional Board's order. Furthermore, the Petitioners request the State Board order the Regional Board to reimburse the Petitioners for their expenses in defending themselves from the order.

In the alternative, the Petitioners request that the State Board issue a stay of the order until such time as the Regional Board or its designated local agency has investigated and added all responsible parties to the order.

(7) Points and Authorities

Please see part (4) The Reasons the order was Improper and Inappropriate.

(8) List of Interested Parties

Below is a list of known interested parties other than the Petitioners.

Ms. Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

Mobil Oil Corp.
1450 Alameda Circle, A-100
Concord, CA 94520

Alameda County Health Agency
Division of Hazardous Materials
80 Swan Way
Oakland, CA 94621

A request has been made to the Regional Board to provide names and addresses of any additional interested parties.

*This is full list.
NONE OTHERS -
JK 9/23/93*

(9) Notice to the Regional Board

A copy of this petition has been sent to the Regional Board.

(10) Request for Regional Board's Record

Exhibit F is a copy of a letter sent to the Regional Board requesting preparation of the Regional Board's record, including a copy of the tape recording of the Regional Board action or a transcript, if available. Because the Regional Board did not hold a hearing on this matter, it is unknown what transcripts or records they may produce, nor is it clear what evidence they considered in

Graffenstatte -- Petition for Review of Order

310-0687/review.pet

September 14, 1993

Page 12

their decision.

During the Panel meeting, the legal basis the Hazardous Division was relying in claiming that the Graffenstattes were responsible parties was finally revealed. On August 16, 1993, 20 days after the Panel meeting and 10 days before its report was due, the Graffenstattes, through their attorneys, submitted much the same arguments as presented in this petition to the members of the Panel for their consideration. Because the Regional Board issued its decision the next day, it is unlikely these issues were considered. To the extent that the Regional Board did not consider or were not presented with all the evidence contained or supported by this petition, the Petitioners make a special request that this evidence be presented to the State Board and be considered by that body.

Dated: September 14, 1993

JAFFE, TRUTANICH, SCATENA & BLUM

BY: R. Allan Payne

R. ALLAN PAYNE, Attorneys for
Mr. & Mrs Carl Graffenstatte

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

2101 WEBSTER STREET, SUITE 500

OAKLAND, CA 94612

(510) 286-1255

AUG 18 1993



Ms. Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

August 17, 1993
File 2198.17 (UST)
RB File No.: 01-1041

Mr. & Mrs. Graffenstatte
P. O. Box 97397
Tacoma, Washington 98497

Re: Official designation of Responsible Parties, and request for
submittal of a technical report resulting from the Alameda
County Department of Environmental Health's Enforcement Panel
meeting of July 27, 1993.

Dear Ms. Young, Mr. & Mrs. Graffenstatte:

A condition of soil and groundwater pollution exists from
Underground Storage Tank releases on the property located at 186
E. Lewelling Blvd., San Lorenzo, California. A pre-enforcement
Review Panel meeting was held on July 27, 1993 at the Offices of
Alameda County Health Department (ACHD) attended by Mr. Richard
Hiett from my Staff, Mr. James Jaffe and Mr. Allan Payne
representing Mr. and Mrs. Graffenstatte, and Ms. young and Mr.
Francis Lan.

Based on extensive presentations by the parties, documents, and
legal arguments received on behalf of Mr. and Mrs. Graffenstatte
during the Panel meeting, Ms. Young, Mr. and Mrs. Graffenstatte
have been designated as a "Responsible Party" under section 2720,
Article 11, Chapter 16, Division 3, Title 23 of the California Code
of Regulations. The Section states that a "Responsible Party" is
"any person who owned or operated the Underground Storage Tank
immediately before the discontinuation of its use", and "any owner
of property where an unauthorized release of a hazardous substance
from an Underground Storage Tank has occurred".

Pursuant to the Regional Board's authority under section 13267 (b)
of the California Water Code, you are both hereby, as "Responsible
Parties", required to cooperate and conduct soil and groundwater
investigations at the above site within 30 days of the date of this
letter. You shall jointly either submit a Work Plan to the ACHD
addressing the required soil and groundwater investigations at the
site, or implement the Work Plan prepared by Ms. Young's
consultants in March 1991, and approved in a June 6, 1991 letter
from the County with the condition that a total of three monitoring
wells be installed at the site.

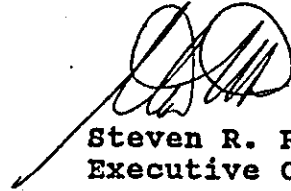
I am hereby transmitting this request for a technical report to
ACHD for service and continued case handling. Please be aware that
failure to submit or late submittal may result in fines of up to
\$1000 per day of delinquency. Response to this technical report

Page 2 of 2

request should be sent to the attention of Ms. Juliet Shin at the ACHD. Please inform Ms. Shin at least four working days in advance of all field activities so that she may arrange to be on site.

If you have any questions or comments regarding the contents of this letter please contact Juliet Shin from ACHD at (510) 271 - 4530.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Ritchie", with a long horizontal stroke extending to the left.

Steven R. Ritchie,
Executive Officer.

CC: Gil Jensen, ACDA, 7677 Oakport Street, Suite 400, Oakland 94621.

Julie Shin, ACHD, 80 Swan Way, Suite 200, Oakland 94621

Mr. James L. Jaffe, Jaffe, Truitanich, Scatena & Blum, 250 Montgomery st., Suite 900, San Francisco 94104.

Tested By: Paul
 Date of Test: 7-10-81
 Tanks: 1
 Street Number, Corner, City and State: 183 Lewelling St. Loser
 Customers Name or Company Ident.: Graco Petro
 Form No. 69-1000
TANK-TEST

7 OPERATOR Graco Petro
 Name _____ Address - Same for Mailing _____ YES NO Telephone _____

8 OWNER (If not Operator) _____
 Name _____ Address _____ Representative _____ Telephone _____

9 REASON FOR TEST (Explain Fully) _____

10 WHO REQUESTED TEST AND WHEN
 Name Dale Seize Title _____ Company or Affiliation _____ Date _____
 Address _____ Telephone _____

REMARKS _____
 By _____
 Signature _____

11 TANK(S) INVOLVED	Tank Ident.	Capacity	Brand or Supplier	Grade	Approx. A
	<u>middle</u>	<u>4000</u>	<u>Super</u>	<u>Super</u>	

12 INSTALLATION DATA	Location	Cover	Fills	Vents	Syphons	Pumps
	<u>Side</u>	<u>A.C.</u>	<u>4"</u> Size(s) & Type(s) or Make(s)	<u>2"</u> Size? Manifoldd?	<u>None</u> What Tanks?	<u>SUC.</u> Suction, Remot.

13 PRODUCT SOURCE
 Company _____ Person or Position to Contact _____ Location _____ Telephone _____

14 FILL-UP PAYMENT
 Usual Credit Terms Arranged or Approved by _____
 C. O. D. Title _____
 Other _____ Location _____ Telephone _____

15 MECHANIC OR CONTRACTOR EAGrow + Paradise
 Name _____ Address _____ Telephone _____ Assigned By _____

REMARKS ON ITEMS 11 THRU 15 _____
 By _____
 Signature _____

16 TEST RESULTS

Tests were made on the above tank systems in accordance with test procedures prescribed for Kent-Mc Tank Systems Tightness Tester Model 1000 as detailed on attached test charts with result: as follow

Tank Ident.	Tight	Leakage Indicated	Date Test
<u>Middle</u>	<u>Yes</u>	<u>+.006</u>	<u>7-10-81</u>

17 CERTIFICATION
 This is to certify that these tank systems were tested on the date(s) shown. Those indicated as "Tight" meet the criteria established by the National Fire Protection Association Pamphlet 329.
 Date 7-10-81 Signature _____

18 TANK Middle Identify by # or Position PRODUCT Super Brand and Grade CAPACITY 4,000 Gallons LAST DELIVERY 7-10-81 Date

19 PRODUCT QUANTITY GALLONS

STICK READINGS BEFORE FILL-UP Water Bottom _____ to 1/8 in. gallons Product Inventory _____ to 1/8 in.

FILL-UP DELIVERY (Take Temperature on Truck) (Meter Off)

ADDED TO FILL TESTER TO 12" (Fill Hoses - Prime Pump)

TOTAL QUANTITY IN SYSTEM

20 TEMPERATURE

INVENTORY _____ °F

ON TRUCK _____ °F

IN FULL TANK _____ °F

CHANGE TO EXPECT DURING TEST _____ °F

+ or -

21 MEASUREMENTS

TANK LENGTH _____ "

To Compute Length of Discharge Tube

TANK DIAMETER _____ "

TANK TOP TO GRADE _____ "

ELBOW FLANGE ABOVE GRADE _____ "

NEEDED TO CONNECT 21 "

+ or - 6"

LENGTH TO ASSEMBLE _____ "

22 TEMPERATURE / VOLUME FACTOR (a) TO TEST THIS TANK

23 THERMAL-SENSOR READING AFTER CIRCULATION 195.30 82 °F

Letter Units Nearest

24 UNITS PER °F IN RANGE OF EXPECTED CHANGE 308 Units

25 CALCULATIONS

$\frac{4,000}{\text{Total Quantity (19)}} \times \frac{.0006}{\text{Coefficient of Expansion for Involved Product}} = \frac{2.4}{\text{Volume Change in this System per } ^\circ\text{F}}$ Gallons

26 $\frac{2.4}{\text{Volume Change per } ^\circ\text{F (25)}} \times \frac{308}{\text{Units per } ^\circ\text{F in Test Range (24)}} = \frac{.008}{\text{Volume Change per Unit Compute to 3 Dec. Places}}$ Gallons

This Test Factor (a)

27 LOG OF TEST PROCEDURES

28 Date	29 Record Each Step of Setting Up and Running Test	30 Reading No.
Time		
8:30	Set up unit	
9:00	Brought it to 42" high	1
9:15	42"	2
9:30	42"	3
9:45	42"	4
10:00	42"	5
10:15	42"	1

31 VOLUME MEASUREMENTS

32 Stand Pipe Level		33 Product Added - Drained + (v)
Before	After	
2.00	.65	7.35
1.00	.72	2.8
1.00	.85	.15
.85	.76	.09
.76	.69	.07
.69	.64	.05

34 TEMPERATURE CHANGES

35 Thermal-Sensor Reading	36 Change Higher + Lower - (c)	37 Expansion or Contraction This Reading (c) x (a) = (t)
19700		
19702	+2	+016
19718	+16	+128
19720	+2	+016
19711	+11	+077

38 NET VOLUME CHANGES

39 This Reading Volume (v) Adjusted for (t) (v) ± (t)	40 Accumulate
+166	+446
+218	+664
+086	+750

USING KENT-MOORE CORPORATION TANK TIGHTNESS TESTER MODEL 1000

Copyright © Kent-Moore Corporation

(Please Print)

Tested By: *[Signature]*
 Result: *7-9-81*
 Date of Test: *7-9-81*
 Tanks: *1*
 Street Number, Corner, City and State: *183 Leeding S. Lopez-ro*
 Customers Name or Company Ident.: *GLACO*
 Form No. 68-1000

7 OPERATOR *Graco Petio*
 Name Address - Some for Mailing YES NO Telephone

8 OWNER (If not Operator)
 Name Address Representative Telephone

9 REASON FOR TEST (Explain Fully)

10 WHO REQUESTED TEST AND WHEN
 Name *Dale Seise* Title Company or Affiliation Date
 Address Telephone

REMARKS

By *[Signature]*
 Signature

Tank Ident.	Capacity	Brand or Supplier	Grade	Approx. Age
<i>West</i>	<i>4000</i>		<i>ReB.</i>	

Location	Cover	Fills	Vents	Syphons	Pumps
<i>Side</i> <small>Driveway, Rear, etc.</small>	<i>A.C.</i> <small>Concrete, Earth, etc.</small>	<i>4"</i> <small>Size(s) & Type(s) or Make(s)</small>	<i>2"</i> <small>Size? Manifolded?</small>	<i>None</i> <small>What Tanks?</small>	<i>Suc.</i> <small>Suction, Remote.</small>

13 PRODUCT SOURCE
 Company Person or Position to Contact Location Telephone

14 FILL UP PAYMENT
 Usual Credit Terms Arranged or Approved by _____
 C. O. D. Title _____
 Other _____ Location _____ Telephone _____

15 MECHANIC OR CONTRACTOR
ENGR & Apprentis *CO.*
 Name Address Telephone Assigned By

REMARKS ON ITEMS 11 THRU 15

By *[Signature]*
 Signature

16 TEST RESULTS

Tests were made on the above tank systems in accordance with test procedures prescribed for Kent-Moore Tank Systems Tightness Tester Model 1000 as detailed on attached test charts with results as follows

Tank Ident.	Tight	Leakage Indicated	Date Tested
<i>West</i>	<i>yes</i>	<i>r. o. l. e</i>	<i>7-9-81</i>

17 CERTIFICATION

This is to certify that these tank systems were tested on the date(s) shown. Those indicated as "Tight" meet the criteria established by the National Fire Protection Association, NFPA 329.

Date *7-9-81* Signature *[Signature]*

18 TANK West Identify by # or Position
 PRODUCT Pet Brand and Grade
 CAPACITY 4,000 Gallons
 LAST DELIVERY 7-9-81 Date

19 PRODUCT QUANTITY
 STICK READINGS BEFORE FILL-UP Water Bottom _____ to 1/8 in. gallons Product Inventory _____ to 1/8 in. gallons
 FILL-UP DELIVERY (Take Temperature on Truck) (Meter Off) _____
 ADDED TO FILL TESTER TO 12" (Fill Hoses - Prime Pump) _____
 TOTAL QUANTITY IN SYSTEM _____

20 TEMPERATURE
 INVENTORY _____ °F
 ON TRUCK _____ °F
 IN FULL TANK _____ °F
 CHANGE TO EXPECT DURING TEST _____ °F
 † or -

21 MEASUREMENTS
 TANK LENGTH _____"
 To Compute Length of Discharge Tube
 TANK DIAMETER _____"
 TANK TOP TO GRADE _____"
 ELBOW FLANGE ABOVE GRADE _____"
 NEEDED TO CONNECT 21"
 † or - 6"
 LENGTH TO ASSEMBLE _____"

22 TEMPERATURE / VOLUME FACTOR (a) TO TEST THIS TANK
 23 THERMAL-SENSOR READING AFTER CIRCULATION 20480 85°F
 Letter Units Nearest
 24 UNITS PER °F IN RANGE OF EXPECTED CHANGE 309 Units
 25 $\frac{4,000}{\text{Total Quantity (19)}} \times \frac{1,0006}{\text{Coefficient of Expansion for Involved Product}} = \frac{2.4}{\text{Volume Change in this System per } ^\circ\text{F}}$ Gallons
 26 $\frac{2.4}{\text{Volume Change per } ^\circ\text{F (25)}} = \frac{309}{\text{Units per } ^\circ\text{F in Test Range (24)}} = \frac{.008}{\text{Volume Change per Unit Compute to 3 Dec. Places}}$ Gallons { This Test Fact. (a)

27 LOG OF TEST PROCEDURES

28 Date	29 Record Each Step of Setting Up and Running Test	30 Reading No.
Time		
1:00	Set up Unit	
1:30	Brought to 42"	1
1:45	42"	2
2:00	42"	3
2:15	42"	4
2:30	42"	5
9:45	47"	6

31 VOLUME MEASUREMENTS

32 Stand Pipe Level		33 Product Added - Drained + (v)
Before	After	
2.00	.46	1.54
1.00	.48	.52
1.00	.74	.26
1.00	.75	.25
1.00	.75	.25
1.00	.80	.20

34 TEMPERATURE CHANGES

35 Thermal-Sensor Reading	36 Change Higher + Lower - (c)	37 Expansion or Contraction This Reading (c) x (a) = (t)
20474		
20458	-16	.128
20452	-6	.048
20440	-12	.096
	-10	.080

38 NET VOLUME CHANGES

39 This Reading Volume (v) Adjusted for (t) (v) ± (t)	40 Accumulate
.132	+6.52
.202	+8.54
.154	+1.008
.110	+1.170



9

HUMMER

ENVIRONMENTAL SERVICES, INC.

115 DEWALT AVENUE, NORTHWEST
SUITE 400
CANTON, OH 44702
800-523-4370 216-453-1800
Outside Ohio

INVOICE DATE 05/30/86

INVOICE NO. 005865

CUSTOMER NO. GRAFCO

INVOICE

COPY 1

BILL TO
 ALLEN: CARL GRAFFENSTATTE
 GRAFCO PETROLEUM
 P.O. BOX 1715
 SAN LEANDRO, CA
 94777

TEST LOCATION:

GRAFCO PETROLEUM
 186 S. LEVELLING AVE. / OAKLAND
 SAN LEANDRO, CA

PAGE

LOCATION	CUSTOMER ORDER NO.	VAN ID	TERMS			SALES ID	OUR ORDER NO.
0727/86 S. LEAND		PE LL-17	NET 10 DAYS			052008	000104
ITEM NO./ WORK TYPE	WORK DESCRIPTION	UNIT	QUANTITY			UNIT PRICE	EXTENDED PRICE
			ORDERED	BACKORDERED	COMPLETED		
825	LEAK LOCATOR TEST	TEST	2	0	2	525.000	1250.00
800	OPW 633-TC-4" X 4" COAXIAL FI LL ADAPTOR	PART	1	0	1	53.000	53.00
855	OPW H-4150-M 4" GASKETS (TOP SEAL)	PART	6	0	6	2.000	12.00
						Sales Total	1325.00
						Freights	0.00
						Misc. Charges	0.00
						Sales Taxes	0.00
						TOTAL	1325.00

leak lokator

SUMMARY OF TEST RESULTS

REFERRED BY:

LOCATION: Shafco Petroleum
186 E. Jewelling Ave / Ashland
San Diego, CA

DATE: 6-27-86
 COPIES TO: Carl Shaffer

CUSTOMER: Shafco Petroleum

LL-17
 RB

SYSTEM	TANK SIZE		WATER INCHES	PUMP DISCHARGE PRESSURE TEST	LEAK LOKATOR RESULTS*			COMMENTS - RECOMMENDATIONS
	GALLONS	DIAMETER INCHES			LEVEL INCHES	GPH	CONCLUSION	
<u>Super</u>	<u>4000</u>	<u>76"</u>	<u>0"</u>	<u>see note</u>	<u>146"</u>	<u>-0.021</u>	<u>Tight</u>	
<u>R/L</u>	<u>4000</u>	<u>76"</u>	<u>0"</u>	<u>see note</u>	<u>135"</u>	<u>+0.016</u>	<u>Tight</u>	

ADDITIONAL COMMENTS: No pressure testing could be done due to electricity on site.

OTHER CHARGES: (i.e., pumpovers, overtime, parts, etc.) Parts Replaced: ① 6337C coaxial adaptor 63-
② 4" gaskets 2ea

*LEVEL - INCHES FROM TANK BOTTOM TO TEST LEVEL
 GPH - ABSOLUTE LEAK RATE (MEASURED LEAK RATE - TEMPERATURE COMPENSATION) IN GALLONS PER HOUR
 CONCLUSION - NFPA 329 STANDARD OF +0.05 GPH IS USED TO CERTIFY TIGHTNESS.

Requires Salesman Approval: _____
 Technical Review: _____

PRELIMINARY REPORT

SEE DEPT. 1031-1032

INVESTIGATIVE PROCEDURES FOR LEAK LOKATOR RESULTS

NUMBER
ENVIRONMENTAL SERVICES, INC.
115 Dewalt Ave. N.W., Suite 400
Canton, Ohio 44702
PHONE: 800-623-4370
IN OHIO: 218-463-1800

All results indicating a leak conclusion should be investigated.

RESULTS			CONCLUSION	INVESTIGATIVE PROCEDURE
Full System Tank & Piping	Tank Top 6"-10" above tank top	In Tank* 6"-10" below tank top		
1 Leak Leak Leak	Tight ... Leak	... Tight Tight	Piping and/or tank top leak	<ul style="list-style-type: none"> a. Conduct hydrostatic pressure test on product lines <ul style="list-style-type: none"> • If tight, proceed to b • If leak, repair and retest at full system. b. Uncover the entire tank top (all fittings) and piping — start at most likely sources — fills, vapor recovery, gauges, vents, pumps (Don't forget the suction side) Be observant as to whether or not loose fittings, etc. are inadvertently repaired during investigation. c. If no piping leak is found, retest the system while still uncovered. If a piping leak is found, repair and retest the system while still uncovered (this is important to assure that all leaks have been corrected). d. If full system retest still reveals a leak and no leak in piping can be observed, it is safe to assume there is a tank leak that is being covered up by geology or some other hydraulic phenomenon.
2 Leak Leak	... Leak	... ...	Full system leak, however, tank top and/or in tank test unable to be performed due to inaccessibility to low level (i.e., bent riser, too small riser, or time restraints on site).	<ul style="list-style-type: none"> a. If due to inaccessibility. <ul style="list-style-type: none"> • Uncover and repair or replace riser. • Retest at full system and lower level if necessary. b. If due to time restraints — set up retest for in tank
3 Leak Leak Leak	Innage ... Innage	... Innage Innage	Water In Tank (Two Possibilities) <ul style="list-style-type: none"> a. There is a hole below the water table and water is leaking in at low level and gasoline is leaking out at full system. b. Water is entering through hole in piping or tank top. 	<ul style="list-style-type: none"> a. Repair/Replace system b. Follow procedure outlined in #4.
4 Leak Leak Leak	Innage ... Innage	... Innage Innage	No Water in Tank <ul style="list-style-type: none"> • There is a hole on the tank top or in piping which results in product leaking out at full system and the same product leaking back in at low level test. 	<ul style="list-style-type: none"> a. Conduct hydrostatic pressure test on product lines <ul style="list-style-type: none"> • If tight, proceed to b • If leak, repair and retest at full system. b. Uncover and investigate piping and tank top and follow procedure outlined in 1a. c. If no leak is found, retest while still uncovered. If leak is found, repair and retest the system while still uncovered (this is important to assure that all leaks have been corrected). d. If full system retest still reveals a leak and no leak in piping can be observed, it is safe to assume there is a tank leak that is being covered up by geology or some other hydraulic phenomenon.
5 Leak Leak	Leak ...	Leak Leak	Tank and/or Piping Leak	<ul style="list-style-type: none"> a. Repair/replace system.

* The conclusion is based on the assumption that the test was conducted completely below tank top. Test level and tank configuration should be thoroughly investigated before corrective action is taken (where vapor recovery is present - watch for ball float interference).

NOTE: In tank results are not certified as meeting the NFPA 329 Criterion

D

WE HAVE READ AND UNDERSTAND THE TANK AND INSPECTION REPORT ATTACHED TO THIS LETTER. WE ACCEPT ~~THE~~ ^{sale} TANKS IN THEIR PRESENT CONDITION. WE UNDERSTAND THAT THE ~~LEASE~~ ^{sale} IMPOSES OBLIGATION ON US WITH RESPECT TO THE TANKS. WE FURTHER UNDERSTAND GRAFFENSTATTE CORPORATION, TRACE AND LEIGH GRAFFENSTATTE, AND CARL AND DONNA GRAFFENSTATTE HAVE NO OBLIGATION WITH RESPECT TO SUCH TANKS.

8-21-86

Wm J. Young

E

F

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

FRESNO
2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1752
FRESNO, CA 93717-1752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8171

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES
2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

September 13, 1993

PLEASE REPLY TO: SAN FRANCISCO

Office of the Chief Counsel
California Regional Water Quality Control Board,
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612

Re: 186 E. Lewelling Blvd., San Lorenzo, CA
File 2198.17 (UST)
RB File No.: 01-1041

Dear Sir or Madam:

This firm represents Mr. and Mrs. Carl Graffenstatte (the "Graffenstattes") regarding the above referenced matter. Your agency issued an order to the Graffenstattes on August 17, 1993, see enclosures. This office has filed petitions for a stay and review of this order with the State Water Quality Control Board ("State Board"). See enclosures.

The Graffenstattes hereby request that your agency provide the names and addresses of all known interested parties to this office and to the State Board. The Graffenstattes further request that your agency prepare its record in this matter, including any transcript or tape recording of the Regional Board's actions in this matter.

Finally, it is our understanding that the Regional Board did not hold a hearing in this matter. If the Regional Board would agree to grant a stay and review of the order the Graffenstattes would withdraw their petitions to the State Board. If you have any questions or wish to discuss this matter please contact me.

Sincerely,

JAFFE, TRUTANICH, SCATENA & BLUM



R. ALLAN PAYNE

cc: Mr. & Mrs. Carl Graffenstatte

Enclosures: Pettitions for Stay and Review

310-0687/cor/RWQCB.rap

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

FRESNO
2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1752
FRESNO, CA 93717-1752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8171

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES
2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

PLEASE REPLY TO: SAN FRANCISCO

VIA FEDERAL EXPRESS

September 14, 1993

California State Water Quality Control Board
Office of the Chief Counsel
901 P Street
Sacramento, CA 95812-0100

PETITION TO THE CALIFORNIA STATE WATER QUALITY CONTROL BOARD
FOR STAY OF AN ORDER OF THE CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION

Petitioners:

Mr. & Mrs. Carl Graffenstatte
P.O. Box 97397
Tacoma Washington 98497

Represented by:

James L. Jaffe, Esq.
R. Allan Payne, Esq.
Jaffe, Trutanich, Scatena & Blum
A Professional Law Corporation
250 Montgomery Street, Suite 900
San Francisco, CA 94104
(415) 397-9006

This Petition seeks a stay of an Order as it relates to Mr. & Mrs. Carl Graffenstatte (the "Graffenstattes") that was issued on August 17, 1993 by the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"). This Order requires the Graffenstattes, as alleged "Responsible Parties," to cooperate with an admitted responsible party, Ms. Wai Yee Wong Young, in conducting a soil and groundwater investigation at 186 E. Lewelling Blvd., San Lorenzo, California. This investigation must be pursuant to or consistent with a work plan approved by the Regional Board which calls for the installation of three monitoring wells. A copy of the Order is presented in Exhibit A.

Graffenstatte -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 2

Pursuant to California Water Code § 13321, Mr. & Mrs. Carl Graffenstatte hereby petition the State Water Quality Control Board ("State Board") for a stay of the above-referenced Order pending the outcome of the accompanying "Petition for Review of the Regional Board's Order." In accordance with California Code of Regulations, Title 23 § 2053, the Graffenstattes allege the following:

I. THE GRAFFENSTATTES WILL SUFFER SUBSTANTIAL HARM IF THE STAY IS NOT GRANTED.

The Regional Board's Order requires the Graffenstattes to "cooperate" with Ms. Young in conducting the investigation. Ms. Young claims to have no funds at the present time to assist in the investigation. Therefore, most, if not all, the costs to implement the work plan may have to be provided by the Graffenstattes. Furthermore, Ms. Young's lack of funds will mean that if the Graffenstattes are later determined not to be a responsible party by the State Board, the funds expended by them will be difficult if not impossible to recover.

Ms. Young obtained a price estimate to conduct an earlier version of the work plan where only one monitoring well was to be installed. This estimate placed the price of such an investigation at over \$19,000.00. The Graffenstattes are presently requesting estimates from consultants for the approved work plan with its required three monitoring wells.

Under § 13268 of the Water Code, failure to comply with implementing the work plan will expose the Graffenstattes to criminal liability as misdemeanants and fines of up to \$1,000.00 per day. Therefore, if the stay is not granted, the Graffenstattes will be forced to pay for an expensive investigation for which they are not liable (see no. 3 below) and for which they may never be reimbursed.

II. THERE WILL BE NO SUBSTANTIAL HARM TO OTHER INTERESTED PARTIES OR TO THE PUBLIC INTEREST IF THE STAY IS GRANTED.

Initially, there is no evidence that the alleged contamination poses any imminent or substantial danger to the public health or welfare. Nor has any public agency made such an allegation. In fact, the alleged soil contamination at the site in question was first discovered when three underground storage tanks (USTs) were removed from the site in early September, 1990. It was almost two and a half years later on January 28, 1993 that the lead agency, the Alameda County Department of Environmental Health, Hazardous Materials Division, sent the Graffenstattes a letter definitively

Graffenstatte -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 3

asserting their potential liability. Furthermore, it was almost three years since the discovery of the alleged contamination before the Regional Board made its determination that the Graffenstattes were "responsible parties" and issued their disputed order.

Given the extended time period the Regional Board and local agency has taken to act in this case, they clearly cannot view this as an important public concern. It cannot be said that the public interest will be harmed by granting a short stay of the order while the State Board considers the matter. Any harm that Ms. Young's interests may suffer can be eliminated if the granted stay prevented the enforcement of the Regional Board's Order against all parties while the State Board considers the matter.

III. SUBSTANTIAL QUESTIONS OF LAW AND FACT REGARDING THIS DISPUTE REMAIN.

The accompanying "Petition for Review of the Regional Board's Order" raises several substantial issues of law and fact not resolved by the Regional Board's Order. These issues pertain to whether or not the Graffenstattes are "responsible parties" with respect to the contamination allegedly present at the site in question. Furthermore, the Graffenstattes have not been granted a fair and adequate hearing as required by the due process guarantees of the state and federal constitution before being deprived of their property. The following is a brief outline of those issues; please refer to the accompanying "Petition for Review of the Regional Board's Order" and Exhibit B - the supporting Affidavit of James L. Jaffe - for a summary of the facts in this dispute.

Chapters 6.7 and 6.75 (the Barry Keene Underground Storage Tank Clean-up Trust Fund Act of 1989, hereinafter the "Keene Act") of the California Health and Safety Code (§§ 25280 through 25299.82) provide the state statutory framework for the regulation of underground tanks in general and those holding petroleum products in particular. The federal regulation of underground storage tanks is found in 42 U.S.C. § 6991 et seq. (hereinafter the "federal act"). Article 4 of the Keene Act (§ 25299.37) requires "owners, operators or other responsible parties" to take corrective actions whenever issued an order by a local agency.

The Keene Act defines owner as "the owner of an underground storage tank" and operator as "any person in control of, or having responsibility for, the daily operations of an underground storage tank." Use of the definite article "the" in the definition of "owner" denotes that "owner" is a single entity - the present owner of the underground storage tank. The Graffenstattes are not the present owners and there is no evidence to suggest that they are in

Graffenstette -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 4

daily control of the operation of the underground storage tanks. It is clear that the Graffenstettes are not the "owner or operator" of the underground storage tanks. The Graffenstettes can only be required to respond to orders issue with respect to these underground storage tanks if they are found to be a "responsible party" as the term is used in § 25299.37.

Below, we present four independent reasons, each sufficient in itself, to conclude that the Graffenstettes are not a "responsible party." These include:

- 1) The statutory use of "responsible party" cannot yield a meaning different than that of "owner" or "operator;"
- 2) If the legislature intended "responsible party" to have a separate meaning, it is clear that the federal definition under CERCLA should be used;
- 3) The state regulation defining "responsible party" is not consistent with the authorizing legislation and is hence invalid and;
- 4) Even assuming the validity of the state regulation, the Graffenstettes do not fall within its definition of "responsible party."

Under each of these headings, the result is the same, the Graffenstettes are not responsible parties.

- 1) The statutory use of "responsible party" cannot yield a meaning different than that of "owner" or "operator."

While the Keene Act does define "owner" and "operator" it does not define "responsible parties." Nor is it defined in Chapter 6.7 or in the federal act. In fact, a close examination of the Keene Act reveals the legislature could not have intended "responsible party" to have a definition separate or different than that of "owner" or "operator."

As stated above, the term "owner, operator or other responsible party" is used in § 25299.37 to describe persons who must take corrective action in response local agency orders. Under the rules of statutory construction, "[w]here general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated." 58 Cal Jur 3d, 525. In our case, "owner" and "operator" enumerates a class of persons with a present possessory interest in the

Graffenstatte -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 5

property and an ability to effect the operation of the tanks. The general term "other responsible parties" must be interpreted to mean persons of that same general class. The Graffenstattees do not have a present possessory interest in the property and could not affect the operation of the tanks; the Graffenstattees are not a "responsible party" within the statutory definition.

Furthermore, § 25299.53 authorizes local agencies and Regional Boards to take corrective action themselves only when the "owner or operator" not when the "owner, operator or other responsible parties" fail to do so. Also, under § 25299.70 cleanup, oversight and corrective action costs can only be recovered from "the owner or operator" not "the owner, operator or other responsible parties." Because the Keene Act imposes strict liability, due process requires that the legislature clearly and with particularity define who is liable; they have done so with clarity and particularity and that definition does not include the Graffenstattees.

If "other responsible parties" has a definition different from that of "owner" or "operator," as the Regional Board has claimed (see below), then suit cannot be brought against such parties to force compliance with such orders, nor can they be held liable for agency response costs, corrective action or oversight fees. If this is the State Board's position, please inform us, otherwise, it is clear that "other responsible parties" does not have a separate and different definition and must simply be a reiteration of "owner or operator." Therefore, as the Graffenstattees are not an owner or operator within the statutory definition, they are not a responsible party.

2) If the legislature intended "responsible party" to have a separate meaning, it is clear that the federal definition under CERCLA should be used.

If the legislature did have a separate definition in mind when they employed the term "responsible party" in the statute, it is only reasonable that this important term of art has been defined elsewhere in the statutes. In fact, in the very next Chapter of the Health and Safety Code (Chapter 6.8, California Superfund) § 25323.5 adopts the federal government CERCLA definition of parties liable found in 42 U.S.C. § 9607(a) as its definition for "responsible party".

Finally, there is further evidence of the intended definition of "responsible parties." The state legislature appears to have borrowed the use of the words "owners, operators or other responsible parties" for Health and Safety Code § 25299.37 directly

Graffenstatte -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 6

from CERCLA's use of the wording "owner or operator or other responsible person" found in 42 U.S.C. § 9607(c)(1) and (2).

Basically, for our purposes, this federal definition includes present owners and operators and past owners and operators at the time of disposal (release). Under this definition, the Graffenstatte's are not a responsible party because they are not a present owner and the only direct evidence (the tank tightness tests) demonstrate that no releases occurred under their past ownership. The Regional Board may feel that there is evidence to support the supposition that a release occurred during the Graffenstatte's ownership. However, in any civil action to enforce any Regional Board orders against the Graffenstatte's, the state must prove by the preponderance of the evidence - that it is more likely than not - that the Graffenstatte's are a responsible party because a release occurred during their ownership.

No evidence has been produced to date to support such a finding. As no releases occurred during their ownership, the Graffenstatte's are not a "responsible party."

3) The state regulation defining "responsible party" is not consistent with the authorizing legislation and is hence invalid.

The Regional Board has cited Title 23 § 2720 of the California Code of Regulations (hereinafter 23 CCR § 2720) as its source of authority for holding the Graffenstatte's as a responsible party. 23 CCR § 2720 defines a "responsible party" as one or more of the following:

(1) Any person who owns or operates an underground storage tank used for the storage of any hazardous substance;

(2) In the case of any underground storage tank no longer in use, any person who owned or operated the underground storage tank immediately before the discontinuation of its use;

(3) Any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred; and

(4) Any person who had or has control over a (sic) underground storage tank at the time of or following an unauthorized release of a hazardous substance.

The State Board adopted 23 CCR § 2720 under authority of the

Graffenstatte -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 7

Health and Safety Code § 25299.77 which requires the Board to implement regulations consistent with Chapter 6.7, the Keene Act and requirements for state programs implementing the federal act. As shown above, "responsible party" cannot have a definition different from that of the statutory definitions of "owner" or "operator." While 23 CCR § 2720(1) is likely consistent with the Keene Act, the Graffenstattes are not an "owner" or "operator." It is debatable whether or not 23 CCR § 2720 (3) and (4) above fall within the statutory definition of "owner" or "operator" and even if they do, no releases occurred during the Graffenstattes' ownership. Finally, 23 CCR § 2720 (2) does not fall within the statutory definition of "owner" or "operator."

Furthermore, 23 CCR § 2720(2) may be a misapplication of the federal act's definition of "owner." It appears that the State Board borrowed 23 CCR § 2720(2) from the definition of "owner" in the federal act found in 42 U.S.C. § 6991(3). Section 6991(3) defines two types of owners depending on whether or not the UST in question was in use on November 8, 1984. If the tank was not in use on November 8, 1984, the definition found in § 6991(3)(B) applies, and defines "owner" as a person who owned the property "immediately before the discontinuation of its use." If, on the other hand, the tank was in use on November 8, 1984, the definition found in § 6991(3)(A) applies which defines an "owner" as "any person who owns an underground storage tank."

This federal definition apportions liability for tanks no longer in use based on the effective date of the federal act. Those owners who discontinued use of their tanks before the effective date of the act remain solely liable for past releases from the tanks while the present owners of tanks in use after the effective date are solely liable for all releases from their tanks. The board's 23 CCR § 2720 (2) definition adds a whole new class of responsible parties not found in the federal or state acts - all past owners who discontinued use of their tanks.

Fear of future liability will encourage tank owners to keep their tanks in operation that might otherwise be taken out of service. By keeping their tanks in operation until after they have sold the tanks, such owners can escape 23 CCR § 2720 (2) classification as a responsible party but at the cost of placing the environment at greater risk. Arbitrarily creating such a new class of responsible parties and increasing the risk to the environment is not "consistent with" the Keene Act or the federal act. The Graffenstattes cannot be found to be a responsible party under an invalid state regulation.

4) Even assuming the validity of the state regulation, The

Graffenstatte -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 8

Graffenstattes do not fall within its definition of "responsible party."

Even assuming that 23 CCR § 2720(2) is valid, the Graffenstattes are still not a "responsible party" under that provision. Before closure, abandonment or discontinuing use of an underground storage tank is allowed, § 25298 of the Health and Safety Code requires certain acts and procedures be undertaken. Even if use of the underground storage tank is temporarily discontinued, certain requirements must still be met.

Under state law and regulations, "use" is a term of art. Whether or not a tank is in "use" is not dependant on what is or is not in the tank but what permits have been filed. Even though she knew she had obligations with respect to the tank, Ms. Young never undertook any of the required acts or procedures to permanently or temporarily discontinue the use of the tanks. It was not until she had them removed from the ground some four years after the Graffenstattes' ownership ceased, that her ownership of the USTs was in compliance with the law. Therefore the Graffenstattes were not the owner of the underground storage tanks immediately before the discontinuation of their use and therefore are not a responsible party under 23 CCR § 2720(2).

When if the Graffenstattes are validly named responsible parties, the Order is inappropriate because the Regional Board has refused to name other potentially responsible parties. During the Panel Review Meeting, the Panel refused to investigate or name other potentially responsible parties. In particular, the Panel has refused to name a long-time lessee of the subject property, Mobil Oil. When such a readily identifiable, clearly responsible party is not named in such an order, it unfairly burdens the named parties and is an abuse of discretion.

Finally, the due process of law guarantees of the state and federal constitutions require notice and a hearing before an impartial trier of fact that before one can be deprived of property. The Regional Board did not hold a hearing before issuing its order to the Graffenstattes. Instead, its executive officer issued the order based on the findings of a "Panel Review Meeting." In fact, the only hearing granted the Graffenstattes was this Panel Review Meeting ("Panel") convened by the Alameda County Hazardous Materials Division ("Hazardous Division") with one staff member of the Regional Board present.

Notice of this Panel was given in a letter from Thomas Peacock to the Graffenstattes dated July 13, 1993. See Exhibit C. This notice did not state who would compose the Panel, what evidence

Graffenstatte -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 9

could be presented, whether witnesses could testify or be cross-examined nor what, if any, rules or methods of fact finding would apply.

This Panel was an informal ad hoc committee without statutory basis consisting of three employees of the Hazardous Division, a Deputy District Attorney and a representative from the Regional Board's staff. This body was not an impartial trier of fact. Juliet Shin, the enforcement officer on the case and her supervisor, Thomas Peacock, served as members of the Panel. It was Juliet Shin who first asserted that the Graffenstattes were responsible parties.

The Panel was chaired by Gil Jensen, the Alameda County Deputy District Attorney in charge of enforcement in these cases. It is also our understanding that the three employees of the Hazardous Division directly receive portions of their salary from the oversight fees the Hazardous Division collects from responsible parties. It was in their personal financial interest to designate solvent individuals as responsible parties.

At the conclusion of the Panel meeting, the Panel stated that it would release its findings in 30 days. However, by August 17, 21 days after the Panel, the Regional Board had issued its order. The Regional Board claims to have relied on the findings of the Panel. Therefore, it can be surmised that in a very short period of time, the Panel had made its decision, reported it to the Regional Board, and the Regional Board made its decision and issued the order. To allow all these events to happen in 21 days, the Panel must have made its decision very quickly, likely before the meeting occurred. This Panel was not an impartial trier of fact, but convened specifically to find the Graffenstattes responsible parties.

The above outline raises many substantial questions of law and fact not answered by the Regional Board's order. An Affidavit of the Graffenstattes' Attorney for this matter, Mr. James L. Jaffe, in support of this petition is presented in Exhibit B.

Dated: September 14, 1993

JAFFE, TRUTANICH, SCATENA & BLUM

BY: R. Allan Payne
R. ALLAN PAYNE, Attorneys for
Mr. & Mrs Carl Graffenstatte

A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

2101 WEBSTER STREET, SUITE 500

OAKLAND, CA 94612

(510) 286-1255



AUG 18 1993

Ms. Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

August 17, 1993
File 2198.17 (UST)
RB File No.: 01-1041

Mr. & Mrs. Graffenstatte
P. O. Box 97397
Tacoma, Washington 98497

Re: Official designation of Responsible Parties, and request for
submittal of a technical report resulting from the Alameda
County Department of Environmental Health's Enforcement Panel
meeting of July 27, 1993.

Dear Ms. Young, Mr. & Mrs. Graffenstatte:

A condition of soil and groundwater pollution exists from
Underground Storage Tank releases on the property located at 186
E. Lewelling Blvd., San Lorenzo, California. A pre-enforcement
Review Panel meeting was held on July 27, 1993 at the Offices of
Alameda County Health Department (ACHD) attended by Mr. Richard
Hiett from my Staff, Mr. James Jaffe and Mr. Allan Payne
representing Mr. and Mrs. Graffenstatte, and Ms. young and Mr.
Francis Lan.

Based on extensive presentations by the parties, documents, and
legal arguments received on behalf of Mr. and Mrs. Graffenstatte
during the Panel meeting, Ms. Young, Mr. and Mrs. Graffenstatte
have been designated as a "Responsible Party" under section 2720,
Article 11, Chapter 16, Division 3, Title 23 of the California Code
of Regulations. The Section states that a "Responsible Party" is
"any person who owned or operated the Underground Storage Tank
immediately before the discontinuation of its use", and "any owner
of property where an unauthorized release of a hazardous substance
from an Underground Storage Tank has occurred".

Pursuant to the Regional Board's authority under section 13267 (b)
of the California Water Code, you are both hereby, as "Responsible
Parties", required to cooperate and conduct soil and groundwater
investigations at the above site within 30 days of the date of this
letter. You shall jointly either submit a Work Plan to the ACHD
addressing the required soil and groundwater investigations at the
site, or implement the Work Plan prepared by Ms. Young's
consultants in March 1991, and approved in a June 6, 1991 letter
from the County with the condition that a total of three monitoring
wells be installed at the site.

I am hereby transmitting this request for a technical report to
ACHD for service and continued case handling. Please be aware that
failure to submit or late submittal may result in fines of up to
\$1000 per day of delinquency. Response to this technical report

Page 2 of 2

request should be sent to the attention of Ms. Juliet Shin at the ACHD. Please inform Ms. Shin at least four working days in advance of all field activities so that she may arrange to be on site.

If you have any questions or comments regarding the contents of this letter please contact Juliet Shin from ACHD at (510) 271 - 4530.

Sincerely,



Steven R. Ritchie,
Executive Officer.

CC: Gil Jensen, ACDA, 7677 Oakport Street, Suite 400, Oakland 94621.

Julie Shin, ACHD, 80 Swan Way, Suite 200, Oakland 94621

Mr. James L. Jaffe, Jaffe, Truitanich, Scatena & Blum, 250 Montgomery st., Suite 900, San Francisco 94104.

B

JAMES L. JAFFE, ESQ., State Bar No.: 053811
JAFFE, TRUTANICH, SCATENA & BLUM
A Professional Law Corporation
250 Montgomery Street, Suite 900
San Francisco, CA 94104
(415) 397-9006

Attorneys for Petitioners,
MR. & MRS CARL GRAFFENSTATTE

CALIFORNIA STATE WATER
QUALITY CONTROL BOARD

AFFIDAVIT OF JAMES L. JAFFE IN SUPPORT OF PETITION
FOR STAY OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD, SAN FRANCISCO BAY REGION'S ORDER OF AUGUST 17, 1993

I, James L. Jaffe, hereby declare that:

1. I am an attorney duly licensed to practice law in the state of California and represent Mr. & Mrs Carl Graffenstatte in the above-entitled action.

2. In July of 1981, the Graffenstattes purchased the property which is the subject of the current action, (186 E. Lewelling Boulevard, San Lorenzo, California), from a Mrs. Robello, now deceased. Formerly, Mrs. Robello leased the site to Mobil Oil Company, which in turn sub-leased it to independent gasoline station owners. We understand that Mobil Oil installed the underground tanks which were eventually removed in 1990. Sub-lessees operated the underground storage tanks ("USTs").

3. When the Graffenstattes purchased the property the two USTs in question were already present at the site. At the time of the Graffenstattes purchase, the USTs were tested for leaks and found

to be tight.

4. On June 27, 1986, Mr. Graffenstatte hired Hunter Environmental Services to conduct tank tightness tests on the USTs in anticipation of sale of the property to Ms. Wai Yee Wong Young. The two USTs and piping system tested tight. Thereafter, the Graffenstattes sold the property to Ms. Young. As part of this sale Ms. Young acknowledged and was put on notice that the sale placed obligations on her with respect to the tanks.

5. In February, 1990, four years subsequent to the sale of the property by the Graffenstattes to Ms. Young, an inspection of the property by the Alameda County Department of Environmental Health, Hazardous Materials Division ("Hazardous Division") discovered the existence of the USTs which Ms. Young failed to obtain the required permit to abandon. Ms. Young claimed, despite her acknowledgement to the contrary, that she was unaware that the USTs required permits. The USTs were thereafter pulled on September 5, 1990 and two were found to be in a deteriorated condition. Soil samples taken at this time indicated that the two deteriorated USTs had leaked. Ms. Young had a work plan prepared regarding investigation of the site. At no time was the source of the contamination identified, or during whose period of ownership the contamination occurred.

6. On January 28, 1993, the Hazardous Division, sent the Graffenstattes a letter. This letter ordering them to either submit a Preliminary Site Assessment work plan to determine the vertical and lateral extent of soil and ground water contamination from past releases from the former USTs, or begin implementing Ms. Young's

already approved work plan.

7. The Graffenstattes protested their designation as responsible parties and on July, 27, 1993 a "Review Panel Meeting" was convened by the Hazardous Division; the Regional Board sent one staff member as a representative. Without issuing a finding of facts or a report of any kind, the Panel determined the Graffenstattes were a responsible party. The Regional Board did not hold a hearing before issuing its order to the Graffenstattes. Instead, its executive officer issued the order based on the findings of a "Panel Review Meeting."

8. Notice of this Panel was given in a letter from Thomas Peacock to the Graffenstattes dated July 13, 1993. This notice did not state who would compose the Panel, what evidence could be presented, whether witnesses could testify or be cross-examined nor what, if any, rules or methods of fact finding would apply.

9. This Panel was an informal ad hoc committee without statutory basis consisting of three employees of the Hazardous Division, a Deputy District Attorney and a representative from the Regional Board's staff. Juliet Shin, the enforcement officer on the case and her supervisor, Thomas Peacock, served as members of the Panel. It was Juliet Shin who first asserted that the Graffenstattes were responsible parties.

10. The Panel was chaired by Gil Jensen, the Alameda County Deputy District Attorney in charge of enforcement in these cases. It is to my information and belief that the three employees of the Hazardous Division directly receive portions of their salary from the oversight fees the Hazardous Division collects from

responsible parties.

11. Ms. Young obtained a price estimate to conduct an earlier version of the work plan where only one monitoring well was to be installed. This estimate placed the price of such an investigation at over \$19,000.00. The Graffenstattes are presently requesting estimates from consultants for the approved work plan with its required three monitoring wells.

12. I have personal knowledge or have reviewed documentation of the foregoing facts and if called as a witness, can and will competently testify to them under oath.

13. I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct except as to those matters stated on information of belief and as to those, I believe them to be true. Dated this 14th day of September, 1993 in San Francisco, California.



JAMES L. JAFFE



U

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

2101 WEBSTER STREET, SUITE 500

OAKLAND, CA 94612

(510) 286-1255

AUG 18 1993



Ms. Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

August 17, 1993
File 2198.17 (UST)
RB File No.: 01-1041

Mr. & Mrs. Graffenstatte
P. O. BOX 97397
Tacoma, Washington 98497

Re: Official designation of Responsible Parties, and request for
submittal of a technical report resulting from the Alameda
County Department of Environmental Health's Enforcement Panel
meeting of July 27, 1993.

Dear Ms. Young, Mr. & Mrs. Graffenstatte:

A condition of soil and groundwater pollution exists from
Underground Storage Tank releases on the property located at 186
E. Lewelling Blvd., San Lorenzo, California. A pre-enforcement
Review Panel meeting was held on July 27, 1993 at the Offices of
Alameda County Health Department (ACHD) attended by Mr. Richard
Hiatt from my Staff, Mr. James Jaffe and Mr. Allan Payne
representing Mr. and Mrs. Graffenstatte, and Ms. young and Mr.
Francis Lan.

Based on extensive presentations by the parties, documents, and
legal arguments received on behalf of Mr. and Mrs. Graffenstatte
during the Panel meeting, Ms. Young, Mr. and Mrs. Graffenstatte
have been designated as a "Responsible Party" under section 2720,
Article 11, Chapter 16, Division 3, Title 23 of the California Code
of Regulations. The Section states that a "Responsible Party" is
"any person who owned or operated the Underground Storage Tank
immediately before the discontinuation of its use", and "any owner
of property where an unauthorized release of a hazardous substance
from an Underground Storage Tank has occurred".

Pursuant to the Regional Board's authority under section 13267 (b)
of the California Water Code, you are both hereby, as "Responsible
Parties", required to cooperate and conduct soil and groundwater
investigations at the above site within 30 days of the date of this
letter. You shall jointly either submit a Work Plan to the ACHD
addressing the required soil and groundwater investigations at the
site, or implement the Work Plan prepared by Ms. Young's
consultants in March 1991, and approved in a June 6, 1991 letter
from the County with the condition that a total of three monitoring
wells be installed at the site.

I am hereby transmitting this request for a technical report to
ACHD for service and continued case handling. Please be aware that
failure to submit or late submittal may result in fines of up to
\$1000 per day of delinquency. Response to this technical report

Page 2 of 2

request should be sent to the attention of Ms. Juliet Shin at the ACHD. Please inform Ms. Shin at least four working days in advance of all field activities so that she may arrange to be on site.

If you have any questions or comments regarding the contents of this letter please contact Juliet Shin from ACHD at (510) 271 - 4530.

Sincerely,



Steven R. Ritchie,
Executive Officer.

CC: Gil Jensen, ACDA, 7677 Oakport Street, Suite 400, Oakland 94621.

Julie Shin, ACHD, 80 Swan Way, Suite 200, Oakland 94621

Mr. James L. Jaffe, Jaffe, Truitanich, Scatena & Blum, 250 Montgomery st., Suite 900, San Francisco 94104.

TANK-TEST Form No. 68-1000
 Graco Petro
 Customers Name or Company Ident.
 187 Lewelling S. Lakewood
 Street Number, Corner, City and State
 Tanks
 Date of Test 7-10-81
 Results
 Tested By:

7 OPERATOR Graco Petro
 Name _____ Address - Same for Mailing YES NO Telephone _____

8 OWNER (If not Operator)
 Name _____ Address _____ Representative _____ Telephone _____

9 REASON FOR TEST (Explain Fully)

10 WHO REQUESTED TEST AND WHEN
 Name Dale Seise Title _____ Company or Affiliation _____ Date _____
 Address _____ Telephone _____

REMARKS

 By _____
 Signature _____

11 TANK (S) INVOLVED	Tank Ident.	Capacity	Brand or Supplier		Grade	Approx.
	<u>Middle</u>	<u>4000</u>	<u>Super</u>	<u>Super</u>	<u>Super</u>	

12 INSTALLATION DATA	Location	Cover	Fills	Vents	Syphons	Pumps
	<u>Side</u>	<u>A.C.</u>	<u>4"</u>	<u>2"</u>	<u>None</u>	<u>SUC</u>

Driveway, Rear, etc. Concrete, Earth, etc. Size(s) & Type(s) or Make(s) Size? Manifoldd? What Tanks? Suction, Remo

13 PRODUCT SOURCE
 Company _____ Person or Position to Contact _____ Location _____ Telephone _____

14 FILL-UP PAYMENT
 Usual Credit Terms Arranged or Approved by _____
 C. O. D. Title _____
 Other _____ Location _____ Telephone _____

15 MECHANIC OR CONTRACTOR
EAGLE to Paradise
 Name _____ Address _____ Telephone _____ Assigned By _____

REMARKS ON ITEMS 11 THRU 15

 By _____
 Signature _____

16 TEST RESULTS

Tests were made on the above tank systems in accordance with test procedures prescribed for Kent-Mo Tank Systems Tightness Tester Model 1000 as detailed on attached test charts with results as follows:

Tank Ident.	Tight	Leakage Indicated	Date Test
<u>Middle</u>	<u>Yes</u>	<u>+ .006</u>	<u>7-10-81</u>

17 CERTIFICATION
 This is to certify that these tank systems were tested on the date(s) shown. Those indicated as "Tight" meet the criteria established by the National Fire Protection Association Pamphlet 329.
7-10-81
 Date _____ Signature _____

18 TANK Middle PRODUCT Super CAPACITY 4,000 LAST DELIVERY 7-10-81
Identify by # or Position Brand and Grade Gallons Date

19 PRODUCT QUANTITY

STICK READINGS BEFORE FILL-UP Water Bottom _____ Product Inventory _____
to 1/8 in. gallons to 1/8 in.

FILL-UP DELIVERY (Take Temperature on Truck) (Meter Off) _____

ADDED TO FILL TESTER TO 12" (Fill Hoses - Prime Pump) _____

TOTAL QUANTITY IN SYSTEM _____

20 TEMPERATURE

INVENTORY _____ °F

ON TRUCK _____ °F

IN FULL TANK _____ °F

CHANGE TO EXPECT DURING TEST _____ °F
+ or -

21 MEASUREMENTS

TANK LENGTH _____"
To Compute Length of Discharge Tube

TANK DIAMETER _____"

TANK TOP TO GRADE _____"

ELBOW FLANGE ABOVE GRADE _____"

NEEDED TO CONNECT 21"
+ or - 6"

LENGTH TO ASSEMBLE _____"

22 TEMPERATURE / VOLUME FACTOR (a) TO TEST THIS TANK

23 THERMAL-SENSOR READING AFTER CIRCULATION 195.30 82° °F
Letter Units Nearest

24 UNITS PER °F IN RANGE OF EXPECTED CHANGE 308 Units

25 4,000 x .0006 = 2.4 Gallons
Total Quantity (19) Coefficient of Expansion for Involved Product Volume Change in this System per °F

26 2.4 x 308 = .008 Gallons
Volume Change per °F (25) Units per °F in Test Range (24) Volume Change per Unit Compute to 3 Dec. Places

27 LOG OF TEST PROCEDURES

28 Date	29 Record Each Step of Setting Up and Running Test	30 Reading No.
Time		
8:30	Set up unit	
9:00	Brought to 42" high	1
9:15	42"	2
9:30	42"	3
9:45	42"	4
10:00	42"	5
10:15	47"	1

31 VOLUME MEASUREMENTS

32 Stand Pipe Level		33 Product Added - Drained + (v)
Before	After	
2.00	.65	1.35
1.00	.72	
1.00	.85	.15
.85	.76	.09
.76	.69	.07
.69	.64	

34 TEMPERATURE CHANGES

35 Thermal-Sensor Reading	36 Change Higher + Lower - (c)	37 Expansion or Contraction This Reading (c)x(a)=(t)
19700		
19702	+2	+016
19718	+16	+128
19720	+2	+016

38 NET VOLUME CHANGES

39 This Reading Volume (v) Adjusted for (t) (v) ± (t)	40 Accumulate
+166	+446
+218	+664
+086	+750

183 Leavelly S. Lopez, 20
Street Number, Corner, City and State
187
1983
2-9-81
7661
Tested By
Results
Date of Test
Tanks
Customers Name or Company Ident.
Form No. 68-1000

7 OPERATOR Graco Petro
Name Address - Same for Mailing YES NO Telephone

8 OWNER (If not Operator)
Name Address Representative Telephone

9 REASON FOR TEST (Explain Fully)

10 WHO REQUESTED TEST AND WHEN
Name Dale Seise Title Company or Affiliation Date
Address Telephone

REMARKS
By _____
Signature

TANK (S) INVOLVED	Tank Ident.	Capacity	Brand or Supplier	Grade	Approx. A
	<u>West</u>	<u>4000</u>		<u>Red</u>	

INSTALLATION DATA	Location	Cover	Fills	Vents	Syphons	Pumps
	<u>Side</u>	<u>A.C.</u>	<u>4"</u>	<u>2"</u>	<u>None</u>	<u>Suc.</u>
	<small>Driveway, Recr, etc.</small>	<small>Concrete, Earth, etc.</small>	<small>Size(s) & Type(s) or Make(s)</small>	<small>Size? Manifolded?</small>	<small>What Tanks?</small>	<small>Suction, Remat.</small>

13 PRODUCT SOURCE
Company Person or Position to Contact Location Telephone

14 FILL-UP PAYMENT
Usual Credit Terms Arranged or Approved by _____
C. O. D. Title _____
Other _____ Location _____ Telephone _____

15 MECHANIC OR CONTRACTOR
ENGOR & Operadio CO.
Name Address Telephone Assigned By

REMARKS ON ITEMS 11 THRU 15
By _____
Signature

16 TEST RESULTS

Tests were made on the above tank systems in accordance with test procedures prescribed for Kent-Moore Tank Systems Tightness Tester Model 1000 as detailed on attached test charts with results as follow

Tank Ident.	Tight	Leakage Indicated	Date Tested
<u>West</u>	<u>yes</u>	<u>r. 0.26</u>	<u>7-9-81</u>

17 CERTIFICATION
This is to certify that these tank systems were tested on the date(s) shown. Those indicated as "Tight" meet the criteria established by the National Fire Protection Association, NFPA 329.
7-9-81
Date Signature Paul Jones

18 TANK West PRODUCT P.C.C. CAPACITY 4,000 LAST DELIVERY 7-9-81
Identify by # or Position Brand and Grade Gallons Date

19 PRODUCT QUANTITY GALLONS

STICK READINGS BEFORE FILL-UP Water Bottom _____ Product Inventory _____
to 1/8 in. gallons to 1/8 in.

FILL-UP DELIVERY (Take Temperature on Truck) (Meter Oil) _____

ADDED TO FILL TESTER TO 12" (Fill Hoses - Prime Pump) _____

TOTAL QUANTITY IN SYSTEM _____

20 TEMPERATURE °F

INVENTORY _____ °F

ON TRUCK _____ °F

IN FULL TANK _____ °F

CHANGE TO EXPECT DURING TEST _____ °F
+ or -

21 MEASUREMENTS

TANK LENGTH _____"
To Compute Length of Discharge Tube

TANK DIAMETER _____"

TANK TOP TO GRADE _____"

ELBOW FLANGE ABOVE GRADE _____"

NEEDED TO CONNECT 21"
+ or - 6"

LENGTH TO ASSEMBLE _____"

22 TEMPERATURE / VOLUME FACTOR (a) TO TEST THIS TANK

23 THERMAL-SENSOR READING AFTER CIRCULATION 20490 85°F
Letter Units Nearest

24 UNITS PER °F IN RANGE OF EXPECTED CHANGE 309
Units

25 $\frac{4,000}{\text{Total Quantity (19)}} \times \frac{1,0006}{\text{Coefficient of Expansion for Involved Product}} = \frac{2.4}{\text{Volume Change in this System per } ^\circ\text{F}}$ Gallons

26 $\frac{2.4}{\text{Volume Change per } ^\circ\text{F (25)}} \div \frac{309}{\text{Units per } ^\circ\text{F in Test Range (24)}} = \frac{.008}{\text{Volume Change per Unit Compute to 3 Dec. Places}}$ Gallons This Test Fact. (a)

27 LOG OF TEST PROCEDURES

28 Date	29 Record Each Step of Setting Up and Running Test	30 Reading No.
Time		
1:00	Set up Unit	
1:30	Brought to 42"	1
1:45	42"	2
2:00	42"	3
2:15	42"	4
2:30	42"	5
2:45	42"	6

31 VOLUME MEASUREMENTS

32 Stand Pipe Level		33 Product Added - Drained + (v)
Before	After	
2.00	.46	1.54
1.00	.48	.52
1.00	.74	.26
1.00	.75	.25
1.00	.75	.25
1.00	.80	.20

34 TEMPERATURE CHANGES

35 Thermal-Sensor Reading	36 Change Higher + Lower - (c)	37 Expansion or Contraction This Reading (c)x(a)=(t)
20474		
20458	16	.128
20452	6	.048
20440	12	.096

38 NET VOLUME CHANGES

39 This Reading Volume (v) Adjusted for (t) (v) ± (t)	40 Accumulate
.132	+6.52
.202	+8.54
.154	+1.008

LUMBER

ENVIRONMENTAL SERVICES, INC.

115 DEWALT AVENUE, NORTHWEST
SUITE 400
CANTON, OH 44702
800-523-4370 216-453-1800
Outside Ohio

INVOICE DATE 06/30/86

INVOICE NO. 005865

CUSTOMER NO. GRAFCO

INVOICE

COPY 1

BILL TO

ALLEN: CARL BRAPPENSTATTE
GRAFCO PETROLEUM
P.O. BOX 1713

SAN LEANDRO, CA

TEST LOCATION:

GRAFCO PETROLEUM
186 E. LEVELLING AVE. / ASHLAND

SAN LEANDRO, CA

PAGE

LOCATION	CUSTOMER ORDER NO.	VAN ID	TERMS	SALES ID	OUR ORDER NO
21756 S. LEAND		PE LL-17	NET 10 DAYS	032008	000108

ITEM NO./ WORK TYPE	WORK DESCRIPTION	UNIT	QUANTITY			UNIT PRICE	EXTENDED PRICE
			ORDERED	BACKORDERED	COMPLETED		
01	LEAK LOCATOR TEST	TEST	2	0	2	625.000	1250.00
02	OPW 633-TC-4" X 4" COAXIAL FI LL ADAPTOR	PART	1	0	1	67.000	67.00
03	OPW H-4150-M 4" BASKETS (TOP SEAL)	PART	6	0	6	2.000	12.00
						Sales Total	1329.00
						Freight	0.00
						Disc. Charges	0.00
						Sales Taxes	0.00
						TOTAL	1329.00

leak lokator

SUMMARY OF TEST RESULTS

REFERRED BY: _____

LOCATION: Shafco Petroleum
186 E. Jewelling Ave / Ashland
San Diego, CA

DATE: 6-27-86 CUSTOMER: Shafco Petroleum
 COPIES TO: Carl Shaffer/State

LL-17
 RB

SYSTEM	TANK SIZE		WATER INCHES	PUMP DISCHARGE PRESSURE TEST	LEAK LOKATOR RESULTS*			COMMENTS - RECOMMENDATIONS
	GALLONS	DIAMETER INCHES			LEVEL INCHES	GPH	CONCLUSION	
<u>Super</u>	<u>4000</u>	<u>76"</u>	<u>0"</u>	<u>see note</u>	<u>146"</u>	<u>-0.021</u>	<u>Tight</u>	
<u>R/L</u>	<u>4000</u>	<u>76"</u>	<u>0"</u>	<u>see note</u>	<u>135"</u>	<u>+0.016</u>	<u>Tight</u>	

ADDITIONAL COMMENTS: No pressure testing could be done due to electricity on site.

OTHER CHARGES: (i.e., pumpovers, overtime, parts, etc.) Parts Replaced: ① 633TC coaxial adaptor 63-
② 4" gaskets 2ea.

*LEVEL - INCHES FROM TANK BOTTOM TO TEST LEVEL
 GPH - ABSOLUTE LEAK RATE (MEASURED LEAK RATE - TEMPERATURE COMPENSATION) IN GALLONS PER HOUR
 CONCLUSION - NFPA 329 STANDARD OF +0.05 GPH IS USED TO CERTIFY TIGHTNESS.

Requires Salesman Approval: _____
 Technical Review: _____

PRELIMINARY REPORT

INVESTIGATIVE PROCEDURES FOR LEAK LOKATOR RESULTS

MINUTEMAN
ENVIRONMENTAL SERVICES, INC.
115 DeWalt Ave. N.W., Suite 400
Canton, Ohio 44702
PHONE: 800-523-4370
IN OHIO: 218-453-1800

All results indicating a leak conclusion should be investigated.

RESULTS			CONCLUSION	INVESTIGATIVE PROCEDURE
Full System Tank & Piping	Tank Top 6"-10" above tank top	In Tank* 6"-10" below tank top		
1 Leak Leak Leak	Tight --- Leak	--- Tight Tight	Piping and/or tank top leak	<ul style="list-style-type: none"> a. Conduct hydrostatic pressure test on product lines <ul style="list-style-type: none"> • If tight, proceed to b • If leak, repair and retest at full system. b. Uncover the entire tank top (all fittings) and piping — start at most likely sources — fills, vapor recovery, gauges, vents, pumps (don't forget the suction side) Be observant as to whether or not loose fittings, etc. are inadvertently repaired during investigation. c. If no piping leak is found, retest the system while still uncovered. If a piping leak is found, repair and retest the system while still uncovered (this is important to assure that all leaks have been corrected). d. If full system retest still reveals a leak and no leak in piping can be observed, it is safe to assume there is a tank leak that is being covered up by geology or some other hydraulic phenomenon.
2 Leak Leak	--- Leak	--- ---	Full system leak, however, tank top and/or in tank test unable to be performed due to inaccessibility to low level (i.e., bent riser, too small riser, or time restraints on site).	<ul style="list-style-type: none"> a. If due to inaccessibility. <ul style="list-style-type: none"> • Uncover and repair or replace riser. • Retest at full system and lower level if necessary. b. If due to time restraints — set up retest for in tank
3 Leak Leak Leak	Innage --- Innage	--- Innage Innage	Water In Tank (Two Possibilities) <ul style="list-style-type: none"> a. There is a hole below the water table and water is leaking in at low level and gasoline is leaking out at full system. b. Water is entering through hole in piping or tank top. 	<ul style="list-style-type: none"> a. Repair/Replace system b. Follow procedure outlined in #4.
Leak Leak Leak	Innage --- Innage	--- Innage Innage	No Water in Tank <ul style="list-style-type: none"> • There is a hole on the tank top or in piping which results in product leaking out at full system and the same product leaking back in at low level test. 	<ul style="list-style-type: none"> a. Conduct hydrostatic pressure test on product lines <ul style="list-style-type: none"> • If tight, proceed to b • If leak, repair and retest at full system. b. Uncover and investigate piping and tanktop and follow procedure outlined in 1c. c. If no leak is found, retest while still uncovered. If leak is found, repair and retest the system while still uncovered (this is important to assure that all leaks have been corrected). d. If full system retest still reveals a leak and no leak in piping can be observed, it is safe to assume there is a tank leak that is being covered up by geology or some other hydraulic phenomenon
5 Leak Leak	Leak ---	Leak Leak	Tank and/or Piping Leak	<ul style="list-style-type: none"> a. Repair/replace system.

* The conclusion is based on the assumption that the test was conducted completely below tank top. Test level and tank configuration should be thoroughly investigated before corrective action is taken (where vapor recovery is present - watch for ball float interference).

NOTE: In tank results are not certified as meeting the NFPA 329 Criterion

WE HAVE READ AND UNDERSTAND THE TANK AND INSPECTION REPORT ATTACHED TO THIS LETTER. WE ACCEPT THE TANKS IN THEIR PRESENT CONDITION. WE UNDERSTAND THAT THE ~~LEASE~~ ^{Sale} IMPOSES OBLIGATION ON US WITH RESPECT TO THE TANKS. WE FURTHER UNDERSTAND GRAFFENSTATTE CORPORATION, TRACE AND LEIGH GRAFFENSTATTE, AND CARL AND DONNA GRAFFENSTATTE HAVE NO OBLIGATION WITH RESPECT TO SUCH TANKS.

8-21-86

Walter W. Young

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

FRESNO
2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1752
FRESNO, CA 93717-1752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8171

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES
2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

September 13, 1993

PLEASE REPLY TO: SAN FRANCISCO

Office of the Chief Counsel
California Regional Water Quality Control Board,
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612

Re: 186 E. Lewelling Blvd., San Lorenzo, CA
File 2198.17 (UST)
RB File No.: 01-1041

Dear Sir or Madam:

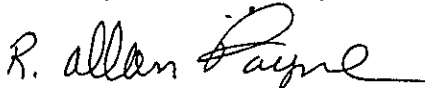
This firm represents Mr. and Mrs. Carl Graffenstatte (the "Graffenstattes") regarding the above referenced matter. Your agency issued an order to the Graffenstattes on August 17, 1993, see enclosures. This office has filed petitions for a stay and review of this order with the State Water Quality Control Board ("State Board"). See enclosures.

The Graffenstattes hereby request that your agency provide the names and addresses of all known interested parties to this office and to the State Board. The Graffenstattes further request that your agency prepare its record in this matter, including any transcript or tape recording of the Regional Board's actions in this matter.

Finally, it is our understanding that the Regional Board did not hold a hearing in this matter. If the Regional Board would agree to grant a stay and review of the order the Graffenstattes would withdraw their petitions to the State Board. If you have any questions or wish to discuss this matter please contact me.

Sincerely,

JAFFE, TRUTANICH, SCATENA & BLUM



R. ALLAN PAYNE

cc: Mr. & Mrs. Carl Graffenstatte

Enclosures: Pettitions for Stay and Review

310-0687/cor/RWQCB.rap

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

FRESNO
2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1752
FRESNO, CA 93717-1752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8171

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES
2500 VIA CABILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

PLEASE REPLY TO: SAN FRANCISCO

VIA FEDERAL EXPRESS

September 14, 1993

California State Water Quality Control Board
Office of the Chief Counsel
901 P Street
Sacramento, CA 95812-0100

PETITION TO THE CALIFORNIA STATE WATER QUALITY CONTROL BOARD
FOR STAY OF AN ORDER OF THE CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION

Petitioners:

Mr. & Mrs. Carl Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

Represented by:

James E. Jaffe, Esq.
R. Allan Payne, Esq.
Jaffe, Trutanich, Scatena & Blum
A Professional Law Corporation
250 Montgomery Street, Suite 900
San Francisco, CA 94104
(415) 397-9006

This Petition seeks a stay of an Order as it relates to Mr. & Mrs. Carl Graffenstatte (the "Graffenstattes") that was issued on August 17, 1993 by the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"). This Order requires the Graffenstattes, as alleged "Responsible Parties," to cooperate with an admitted responsible party, Ms. Wai Yee Wong Young, in conducting a soil and groundwater investigation at 186 E. Lewelling Blvd., San Lorenzo, California. This investigation must be pursuant to or consistent with a work plan approved by the Regional Board which calls for the installation of three monitoring wells. A copy of the Order is presented in Exhibit A.

Graffenstette -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 4

daily control of the operation of the underground storage tanks. It is clear that the Graffenstettes are not the "owner or operator" of the underground storage tanks. The Graffenstettes can only be required to respond to orders issue with respect to these underground storage tanks if they are found to be a "responsible party" as the term is used in § 25299.37.

Below, we present four independent reasons, each sufficient in itself, to conclude that the Graffenstettes are not a "responsible party." These include:

- 1) The statutory use of "responsible party" cannot yield a meaning different than that of "owner" or "operator;"
- 2) If the legislature intended "responsible party" to have a separate meaning, it is clear that the federal definition under CERCLA should be used;
- 3) The state regulation defining "responsible party" is not consistent with the authorizing legislation and is hence invalid and;
- 4) Even assuming the validity of the state regulation, the Graffenstettes do not fall within its definition of "responsible party."

Under each of these headings, the result is the same, the Graffenstettes are not responsible parties.

- 1) The statutory use of "responsible party" cannot yield a meaning different than that of "owner" or "operator."

While the Keene Act does define "owner" and "operator" it does not define "responsible parties." Nor is it defined in Chapter 6.7 or in the federal act. In fact, a close examination of the Keene Act reveals the legislature could not have intended "responsible party" to have a definition separate or different than that of "owner" or "operator."

As stated above, the term "owner, operator or other responsible party" is used in § 25299.37 to describe persons who must take corrective action in response local agency orders. Under the rules of statutory construction, "[w]here general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated." 58 Cal Jur 3d, 525. In our case, "owner" and "operator" enumerates a class of persons with a present possessory interest in the

Graffenstette -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 5

property and an ability to effect the operation of the tanks. The general term "other responsible parties" must be interpreted to mean persons of that same general class. The Graffenstettes do not have a present possessory interest in the property and could not affect the operation of the tanks; the Graffenstettes are not a "responsible party" within the statutory definition.

Furthermore, § 25299.53 authorizes local agencies and Regional Boards to take corrective action themselves only when the "owner or operator" not when the "owner, operator or other responsible parties" fail to do so. Also, under § 25299.70 cleanup, oversight and corrective action costs can only be recovered from "the owner or operator" not "the owner, operator or other responsible parties." Because the Keene Act imposes strict liability, due process requires that the legislature clearly and with particularity define who is liable; they have done so with clarity and particularity and that definition does not include the Graffenstettes.

If "other responsible parties" has a definition different from that of "owner" or "operator," as the Regional Board has claimed (see below), then suit cannot be brought against such parties to force compliance with such orders, nor can they be held liable for agency response costs, corrective action or oversight fees. If this is the State Board's position, please inform us, otherwise, it is clear that "other responsible parties" does not have a separate and different definition and must simply be a reiteration of "owner or operator." Therefore, as the Graffenstettes are not an owner or operator within the statutory definition, they are not a responsible party.

2) If the legislature intended "responsible party" to have a separate meaning, it is clear that the federal definition under CERCLA should be used.

If the legislature did have a separate definition in mind when they employed the term "responsible party" in the statute, it is only reasonable that this important term of art has been defined elsewhere in the statutes. In fact, in the very next Chapter of the Health and Safety Code (Chapter 6.8, California Superfund) § 25323.5 adopts the federal government CERCLA definition of parties liable found in 42 U.S.C. § 9607(a) as its definition for "responsible party".

Finally, there is further evidence of the intended definition of "responsible parties." The state legislature appears to have borrowed the use of the words "owners, operators or other responsible parties" for Health and Safety Code § 25299.37 directly

Graffenstatte -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 6

from CERCLA's use of the wording "owner or operator or other responsible person" found in 42 U.S.C. § 9607(c)(1) and (2).

Basically, for our purposes, this federal definition includes present owners and operators and past owners and operators at the time of disposal (release). Under this definition, the Graffenstatte's are not a responsible party because they are not a present owner and the only direct evidence (the tank tightness tests) demonstrate that no releases occurred under their past ownership. The Regional Board may feel that there is evidence to support the supposition that a release occurred during the Graffenstatte's ownership. However, in any civil action to enforce any Regional Board orders against the Graffenstatte's, the state must prove by the preponderance of the evidence - that it is more likely than not - that the Graffenstatte's are a responsible party because a release occurred during their ownership.

No evidence has been produced to date to support such a finding. As no releases occurred during their ownership, the Graffenstatte's are not a "responsible party."

3) The state regulation defining "responsible party" is not consistent with the authorizing legislation and is hence invalid.

The Regional Board has cited Title 23 § 2720 of the California Code of Regulations (hereinafter 23 CCR § 2720) as its source of authority for holding the Graffenstatte's as a responsible party. 23 CCR § 2720 defines a "responsible party" as one or more of the following:

(1) Any person who owns or operates an underground storage tank used for the storage of any hazardous substance;

(2) In the case of any underground storage tank no longer in use, any person who owned or operated the underground storage tank immediately before the discontinuation of its use;

(3) Any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred; and

(4) Any person who had or has control over a (sic) underground storage tank at the time of or following an unauthorized release of a hazardous substance.

The State Board adopted 23 CCR § 2720 under authority of the

Graffenstatte -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 7

Health and Safety Code § 25299.77 which requires the Board to implement regulations consistent with Chapter 6.7, the Keene Act and requirements for state programs implementing the federal act. As shown above, "responsible party" cannot have a definition different from that of the statutory definitions of "owner" or "operator." While 23 CCR § 2720(1) is likely consistent with the Keene Act, the Graffenstattes are not an "owner" or "operator." It is debatable whether or not 23 CCR § 2720 (3) and (4) above fall within the statutory definition of "owner" or "operator" and even if they do, no releases occurred during the Graffenstattes' ownership. Finally, 23 CCR § 2720 (2) does not fall within the statutory definition of "owner" or "operator."

Furthermore, 23 CCR § 2720(2) may be a misapplication of the federal act's definition of "owner." It appears that the State Board borrowed 23 CCR § 2720(2) from the definition of "owner" in the federal act found in 42 U.S.C. § 6991(3). Section 6991(3) defines two types of owners depending on whether or not the UST in question was in use on November 8, 1984. If the tank was not in use on November 8, 1984, the definition found in § 6991(3)(B) applies, and defines "owner" as a person who owned the property "immediately before the discontinuation of its use." If, on the other hand, the tank was in use on November 8, 1984, the definition found in § 6991(3)(A) applies which defines an "owner" as "any person who owns an underground storage tank."

This federal definition apportions liability for tanks no longer in use based on the effective date of the federal act. Those owners who discontinued use of their tanks before the effective date of the act remain solely liable for past releases from the tanks while the present owners of tanks in use after the effective date are solely liable for all releases from their tanks. The board's 23 CCR § 2720 (2) definition adds a whole new class of responsible parties not found in the federal or state acts - all past owners who discontinued use of their tanks.

Fear of future liability will encourage tank owners to keep their tanks in operation that might otherwise be taken out of service. By keeping their tanks in operation until after they have sold the tanks, such owners can escape 23 CCR § 2720 (2) classification as a responsible party but at the cost of placing the environment at greater risk. Arbitrarily creating such a new class of responsible parties and increasing the risk to the environment is not "consistent with" the Keene Act or the federal act. The Graffenstattes cannot be found to be a responsible party under an invalid state regulation.

4) Even assuming the validity of the state regulation, The

Graffenstatte -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 8

Graffenstattes do not fall within its definition of "responsible party."

Even assuming that 23 CCR § 2720(2) is valid, the Graffenstattes are still not a "responsible party" under that provision. Before closure, abandonment or discontinuing use of an underground storage tank is allowed, § 25298 of the Health and Safety Code requires certain acts and procedures be undertaken. Even if use of the underground storage tank is temporarily discontinued, certain requirements must still be met.

Under state law and regulations, "use" is a term of art. Whether or not a tank is in "use" is not dependant on what is or is not in the tank but what permits have been filed. Even though she knew she had obligations with respect to the tank, Ms. Young never undertook any of the required acts or procedures to permanently or temporarily discontinue the use of the tanks. It was not until she had them removed from the ground some four years after the Graffenstattes' ownership ceased, that her ownership of the USTs was in compliance with the law. Therefore the Graffenstattes were not the owner of the underground storage tanks immediately before the discontinuation of their use and therefore are not a responsible party under 23 CCR § 2720(2).

Even if the Graffenstattes are validly named responsible parties, the Order is inappropriate because the Regional Board has refused to name other potentially responsible parties. During the Panel Review Meeting, the Panel refused to investigate or name other potentially responsible parties. In particular, the Panel has refused to name a long-time lessee of the subject property, Mobil Oil. When such a readily identifiable, clearly responsible party is not named in such an order, it unfairly burdens the named parties and is an abuse of discretion.

Finally, the due process of law guarantees of the state and federal constitutions require notice and a hearing before an impartial trier of fact that before one can be deprived of property. The Regional Board did not hold a hearing before issuing its order to the Graffenstattes. Instead, its executive officer issued the order based on the findings of a "Panel Review Meeting." In fact, the only hearing granted the Graffenstattes was this Panel Review Meeting ("Panel") convened by the Alameda County Hazardous Materials Division ("Hazardous Division") with one staff member of the Regional Board present.

Notice of this Panel was given in a letter from Thomas Peacock to the Graffenstattes dated July 13, 1993. See Exhibit C. This notice did not state who would compose the Panel, what evidence

Graffenstatte -- Petition for Stay of Order

310-0687/stay.pet

September 14, 1993

Page 9

could be presented, whether witnesses could testify or be cross-examined nor what, if any, rules or methods of fact finding would apply.

This Panel was an informal ad hoc committee without statutory basis consisting of three employees of the Hazardous Division, a Deputy District Attorney and a representative from the Regional Board's staff. This body was not an impartial trier of fact. Juliet Shin, the enforcement officer on the case and her supervisor, Thomas Peacock, served as members of the Panel. It was Juliet Shin who first asserted that the Graffenstattes were responsible parties.

The Panel was chaired by Gil Jensen, the Alameda County Deputy District Attorney in charge of enforcement in these cases. It is also our understanding that the three employees of the Hazardous Division directly receive portions of their salary from the oversight fees the Hazardous Division collects from responsible parties. It was in their personal financial interest to designate solvent individuals as responsible parties.

At the conclusion of the Panel meeting, the Panel stated that it would release its findings in 30 days. However, by August 17, 21 days after the Panel, the Regional Board had issued its order. The Regional Board claims to have relied on the findings of the Panel. Therefore, it can be surmised that in a very short period of time, the Panel had made its decision, reported it to the Regional Board, and the Regional Board made its decision and issued the order. To allow all these events to happen in 21 days, the Panel must have made its decision very quickly, likely before the meeting occurred. This Panel was not an impartial trier of fact, but convened specifically to find the Graffenstattes responsible parties.

The above outline raises many substantial questions of law and fact not answered by the Regional Board's order. An Affidavit of the Graffenstattes' Attorney for this matter, Mr. James L. Jaffe, in support of this petition is presented in Exhibit B.

Dated: September 14, 1993

JAFFE, TRUTANICH, SCATENA & BLUM

BY: R. Allan Payne
R. ALLAN PAYNE, Attorneys for
Mr. & Mrs Carl Graffenstatte

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

2101 WEBSTER STREET, SUITE 500

OAKLAND, CA 94612

(510) 286-1255

AUG 18 1993



Ms. Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

August 17, 1993
File 2198.17 (UST)
RB File No.: 01-1041

Mr. & Mrs. Graffenstatte
P. O. Box 97397
Tacoma, Washington 98497

Re: Official designation of Responsible Parties, and request for
submittal of a technical report resulting from the Alameda
County Department of Environmental Health's Enforcement Panel
meeting of July 27, 1993.

Dear Ms. Young, Mr. & Mrs. Graffenstatte:

A condition of soil and groundwater pollution exists from
Underground Storage Tank releases on the property located at 186
E. Lewelling Blvd., San Lorenzo, California. A pre-enforcement
Review Panel meeting was held on July 27, 1993 at the Offices of
Alameda County Health Department (ACHD) attended by Mr. Richard
Hiett from my Staff, Mr. James Jaffe and Mr. Allan Payne
representing Mr. and Mrs. Graffenstatte, and Ms. young and Mr.
Francis Lan.

Based on extensive presentations by the parties, documents, and
legal arguments received on behalf of Mr. and Mrs. Graffenstatte
during the Panel meeting, Ms. Young, Mr. and Mrs. Graffenstatte
have been designated as a "Responsible Party" under section 2720,
Article 11, Chapter 16, Division 3, Title 23 of the California Code
of Regulations. The Section states that a "Responsible Party" is
"any person who owned or operated the Underground Storage Tank
immediately before the discontinuation of its use", and "any owner
of property where an unauthorized release of a hazardous substance
from an Underground Storage Tank has occurred".

Pursuant to the Regional Board's authority under section 13267 (b)
of the California Water Code, you are both hereby, as "Responsible
Parties", required to cooperate and conduct soil and groundwater
investigations at the above site within 30 days of the date of this
letter. You shall jointly either submit a Work Plan to the ACHD
addressing the required soil and groundwater investigations at the
site, or implement the Work Plan prepared by Ms. Young's
consultants in March 1991, and approved in a June 6, 1991 letter
from the County with the condition that a total of three monitoring
wells be installed at the site.

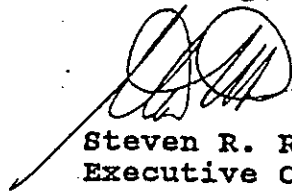
I am hereby transmitting this request for a technical report to
ACHD for service and continued case handling. Please be aware that
failure to submit or late submittal may result in fines of up to
\$1000 per day of delinquency. Response to this technical report

Page 2 of 2

request should be sent to the attention of Ms. Juliet Shin at the ACHD. Please inform Ms. Shin at least four working days in advance of all field activities so that she may arrange to be on site.

If you have any questions or comments regarding the contents of this letter please contact Juliet Shin from ACHD at (510) 271 - 4530.

Sincerely,



Steven R. Ritchie,
Executive Officer.

CC: Gil Jensen, ACDA, 7677 Oakport Street, Suite 400, Oakland 94621.

Julie Shin, ACHD, 80 Swan Way, Suite 200, Oakland 94621

Mr. James L. Jaffe, Jaffe, Truitanich, Scatena & Blum, 250 Montgomery st., Suite 900, San Francisco 94104.

JAMES L. JAFFE, ESQ., State Bar No.: 053811
JAFFE, TRUTANICH, SCATENA & BLUM
A Professional Law Corporation
250 Montgomery Street, Suite 900
San Francisco, CA 94104
(415) 397-9006

Attorneys for Petitioners,
MR. & MRS CARL GRAFFENSTATTE

CALIFORNIA STATE WATER
QUALITY CONTROL BOARD

AFFIDAVIT OF JAMES L. JAFFE IN SUPPORT OF PETITION
FOR STAY OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD, SAN FRANCISCO BAY REGION'S ORDER OF AUGUST 17, 1993

I, James L. Jaffe, hereby declare that:

1. I am an attorney duly licensed to practice law in the state of California and represent Mr. & Mrs Carl Graffenstatte in the above-entitled action.

2. In July of 1981, the Graffenstattes purchased the property which is the subject of the current action, (186 E. Lewelling Boulevard, San Lorenzo, California), from a Mrs. Robello, now deceased. Formerly, Mrs. Robello leased the site to Mobil Oil Company, which in turn sub-leased it to independent gasoline station owners. We understand that Mobil Oil installed the underground tanks which were eventually removed in 1990. Sub-lessees operated the underground storage tanks ("USTs").

3. When the Graffenstattes purchased the property the two USTs in question were already present at the site. At the time of the Graffenstattes purchase, the USTs were tested for leaks and found

to be tight.

4. On June 27, 1986, Mr. Graffenstatte hired Hunter Environmental Services to conduct tank tightness tests on the USTs in anticipation of sale of the property to Ms. Wai Yee Wong Young. The two USTs and piping system tested tight. Thereafter, the Graffenstattes sold the property to Ms. Young. As part of this sale Ms. Young acknowledged and was put on notice that the sale placed obligations on her with respect to the tanks.

5. In February, 1990, four years subsequent to the sale of the property by the Graffenstattes to Ms. Young, an inspection of the property by the Alameda County Department of Environmental Health, Hazardous Materials Division ("Hazardous Division") discovered the existence of the USTs which Ms. Young failed to obtain the required permit to abandon. Ms. Young claimed, despite her acknowledgement to the contrary, that she was unaware that the USTs required permits. The USTs were thereafter pulled on September 5, 1990 and two were found to be in a deteriorated condition. Soil samples taken at this time indicated that the two deteriorated USTs had leaked. Ms. Young had a work plan prepared regarding investigation of the site. At no time was the source of the contamination identified, or during whose period of ownership the contamination occurred.

6. On January 28, 1993, the Hazardous Division, sent the Graffenstattes a letter. This letter ordering them to either submit a Preliminary Site Assessment work plan to determine the vertical and lateral extent of soil and ground water contamination from past releases from the former USTs, or begin implementing Ms. Young's

already approved work plan.

7. The Graffenstattes protested their designation as responsible parties and on July, 27, 1993 a "Review Panel Meeting" was convened by the Hazardous Division; the Regional Board sent one staff member as a representative. Without issuing a finding of facts or a report of any kind, the Panel determined the Graffenstattes were a responsible party. The Regional Board did not hold a hearing before issuing its order to the Graffenstattes. Instead, its executive officer issued the order based on the findings of a "Panel Review Meeting."

8. Notice of this Panel was given in a letter from Thomas Peacock to the Graffenstattes dated July 13, 1993. This notice did not state who would compose the Panel, what evidence could be presented, whether witnesses could testify or be cross-examined nor what, if any, rules or methods of fact finding would apply.

9. This Panel was an informal ad hoc committee without statutory basis consisting of three employees of the Hazardous Division, a Deputy District Attorney and a representative from the Regional Board's staff. Juliet Shin, the enforcement officer on the case and her supervisor, Thomas Peacock, served as members of the Panel. It was Juliet Shin who first asserted that the Graffenstattes were responsible parties.

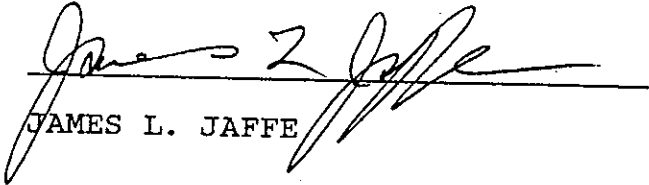
10: The Panel was chaired by Gil Jensen, the Alameda County Deputy District Attorney in charge of enforcement in these cases. It is to my information and belief that the three employees of the Hazardous Division directly receive portions of their salary from the oversight fees the Hazardous Division collects from

responsible parties.

11. Ms. Young obtained a price estimate to conduct an earlier version of the work plan where only one monitoring well was to be installed. This estimate placed the price of such an investigation at over \$19,000.00. The Graffenstattes are presently requesting estimates from consultants for the approved work plan with its required three monitoring wells.

12. I have personal knowledge or have reviewed documentation of the foregoing facts and if called as a witness, can and will competently testify to them under oath.

13. I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct except as to those matters stated on information of belief and as to those, I believe them to be true. Dated this 14th day of September, 1993 in San Francisco, California.


JAMES L. JAFFE

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

In Re The Property Known As :)
186 E. Lewelling Blvd.)
San Lorenzo, CA 94580)
)
)
)
)
)

Notice of Official Action
By the San Francisco Bay
Regional Water Quality
Control Board

Dear Sirs:

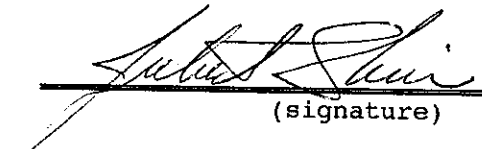
The attached Official Notice of Request for Technical Reports pursuant to Water Code Section 13267(b) has been forwarded to this office for legal service, and oversight. As the Agency responsible for enforcing the terms of this Official Action, all communication should continue to be directed to this office. Please make arrangements to comply by calling me at (510) 271-4530 to coordinate all future activities.

Failure to comply could result in liability for civil or administrative penalties of up to \$1000 per day of delinquency.

I Juliet Shin, do hereby certify
that I served Ms. Wai Yee Wong Young
with a copy of the attached Notice of Official Action by the
Regional Board by certified mailer

P 386 338 109

Dated: 9/2/93


(signature)

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

In Re The Property Known As :	)	Notice of Official Action
	)	By the San Francisco Bay
186 E. Lewelling Blvd.	)	Regional Water Quality
San Lorenzo, CA 94580	)	Control Board
)	
)	

Dear Sirs:

The attached Official Notice of Request for Technical Reports pursuant to Water Code Section 13267(b) has been forwarded to this office for legal service, and oversight. As the Agency responsible for enforcing the terms of this Official Action, all communication should continue to be directed to this office. Please make arrangements to comply by calling me at (510) 271-4530 to coordinate all future activities.

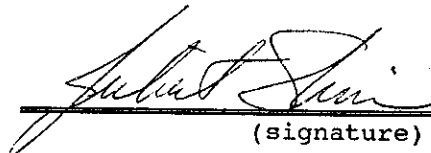
Failure to comply could result in liability for civil or administrative penalties of up to \$1000 per day of delinquency.

I Juliet Shin, do hereby certify

that I served Mrs. Graffenstatte
with a copy of the attached Notice of Official Action by the
Regional Board by certified mailer

P 386 338 110

Dated: 9/2/93


(signature)

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

250 MONTGOMERY STREET

SUITE 900

SAN FRANCISCO, CA 94104

TELEPHONE: (415) 397-9006

FAX: (415) 397-1339

93 AUG 31 PM 3:06

FRESNO

2344 TULARE STREET, SUITE 400

POST OFFICE BOX 1752

FRESNO, CA 93717-1752

TELEPHONE: (209) 486-2187

FAX: (209) 486-8171

LOS ANGELES

2500 VIA CABRILLO MARINA, SUITE 204

SAN PEDRO, CA 90731

TELEPHONE: (310) 548-0410

FAX: (310) 832-3394

PLEASE REPLY TO: SAN FRANCISCO

August 27, 1993

Ms. Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

Re: 186 E. Lewelling Blvd., San Lorenzo, CA

Dear Ms. Young:

This firm represents Mr. and Mrs. Carl Graffenstatte regarding the above referenced property. It is our understanding that you are not represented by counsel in this matter. If you are represented by counsel, please refer this correspondence to them.

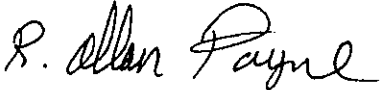
As you are likely aware, on August 17, the Regional Water Quality Control Board, San Francisco Bay Region (hereinafter "Regional Board") issued an order naming you and Mr. and Mrs. Graffenstatte as "responsible parties" and requiring both parties to cooperate in a soil and groundwater investigation. Please find attached, a copy of this order.

We request that you or your representative contact this office so that we may begin negotiations on undertaking the required investigations. We are in the process of contacting consultants to determine the costs of an investigation consistent with that approved by the Alameda County Health Department or of developing our own plan. Any cost information you have would be helpful to all parties.

This correspondence and the above described acts are not intended and should not be construed as an admission of liability by Mr. and Mrs. Graffenstatte. We look forward to hearing from you; please contact me if you have any questions.

Sincerely,

JAFFE, TRUTANICH, SCATENA & BLUM



R. ALLAN PAYNE

cc: Mr. & Mrs. Carl Graffenstatte
Juliet Shin
Francis Lan

Enclosure

310-0687/cor/young.rap

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

FRESNO

2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1752
FRESNO, CA 93717-1752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8171

93 AUG 31 PM 3:05

25 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES

2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

PLEASE REPLY TO: SAN FRANCISCO

August 27, 1993

Mobil Oil Corp.
1450 Enea Circle, A-100
Concord, CA 94520

Re: 186 E. Lewelling Blvd., San Lorenzo, CA

Dear Sir or Madame:

This firm represents Mr. and Mrs. Carl Graffenstatte regarding the above referenced property. Your firm occupied this property from at least 1969 to 1981 as the master lessee from the then owner of the property, Mrs. Robello, now deceased. During your occupancy, you installed several underground storage tanks (USTs) on the property. On September 5, 1991, three of these USTs were removed from the property. Soil samples taken near two of the removed USTs showed hydrocarbon contamination.

On August 17, the Regional Water Quality Control Board, San Francisco Bay Region (hereinafter "Regional Board") issued an order naming the present owner, Ms. Wai Yee Wong Young and the former owners Mr. and Mrs. Graffenstatte as "responsible parties" under California Code of Regulations Title 23 § 2720 and requiring both parties to cooperate in a soil and groundwater investigation. Please find attached, a copy of this order.

As a past operator, Mobil is also a responsible party.

We request that you or your representative contact this office so that we may begin negotiations on undertaking the required investigations. Voluntary involvement by Mobil at this stage could reduce or eliminate litigation expenses for all parties and allow your input into the design and implementation of whatever investigations or remediations are required.

A work plan for the initial investigation ordered by the Regional Board has been prepared and approved by the Alameda Health Department. We are in the process of contacting consultants to determine the costs of this investigation. We would welcome any input or expertise you might have in reducing such costs, however, as per the Regional Board's order, we are working under a 30 day time constraint so you must act quickly.

This correspondence and the above described acts are not intended and should not be construed as an admission of liability by Mr. and Mrs. Graffenstatte. We look forward to hearing from you; please contact me if you have any questions.

Sincerely,

JAFFE, TRUTANICH, SCATENA & BLUM


R. ALLAN PAYNE

cc: Mr. & Mrs. Carl Graffenstatte
Juliet Shin

Enclosure

310-0687/cor/young.rap

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

2101 WEBSTER STREET, SUITE 500

OAKLAND, CA 94612

(510) 286-1255

93 AUG 18 PM 3:36



Ms. Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

August 17, 1993
File 2198.17 (UST)
RB File No.: 01-1041

Mr. & Mrs. Graffenstatte
P. O. Box 97397
Tacoma, Washington 98497

Re: Official designation of Responsible Parties, and request for
submittal of a technical report resulting from the Alameda
County Department of Environmental Health's Enforcement Panel
meeting of July 27, 1993.

Dear Ms. Young, Mr. & Mrs. Graffenstatte:

A condition of soil and groundwater pollution exists from
Underground Storage Tank releases on the property located at 186
E. Lewelling Blvd., San Lorenzo, California. A pre-enforcement
Review Panel meeting was held on July 27, 1993 at the Offices of
Alameda County Health Department (ACHD) attended by Mr. Richard
Hiett from my Staff, Mr. James Jaffe and Mr. Allan Payne
representing Mr. and Mrs. Graffenstatte, and Ms. young and Mr.
Francis Lan.

Based on extensive presentations by the parties, documents, and
legal arguments received on behalf of Mr. and Mrs. Graffenstatte
during the Panel meeting, Ms. Young, Mr. and Mrs. Graffenstatte
have been designated as a "Responsible Party" under section 2720,
Article 11, Chapter 16, Division 3, Title 23 of the California Code
of Regulations. The Section states that a "Responsible Party" is
"any person who owned or operated the Underground Storage Tank
immediately before the discontinuation of its use", and "any owner
of property where an unauthorized release of a hazardous substance
from an Underground Storage Tank has occurred".

Pursuant to the Regional Board's authority under section 13267 (b)
of the California Water Code, you are both hereby, as "Responsible
Parties", required to cooperate and conduct soil and groundwater
investigations at the above site within 30 days of the date of this
letter. You shall jointly either submit a Work Plan to the ACHD
addressing the required soil and groundwater investigations at the
site, or implement the Work Plan prepared by Ms. Young's
consultants in March 1991, and approved in a June 6, 1991 letter
from the County with the condition that a total of three monitoring
wells be installed at the site.

I am hereby transmitting this request for a technical report to
ACHD for service and continued case handling. Please be aware that
failure to submit or late submittal may result in fines of up to
\$1000 per day of delinquency. Response to this technical report

Page 2 of 2

request should be sent to the attention of Ms. Juliet Shin at the ACHD. Please inform Ms. Shin at least four working days in advance of all field activities so that she may arrange to be on site.

If you have any questions or comments regarding the contents of this letter please contact Juliet Shin from ACHD at (510) 271 - 4530.

Sincerely,



Steven R. Ritchie,
Executive Officer.

CC: Gil Jensen, ACDA, 7677 Oakport Street, Suite 400, Oakland 94621.

Julie Shin, ACHD, 80 Swan Way, Suite 200, Oakland 94621

Mr. James L. Jaffe, Jaffe, Truitanich, Scatena & Blum, 250 Montgomery st., Suite 900, San Francisco 94104.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
 • Complete items 1 and/or 2 for additional services.
 • Complete items 3, 4a & b.
 • Print your name and address on the reverse of this form so that we can return this card to you.
 • Attach this form to the front of the mailpiece, or on the back if space does not permit.
 • Write "Return Receipt Requested" on the mailpiece below the article number.
 • The Return Receipt will show to whom the article was delivered and the date delivered.

STID 1709

I also wish to receive the following services (for an extra fee):
 1. Addressee's Address
 2. Restricted Delivery
 Consult postmaster for fee.

3. Article Addressed to:
 Mr. Carl Graffenstatte
 P.O. Box 97397
 Tacoma, Washington
 98497

4a. Article Number
 P 386 338 111

4b. Service Type
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

7. Date of Delivery
 8/13/93

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)
 [Signature]



PS Form 3811, December 1991 ☆ U.S.G.P.O. : 1992-307-530 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
 • Complete items 1 and/or 2 for additional services.
 • Complete items 3, 4a & b.
 • Print your name and address on the reverse of this form so that we can return this card to you.
 • Attach this form to the front of the mailpiece, or on the back if space does not permit.
 • Write "Return Receipt Requested" on the mailpiece below the article number.
 • The Return Receipt will show to whom the article was delivered and the date delivered.

STID 1709

I also wish to receive the following services (for an extra fee):
 1. Addressee's Address
 2. Restricted Delivery
 Consult postmaster for fee.

3. Article Addressed to:
 Mrs. Carl Graffenstatte
 P.O. Box 97397
 Tacoma, Washington
 98497

4a. Article Number
 P 386 338 110

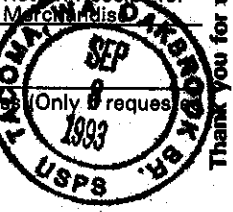
4b. Service Type
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

7. Date of Delivery
 9/13/93

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)
 [Signature]



PS Form 3811, December 1991 ☆ U.S.G.P.O. : 1992-307-530 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
 • Complete items 1 and/or 2 for additional services.
 • Complete items 3, 4a & b.
 • Print your name and address on the reverse of this form so that we can return this card to you.
 • Attach this form to the front of the mailpiece, or on the back if space does not permit.
 • Write "Return Receipt Requested" on the mailpiece below the article number.
 • The Return Receipt will show to whom the article was delivered and the date delivered.

STID 1709

I also wish to receive the following services (for an extra fee):
 1. Addressee's Address
 2. Restricted Delivery
 Consult postmaster for fee.

3. Article Addressed to:
 Ms. Wai Yee Wong Young
 4230 Harbor View Ave.
 Oakland, CA
 94619

4a. Article Number
 P 386 338 109

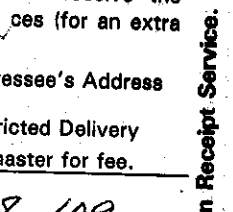
4b. Service Type
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

7. Date of Delivery
 9-4-93

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)
 [Signature]



PS Form 3811, December 1991 ☆ U.S.G.P.O. : 1992-307-530 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

JAFFE, TRUTANICH, SCATENA & BLUM

A PROFESSIONAL LAW CORPORATION

93 AUG 18 PM 3:28

FRESNO

2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1752
FRESNO, CA 93717-1752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8171

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES

2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

PLEASE REPLY TO: SAN FRANCISCO

August 16, 1993

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Department of
Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Re: 186 E. Lewelling Blvd., San Lorenzo, CA

Dear Ms. Shin:

This correspondence is as a follow-up communication to the Review Panel meeting conducted at your office on July 27, 1993. This letter sets forth the facts and law of the above-entitled matter as we understand them as well as my client's position regarding the same. It is still our position that as a matter of law, Mr. Graffenstatte is not an "owner" within the meaning of Health and Safety Code § 25281(i), § 25299.21, or 42 U.S.C. § 6991(3) and therefore is not a responsible party.

SUMMARY OF FACTS

For a complete rendering of the known facts prior to the Review Panel meeting please see my attached letter to you of April 16, 1993. Since that letter, several additional facts have come to light. First, immediately before Mr. Graffenstatte's purchase of the property in July, 1981, tank tightness tests were conducted on both gasoline tanks in question. Both tanks tested "tight" then as they did five years later when he sold the property to Ms. Young.

Ms. Young claims that she is financially unable to undertake the work plan she has had prepared and has been approved by your department. However, at the Panel Review meeting, she admitted that she has not made her mortgage payments to Mr. Graffenstatte in over a year in the hope that he might foreclose on the property and become the present owner. During this time she has charged her tenants on the property \$1,380.00 per month for rent and with her husband continues to own two other properties in Oakland and appears to operate an unlicensed and unregistered business at 421 15th Street in Oakland.

Ms. Juliet Shin
Alameda County Department of
Environmental Health
August 16, 1993
Page 2

Further, Ms. Young claimed that she was unaware that she had any obligations with respect to the tanks. However, please find enclosed a letter, originally attached to the 1986 tank tightness tests, signed by Ms. Young by which she intra alia, acknowledges and is put on notice that the sale places obligations on her with respect to the tanks.

Finally, your department, through the District Attorney's office, has clarified its position on the legal basis for holding Mr. Graffenstatte as a responsible party. It is our understanding that your department is relying on state law in your assertions that Mr. Graffenstatte is a responsible party. Below is an analysis of why "responsible party" has no definition separate from that of owner or operator, and even if it does the federal definition of responsible party applies, and finally even under the definition your department has proposed, Mr. Graffenstatte is still not a responsible party.

SUMMARY OF RELEVANT LAW

Chapters 6.7 and 6.75 (the Barry Keene Underground Storage Tank Clean-up Trust Fund Act of 1989, hereinafter the "Keene Act") of the California Health and Safety Code (§§ 25280 through 25299.82) provide the state statutory framework for the regulation of underground tanks in general and those holding petroleum products in particular. The federal regulation of underground storage tanks is found in 42 U.S.C. § 6991 et seq. (hereinafter the "federal act"). Article 4 of the Keene Act (§ 25299.37) requires "owners, operators or other responsible parties" to take corrective actions whenever issued an order by a local agency such as yours.

The Keene Act defines owner as "the owner of an underground storage tank" and operator as "any person in control of, or having responsibility for, the daily operations of an underground storage tank." Use of the definite article "the" in the definition of "owner" denotes that "owner" is a single entity - the present owner of the underground storage tank. Mr Graffenstatte is not the present owner and there is no evidence to suggest that he is in daily control of the operation of the underground storage tanks. It is clear that Mr. Graffenstatte is not the "owner or operator" of the underground storage tanks. Mr. Graffenstatte can only be required to respond to orders your department might issue with respect to these underground storage tanks if he is found to be a "responsible party" as the term is used in § 25299.37.

Ms. Juliet Shin
Alameda County Department of
Environmental Health
August 16, 1993
Page 3

Below, we present four independent reasons, each sufficient in itself to conclude that Mr. Graffenstatte is not a "responsible party." These include:

- 1) The statutory use of "responsible party" cannot yield a meaning different than that of "owner" or "operator;"
- 2) If the legislature intended "responsible party" to have a separate meaning, it is clear that the federal definition under CERCLA should be used;
- 3) The state regulation defining "responsible party" is not consistent with the authorizing legislation and is hence invalid and;
- 4) Even assuming the validity of the state regulation, Mr. Graffenstatte does not fall within its definition of "responsible party."

Under each of these headings, the result is the same, Mr. Graffenstatte is not a responsible party.

- 1) The statutory use of "responsible party" cannot yield a meaning different than that of "owner" or "operator."

While the Keene Act does define "owner" and "operator" it does not define "responsible parties." Nor is it defined in Chapter 6.7 or in the federal act. In fact, a close examination of the Keene Act reveals the legislature could not have intended "responsible party" to have a definition separate or different than that of "owner" or "operator."

As stated above, the term "owner, operator or other responsible party" is used in § 25299.37 to describe persons who must take corrective action in response local agency orders. Under the rules of statutory construction, "[w]here general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated." 58 Cal Jur 3d, 525. In our case, "owner" and "operator" enumerate a class of persons with a present possessory interest in the property and an ability to effect the operation of the tanks. The general term "other responsible parties" must be interpreted to mean persons of

Ms. Juliet Shin
Alameda County Department of
Environmental Health
August 16, 1993
Page 4

*This
Collection
must go* → that same general class. Mr. Graffenstatte does not have a present possessory interest in the property and could not affect the operation of the tanks; Mr. Graffenstatte is not a "responsible party" within the statutory definition.

Furthermore, § 25299.53 authorizes local agencies and regional boards to take corrective action themselves only when the "owner or operator" not when the "owner, operator or other responsible parties" fail to do so. Also, under § 25299.70 cleanup, oversight and corrective action costs can only be recovered from "the owner or operator" not "the owner, operator or other responsible parties." Because the Keene Act imposes strict liability, due process requires that the legislature clearly and with particularity define who is liable; they have not done so with clarity or particularity.

If "other responsible party parties" has a definition different from that of "owner" or "operator," as you have claimed (see below), then suit cannot be brought against such parties to force compliance with your orders, nor can they be held liable for your response costs, corrective action or oversight fees. If this is your position, please inform us, otherwise, it is clear that "other responsible parties" does not have a separate and different definition and must simply be a reiteration of "owner or operator." Therefore, as Mr. Graffenstatte is not an owner or operator within the statutory definition, he is not a responsible party.

2) If the legislature intended "responsible party" to have a separate meaning, it is clear that the federal definition under CERCLA should be used.

If the legislature did have had a separate definition in mind when they employed the term "responsible party" in the statute, it is only reasonable that this important term of art has been defined elsewhere in the statutes. In fact, in the very next Chapter of the Health and Safety Code (Chapter 6.8 - California Superfund) § 25323.5 adopts the federal government CERCLA definition of parties liable found in 42 U.S.C. § 9607(a) as its definition for "responsible party".

Finally, there is further evidence of the intended definition of "responsible parties." The state legislature appears to have borrowed the use of the words "owners, operators or other responsible parties" for H&S § 25299.37 directly from CERCLA's use

Ms. Juliet Shin
Alameda County Department of
Environmental Health
August 16, 1993
Page 5

of the wording "owner or operator or other responsible person" found in 42 U.S.C. § 9607(c)(1) and (2).

Basically, for our purposes, this federal definition includes present owners and operators and past owners and operators at the time of disposal (release). Under this definition, Mr. Graffenstatte is not a responsible party because he is not a present owner and the only direct evidence (the tank tightness tests) demonstrate that no releases occurred under his past ownership. You may feel that there is evidence to support the supposition that a release occurred during Mr. Graffenstatte's ownership, but in any civil action to enforce any orders your department may issue against Mr. Graffenstatte, you must prove by the preponderance of the evidence - that it is more likely than not - that Mr. Graffenstatte is a responsible party because a release occurred during his ownership.

No evidence has been produced to date to support such a finding. As no releases occurred during his ownership, Mr. Graffenstatte is not a "responsible party."

3) The state regulation defining "responsible party" is not consistent with the authorizing legislation and is hence invalid.

Your department has cited Title 23 § 2720 of the California Code of Regulations (hereinafter § 2720) as its source of authority for holding Mr. Graffenstatte as a responsible party. Section 2720 defines a "responsible party" as one or more of the following:

- (1) Any person who owns or operates an underground storage tank used for the storage of any hazardous substance;
- (2) In the case of any underground storage tank no longer in use, any person who owned or operated the underground storage tank immediately before the discontinuation of its use;
- (3) Any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred; and
- (4) Any who had or has control over a (sic) underground storage tank at the time of or following an unauthorized release of a hazardous substance.

The State Water Resources Control Board (hereinafter "Board")

Ms. Juliet Shin
Alameda County Department of
Environmental Health
August 16, 1993
Page 6

adopted § 2720 under authority of the H&S § 25299.77 which requires the Board to implement regulations consistent with Chapter 6.7, the Keene Act and requirements for state programs implementing the federal act. As shown above, "responsible party" cannot have a definition different from that of the statutory definitions of "owner" or "operator." While definition (1) is likely consistent with the Keene Act, Mr. Graffenstatte is not an "owner" or "operator." It is debatable whether or not definitions (3) and (4) of § 2720 above fall within the statutory definition of "owner" or "operator" and even if they do, no releases occurred during Mr. Graffenstatte's ownership. Finally, definition (2) does not fall within the statutory definition of "owner" or "operator."

Furthermore, (2) may be a misapplication of the federal act's definition of "owner." It appears that the state board borrowed (2) from the definition of "owner" in the federal act found in 42 U.S.C. § 6991(3). Section 6991(3) defines two types of owners depending on whether or not the UST in question was in use on November 8, 1984. If the tank was not in use on November 8, 1984, the definition found in § 6991(3)(B) applies, and defines "owner" as a person who owned the property "immediately before the discontinuation of its use." If, on the other hand, the tank was in use on November 8, 1984, the definition found in § 6991(3)(A) applies which defines an "owner" as "any person who owns an underground storage tank."

This federal definition apportions liability for tanks no longer in use on the effective date of the federal act. Those owners who discontinued use of their tanks before the effective date of the act remain solely liable for past releases from the tanks while the present owners of tanks in use after the effective date are solely liable for all releases from their tanks. The board's (2) definition adds a whole new class of responsible parties not found in the federal or state acts - all past owners who discontinued use of their tanks.

Creating such a new class of responsible parties is not "consistent with" the Keene Act or the federal act. Mr. Graffenstatte cannot be found to be a responsible party under an invalid state regulation.

4) Even assuming the validity of the state regulation, Mr. Graffenstatte does not fall within its definition of "responsible party."

Ms. Juliet Shin
Alameda County Department of
Environmental Health
August 16, 1993
Page 7

Even assuming that definition (2) of § 2720 is valid, Mr. Graffenstatte is still not a "responsible party" under that provision. Before closure, abandonment or discontinuing use of an underground storage tank is allowed, § 25298 of the Health and Safety Code requires certain acts and procedures be undertaken. Even if use of the underground storage tank is temporarily discontinued, certain requirements must still be met.

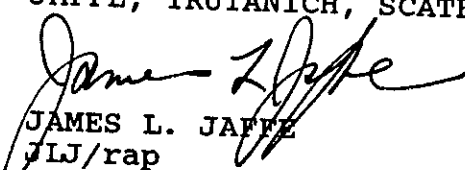
Under state law and regulations, "use" is a term of art. Whether or not a tank is in "use" is not dependant on what is or is not in the tank but what permits have been filed. Even though she knew she had obligations with respect to the tank, Ms. Young never undertook any of the required acts or procedures to permanently or temporarily discontinue the use of the tanks until she had them removed from the ground some four years after Mr. Graffenstatte's ownership. Therefore Mr. Graffenstatte was not the owner of the underground storage tanks immediately before the discontinuation of their use and therefore is not a responsible party under definition (2) of § 2720.

In light of the forgoing, we suggest that the Review Panel find that Mr. Graffenstatte is not a "responsible party" and that your department withdraw its previous orders issued to him with respect to the above mentioned property.

Thank you for your attention to this matter.

Very truly yours,

JAFFE, TRUTANICH, SCATENA & BLUM


JAMES L. JAFFE

JLJ/rap

310-0687/cor/shin2.rap

Enclosures

cc: Mr. Carl Graffenstatte
Mr. Gil Jensen, Alameda County District Attorney
Mr. Thomas Peacock
Mr. Edgar Howell
Mr. Richard Hiett, San Francisco Bay Regional Water
Quality Control Board

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

FRESNO

2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1752
FRESNO, CA 93717-1752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8171

250 MONTGOMERY STREET

SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES

2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

PLEASE REPLY TO: SAN FRANCISCO

April 16, 1993

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Department of
Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Re: Carl Graffenstatte

Dear Ms. Shin:

This correspondence sets forth the facts and law of the above-entitled matter as we understand them as well as my client's position regarding the same. It is our position that the evidence which shows contamination at the site does not show that it occurred under the ownership of Mr. Graffenstatte. Further, as a matter of law, Mr. Graffenstatte is not an "owner" within the meaning of Health and Safety Code § 25281(c) or 42 U.S.C. § 6991, and therefore is not a responsible party.

SUMMARY OF FACTS

In or about 1981, Mr Graffenstatte purchased the property which is the subject of the current action, (186 E. Lewelling Boulevard, San Lorenzo, California), from a Mrs. Robello, now deceased. Formerly, Mrs. Robello leased the site to Mobil Oil Company, which in turn sub-leased it to independent gasoline station owners. We understand that Mobil Oil installed the underground tanks which were removed in 1990. Sub-lessees operated the underground storage tanks ("UST's").

When Mr. Graffenstatte purchased the property the UST's were already present at the site. We are unaware of whether there were previous tanks at the site either owned or operated by Mobil Oil or any other predecessor in interest to Mr. Graffenstatte. However, we are certain that when Mr. Graffenstatte purchased the property, he had neither actual nor constructive knowledge of the presence of any contamination at the site, either from the UST's or any other source.

Ms. Juliet Shin
Alameda County Department of
Environmental Health
April 16, 1993
Page 2

On June 27, 1986, Mr. Graffenstatte hired Hunter Environmental Services to conduct tank tightness tests on the UST's in anticipation of sale of the property to Ms. Wai Yee Wong Young. The two UST's and piping system tested tight. Furthermore, the UST's were emptied and were "bone dry" subsequent to the tank testing. Thereafter, during 1986, Mr. Graffenstatte sold the property to Ms. Young.

In 1990, four years subsequent to the sale of the property by Mr. Graffenstatte to Ms. Young, it was determined that the property was contaminated. The UST's were thereafter pulled and found to be in a deteriorated condition. Ms. Young had a work plan prepared regarding remediation of the site. At no time was the source of the contamination identified, vis-a-vis on whose watch the contamination occurred.

On January 28, 1993, the Alameda County Department of Environmental Health, Hazardous Materials Division, sent Mr. Graffenstatte a letter ordering him to either submit a Preliminary Site Assessment work plan to determine the vertical and lateral extent of soil and ground water contamination from past releases from the former UST's, or begin implementing the already approved work plan, completed by consultants retained by Ms. Young, by the first week of March 1993. The Department's order appears to stem primarily from two basis. First, Mrs. Young's alleged financial inability to pay for the implementation of the work plan. Second, Mr. Graffenstatte's alleged liability based on the allegation that the contamination occurred while he owned the property.¹

¹. The Department's "evidence" of the contamination occurring while Mr. Graffenstatte owned the property is that when the tanks were removed by Ms. Young they were in a deteriorated condition. However the objective evidence known to the parties at this time point to the deterioration of the tanks occurring after the sale of the property to Ms. Young. First, the Hunter Environmental Services test results show unequivocally that the tanks and piping were tight at the time of the sale of the property to Ms. Young. Second, there is evidence to suggest that during her ownership of the tanks, prior to having them pulled, she failed to render them inert as required by Health and Safety Code § 25298. It is well established that the failure to render UST's inert for a substantial period of time will allow them to corrode/deteriorate, much in the same fashion as the tanks here were found when removed.

Ms. Juliet Shin
Alameda County Department of
Environmental Health
April 16, 1993
Page 3

What emerges from the forgoing facts is that Ms. Young is liable for the implementation of the work plan simply by virtue of the fact that she is the current owner of the property, whether or not she contributed to the contamination. Moreover, it appears that any deterioration of the tanks occurred during Ms. Young's ownership by failing to render the tanks inert. During Mr. Graffenstatte's period of ownership, the tanks tested tight and then were emptied. There is no evidence of, nor does Mr. Graffenstatte have any knowledge of, either actual or constructive, any leaks from the UST's or piping during his period of ownership. It is equally well established that prior to Mr. Graffenstatte's ownership, Mrs. Robello leased the property to Mobil Oil, who in turn subleased it to independent gasoline station owners who operated the tank system.

There is no clear evidence that the tanks leaked during Ms. Young's ownership. Further, there is evidence, as set forth above, that the tanks did not leak during Mr. Graffenstatte's ownership. Therefore, the weak link appears to be the predecessors in interest to Mr. Graffenstatte, i.e., Mrs. Robello, Mobil Oil etc.

Based on the forgoing, certain salient issues with respect to Mrs. Robello and Mobil Oil's potential liability are raised. Do either or both of these parties have any knowledge of any leaks from the tanks during their period of ownership/operation? Were any tanks removed during their ownership/operation during the course of such removal a spill or spills may have occurred?

At a minimum, any supposition supporting the Department's decision to proceed against Mr. Graffenstatte is severely questioned. An objective observer may even suggest that the Department's decision to proceed against Mr. Graffenstatte, in spite of the overwhelming evidence in support of his non-liability, is an attempt to stick a non-governmental entity with the bill because Ms. Young apparently does not have the necessary financial wherewithal. Factually, it is clear that there is no basis for the Department's asserted position that Mr. Graffenstatte is responsible for the contamination at the site and therefore the cleanup thereof.

SUMMARY OF RELEVANT LAW

In an April 15, 1993 telephone conversation with Ms. Lori Casillas, of Cal-EPA, I was informed that the legal basis, apart from any factual findings, that the Department was relying upon in proceeding against Mr. Graffenstatte was that he was an "owner" of

Ms. Juliet Shin
Alameda County Department of
Environmental Health
April 16, 1993
Page 4

the property within the meaning of 42 U.S.C. § 6991(3).² As discussed below, as a matter of law Mr. Graffenstatte is not an owner as that term is defined in § 6991(3).

Section 6991(3) defines two types of owners depending on whether or not the UST in question was in use on November 8, 1984. If the tank was not in use on November 8, 1984, the definition found in § 6991(3)(B) applies, and defines "owner" as a person who owned the property "immediately before the discontinuation of its use." If, on the other hand, the tank was in use on November 8, 1984, the definition found in § 6991(3)(A) applies which defines an "owner" as "any person who owns an underground storage tank."

Here, the UST's in question were used until 1986, and therefore the definition of "owner" found in § 6991(3)(A) applies. As set forth above, this section, by use of the present tense of the word "owns", contemplates an owner who presently owns the property. Therefore, because Mr. Graffenstatte is not an owner within the meaning of the statute he is not a responsible party for any cleanup of the site.

In light of the forgoing, we suggest that the Department re-examine it's decision to proceed against Mr. Graffenstatte without clearly having first carefully considered the facts and law of the case. As a matter of law, liability falls squarely on Ms. Young as the current owner. Further, all indications are that any contamination that may have occurred did so while the ownership and operation of the property was under the auspices of Mrs. Robello and Mobil Oil.

². Ms. Casillas stated reason for using the definition of "owner" used in RCRA, 42 U.S.C. § 6900 et seq. was that federal funds are being used to pay for the oversight costs incurred in the UST program.

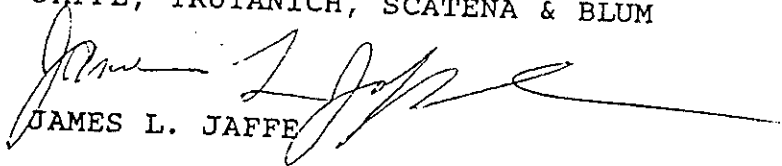
Ms. Juliet Shin
Alameda County Department of
Environmental Health
April 16, 1993
Page 5

I suggest we set a mutually agreeable time in which to meet and further discuss the issues raised by this correspondence. After reviewing this correspondence, please contact me so we may arrange the same.

Thank you for your attention to this matter.

Very truly yours,

JAFFE, TRUTANICH, SCATENA & BLUM


JAMES L. JAFFE

JLJ/TCC/db
310-0687/cor/graff.tcc

cc: Mr. Carl Graffenstatte

WE HAVE READ AND UNDERSTAND THE TANK AND INSPECTION REPORT ATTACHED TO THIS LETTER. WE ACCEPT THE TANKS IN THEIR PRESENT CONDITION. WE UNDERSTAND THAT THE ~~SELLER~~ ^{Sale} IMPOSES OBLIGATION ON US WITH RESPECT TO THE TANKS. WE FURTHER UNDERSTAND GRAFFENSTATTE CORPORATION, TRACE AND LEIGH GRAFFENSTATTE, AND CARL AND DONNA GRAFFENSTATTE HAVE NO OBLIGATION WITH RESPECT TO SUCH TANKS.

8-21-86

Wm J. Young

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

In Re The Property Known As :) Request for, and Notice of
) Meeting of Review Panel
)

186 E. Lewelling Blvd.,
San Lorenzo, CA 94580

Notice is hereby given that upon the motion of the Alameda County Hazardous Materials Division, and the San Francisco Bay Regional Water Quality Control Board a **Review Panel** will convene on **July 27, 1993 at 11:00 a.m.** in the offices of the Alameda County Hazardous Materials Division located at 80 Swan Way, Room 200, Oakland, CA 94621. This **Review Panel** will convene for the purpose of determining responsible parties as well as appropriate closure, site assessment, clean-up and mitigation of contamination at the above location.

The Alameda County Hazardous Materials Division, and the San Francisco Bay Regional Water Quality Control Board have named and served notice of this **Review Panel** on the following persons or entities as having proposed responsibility for closure, site assessment, clean-up and mitigation of contamination at the above location, and by this notice all parties named herein are informed of the right to appear and show cause, if any they have, for the exclusion or inclusion of any of the parties served herein from said responsibility or obligations :

1. Mr. and Mrs. Graffenstatte

P.O. Box 97397
Tacoma, Washington 98497

2. Ms. Wai Yee Wong Young

4230 Harbor View Avenue
Oakland, California 94619

3. Mr. James L. Jaffe

c/o Jaffe, Trutanich, Scatena & Blum
250 Montgomery St., Ste 900
San Francisco, CA 94104

Alameda County has served a copy of this document on each of the above listed persons or entities, and attached hereto a separate **Proof of Service** for each of said persons or entities.

Dated: July 13, 1993

Tom Peacock by [Signature]

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

In Re The Property Known As :) Request for, and Notice of
) Meeting of Review Panel
)

186 E. Lewelling Blvd.,
San Lorenzo, CA 94580

Notice is hereby given that upon the motion of the Alameda County Hazardous Materials Division, and the San Francisco Bay Regional Water Quality Control Board a **Review Panel** will convene on **July 27, 1993 at 11:00 a.m.** in the offices of the Alameda County Hazardous Materials Division located at 80 Swan Way, Room 200, Oakland, CA 94621. This **Review Panel** will convene for the purpose of determining responsible parties as well as appropriate closure, site assessment, clean-up and mitigation of contamination at the above location.

The Alameda County Hazardous Materials Division, and the San Francisco Bay Regional Water Quality Control Board have named and served notice of this **Review Panel** on the following persons or entities as having proposed responsibility for closure, site assessment, clean-up and mitigation of contamination at the above location, and by this notice all parties named herein are informed of the right to appear and show cause, if any they have, for the exclusion or inclusion of any of the parties served herein from said responsibility or obligations :

1. Mr. and Mrs. Graffenstatte

P.O. Box 97397
Tacoma, Washington 98497

2. Ms. Wai Yee Wong Young

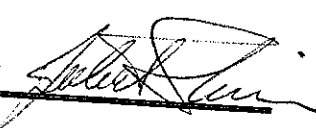
4230 Harbor View Avenue
Oakland, California 94619

3. Mr. James L. Jaffe

c/o Jaffe, Trutanich, Scatena & Blum
250 Montgomery St., Ste 900
San Francisco, CA 94104

Alameda County has served a copy of this document on each of the above listed persons or entities, and attached hereto a separate **Proof of Service** for each of said persons or entities.

Dated: July 13, 1993

Tom Peacock by 

**Alameda County Health Care Services Age/
Environmental Health, Hazardous Mate**

In Re The Property Known As :)

186 E. Lewelling Blvd.)
San Lorenzo, CA 94580)

I Juliet Shin, do hereby certify
that I served James L. Jaffe
with a copy of the attached **Notice of Pre-Enforcement Review
Panel** on July 14, 1993 by certified
mailer # P418 724 616

Dated: July 14, 1993

Juliet Shin
(signature)

724 616

Receipt for Certified Mail
No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

UNITED STATES POSTAL SERVICE

PS Form 3800, June 1991

Sent to	
Street and No.	
P.O., State and ZIP Code	
Postage	
Certified Fee	\$
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

Notice of Review Panel

Alameda County Health Care Services Agency
 Environmental Health, Hazardous Materials

P 418 724 615



Receipt for Certified Mail
 No Insurance Coverage Provided
 Do not use for International Mail
 (See Reverse)

Sent to	
Street and No.	
P.O., State and ZIP Code	
Postage	
Certified Fee	\$
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, June 1991

In Re The Property Known As :)

186 E. Lewelling Blvd.)
 San Lorenzo, CA 94580)
)
)

Review Panel

I Juliet Shin, do hereby certify
 that I served Mr. & Mrs. Graffenstatter
 with a copy of the attached Notice of Pre-Enforcement Review
 Panel on July 14, 1993
 mailer # P 418 724 615 by certified

Dated: July 14, 1993

Juliet Shin
 (signature)

April 20, 1993

Gil,

Per your request here is a copy of the letter from Mr. Graffenstatte's attorney, Jim Jaffe, regarding the site at 186 E. Lewelling Blvd.

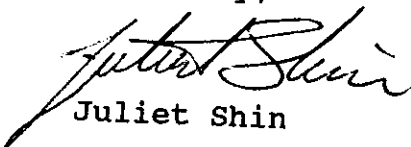
Mr. Graffenstatte sold the above property to Ms. Wai Yee Young in 1986. Prior to selling the property, he had conducted tank tightness tests on the gasoline tanks, and then pumped them dry. The tanks passed the tightness test, however, these tests are known to be less than 100% accurate. Ms. Wai Yee Young apparently did not use these gasoline tanks after purchasing the property. Her tenants were auto repair stores and had no use for the gasoline tanks, and furthermore, according to Ms. Young, the pumps that were connected to these gas tanks were dismantled and rendered useless.

Four years after purchasing the property, Ms. Wai Yee Young had these tanks removed at the request of the County. Elevated levels of gasoline were identified in the soil samples collected from beneath the gasoline tanks and holes and corrosion were noted. The County cited Mr. Graffenstatte, in addition to Ms. Young, as a responsible party because Mr. Graffenstatte was the last one to use the tanks and the tanks were pumped dry prior to selling the property to Ms. Young, which implies that the observed releases occurred prior to Ms. Young's purchase of the property.

If you have any additional questions or comments, please contact me at (510) 271-4530.

Thanks.

Sincerely,


Juliet Shin

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

FRESNO
2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1752
FRESNO, CA 93717-1752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8171

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES
2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 832-3394

PLEASE REPLY TO: SAN FRANCISCO

April 16, 1993

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Department of
Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Re: Carl Graffenstatte

Dear Ms. Shin:

This correspondence sets forth the facts and law of the above-entitled matter as we understand them as well as my client's position regarding the same. It is our position that the evidence which shows contamination at the site does not show that it occurred under the ownership of Mr. Graffenstatte. Further, as a matter of law, Mr. Graffenstatte is not an "owner" within the meaning of Health and Safety Code § 25281(c) or 42 U.S.C. § 6991, and therefore is not a responsible party.

SUMMARY OF FACTS

In or about 1981, Mr Graffenstatte purchased the property which is the subject of the current action, (186 E. Lewelling Boulevard, San Lorenzo, California), from a Mrs. Robello, now deceased. Formerly, Mrs. Robello leased the site to Mobil Oil Company, which in turn sub-leased it to independent gasoline station owners. We understand that Mobil Oil installed the underground tanks which were removed in 1990. Sub-lessees operated the underground storage tanks ("UST's").

When Mr. Graffenstatte purchased the property the UST's were already present at the site. We are unaware of whether there were previous tanks at the site either owned or operated by Mobil Oil or any other predecessor in interest to Mr. Graffenstatte. However, we are certain that when Mr. Graffenstatte purchased the property, he had neither actual nor constructive knowledge of the presence of any contamination at the site, either from the UST's or any other source.

Ms. Juliet Shin
Alameda County Department of
Environmental Health
April 16, 1993
Page 2

On June 27, 1986, Mr. Graffenstatte hired Hunter Environmental Services to conduct tank tightness tests on the UST's in anticipation of sale of the property to Ms. Wai Yee Wong Young. The two UST's and piping system tested tight. Furthermore, the UST's were emptied and were "bone dry" subsequent to the tank testing. Thereafter, during 1986, Mr. Graffenstatte sold the property to Ms. Young.

In 1990, four years subsequent to the sale of the property by Mr. Graffenstatte to Ms. Young, it was determined that the property was contaminated. The UST's were thereafter pulled and found to be in a deteriorated condition. Ms. Young had a work plan prepared regarding remediation of the site. At no time was the source of the contamination identified, vis-a-vis on whose watch the contamination occurred.

On January 28, 1993, the Alameda County Department of Environmental Health, Hazardous Materials Division, sent Mr. Graffenstatte a letter ordering him to either submit a Preliminary Site Assessment work plan to determine the vertical and lateral extent of soil and ground water contamination from past releases from the former UST's, or begin implementing the already approved work plan, completed by consultants retained by Ms. Young, by the first week of March 1993. The Department's order appears to stem primarily from two basis. First, Mrs. Young's alleged financial inability to pay for the implementation of the work plan. Second, Mr. Graffenstatte's alleged liability based on the allegation that the contamination occurred while he owned the property.¹

¹. The Department's "evidence" of the contamination occurring while Mr. Graffenstatte owned the property is that when the tanks were removed by Ms. Young they were in a deteriorated condition. However the objective evidence known to the parties at this time point to the deterioration of the tanks occurring after the sale of the property to Ms. Young. First, the Hunter Environmental Services test results show unequivocally that the tanks and piping were tight at the time of the sale of the property to Ms. Young. Second, there is evidence to suggest that during her ownership of the tanks, prior to having them pulled, she failed to render them inert as required by Health and Safety Code § 25298. It is well established that the failure to render UST's inert for a substantial period of time will allow them to corrode/deteriorate, much in the same fashion as the tanks here were found when removed.

Ms. Juliet Shin
Alameda County Department of
Environmental Health
April 16, 1993
Page 3

What emerges from the forgoing facts is that Ms. Young is liable for the implementation of the work plan simply by virtue of the fact that she is the current owner of the property, whether or not she contributed to the contamination. Moreover, it appears that any deterioration of the tanks occurred during Ms. Young's ownership by failing to render the tanks inert. During Mr. Graffenstatte's period of ownership, the tanks tested tight and then were emptied. There is no evidence of, nor does Mr. Graffenstatte have any knowledge of, either actual or constructive, any leaks from the UST's or piping during his period of ownership. It is equally well established that prior to Mr. Graffenstatte's ownership, Mrs. Robello leased the property to Mobil Oil, who in turn subleased it to independent gasoline station owners who operated the tank system.

There is no clear evidence that the tanks leaked during Ms. Young's ownership. Further, there is evidence, as set forth above, that the tanks did not leak during Mr. Graffenstatte's ownership. Therefore, the weak link appears to be the predecessors in interest to Mr. Graffenstatte, i.e., Mrs. Robello, Mobil Oil etc.

Based on the forgoing, certain salient issues with respect to Mrs. Robello and Mobil Oil's potential liability are raised. Do either or both of these parties have any knowledge of any leaks from the tanks during their period of ownership/operation? Were any tanks removed during their ownership/operation during the course of such removal a spill or spills may have occurred?

At a minimum, any supposition supporting the Department's decision to proceed against Mr. Graffenstatte is severely questioned. An objective observer may even suggest that the Department's decision to proceed against Mr. Graffenstatte, in spite of the overwhelming evidence in support of his non-liability, is an attempt to stick a non-governmental entity with the bill because Ms. Young apparently does not have the necessary financial wherewithal. Factually, it is clear that there is no basis for the Department's asserted position that Mr. Graffenstatte is responsible for the contamination at the site and therefore the cleanup thereof.

SUMMARY OF RELEVANT LAW

In an April 15, 1993 telephone conversation with Ms. Lori Casillas, of Cal-EPA, I was informed that the legal basis, apart from any factual findings, that the Department was relying upon in proceeding against Mr. Graffenstatte was that he was an "owner" of

Ms. Juliet Shin
Alameda County Department of
Environmental Health
April 16, 1993
Page 4

the property within the meaning of 42 U.S.C. § 6991(3).² As discussed below, as a matter of law Mr. Graffenstatte is not an owner as that term is defined in § 6991(3).

Section 6991(3) defines two types of owners depending on whether or not the UST in question was in use on November 8, 1984. If the tank was not in use on November 8, 1984, the definition found in § 6991(3)(B) applies, and defines "owner" as a person who owned the property "immediately before the discontinuation of its use." If, on the other hand, the tank was in use on November 8, 1984, the definition found in § 6991(3)(A) applies which defines an "owner" as "any person who owns an underground storage tank."

Here, the UST's in question were used until 1986, and therefore the definition of "owner" found in § 6991(3)(A) applies. As set forth above, this section, by use of the present tense of the word "owns", contemplates an owner who presently owns the property. Therefore, because Mr. Graffenstatte is not an owner within the meaning of the statute he is not a responsible party for any cleanup of the site.

In light of the forgoing, we suggest that the Department re-examine it's decision to proceed against Mr. Graffenstatte without clearly having first carefully considered the facts and law of the case. As a matter of law, liability falls squarely on Ms. Young as the current owner. Further, all indications are that any contamination that may have occurred did so while the ownership and operation of the property was under the auspices of Mrs. Robello and Mobil Oil.

². Ms. Casillas stated reason for using the definition of "owner" used in RCRA, 42 U.S.C. § 6900 et seq. was that federal funds are being used to pay for the oversight costs incurred in the UST program.

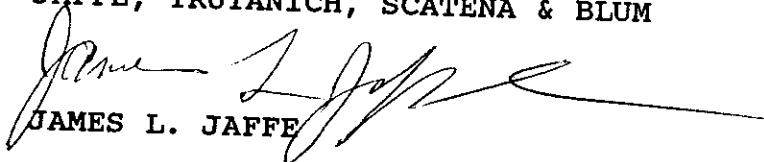
Ms. Juliet Shin
Alameda County Department of
Environmental Health
April 16, 1993
Page 5

I suggest we set a mutually agreeable time in which to meet and further discuss the issues raised by this correspondence. After reviewing this correspondence, please contact me so we may arrange the same.

Thank you for your attention to this matter.

Very truly yours,

JAFFE, TRUTANICH, SCATENA & BLUM


JAMES L. JAFFE

JLJ/TCC/db
310-0687/cor/graff.tcc

cc: Mr. Carl Graffenstatte

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

FRESNO
2344 TULARE STREET, SUITE 400
POST OFFICE BOX 1732
FRESNO, CA 93717-1732
TELEPHONE: (209) 486-3187
FAX: (209) 486-8171

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-4339

LOS ANGELES
618 WEST 8TH STREET
SAN PEDRO, CA 90731
TELEPHONE: (213) 548-0410
FAX: (213) 632-3394

TELECOPY TRANSMITTAL FORM

PLEASE REPLY TO: SAN FRANCISCO

DATE: Mar. 17, 1993

FAX NO.: 510-569-4257

PLEASE DELIVER THE FOLLOWING 7 PAGES INCLUDING COVER PAGE TO:

ATTENTION: Subject Shins
COMPANY: Alameda County Dept of Env. Health
FROM: Timothy Cronin
REGARDING: Carl Shaffenstatte

____ ORIGINAL WILL NOT FOLLOW. ____ ORIGINAL WILL FOLLOW BY:
____ U.S. MAIL
____ OVERNIGHT SERVICE
____ OTHER _____

CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS FACSIMILE FROM THE LAW FIRM OF JAFFE, TRUTANICH, SCATENA & BLUM IS CONFIDENTIAL AND ALSO MAY BE LEGALLY PRIVILEGED AS AN ATTORNEY-CLIENT COMMUNICATION. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE ADDRESSEE, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER THIS FACSIMILE TO ITS INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY REVIEW, USE, DISSEMINATION, DISTRIBUTION, DISCLOSURE, COPYING OR TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL FACSIMILE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

If there is a problem with receipt of this transmission, please contact Kenji at 415/397-9006. Client No. _____

JAFFE, TRUTANICH, SCATENA & BLUM
A PROFESSIONAL LAW CORPORATION

FRESNO
2344 TULARE STREET, SUITE 900
POST OFFICE BOX 1752
FRESNO, CA 9371752
TELEPHONE: (209) 486-2187
FAX: (209) 486-8171

250 MONTGOMERY STREET
SUITE 900
SAN FRANCISCO, CA 94104
TELEPHONE: (415) 397-9006
FAX: (415) 397-1339

LOS ANGELES
2500 VIA CABRILLO MARINA, SUITE 204
SAN PEDRO, CA 90731
TELEPHONE: (310) 548-0410
FAX: (310) 532-3304

PLEASE REPLY TO: SAN FRANCISCO

March 17, 1993

Ms. Juliet Shin
Hazardous Materials Specialist
Alameda County Department of
Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Re: Carl Graffenstatte

Dear Ms Shin:

Pursuant to our telephone conversation of this date, enclosed please find copies of the Hunter Environmental tank test results about which we spoke.

As set forth in the test results, the tanks tested tight prior to the sale of the property by Mr. Graffenstatte to Wai Yee Young. After reviewing the enclosed documents, please contact me so we may discuss the same. In the meantime, I will speak with Mr. Graffenstatte to see if he is in possession of any documentation regarding the emptying of the tanks or sale of the product that was contained therein.

Should you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,


JAFFE, TRUTANICH, SCATENA & BLUM

Timothy C. Cronin
TIMOTHY C. CRONIN

TCC/db
Enclosures

INVESTIGATIVE PROCEDURES FOR LEAK LOKATOR RESULTS

All results indicating a leak conclusion should be investigated.



ENVIRONMENTAL SERVICES, INC.
 715 DEWEY AVE., N.W., SUITE 400
 CANTON, OHIO 44702
 PHONE: 800-929-4372
 IN OHIO: 318-453-1400

RESULTS			CONCLUSION	INVESTIGATIVE PROCEDURE
Full System Tank & Piping	Tank Top 6"-10" above Tank Top	In Tank 6"-10" below Tank Top		
Leak Leak Leak	Light ... Leak	... Light Light	Piping and/or tank top leak	<ol style="list-style-type: none"> Conduct hydrostatic pressure test on product lines <ul style="list-style-type: none"> • If light proceed to b • If leak, repair and retest at full system. Uncover the entire tank top fan blower and piping -- start at most likely sources -- fans, vapor recovery, gauges, vents, pumps (don't forget the suction side) the observant as to whether or not these things, etc. are inadvertently repaired during investigation. If no piping leak is found, retest the system while still uncovered. If a piping leak is found, repair and retest the system while still uncovered (this is important to assure that all leaks have been corrected). If the system retest still reveals a leak and the leak in piping can be covered, it is safe to assume there is a tank leak that is being covered up by geology or some other hydraulic phenomenon.
Leak Leak	... Leak	... ... ...	
Leak Leak Leak	... ... Image	... ... Image	Full system leak, however, tank top and/or in tank test unable to be performed due to inaccessibility to low level (e.g., boat riser, too small, acid, or lime residuals on site).	<ol style="list-style-type: none"> Due to inaccessibility: <ul style="list-style-type: none"> • Uncover and repair or replace riser. • Retest at full system and lower level if necessary. • If due to lime residuals -- set up retest for in tank Repair/Replace system. Follow procedure outlined in #4.
Leak Leak Leak	Image ... Image	... ... Image		
Leak Leak	Image ... Image	... ... Image	Water in Tank (Trim Socks/lines) a. There is a hole below the water table and water is leaking in b. Water is entering through hole in piping or tank top	<ol style="list-style-type: none"> Conduct hydrostatic pressure test on product lines <ul style="list-style-type: none"> • If light, proceed to b • If leak, repair and retest at full system. Uncover and investigate piping and tank top and follow procedure outlined in 1a. If leak is found, repair and retest the system while still uncovered (this is important to assure that all leaks have been corrected). If full system retest still reveals a leak and no leak in piping can be observed, it is safe to assume there is a tank leak that is being covered up by geology or some other hydraulic phenomenon.
Leak Leak	Image ... Image	... ... Image		
Leak Leak	Leak ... Leak	Leak ... Leak	Tank and/or Piping Leak	<ol style="list-style-type: none"> Repair/replace system.

* The conclusion is based on the assumption that the test was conducted completely below tank top. Test level and tank configuration should be thoroughly investigated before corrective action is taken (where vapor recovery is present - watch for full head interference).
 NOTE: In tank results are not certified as meeting the RFPRA 329 Criterion

LINIER

ENVIRONMENTAL SERVICES, INC.

115 DEWALT AVENUE, NORTHWEST
SUITE 400
CANTON, OH 44702
800-523-4370 216-453-1800
Outside Ohio

INVOICE DATE 11/20/86
INVOICE NO. 0158651
CUSTOMER NO. GRAFCO

INVOICE

COPY 1

BILL TO
ATTN: CARL GRAYFRISTATTE
GRAFCO PETROLEUM
P.O. BOX 1713

SAN LEANDRO, CA
94777

TEST LOCATION:

GRAFCO PETROLEUM
126 E. WASHINGTON AVE. / OAKLAND

SAN LEANDRO, CA

PAGE 1

LOCATION	CUSTOMER ORDER NO.	VAN ID	TERMS			SALES ID	OUR ORDER NO.
6727/86 S. LEAND		PE 11-17	NET 10 DAYS			082005	000104
ITEM NO. WORK TYPE	WORK DESCRIPTION	UNIT	QUANTITY			UNIT PRICE	EXTENDED PRICE
			ORDERED	BACKORDERED	COMPLETED		
LEAK TEST 625	LEAK LOCATOR TEST	TEST	2	0	2	625.000	1250.00
	OPW 653-TC-4" X 4" COAXIAL PI LL ADAPTOR	PART	1	0	1	63.000	63.00
	OPW 2-4150-N 4" BASKETS (TOP SEAL)	PART	6	0	6	2.000	12.00
						Sales Total	1325.00
						Freight	0.00
						Other Charges	0.00
						Sales Taxes	0.00
						TOTAL	1325.00

Leak Lokator

APR 17 '93 15:58 J.T.S&B -LAW OFFICES 3971339
 8000
 8055

P.4/7



FINAL REPORT



ENVIRONMENTAL SERVICES, INC.
 18 GREAT VALLEY PARKWAY, SUITE 6
 MALVERN, PA 19355
 215-263-7389 800-523-4370

TEST RESULTS

DATE OF TEST
 June 27, 1996
 CONTRACT NUMBER

CUSTOMER: GRACO Petroleum

LOCATION - IDENTIFICATION NUMBER: _____ NAME: _____

ADDRESS: 186 LEWELLYN Blvd + Ashland Rd CITY: SAN LORENZO STATE: CALIFORNIA

SYSTEM	PRODUCT	TANK SIZE		WATER INCHES	LEAK LOKATOR RESULTS*			RECOMMENDATIONS	LEAK LOSS (GPH)
		GALLONS	DIAMETER		LEVEL INCHES	WATER	CONCLUSION		
1	SUPER	4000	76		140	-0.21	TIGHT		
2	REGULAR	4300	76	0	135	+0.16	TIGHT		

OTHER INFORMATION: NO Electricity

PRODUCT LINES - HYDROSTATIC PRESSURE TEST RESULTS

NO.	SYSTEM	PRODUCT	TYPE OF PUMP		# APPLIED	MINUTES APPLIED	PRODUCT LOSS CC'S	PRODUCT LOSS GPH	CONCLUSION/ RESULT
			REMOTE	SUCTION					
1	SUPER			W/TYPE					
2	REGULAR			W/TYPE					

NOTE: On suction systems, NEVER put more than 15 psi on any pump system.

OTHER CONTRACTORS, OFFICIALS, CUSTOMER REPRESENTATIVES PRESENT

DETAIL OF TEST RESULTS

NO.	SYSTEM	TEST NO.	TEST LEVEL (INCHES)	TIME		LEAK RATE		TEMPERATURE COMPENSATION		ADJUSTED LEAK RATE		CONCLUSION
				START	STOP	CC/MIN	CC/MIN	Δ F	CC/MIN	CC/MIN	GPH	
1	SUPER	1	140	10:30	10:55	4.875	4.508	+0.20	+1.30	7.304	-0.21	N
2	REGULAR	1	135	10:55	11:20	2.798	2.158	+0.21	+1.63	2.995	+0.16	N

* LEVEL - INCHES FROM TANK BOTTOM TO TEST LEVEL
 ALR - ABSOLUTE LEAK RATE (MEASURED LEAK RATE - TEMPERATURE COMPENSATION) IN GALLONS PER HOUR
 CONCLUSION - NFPA 329 CRITERION OF 1.00 GPH IS USED TO CERTIFY TIGHTNESS

CERTIFICATION This is to certify that the above described tank systems were tested, using the HUNTER ENVIRONMENTAL SERVICES, INC LEAK LOKATOR according to all standard operating procedures. Those indicated as tight meet the criterion established by the National Fire Protection Association Pamphlet 329 for Precision Testing.

TESTS CONDUCTED BY		CERTIFIED BY	
TANK TESTING SPECIALIST <u>E. PRICE</u>	TANK TESTING SPECIALIST <u>A. LUCAS</u>	SIGNATURE <u>[Signature]</u>	DATE <u>06-27-96</u>
TANK TESTING SPECIALIST <u>K. Boyer</u>		NAME <u>STEPHAN E. COYEN</u>	TITLE <u>Team Specialist</u>

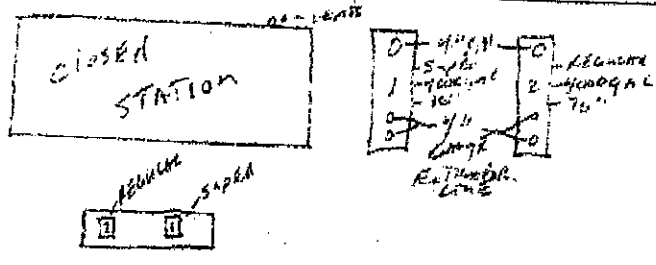
TEST VAN NO. LL-17

TANK AND LOCATION DATA

CUSTOMER: Griffin Peter Cannon DATE: June 27, 1986
 CITY: San Francisco
 I.D. # 186 - Remediating U.C. Prod STATE: California

WEATHER	TIME	TEMPERATURE	COMMENTS
BEFORE TEST -	0730	65°	Clear
AFTER TEST -	1200	72°	Clear

SCHEMATIC:



	PRODUCT/TANK NO.	SUPER / 1		RECOVER / 2							
		Fill	Gauge	Fill	Gauge	Fill	Gauge	Fill	Gauge	Fill	Gauge
BEFORE DELIVERY	LEVEL	123		115							
	GALLONS	Full		Full							
	WATER	0		0							
	TOP OF RISER	126		118							
	GRADE	132		124							
	DROP TUBE	YES		YES							
	CAPACITY, GALLONS	4000		4000							
	DIAMETER, INCHES	76		76							
	MATERIAL	Fiberglass		Fiberglass							
	PUMP TYPE	W/PT		W/PT							
	TYPE OF COVER	CEMENT		CEMENT							
	AGE OF TANK										
	SIPHON	NO		NO							
	TANK OPENINGS	3		3							
	EXTRACTORS	2		2							
VAPOR RECOVERY	TYPE	P-1		P-1							
	VENT CONFIGURATION										
	P-V VENT VALVE TYPE	1		1							

REPLACEMENT PARTS:	PART #	DESCRIPTION	QUANTITY	PRICE
	33768	4" 50' - 2" riser	6	63.00
			6	3.00 EA

ADDITIONAL CHARGES: (pumpovers, overtime, etc.) _____

*Data obtained from Station LL Charts Other _____

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH

State Water Resources Control Board

Division of Clean Water Programs

UST Local Oversight Program

80 Swan Way, Rm 200

Oakland, CA 94621

(510) 271-4530

March 11, 1993

Mr. and Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

STID 1709

Re: 186 E. Lewelling Blvd., San Lorenzo, California

NOTICE OF VIOLATION

Dear Mr. and Mrs. Graffenstatte,

On January 28, 1993, the Alameda County Department of Environmental Health, Hazardous Materials Division, sent you a letter requiring that you either submit a Preliminary Site Assessment work plan to determine the vertical and lateral extent of soil and ground water contamination from past releases from the former underground storage tanks (USTs) at the above site, or that you begin implementing the already approved work plan, completed by consultants retained by Ms. Wai Yee Wong Young, by the first week of March 1993. To this date, we have not received any communication from you on this matter. Therefore, this letter constitutes a Notice that you are in violation of specific laws to investigate and remediate the site.

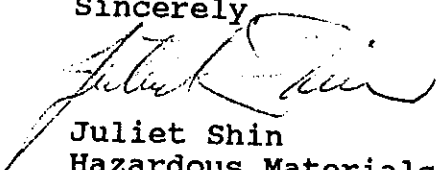
According to **Section 25298, Chapter 6.75, Division 20, of the California Health and Safety Code**, any operator of an underground tank system shall be liable for a civil penalty of not less than **\$500** or more than **\$5,000** for failure to properly close an underground tank system for each day of violation. Also, failure to furnish technical reports regarding documented or potential ground water contamination violates **Section 13267 (b) of the California Water Code**. The Regional Water Quality Control Board (RWQCB) can impose civil penalties of up to **\$1,000 per day** that such a violation continues.

You are required to submit a Preliminary Site Assessment work plan, or implement the already approved work plan, **within 30 days** of the date of this letter. Failure to resond will result in referral of this case to the RWQCB or Alameda County District Attorney's Office to consider for enforcement action. Modifications of required tasks or extensions of stated deadlines must be confirmed in writing by either this agency or RWQCB.

Mr. & Mrs. Graffenstatte
Re: 186 E. Lewelling Blvd.
March 10, 1993
Page 2 of 2

If you have any questions or comments, please contact me at (510) 271-4530.

Sincerely,

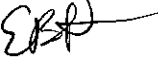


Juliet Shin
Hazardous Materials Specialist

cc: Richard Hiatt, RWQCB

Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

Gil Jensen, Alameda County District Attorney's Office

Edgar Howell-File(JS) 

STATE WATER RESOURCES CONTROL BOARD**DIVISION OF CLEAN WATER PROGRAMS**

2014 T STREET, SUITE 130

P.O. BOX 944212

SACRAMENTO, CA 94244-2120



93 FEB -8 11:17:10

(916) 227-4360

(916) 227-4530 (FAX)

February 1, 1993

TO: Claimants
Regulatory Agencies
Interested Parties

SUBJECT: UNDERGROUND STORAGE TANK CLEANUP FUND UPDATE

INTRODUCTION

This initial update on the Underground Storage Tank Cleanup Fund Program (Fund) is intended to respond to many of the questions being asked about the status of the Fund. From time to time as the need arises, we will be issuing further updates on the Fund.

INITIAL PRIORITY LIST

6,271 applications were received for funding by the January 17, 1992 cutoff date for the Initial Priority List. We conditionally accepted 3,118 and denied 3,153 of the applications for placement on the priority list. Of the 3,153 applications denied, over 2,000 applicants submitted additional information missing in the original application and/or appealed the rejection decision. To date, we have reviewed and issued decisions on about 1,150 of the resubmittals. Applications accepted as a result of this process were placed on the Initial Priority List in their original priority and rank as if they had never been rejected.

The balance of appeals pending review are primarily Priority "D" applications. We anticipate reviewing them during the next three to six months.

The number of applications denied following the cursory review was approximately 50 percent. If the trend continues, approximately 4,700 or almost 75 percent of the original 6,271 claim applications submitted for the Initial Priority List will eventually be accepted. The Initial Priority List currently contains 3,824 claims (45 "A", 1,368 "B", 871 "C", and 1,540 "D").

We do not have authority over these agencies or the orders they issue. A lack of funding by a claimant to pursue the directed cleanup is not a basis for delaying cleanup or refusing to cooperate with regulatory agencies.

To be eligible for reimbursement from the Fund, the claimant must be in compliance with (a) provisions of Chapter 6.7 of the California Health and Safety Code; (b) corrective action orders and directives of the regulatory agencies; and (c) the Corrective Action Regulations (Article 11, Chapter 16, Division 3, Title 23, California Code of Regulations).

A strict application of the statutes and regulations would preclude participation in the Fund by many people who were intended to have access. We are working closely with regulatory agencies to allow access where there are reasonable circumstances why a claimant may not be in total compliance with Fund requirements. For example, where a claimant is under orders to remediate a site and has cooperated with the regulatory agency and diligently pursued cleanup to the extent they are able, we, in consultation with the regulatory agencies, consider the circumstances when determining eligibility. The bottom line is that claimants must cooperate fully with the regulatory agencies.

UST CLEANUP FUND

The Fund is continuing to collect between \$18 and \$20 million per calendar quarter. As of January 1, 1993, there was about \$130 million in the account.

To alleviate concerns about borrowing from the Fund to aid State cash flow, AB3188 (Hauser) was signed by the Governor on September 30, 1992. This bill placed the Fund in the State Treasury rather than the General Fund. This insures that funds borrowed from the account for other state needs will be paid back. To date, all claims submitted for payment have been paid and we do not anticipate any problems in the future.

FINANCIAL RESPONSIBILITY

How a tank owner or operator meets federal requirements for demonstrating financial responsibility is still confusing to some. Financial responsibility can be demonstrated by simply completing the "Certification of Financial Responsibility" form, posting it at the business, and providing a copy to the local regulatory agency as required by the program regulations. The certification form and instructions are included in our "Petroleum Underground Storage Tank Financial Responsibility Guide". Specific questions on financial responsibility can be addressed to Doug Wilson at (916) 227-4413. It is not necessary

February 1, 1993

PHONE NUMBER CHANGE

Our phone numbers were changed on January 8, 1993. If you call our old numbers, you will be directed to an automated system to get our new numbers and automatically transferred to the new number. This service will continue for 6-12 weeks.

Our new number for general information is (916) 227-4307 and our new FAX number is (916) 227-4530. All claims received are processed by five "teams" with responsibility for reviewing the claims within their area. A map is included which identifies the five teams, their new telephone numbers, and the regions that they are responsible for (Enclosure 2).

SUMMARY

Hopefully, this update has provided you with a brief but comprehensive summary of some of the activities occurring within the Fund. As you can see, a great deal of activity occurs on a daily basis. We are committed to processing the maximum number of applications as soon as possible. Toward this end, we need your cooperation. Claimants can help us and aid their cause by doing the following:

- a. Read the instructions being provided to you particularly in regard to filing an application and completing a pay request.
- b. Be prompt in responding to our request for information. Remember that a delay in your response will result in a delay on our part in processing your application.
- c. When providing information, follow the instructions and make sure that the information is complete.

Sincerely,



Dave Deaner, Manager
Underground Storage Tank Cleanup Fund Program

Enclosures (2)

UNDERGROUND STORAGE TANK CLEANUP FUND
RECOMMENDED MINIMUM INVOICE COST BREAKDOWN

- I. PERSONNEL
- a. Name or initials of staff performing the work.
 - b. Job classification or title and hourly rate.
 - c. Date and description of work performed.
 - d. Hours charged for each task per day.
 (If (c) includes meetings with government agencies, the reason for the meeting should also be stated on the invoice)
- II. CONTRACTOR-OWNED EQUIPMENT
- a. Description of equipment and purpose of use.
 - b. Hourly or daily rate plus mobilization costs.
 - c. Dates of use and number of hours/days charged.
 - d. Purchase price if bought specifically for project. Provide cost justification for purchase over rental/lease.
- III. TRAVEL
- a. Vehicle use.
 1. Rate per mile.
 2. Number of miles.
 - b. Name of individual(s) plus per-diem expenses if any.
 - c. Date and purpose of travel.
- IV. MATERIALS
- a. Major items such as well installation materials, pumps, treatment systems etc. should be listed by cost per item.
 - b. Minor items which are bulked together in a lump sum should be listed.
- V. SUBCONTRACTORS, RENTALS OR SERVICES PURCHASED BY CONTRACTOR
- a. Name and type of business.
 - b. Tasks performed.
 - c. Equipment used.
 - d. Subcontractor, rental or purchase invoice.
 - e. Surcharge.
- For drilling, the invoice should show the subcontractor's equipment and manpower mobilization costs, and either the hourly or per foot rate. For excavation work, the invoice should show mobilization costs and hourly rates for equipment and manpower. For soil disposal, include the name, location and landfill fees if applicable. For sampling and analysis, include the number of samples, type of analysis, and cost per sample, and omit (c) above. All invoices should show date work performed.
- VI. PERMITS
- a. Type and date of permit.
 - b. Actual cost charged by regulatory agency.
 - c. Personnel time used to obtain permit (broken down as in (I) above).
 - d. Total cost as charged to claimant.

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

January 28, 1993

Mr. & Mrs. Graffenstatte
P.O. Box 97397
Tacoma, Washington 98497

STID 1709

RE: Required investigations at 186 E. Lewelling Blvd., San Lorenzo, California

Dear Mr. and Mrs. Graffenstatte,

This office has been notified that, prior to Ms. Wai Yee Wong Young's purchase of the above site, Hunter Environmental Services, Inc. assessed the condition of the underground storage tanks (USTs) and piping at the site in June 1986, and notified you of their conclusion that both the on-site USTs and piping were leaking. **Per Section 2720, Article 11, Title 23 California Code of Regulations**, this office is citing you as a Responsible Party for the investigations and remediation of the above site.

On September 5, 1990, Ms. Young's consultants removed two 4,000-gallon gasoline USTs and one 350-gallon waste oil UST from the site, under the direction of the Alameda County Health Department. Analysis of soil samples collected from beneath these USTs identified up to 4,000 parts per million (ppm) Total Petroleum Hydrocarbons as gasoline (TPHg) and trace concentrations of benzene, toluene, xylenes, ethylbenzene, oil and grease, and lead.

Guidelines established by the California Regional Water Quality Control Board (RWQCB) requires that a soil and ground water investigation be conducted when there is evidence to indicate that a release has occurred from an UST. Consequently, Ms. Young retained consultants to prepare a Preliminary Site Assessment (PSA) work plan. This work plan was completed and submitted to this office in March 1991. This work plan proposed that one monitoring well be installed, however, three monitoring wells are required to determine ground water gradient at the site.

As a Responsible Party, you are required to share the burden with Ms. Young in conducting a PSA to determine the lateral and vertical extent and severity of latent soil and ground water contamination which may have resulted from the release at the site. The information gathered by the PSA will be used to determine an appropriate course of action to remediate the site, if deemed necessary. The PSA must be conducted in accordance with the RWQCB's Staff Recommendations for the Initial Evaluation

Mr. & Mrs. Graffenstatte
RE: 186 E. Lewelling Blvd.
Page 2 of 3
January 28, 1993

and Investigation of Underground Tanks, the State Water Board's LUFT Manual, and be consistent with requirements set forth in Article 11 of Title 23, California Code of Regulations. The major elements of such an investigation are summarized in the attached **Appendix A**. The major elements of the guidelines include, but are not limited to, the following:

- o One ground water monitoring well must be installed within 10 feet of the observed soil contamination, oriented in the confirmed downgradient direction relative to ground water flow. Two additional wells need to be installed at the site in order to determine the ground water gradient direction. During the installation of these wells, soil samples are to be collected at five-foot-depth intervals and any significant changes in lithology.
- o Subsequent to the installation of the monitoring wells, these wells must be surveyed to an established benchmark, with an accuracy of 0.01 foot. Ground water samples are to be collected and analyzed quarterly, along with water level measurements. If the initial quarterly reports indicate that ground water flow directions vary greatly than you will be required to begin monthly water level measurements until the ground water gradient behavior is known. Both soil and ground water samples must be analyzed for the appropriate fuel contaminants listed in Table 2 of the RWQCB's Staff Recommendations for the Initial Evaluation and Investigation of Underground Tanks.

The PSA proposal is due **within 45 days** of the date of this letter. Once the proposal is approved, field work should commence within 60 days. A report must be submitted within 45 days after the completion of this phase of work at the site. Subsequent reports are to be submitted quarterly until this site qualifies for final RWQCB "sign-off". Such quarterly reports are due the first day of the second month of each subsequent quarter.

The referenced initial and quarterly reports must 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.

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

December 4, 1992

Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619

STID 1709

RE: The site located at 186 E. Lewelling Blvd., San Lorenzo,
California

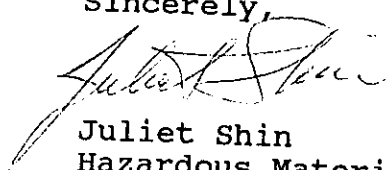
Dear Ms. Wai Yee Wong Young,

This letter is to acknowledge that this Department received your letter, submitted to this office in June 1992. According to the letter, you have applied for the State's Petroleum Underground Storage Tank Trust Fund and, due to your financial situation, you are waiting to conduct additional investigations at the above site when you can be reimbursed by the State for the cost of investigations. This office grants you an extension for the required investigations at the above site until it is determined whether or not you qualify for this fund. It is the understanding of this office that you will begin investigations at the site if and when you do qualify for the Trust Fund. This office will also be contacting the State directly to be updated on the progress of the review of your application, however, we would appreciate it if you also contacted us when you hear from the State.

If, for some reason, you do not qualify for the Trust Fund, this office will work with you in developing a schedule for the required investigations at the site.

If you have any questions or comments, please contact me at (510) 271-4530.

Sincerely,


Juliet Shin
Hazardous Materials Specialist

cc: Richard Hiett, RWQCB

Edgar Howell-File(JS)

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF CLEAN WATER PROGRAMS

2014 T STREET, SUITE 130

P.O. BOX 944212

SACRAMENTO, CA 94244-2120

(916) 739-4332

(916) 739-2300 (FAX)



Wai Yee Wong Young
4320 Harbor View Avenue
Oakland, CA 94619-2210

JUL 21 1992

Dear Ms. Young:

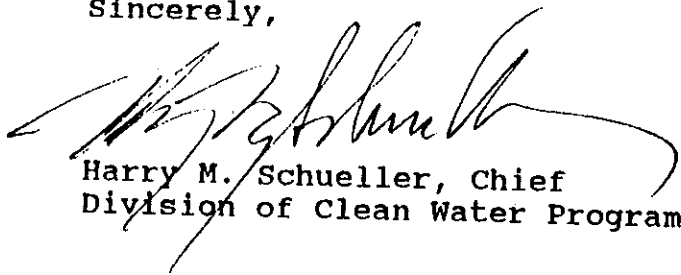
REQUEST FOR FINAL DIVISION DECISION ON CLAIM NO. 319

I have carefully reviewed your request for a final Division decision regarding the Underground Storage Tank Cleanup Fund Claim No. 319. You argue that you were unaware of the permit requirement because the local agency did not inform you of that requirement. As the owner of the underground tanks, you had an obligation to know the legal requirements for such ownership. The Alameda County Department of Environmental Health, which was the local permitting agency, was under no mandatory obligation to notify you of the permitting requirements.

The requirements for tank owners to obtain a permit to own an underground storage tank were mandated January 1, 1984. Therefore, you were under a mandatory obligation to obtain a permit to own such tanks beginning at the time you acquired the property in September 1986. Compliance with this mandatory permit requirement is a statutory prerequisite for eligibility to submit a claim to the Underground Storage Tank Cleanup Fund. I must uphold the final staff decision that Claim No. 319 is not eligible.

If you disagree with this final Division decision, you may file an appeal with the State Water Resources Control Board within 30 calendar days from the date of the Division decision. Please follow the appeal process in Article 5, Division 3, Chapter 18, California Code of Regulations dated December 2, 1991.

Sincerely,



Harry M. Schueller, Chief
Division of Clean Water Programs

92 JUN 19 7 11:28

Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, CA 94619
June 8, 1992

Re: 186 E. Lewelling Boulevard
San Lorenzo, CA

Ms. Juliet Shin
Department of Environmental Health
Hazard Material Division
80 Swan Way, Room 200
Oakland, CA 94621

Dear Ms. Shin,

I am currently in the process of applying for the Underground Storage Tank Clean Up Fund Program offered by the State Of California State Water Resources Control Board, to clean up the soil contamination on my property located on 186 E. Lewelling Boulevard in San Lorenzo.

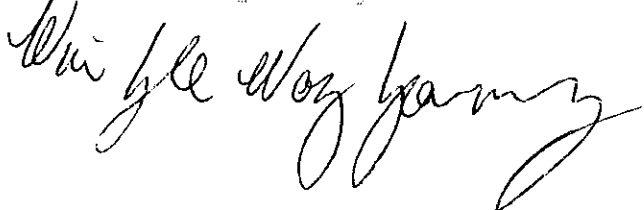
As you may already understand, the county has approved my clean up proposal. I am not financially able to pay for the clean up, and am hoping the State Water Resources Control Board will approve my application. If not, then I will have to evaluate other alternatives to clean up the soil contamination. Perhaps your department and the Alameda County can be of assistance in the clean up, and helping me figure out an alternative to come up with a substantial amount to pay for the clean up.

Please understand my position in this matter. It is not that I am not willing to clean up the contamination, it merely comes down to me not being financially capable. Therefore, the only reason nothing has been done any further is because I am waiting for the State Water Resources Control Board to approve my application to clean up the property.

Thank you for your consideration.

Sincerely,

Wai Yee Wong Young



LAW OFFICES OF
ROBERT B. VROOMAN
601 MONTGOMERY STREET, SUITE 1900
SAN FRANCISCO, CALIFORNIA 94111
(415) 291-0317

TELECOPIER: (415) 982-7372

January 3, 1992

Ms. Pamela J. Evans
Department of Environmental Health
Hazardous Materials Program
80 Swan Way, Room 200
Oakland, California 94621

Re: Underground tank removal/cleanup at 186 East Lewelling
Boulevard, San Lorenzo, California.

Dear Ms. Evans:

Please be advised that I no longer represent Ms. Wai Yee Wong Young concerning the above-referenced matter. Ms. Young now represents herself.

In the future, you should direct all correspondence to Ms. Young at the following address:

Ms. Wai Yee Wong Young
4230 Harbor View Avenue
Oakland, California 94619

Thank you for your attention to this matter. If you have any questions, please contact me at the address or telephone number set out in the letterhead.

Sincerely,



ROBERT B. VROOMAN

RBV/vr

cc: Wai Yee Wong Young

92 JAN -6 11:12:02

ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
DEPARTMENT OF ENVIRONMENTAL HEALTH

MFR Sent _____ (date)

APPLICATION FORM

PURPOSE: Permit Application Service Renewal

Computer No.

--	--	--	--	--

TYPE OF ACTION: New Premises Change of Owner Change of Name Change of Status Change of Mailing Address Inactivate Delete Unincorp.

Premises Name New Performance SUPV. DIST.

--	--	--	--

 C.T. 4

A. Premises Address 186 E. Lowelling Blvd San Lorenzo 94580
Number Street City Zip Code Phone

Owner/Applicant Heller, E. Therman, White & McAuliffe 772-6000
If corporation, also show name of corporation president Phone

B. Mailing Address 333 Bush St. San Francisco 94104-2878
Number Street City Zip Code

SEND BILLING TO ADDRESS: A B (circle one)

Prior Business Name _____ Prior Owner's Name _____

Property Owner _____
If corporation, also show name of corporation president Phone

Address _____
Number Street City Zip Code

E.U. NO. <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>				C.P. CODE <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>			
FOOD CATEGORIES							
<p>Bakery</p> <p>___ Under 2,000 sq. ft. (130)</p> <p>___ 2,000 - 6,000 sq. ft. (131)</p> <p>___ Over 6,000 sq. ft. (132)</p> <p>Food Market, Retail</p> <p>___ Under 3,000 sq. ft. (120)</p> <p>___ 3,000 - 10,000 sq. ft. (129)</p> <p>___ Over 10,000 sq. ft. (122)</p> <p>___ Confectionary (125)</p> <p>Restaurant</p> <p>___ Tavern, Cocktail lounge (104)</p> <p>___ Snack Bar (105)</p> <p>___ Drive-In, Take Out (110)</p> <p>___ Catering Commissary (111)</p> <p>___ Under 26 seats (100)</p> <p>___ 26 - 50 seats (101)</p> <p>___ 51 - 75 seats (102)</p> <p>___ Over 75 seats (103)</p> <p>___ In Plant Feeding (114)</p> <p>___ Bed & Breakfast (Cont.) (115)</p> <p>___ Bed & Breakfast (Reg.) (116)</p> <p>___ Vending Machine</p> <p>Other Food</p>	<p>Temporary Food Operation</p> <p>___ Special Event Facility (113) <small>(not to exceed 3 days)</small></p> <p>___ Temporary Food Facility (108) <small>(not to exceed 21 days)</small></p> <p>___ Seasonal Food Facility (129) <small>(not to exceed 45 days)</small></p> <p>Food Vehicle</p> <p>___ Vehicle Application Fee</p> <p>___ Mobile Food Prep. Unit (107)</p> <p>___ Stationary M.F.P.U. (117)</p> <p>___ Retail Food Vehicle (112)</p> <p>___ Itinerant Vehicle (128)</p>	<p>Private Waste Disposal</p> <p>___ Site Evaluation</p> <p>___ Percolation Test</p> <p>___ Plan Review</p> <p>___ Installation</p> <p>Holding Tank</p> <p>___ Site Evaluation</p> <p>___ Installation</p> <p>___ Inspection</p> <p>Water Supply-Utility</p> <p>___ Community System</p> <p>___ Non-Community System</p> <p>___ State Small Water System</p> <p>___ Local Small Water System</p> <p>Private Water Supply</p> <p>___ Flow, Bacti. & Chem. Anal.</p> <p>Drinking Water Analysis</p> <p>___ Bacterial</p> <p>___ Chemical</p> <p>___ Flow Rate</p> <p>Other <u>site search</u></p>					
GENERAL CATEGORIES							
<p>___ Plan Review</p> <p>___ Special Service</p> <p>___ Public Swimming Area</p> <p>___ Commercial Spa</p> <p>___ Mobilehome Park</p> <p>___ No. Spaces _____</p>							

Number of Units/Hrs. 1 Fee Per Unit/Hr. \$ 67.00 Total Fee \$ 167.00

REMARKS: Law firm's billing reference # : 18275-0001

of copies made = \$100.00

You will receive a **BILL** in accordance with Article 11 of Chapter 6, Title 3 of the Ordinance Code of Alameda County

Owner/Applicant Remela J. Wans Date _____
 Sanitarian _____ Phone 271-4320 Date 9-26-91

HELLER, EHRMAN, WHITE & MCAULIFFE

ATTORNEYS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

333 BUSH STREET · SAN FRANCISCO, CALIFORNIA 94104-2878

CABLE HELPOW · TELEX 184-996 · FACSIMILE (415) 772-6268

TELEPHONE (415) 772-6000

525 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301-1908
FACSIMILE (415) 324-0638
TELEPHONE (415) 326-7800

601 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-5768
FACSIMILE (213) 614-1868
TELEPHONE (213) 689-0200

1300 S. W. FIFTH AVENUE
PORTLAND, OREGON 97201-5696
FACSIMILE (503) 241-0950
TELEPHONE (503) 227-7400

WRITER'S DIRECT DIAL NUMBER
(415) 772-6277

701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7098
FACSIMILE (206) 447-0849
TELEPHONE (206) 447-0800

1201 PACIFIC AVENUE
TACOMA, WASHINGTON 98402-4308
FACSIMILE (206) 572-6743
TELEPHONE (206) 572-6666

550 WEST 7TH AVENUE
ANCHORAGE, ALASKA 99501-3571
FACSIMILE (907) 277-1920
TELEPHONE (907) 277-1900

September 6, 1991

*I called Steven Lincoln 9/11/91
+ left a voice mail msg. He did not
return the call.*

18275-0001

Ms. Pamela J. Evans
Alameda County Health Care Services
Department of Environmental Health
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621

Re: Contamination from Former Underground Storage Tanks at
186 E. Lewelling Blvd., San Lorenzo

Dear Ms. Evans:

In accordance with the provisions of the California Public Records Act (Government Code Sections 6250 et seq.), I request that you make available to me, for inspection and copying, any and all public records in the files of the Alameda County Health Care Services Agency ("the Agency") regarding the above-referenced site. In particular, and in addition to whatever else those files may contain, I would like to review any documents that the Agency possesses concerning the removal and condition of underground storage tanks at that site.

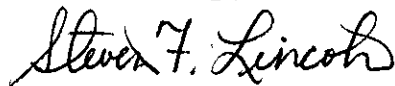
Please be aware that Government Code Section 6256 provides that you have ten (10) days from your receipt of this letter (unless the Agency's Public Record Act guidelines provide for a shorter period of time) within which to determine whether to comply with this request and to notify me of your determination and its reasons. The only justification for non-compliance with this 10-day limit is if one of the "unusual circumstances" specified in Section 6256.1 prevents such compliance, in which case, the "head of the agency" must explain to me in writing the reasons for an extension of the ten days and provide the date (not later than an additional 10 working days) on which the determination to comply shall finally be made.

Ms. Pamela J. Evans
September 6, 1991

Page 2

Thank you for your attention to this request. I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Steven F. Lincoln". The signature is written in dark ink and is positioned above the typed name.

Steven F. Lincoln

Brought by Mike Vrooman 8/19/91

General History of Property at 186 Lewelling Boulevard, San Lorenzo, California.

Earliest known owners are Mr. Rudolph F. Tiller and Mrs. Mildred S. Tiller (Current address of both parties unknown).

1950 - General Petroleum Corporation/operator
43225 Gallows Road
Fairfax, Virginia 22037

Local agent: The Prentice Hall Corporation System
5670 Wilshire Boulevard, Suite 750
Los Angeles, California 90036

Mrs. Mildred S. Tiller obtains sole ownership via decree of divorce from Mr. Rudolph F. Tiller. Mrs. Tiller becomes Ms. Robello (Last known address of Ms. Robello is 280 Santa Susana, San Leandro, California).

1969 - Mobil Oil Corporation/operator
43225 Gallows Road
Fairfax Virginia 22937

(put up signs
added a OST)

Local agent: The Prentice Hall Corporation System
5670 Wilshire Boulevard, Suite 750
Los Angeles, California 90036

Ms. Robello sells property to Mr. Carl J. Graffenstatte, Jr. and Mrs. Donna P. Graffenstatte (Current address is P.O. Box 97397, Tacoma, Washington 98497).

1981 - Lewelling Auto Clinic/operator

Last known address of principles:

Mr. Richard Pierce
2865 Greenvew
Castro Valley, California

Mr. Burhl Harwood
2163 Grove Way
Castro Valley, California

1982 - Vernon and Betty Mayer/operators

(Vern's?)

Last known address of principles:

(82-86?)

Mr. Vernon and Mrs. Betty Mayer
5276 Broadway
Oakland, California 94618

1986 - Grafco Petroleum/operator

Last known address:

P.O. Box 1713
San Leandro, California 94577

LAW OFFICES OF
ROBERT B. VROOMAN
601 MONTGOMERY STREET, SUITE 1900
SAN FRANCISCO, CALIFORNIA 94111
(415) 291-0317

TELECOPIER: (415) 982-7372

August 1, 1991

Ms. Pamela J. Evans
Department of Environmental Health
Hazardous Materials Program
80 Swan Way, Room 200
Oakland, California 94621

Re: Underground tank removal/cleanup at 186 East Lewelling
Boulevard, San Lorenzo, California.

Dear Ms. Evans:

This letter will confirm our telephone conversation of July 31, 1991 during which I advised you that Ms. Wai Yee Wong Young has recently retained me to represent her regarding the above-referenced matter. In this regard, you will recall that I advised you that Ms. Young has provided me with several documents related to this matter and that I am currently in the process of obtaining her previous attorneys' file. You will further recall that during our telephone conversation we agreed that once I have obtained Ms. Young's previous attorneys' file, I will set up an appointment with you to review your file. In this manner, I will hopefully be able to bring myself up to speed with all pertinent documentation as soon as possible.

I look forward to meeting with you soon. In the meantime, should you have any questions or concerns, please contact me at the address or telephone number set out in the letterhead.

Sincerely,



ROBERT B. VROOMAN

91 AUG -2 PM 2:34

The logo consists of the letters "WHF" in a bold, serif font, enclosed within a rectangular border.

WHF Environmental Consultants, Inc.

Post Office Box 6729
Modesto, CA 95355-6729
(209) 579-8138

8 July 1991

Ms. Pamela J. Evans
Department of Environmental Health
Hazardous Materials Program
1150 W. W. Hwy, Room 206
Modesto, CA 94521

Re: Addendum to Work Plan for Fuel Contamination at
1000 E. M. Keweling Blvd., San Lorenzo

The following information is being provided as an addendum to our March 26, 1991,
report for the above referenced property in response to your June 6, 1991, letter to
Mr. Wayne Young:

Both WHF and the property owner are aware that additional work and
analysis may be required if contamination is found to be present in the soil and
ground water.

Ground water around your well will be sampled monthly for the first three months
to detect contamination of the well, and afterward, on a quarterly basis for one
year.

Any potential problems around the oil sumps will be disclosed as a
part of the soil vapor survey. Additional investigation can be conducted in a
second phase and may include removal and soil sampling.

The manner in which improper hazardous waste disposal into these sumps will
be investigated, modification to the tanks and temporarily capping or plugging
the system.

There is a pending lawsuit and a pending litigation. As soon as we
have a final decision from the court, WHF will submit a timeline and begin

Pamela J. Evans
Department of Environmental Health

8 July 1991
Page 2

... you identify the additional requirements in your letter. If
... please do not hesitate to call.

[Handwritten signature]
[Faint text below signature]

...
...
...

UNDERGROUND STORAGE TANK UNAUTHORIZED RELEASE (LEAK) / CONTAMINATION SITE REPORT

EMERGENCY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		HAS STATE OFFICE OF EMERGENCY SERVICES REPORT BEEN FILED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		FOR LOCAL AGENCY USE ONLY I HEREBY CERTIFY THAT I HAVE DISTRIBUTED THIS INFORMATION ACCORDING TO THE DISTRIBUTION SHOWN ON THE INSTRUCTION SHEET ON THE BACK PAGE OF THIS FORM.	
REPORT DATE 06/06/91		CASE #		SIGNED: <u>Pamela J. Evans</u> 6-6-91 DATE	
REPORTED BY	NAME OF INDIVIDUAL FILING REPORT Pamela J. Evans		PHONE (415) 271-4320		SIGNATURE Pamela J. Evans
	REPRESENTING <input checked="" type="checkbox"/> LOCAL AGENCY <input type="checkbox"/> OWNER/OPERATOR <input type="checkbox"/> REGIONAL BOARD <input type="checkbox"/> OTHER		COMPANY OR AGENCY NAME Alameda County Environmental Health Dept		
	ADDRESS 80 Swan Way STREET Rm 200 Oakland CA STATE 94621 ZIP				
RESPONSIBLE PARTY	NAME WAI WEE WONG YOUNG <input type="checkbox"/> UNKNOWN		CONTACT PERSON		PHONE ()
	ADDRESS 4230 Harbor View Av. Oakland CA 94619				
SITE LOCATION	FACILITY NAME (IF APPLICABLE) New Performance		OPERATOR		PHONE ()
	ADDRESS 186 E. Lewelling Blvd		CITY San Lorenzo		COUNTY Alameda 94580 ZIP
	CROSS STREET Ashland Av.				
IMPLEMENTING AGENCIES	LOCAL AGENCY AlCo Environmental Health Dept.		AGENCY NAME		CONTACT PERSON Pamela J. Evans
	REGIONAL BOARD San Francisco WQCB		CONTACT PERSON Richard Hiatt		PHONE ()
SUBSTANCES INVOLVED	(1) NAME Petroleum fuel		QUANTITY LOST (GALLONS) <input checked="" type="checkbox"/> UNKNOWN		
	(2)		<input type="checkbox"/> UNKNOWN		
DISCOVERY/ABATEMENT	DATE DISCOVERED 06/05/91		HOW DISCOVERED <input type="checkbox"/> TANK TEST <input checked="" type="checkbox"/> TANK REMOVAL <input type="checkbox"/> INVENTORY CONTROL <input type="checkbox"/> SUBSURFACE MONITORING <input type="checkbox"/> NUISANCE CONDITIONS <input type="checkbox"/> OTHER		
	DATE DISCHARGE BEGAN <input checked="" type="checkbox"/> UNKNOWN		METHOD USED TO STOP DISCHARGE (CHECK ALL THAT APPLY) <input type="checkbox"/> REMOVE CONTENTS <input checked="" type="checkbox"/> CLOSE TANK & REMOVE <input type="checkbox"/> REPAIR PIPING <input type="checkbox"/> REPAIR TANK <input type="checkbox"/> CLOSE TANK & FILL IN PLACE <input type="checkbox"/> CHANGE PROCEDURE <input type="checkbox"/> REPLACE TANK <input type="checkbox"/> OTHER		
	HAS DISCHARGE BEEN STOPPED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF YES, DATE 06/05/91				
SOURCE/ CAUSE	SOURCE OF DISCHARGE <input type="checkbox"/> TANK LEAK <input checked="" type="checkbox"/> UNKNOWN <input type="checkbox"/> PIPING LEAK <input type="checkbox"/> OTHER		CAUSE(S) <input type="checkbox"/> OVERFILL <input type="checkbox"/> RUPTURE/FAILURE <input type="checkbox"/> SPILL <input type="checkbox"/> CORROSION <input checked="" type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER		
	CHECK ONE ONLY <input checked="" type="checkbox"/> UNDETERMINED <input type="checkbox"/> SOIL ONLY <input type="checkbox"/> GROUNDWATER <input type="checkbox"/> DRINKING WATER - (CHECK ONLY IF WATER WELLS HAVE ACTUALLY BEEN AFFECTED)				
CURRENT STATUS	CHECK ONE ONLY <input type="checkbox"/> NO ACTION TAKEN <input checked="" type="checkbox"/> PRELIMINARY SITE ASSESSMENT WORKPLAN SUBMITTED <input type="checkbox"/> POLLUTION CHARACTERIZATION <input type="checkbox"/> LEAK BEING CONFIRMED <input type="checkbox"/> PRELIMINARY SITE ASSESSMENT UNDERWAY <input type="checkbox"/> POST CLEANUP MONITORING IN PROGRESS <input type="checkbox"/> REMEDIATION PLAN <input type="checkbox"/> CASE CLOSED (CLEANUP COMPLETED OR UNNECESSARY) <input type="checkbox"/> CLEANUP UNDERWAY				
	CHECK APPROPRIATE ACTION(S) (SEE BACK FOR DETAILS) <input type="checkbox"/> CAP SITE (CD) <input type="checkbox"/> EXCAVATE & DISPOSE (ED) <input type="checkbox"/> REMOVE FREE PRODUCT (FP) <input type="checkbox"/> ENHANCED BIO DEGRADATION (IT) <input type="checkbox"/> CONTAINMENT BARRIER (CB) <input type="checkbox"/> EXCAVATE & TREAT (ET) <input type="checkbox"/> PUMP & TREAT GROUNDWATER (GT) <input type="checkbox"/> REPLACE SUPPLY (RS) <input type="checkbox"/> VACUUM EXTRACT (VE) <input type="checkbox"/> NO ACTION REQUIRED (NA) <input type="checkbox"/> TREATMENT AT HOOKUP (HU) <input type="checkbox"/> VENT SOIL (VS) <input type="checkbox"/> OTHER (OT)				
COMMENTS	COMMENTS				

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



file

June 6, 1991

Wai Yee Wong Young
4230 Harbor View Av.
Oakland CA 94619

DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

RE: Work Plan for Fuel Contamination at
186 E. Lewelling Blvd., San Lorenzo

Dear Ms. Young:

I have reviewed the Work Plan submitted by WHF Environmental Consultants, Inc. for your site. As discussed with William H. Fox of WHF, I have the following concerns and comments regarding the plan:

1. WHF has proposed only one monitoring well for the site for the time being. They plan to carry out a soil vapor survey in conjunction with this well installation in order to gather information about the distribution of petroleum constituents in the soil. Be aware that least two additional monitoring wells are likely to be required in the future.
2. No groundwater monitoring frequency or duration is mentioned in the Work Plan. At a minimum, groundwater must be sampled monthly for the first three months following the installation of the well, and afterward on a quarterly basis for one year.
3. During site inspections over the past year, I have noted two sumps on your site that are collecting oily run-off water from inside the shop and from the waste oil storage area outside the west wall of the building. The outside sump appears to be a clogged storm drain, and the inside sump may be connected to the sanitary sewer. The status of these sumps must be determined, and steps must be taken to prevent waste oil and other hazardous wastes from being disposed of into them. Please specify the manner in which improper hazardous waste disposal into these sumps will be corrected.

You may submit changes and additions to the Work Plan in the form of an addendum. Please also submit a timeline for project initiation and completion. The addendum and timeline must be submitted to this office by July 10, 1991. You may contact me with any questions at (415)271-4320.

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442

(707) 938-8702

Mr. Michael L. Abbott, Esq.
Law Offices of Normoyle & Newman
1700 Standiford Avenue, Suite A-340
Modesto, California 95350

May 22, 1991

Re: 186 E. Lewelling Blvd., San Leandro
Your File No. 1933

Dear Mr. Abbott:

In reference to the above matter, and in response to your letter dated May 9, 1991, Mr. Graffenstatte has provided all of the information regarding the past history of the property that he has. While you may not consider the responses by Mr. Graffenstatte timely, you should keep in mind that you are asking for information that is in some cases almost 10 years old, plus it is my understanding all of this information was previously provided to your client at the time she purchased the property. Mr. Graffenstatte never operated a business on the property, the property was leased, therefore, the amount and nature of the information on the property that Mr. Graffenstatte has, is very limited. Your accusation "have not actually done anything" is not supported by the facts.

The improper removal of the tanks on the property by your client was a violation of the terms and conditions of the Deed of Trust. The removal of the tanks has adversely altered the nature of the property collateralizing the loan. The removal of the tanks has potentially reduced the value of the property, with no corresponding reduction in the amount owed to Mr. Graffenstatte. In addition, your client failed to notify Mr. Graffenstatte of any of her actions until she was contacted by the County, or to request permission from Mr. Graffenstatte prior to removing the tanks. The actions by your client are clearly breaches of her duties to Mr. Graffenstatte. The actions by your client are not consistent with "mutual cooperation".

If your client had removed the tanks in a correct manner, it is likely that the contamination would not have occurred. To now suggest that Mr. Graffenstatte participate with your client in correcting a problem she likely created, is untenable.

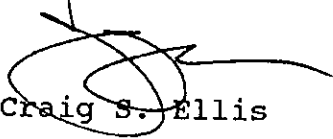
Your proposal suggests that Mr. Graffenstatte participate in the resolution of a problem where your client has had the sole and exclusive responsibility for maintaining the tanks for

approximately the last five years. Mr. Graffenstatte has had no control over the usage or maintenance of the tanks. Ms. Young as the property owner has the responsibility of correcting the problem, and we expect her to correct the problem in a timely manner.

Mr. Graffenstatte will not provide any financial assistance to your client in correcting the contamination problem encountered with the tanks.

In the event your client intends on not making any additional payments due under the note collateralized by this property, I can assure you that Mr. Graffenstatte will take immediate steps to foreclose on the property, and to file a suit against your client for all expenses associated with the contamination problem.

Sincerely,



Craig S. Ellis

CSE:kc

cc: Mr. Carl Graffenstatte



SEMCO

James C. Bateman
Petroleum Services, Inc.



May 10, 1991

Mr. Michael L. Abbot
NORMOYLE & NEWMAN
1700 Standford Ave.
Suite A-340
Modesto, California 95350

Re: Wai Yee Wong Young Property

Dear Michael:

In response to your requests, I hope the following information will be helpful and useful to your firm and client.

On September 5, 1991, a total of 3 tanks were removed at the above referenced property. The tank contents as of the last reported usage was unleaded gas for the 4,000 gallon tanks and waste oil and related constituents for the 350 gallon tank located at the North Easterly section of the property and building.

The samples were collected from the backhoe bucket on the 4,000 gallon tanks in 2" x 6" brass tubes. The ends were sealed with foil and Teflon caps, properly marked and identified, recorded on a chain of custody and immediately placed on dry ice for transportation to Superior Analytical Laboratory, Inc. The State identification number for this facility is 1332.

Bay Area Air Quality Management District, Eden Fire and Alameda County Department of Environmental Health Services were properly notified in advance of the activities at this site. Respectively, as per usual, BAAQMD had no representative present. Vern Brooks of Eden Fire was present along with Ravi Arulanantham from Alameda County. Carolyn Lan of NB Realty was on site with the client to assist with communications.

Photographs were taken by Eden Fire to illustrate tank conditions at the time they were extracted from the excavated area. Eden Fire also has a very concise background usage of this facility and products previously stored in the 4,000 gallon tanks.

1741 Leslie Street, San Mateo, CA 94402
(415) 572-8033 FAX (415) 572-9734

Page 2

May 10, 1991

Normoyle & Newman

Mr. Mike Abbot

As I previously relayed to you in our tele-conference, the neighbor in the first house on Ashland, immediately behind the building office, was very memorable of the facility also. He relayed to me that Vic Hubbard had stored high octane performance fuel there for a period of time.

I hope this serves to assist you in your needs as well as the client's needs. If I may be of any further assistance to you, please give me a call at my office.

Sincerely,



Chuck Kiper
Vice-President
SEMCO-SAN MATEO

CK/rrk

cc: Terry Hamilton, President
Gregg Garrison
Carolyn Lan, NB Realty ✓
Wai Yee Wong Young

file # 1933

存底

Please print or type (Form designed for use on elite typewriter)

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No. CAC0003061211		Manifest Document No.		Page 1 of		Information in the shaded areas is not required by Federal law.	
3. Generator's Name and Mailing Address Alameda County 401 15th Sacramento CA 95811						A. State Manifest Document Number 90002783			
4. Generator's Phone 916-371-3570						B. State Generator's ID CAC0003061211			
5. Transporter 1 Company Name			6. US EPA ID Number			C. State Transporter's ID 100189		D. Transporter's Phone 203-570-3531	
7. Transporter 2 Company Name			8. US EPA ID Number			E. State Transporter's ID		F. Transporter's Phone	
9. Designated Facility Name and Site Address 1115 W. 11th St. Sacramento, CA 95811						10. US EPA ID Number		G. State Facility's ID 020004003555	
11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)						12. Containers		13. Total Quantity	
a. <i>Water soluble liquid</i>						No. Type		Unit	
b. <i>1570</i>						235		GAL	
c.									
d.									
J. Additional Descriptions for Materials Listed Above <i>50% water</i> <i>50% oil</i> <i>Chlorine Contaminated 3800 ppm</i>						K. Handling Codes for Wastes Listed Above			
15. Special Handling Instructions and Additional Information <i>Protect up 11+ 1st East Levelling</i> <i>Sacramento CA</i>						18. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.			
Printed/Typed Name			Signature			Month Day Year			
17. Transporter 1 Acknowledgement of Receipt of Materials			Signature			Month Day Year			
18. Transporter 2 Acknowledgement of Receipt of Materials			Signature			Month Day Year			
19. Discrepancy Indication Space									
20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in item 19.									
Printed/Typed Name			Signature			Month Day Year			

IN CASE OF AN EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8802; WITHIN CALIFORNIA CALL 1-800-952-7550

GENERATOR

TRANSPORTER

FACILITY

Do Not Write Below This Line

IN CASE OF AN EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8902; WITHIN CALIFORNIA CALL 1-800-852-7550

UNIFORM HAZARDOUS WASTE MANIFEST		Generator's US EPA ID No. CA0003061E1470714		Manifest Document No. 1	Page 1 of 1	Information in the shaded areas is not required by Federal law.	
3. Generator's Name and Mailing Address Wm. Yee & Co. Inc. 421-15th Street Oakland CA 94612				A. State Manifest Document Number 90001246			
4. Generator's Phone 415-540-0238				B. State Generator's ID			
5. Transporter 1 Company Name H...		6. US EPA ID Number		C. State Transporter's ID		D. Transporter's Phone 202-572-4180	
7. Transporter 2 Company Name		8. US EPA ID Number		E. State Transporter's ID 100186		F. Transporter's Phone	
9. Designated Facility Name and Site Address ENIG... 225 Park Ave. Richmond CA 94801				10. US EPA ID Number		G. State Facility's ID	
						H. Facility's Phone 415-235-1383	
11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)				12. Containers No.	13. Total Quantity	14. Unit Wt/Vol	I. Waste No.
a. ...				003	10111510		State EPA/Other
b.							State EPA/Other
c.							State EPA/Other
d.							State EPA/Other
J. Additional Descriptions for Materials Listed Above Empty Steel Drum Storage Tanks # 4375, 4376, 4375, 5465, 287 Ice Pick on the ground...				K. Handling Codes for Wastes Listed Above			
				a.		b.	
				c.		d.	
15. Special Handling Instructions and Additional Information AA...							
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.							
Printed/Typed Name				Signature		Month Day Year	
17. Transporter 1 Acknowledgement of Receipt of Materials							
Printed/Typed Name				Signature		Month Day Year	
18. Transporter 2 Acknowledgement of Receipt of Materials							
Printed/Typed Name				Signature		Month Day Year	
19. Discrepancy Indication Space							
20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.							
Printed/Typed Name				Signature		Month Day Year	

Do Not Write Below This Line

YELLOW: GENERATOR RETAINS

LAW OFFICES OF
NORMOYLE & NEWMAN

A PROFESSIONAL LAW CORPORATION

1700 STANDIFORD AVENUE - SUITE A-340
MODESTO, CALIFORNIA 95350
TELEPHONE (209) 521-9521 TELECOPIER (209) 521-4968

91 MAY 15 AM 10:51

MICHAEL C. NORMOYLE
RUSSELL A. NEWMAN
WYLIE P. CASHMAN
ERNEST M. SPOKES, JR.
ELIZABETH L. McKERNAN *
MICHAEL L. ABBOTT

PATRICK M. McGRATH
DAVID O. ROMANO, P.E.
Land Use Analysts

* admitted New Jersey and Florida Bars only

May 9, 1991

Craig Ellis, Esq.
3382 Warm Springs Road
Glen Ellen, California 95442

RE: 186 East Lewelling Blvd., San Lorenzo

Dear Craig:

On April 9, 1991, I wrote to your office regarding an expense incurred by Ms. Wai Yee Wong Young with WHF Environmental relative to the above referenced property. The substance of that letter was to request that your clients, Mr. and Mrs. Carl Graffenstatte, contribute to the payment of that obligation. You stated at that time that your clients were unavailable, but that you would take the matter up with them upon their return. Inasmuch as it has now been a month since our initial request, I would appreciate your assistance in addressing the Graffenstattes' response to this debt.

I would also appreciate your assistance regarding your clients' obligation to timely respond in general. While reviewing the course of this matter, it has become clear that the Graffenstattes have not taken a single affirmative step to address the problems which they should not hope to avoid relating to the property in question. They have taken every request under consideration, but have not actually done anything except to demand timely payment from Ms. Young and to provide the names of their former tenants.

Ms. Young is not without remedies of her own, but she has shown considerable restraint in light of the Graffenstattes' recalcitrance. Please consult with your clients and request that they affirmatively state their position as to their contribution to the debt owed to William H. Fox. Please also advise them of their possible liability as Potentially Responsible Parties under federal and state law as prior owners of contaminated property.

Craig Ellis, Esq.
May 9, 1991
Page Two

It should be apparent that having never used the underground storage tanks at the property, Ms. Young does not plan to address the problems of contamination associated with those tanks by herself. Much can be accomplished by the Graffenstattes' willing participation. Much stands to be lost if they attempt to ignore their responsibilities.

Please consult with your clients as soon as possible. Because of the numerous substantial delays experienced while they have been unavailable, and because of the time wasted attempting to deal with Aqua Terra, a timely response is essential. Your prompt reply is appreciated.

Very Truly Yours,

NORMOYLE & NEWMAN



Michael L. Abbott, Esq.

MLA:vlf

cc: Wai Yee Wong Young

Pam Evans, Alameda County Hazardous Materials Program

V:MLA\CR\1933GRAF.#2

WHF

WHF Environmental Consultants, Inc.

91 MAR 27 AM 8:54

Post Office Box 6729
Modesto, CA 95355-6729
(209) 579-8138

26 March 1991

Pamela J. Evans
Alameda County Department of Environmental
Hazardous Materials
80 Swan Way, Room 200
Oakland, CA 94621

RE: 186 E. Lewelling Blvd., San Lorenzo

Dear Pamela:

I have enclosed a copy of the Work Plan for the Young property located at 186 E. Lewelling Boulevard. This plan is a Phase I Site Work Plan addressing the first major concern regarding this site.

Upon completing your review and approval of this plan, we will schedule with your office a project time table and schedule sub-contractors for this project.

If there are any questions regarding this site, please contact our office at (209) 579-8138.

Sincerely,



W. H. Fox, II, REA

WHF Environmental Consultants, Inc.

WHF/cdc
Enclosure

cc: Mr. Michael Abbott - Normoyle & Newman
Mr. Richard Hiatt - RWCQB - Oakland

LAW OFFICES OF
NORMOYLE & NEWMAN
A PROFESSIONAL CORPORATION

MICHAEL C. NORMOYLE
RUSSELL A. NEWMAN
BART W. BARRINGER
WYLIE P. CASHMAN
ERNEST M. SPOKES, JR.
GREGG S. GARRISON

1700 STANDIFORD AVENUE - SUITE A-340
MODESTO, CALIFORNIA 95350

TELEPHONE (209) 521-9321
TELECOPIER (209) 521-4988

91 MAR 19 11:10:3

March 18, 1991

Pamela J. Evans
Hazardous Materials Specialist
Alameda County Health Care Services
Department of Environmental Health
Hazardous Materials Program
80 Swan Way, Room 200
Oakland, CA 94621

Re: 186 E. Lewelling Blvd., San Lorenzo
Our File No. 1933

Dear Ms. Evans:

Enclosed are the two Hazardous Waste Manifests that we discussed, thank you for your consideration in receiving these at this time. As we discussed, William H. Fox and Associates has been retained by Ms. Young to perform the work and generate the documents that you require. They will be in contact with you as the various deadlines approach.

Thank you again for your professional and courteous approach to this very complicated problem. Please call me if I can provide further information.

Normoyle & Newman

Sincerely,



Michael L. Abbott, Esq.
Attorneys for Wa Ye Wang Young

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442

(707) 938-8702

Mr. Michael L. Abbott, Esq.
Law Offices of Normoyle & Newman
1700 Standiford Avenue, Suite A-340
Modesto, California 95350

March 18, 1991

Re: 186 E. Lewelling Blvd., San Leandro
Your File No. 1933

Dear Michael:


As a follow-up to my letter dated March 13, 1991, I have some additional information on the above referenced matter:

1. At the time the Graffenstatte's purchased the above referenced property, the property was not in use. Mobil Oil had operated a station at this site for approximately 15 years, and their lease with Ms. Robello expired prior to the Graffenstatte's purchasing the property.

2. From July 28, 1981, to January 21, 1982, Mr. Richard Pierce and Mr. Burhl Harwood dba Lewelling Auto Clinic leased the subject property. The last address shown for Mr. Pierce is 2865 Greenview, Castro Valley, California. The last address shown for Mr. Harwood is 2163 Grove Way, Castro Valley, California.

3. The Mayer lease expired May 31, 1986, and from that time until Ms. Young purchased the subject property in September of 1986, the property was not in use.

Sincerely,



Craig S. Ellis

CSE:kc

cc: Mr. Carl Graffenstatte

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442

(707) 938-8702

Mr. Michael L. Abbott, Esq.
Law Offices of Normoyle & Newman
1700 Standiford Avenue, Suite A-340
Modesto, California 95350

March 13, 1991

Re: 186 E. Lewelling Blvd., San Leandro
Your File No. 1933

Dear Michael:

In response to your letter dated March 7, 1991, on the above referenced matter, and our telephone conversation this date, I have outlined the information that is currently available to me:

1. Mr. Graffenstatte has been researching his records on the subject property, in an attempt to locate information on the past tenant(s), and based on that research to date, I have the following:

(a) On or about July 20, 1981, the Graffenstatte's acquired the property from Mildred Smith Robello aka Mildred G. Tiller. Western Title Insurance Company Escrow #SL-859761-JD, (415) 483-4000.

(b) On or about June 1, 1982, the property was leased to Vernon L. Mayer and Betty Mayer. The last address I show for them is 5276 Broadway, Oakland, CA 94618.

(c) On or about September 17, 1986, Ms. Young acquired the property from the Graffenstatte's.

Mr. Graffenstatte apparently is out of town, as I have been unable to reach him. Upon his return, I should be able to provide additional information regarding tenants and use of the property.

2. The agreement that we had with Mr. Garrison was that we would contribute 50% of the cost of a Preliminary Site Assessment Report. In my initial conversations with Mr. Garrison, it was determined that the gasoline tanks were removed from the property without notice to Mr. Graffenstatte, and apparently in a questionable manner. In addition, it appeared that Ms. Young did not have the used oil tank removed. Because of the confusion on what had been done, what the status of the property was (i.e. had the tank holes been filled in), and what the county was going to

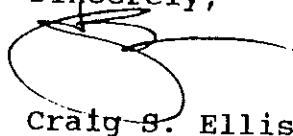
require, we agreed that a company such as Aqua Terra Technologies should review the information and the site, and provide a Preliminary Site Assessment Report. The purpose of the report was to interpret the property information to date, and outline the proposed steps for dealing with any problems. The cost of a Preliminary Site Assessment Report would not include the costs for issuance of a closure report, development of a work plan, a feasibility plan or a implementation plan.

We agreed that if Mr. Garrison used a company other than Aqua Terra, that the cost must be reasonable.

3. I have enclosed a copy of the Hunter Environmental Services, Inc. report dated June 27, 1986, as requested.

I will be in contact with you as soon as I am able to obtain additional information from Mr. Graffenstatte.

Sincerely,



Craig S. Ellis

CSE:kc

cc: Mr. Carl Graffenstatte

LAW OFFICES OF
NORMOYLE & NEWMAN
A PROFESSIONAL CORPORATION

MICHAEL C. NORMOYLE
RUSSELL A. NEWMAN
BART W. BARRINGER
WYLIE P. CASHMAN
ERNEST M. SPOKES, JR.
GREGG S. GARRISON

1700 STANDIFORD AVENUE - SUITE A-340
MODESTO, CALIFORNIA 95350

TELEPHONE (209) 521-9521
TELECOPIER (209) 521-4988

91 JAN 9 PM 4:06

January 7, 1991

Pamela J. Evans
Department of Environmental Health
Hazardous Materials Program
80 Swan Way, Room 200
Oakland, California 94621

RE: 186 E. Lewelling Blvd.
San Lorenzo, CA 94580

Dear Ms. Evans:

Pursuant to your conversation with Mr. Garrison, enclosed herewith please find a copy of the subject letter which we received from Craig Ellis on December 7, 1990.

Thank you.

Very truly yours,

NORMOYLE & NEWMAN



Vicki L. French
Secretary to Gregg S. Garrison

/vlf
Enclosure

LAW OFFICES OF
NORMOYLE & NEWMAN

A PROFESSIONAL CORPORATION

1700 STANDIFORD AVENUE - SUITE A-340
MODESTO, CALIFORNIA 95350

TELEPHONE (209) 521-9521
TELECOPIER (209) 521-4968

MICHAEL C. NORMOYLE
RUSSELL A. NEWMAN
BART W. BARRINGER
WYLIE P. CASHMAN
ERNEST M. SPOKES, JR.
GREGG S. GARRISON

October 1, 1990

DRAFT

Mr. Carl J. Graffenstatte, Jr.
Mrs. Donna P. Graffenstatte
PACIFIC TRADING COMPANY
Post Office Box 97397
Tacoma, WA 98497

RE: 186 E. Lewelling Property/Site Contamination

Dear Mr. and Mrs. Graffenstatte,

This firm has been retained by Ms. Wai Yee Wong Young concerning the property purchased by her in the Grant Deed recorded September 19, 1986. My client has recently become aware of subsurface contamination of the soils as a result of your prior operations. Additionally, there are hazardous wastes currently being stored on the property; my client is informed and believes these wastes were generated by your prior operations.

Current federal and state regulations require the following activities to be performed on the property as a result of the above:

1. Initial site investigation;
2. Development of a remedial action plan; and
3. Site remediation activities to obtain closure of the site.

The regulatory framework cites you as a past owner/operator and generator as being a principally responsible party; environmental laws require you to participate in the activities listed above.

Mr. Carl J. Graffenstatte, Jr.
Mrs. Donna P. Graffenstatte
October 1, 1990
Page 2

DRAFT

Please contact my office as soon as possible so that we can rectify this situation. Indeed , there are important issues which need to be addressed so that fundamental decisions can be made. Your cooperation is anticipated and expected.

Very truly yours,

NORMOYLE & NEWMAN

Gregg S. Garrison

GSG/ts

cc: Wai Yee Wong Young



DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

March 6, 1991

Wai Yee Wong Young
4230 Harbor View Av.
Oakland CA 94619

RE: Contamination from Former Underground Storage Tanks at
186 E. Lewelling Blvd., San Lorenzo

NOTICE OF VIOLATION

Dear Ms. Young:

On September 5, 1990 three underground storage tanks were removed from your property. The sampling results showed that petroleum fuel and constituents in native soils beneath the former gasoline tanks exceeded Regional Water Quality Control Board (RWQCB) action limits. You were instructed in writing by this office to submit a workplan for investigation and remediation of this contamination by January 31, 1991. No workplan has been received by this office to date.

California Health and Safety Code Section 25298 (c) requires that you demonstrate to this agency that any releases from your underground tanks have been investigated and that corrective or remedial action has been taken. You are required to investigate the full depth and lateral and extent of petroleum contamination affecting soil and groundwater at and beyond your site. **We require that you submit a workplan to this office by March 27, 1991.** This workplan must, at a minimum, address the following items:

1. Site History: Site use, any known hazardous materials spills, leaks, or accidents
2. Site Description: Hydrogeologic setting, including soil type(s), depth to groundwater, direction of groundwater flow, and characteristics of the aquifer(s)
3. Investigation Method: Method by which full lateral and vertical extent of contamination will be determined
 - a. A minimum of three groundwater monitoring wells is required in order to determine groundwater flow direction.
 - b. Groundwater samples from monitoring wells must be collected by a qualified person familiar with EPA and DHS sampling protocol. Samples must be analyzed by a state certified laboratory for TPH and BTEX constituents.
4. Planned Remediation or Disposal of Excavated Soil
5. Site Safety Plan

Wai Yee Wong Young
RE: 186 E. Lewelling, San Lorenzo
December 20, 1990
Page 2 of 2

This is a formal request for technical reports pursuant to California Water Code Section 13267 (b). This office is working in conjunction with the RWQCB. All proposals, reports, and analytical results pertaining to this investigation and remediation must be sent to this office and to:

Richard Hiatt
Regional Water Quality Control Board
1800 Harrison Street, Suite 700
Oakland CA 94612

In addition, you are required to submit the following documents:

1. A copy of the hazardous waste manifest(s) for the removed storage tanks signed by a representative of the facility to which they were shipped
2. Copies of receipts or manifests for any soil disposal
3. An Unauthorized Release Report (blank form enclosed)

These documents are due in this office no later than March 16, 1991.

Any deadline extensions for investigation and remediation activities as well as for required reports or other documents must be agreed upon in advance and confirmed in writing. You may contact me with any questions at 271-4320.

Sincerely,



Pamela J. Evans
Hazardous Materials Specialist

Enclosure

c: Gil Jensen, Alameda County District Attorney's Office
Richard Hiatt, RWQCB
Howard Hatayama, Department of Health Services
Michael Abbott, Normoyle & Newman
Craig S. Ellis, Esq.

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

December 20, 1990

Wai Yee Wong Young
4230 Harbor View Av.
Oakland CA 94619

RE: Contamination from Former Underground Storage Tanks at
186 E. Lewelling Blvd., San Lorenzo

Dear Ms. Young:

On September 5, 1990 three underground storage tanks were removed from your property. The sampling results were received by this office on December 14, 1990. They showed that petroleum fuel and constituents in native soils beneath the former gasoline tanks exceeded Regional Water Quality Control Board (RWQCB) action limits. Fuel constituents of concern included total petroleum hydrocarbons (TPH), benzene (B), toluene (T), ethyl benzene (E), and xylene (X).

You are required to investigate the full horizontal and lateral extent of petroleum contamination affecting soil and groundwater at and beyond your site. We require that you submit a work plan to this office by January 31, 1991. This work plan must, at a minimum, address the following items:

1. Site History: Site use, any known hazardous materials spills, leaks, or accidents
2. Site Description: Hydrogeologic setting, including soil type(s), depth to groundwater, direction of groundwater flow, and characteristics of the aquifer(s)
3. Investigation Method: Method by which full lateral and vertical extent of contamination will be determined
 - a. A minimum of three groundwater monitoring wells is required in order to determine groundwater flow direction.
 - b. Groundwater samples from monitoring wells must be collected by a qualified person familiar with EPA and DHS sampling protocol. Samples must be analyzed by a state certified laboratory for TPH and BTEX constituents.
4. Planned Remediation or Disposal of Stockpiled Soil
5. Site Safety Plan

This is a formal request for technical reports pursuant to California Water Code Section 13267 (b). This office is working in conjunction with the RWQCB. All proposals, reports, and analytical results pertaining to this investigation and remediation must be sent to this office and to:

Richard Hiett
Regional Water Quality Control Board
1800 Harrison Street, Suite 700
Oakland CA 94612

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

December 20, 1990

Wai Yee Wong Young
4230 Harbor View Av.
Oakland CA 94619

RE: Contamination from Former Underground Storage Tanks at
186 E. Lewelling Blvd., San Lorenzo

Dear Ms. Young:

On September 5, 1990 three underground storage tanks were removed from your property. The sampling results were received by this office on December 14, 1990. They showed that petroleum fuel and constituents in native soils beneath the former gasoline tanks exceeded Regional Water Quality Control Board (RWQCB) action limits. Fuel constituents of concern included total petroleum hydrocarbons (TPH), benzene (B), toluene (T), ethyl benzene (E), and xylene (X).

You are required to investigate the full horizontal and lateral extent of petroleum contamination affecting soil and groundwater at and beyond your site. We require that you submit a work plan to this office by January 31, 1991. This work plan must, at a minimum, address the following items:

1. Site History: Site use, any known hazardous materials spills, leaks, or accidents
2. Site Description: Hydrogeologic setting, including soil type(s), depth to groundwater, direction of groundwater flow, and characteristics of the aquifer(s)
3. Investigation Method: Method by which full lateral and vertical extent of contamination will be determined
 - a. A minimum of three groundwater monitoring wells is required in order to determine groundwater flow direction.
 - b. Groundwater samples from monitoring wells must be collected by a qualified person familiar with EPA and DHS sampling protocol. Samples must be analyzed by a state certified laboratory for TPH and BTEX constituents.
4. Planned Remediation or Disposal of Stockpiled Soil
5. Site Safety Plan

This is a formal request for technical reports pursuant to California Water Code Section 13267 (b). This office is working in conjunction with the RWQCB. All proposals, reports, and analytical results pertaining to this investigation and remediation must be sent to this office and to:

Richard Hiatt
Regional Water Quality Control Board
1800 Harrison Street, Suite 700
Oakland CA 94612

Panela Evans Hazardous Materials Specialist.

CRAIG S. ELLIS
ATTORNEY AT LAW
3382 WARM SPRINGS ROAD
GLEN ELLEN, CALIFORNIA 95442

(707) 938-8702

91 JAN -9 PM 4:06

Mr. Gregg S. Garrison, Esq.
Law Offices of Normoyle & Newman
1700 Standiford Avenue, Suite A-340
Modesto, California 95350

December 6, 1990

Re: 186 E. Lewelling Blvd., San Leandro
Your File No. 1933

Dear Mr. Garrison:

I have not received any information on how your client plans on working with the Alameda County Health Care Services in light of their letter dated November 6, 1990.

As your client is the property owner, it is our position that she has the responsibility to work with the various agencies in resolving this matter. In addition, it is your clients responsibility to arrange for the piping to be removed, and to pay for the removal.

We previously expressed a willingness to work with you and your client in understanding the nature and extent of contamination with the property, however, it appears from reading the Alameda County Health Care Services letter dated November 6, 1990, that your client has failed to provide any information to or to follow the guidelines established by the agency, which is inconsistent with how the initial situation was presented to us.

Our role in this project was not to assume the role of managing the project, but to work with you and your client in attempting to understand the problem, and to work towards a mutually acceptable resolution of the problem. Due to the time constraints that now have been imposed, and apparently missed without a request for extension, and the added issues outlined in the November 6, 1990, letter, I feel that we should clarify our role.

It is your clients responsibility to remove the piping, resolve the contamination problem, and to satisfy any all agency requirements. In order to avoid any misunderstandings, to expedite resolution of this matter, and to emphasize that this is your clients responsibility, I have advised Mr. Brad Bennett at Aqua Terra to not perform any additional work on the above property, and that if you and your client are interested in using their services, that you will contact him directly.

As we previously agreed, my client will research his files in a effort to locate information about previous tenants. In addition, we agreed to reimburse your client for one half of the preliminary site assessment. In the event you use someone other than Aqua Terra, any expense for the preliminary site assessment must be reasonable.

With respect to your inquiry about leaks, spills or other environmentally related incidents on the above property, Mr. Graffenstatte has advised me that he has no knowledge of any of these events ever occurring.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig S. Ellis", with a long horizontal line extending to the right.

Craig S. Ellis

CSE:kc

cc: Mr. Carl Graffenstatte

General History of Property at 186 Lewelling Boulevard, San Lorenzo, California.

Earliest known owners are Mr. Rudolph F. Tiller and Mrs. Mildred S. Tiller (Current address of both parties unknown).

1950 - General Petroleum Corporation/operator
3225 Gallows Road
Fairfax, Virginia 22037

Local agent: The Prentice Hall Corporation System
5670 Wilshire Boulevard, Suite 750
Los Angeles, California 90036

Mrs. Mildred S. Tiller obtains sole ownership via decree of divorce from Mr. Rudolph F. Tiller. Mrs. Tiller becomes Ms. Robello (Last known address of Ms. Robello is 280 Santa Susana, San Leandro, California).

1969 - Mobil Oil Corporation/operator
3225 Gallows Road
Fairfax Virginia 22937

Local agent: The Prentice Hall Corporation System
5670 Wilshire Boulevard, Suite 750
Los Angeles, California 90036

Ms. Robello sells property to Mr. Carl J. Graffenstatte, Jr. and Mrs. Donna P. Graffenstatte (Current address is P.O. Box 97397, Tacoma, Washington 98497).

1981 - Lewelling Auto Clinic/operator

Last known address of principles:

Mr. Richard Pierce
2865 Greenview
Castro Valley, California

Mr. Burhl Harwood
2163 Grove Way
Castro Valley, California

1982 - Vernon and Betty Mayer/operators

Last known address of principles:

Mr. Vernon and Mrs. Betty Mayer
5276 Broadway
Oakland, California 94618

1986 - Grafco Petroleum/operator

Last known address:

P.O. Box 1713
San Leandro, California 94577

Jerns Auto?

Note, this may be what is currently operating in San Leandro as the GrafcO Convenience Store; telephone number 895-2620.

Mr. and Mrs. Graffenstatter sell property to Ms. Wai Yee Wong Young.

1986 - Tech Performance/operator

Last known address of principle:

Mr. Kyi-Sein Koo
(address unknown)

1989 - New Performance Automotive/operator (still operating at property)

Principle - Mr. Steve Liem

RESPONSIBLE PARTY IDENTIFICATION
FISCAL YEAR 1991-92 CONTRACT

At BOTH federal and state funded sites, the following definition will be used for responsible party. This definition is paraphrased here. It is contained in full in Section Two, Letter P (Page 3 of 19) in your contract.

The owner and/or operator of an UST from which an unauthorized release has taken place, and every other person, organization, or agency which is legally responsible for repayment of moneys. The term includes all persons, organizations, and agencies classified as Responsible Parties by applicable State Board regulations.

This includes:

- 1) any person who owns or operates an UST used to store petroleum
- 2) for USTs no longer in use, the current owner of the UST
- 3) Anyone who owned or operated the UST immediately before discontinuation of its use
- 4) Any owner of property where an unauthorized release of petroleum from an UST has occurred
- 5) Any person who had or has control over an UST at the time of or following an unauthorized release of petroleum occurred.

In all cases funded by the Federal Petroleum Trust Fund, be sure to identify the Resource Conservation and Recovery Act (RCRA) responsible party. This means:

For USTs brought into use before and after November 8, 1984, any person who owns the UST.

For USTs no longer in use on November 8, 1984, anyone who owned the UST immediately before the discontinuation of its use.

Once these persons have been identified, you can then broaden your identification of responsible party to include Numbers 1-5 above.

If you are unable to identify anyone meeting the RCRA definition, the UST will be considered abandoned for EPA purposes and you may name someone in Numbers 1-5.

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

To	Jim Jaffe	From	Juliet Shin
Co.	SAFFE, T, S & Blum	Co.	Alameda County
Dept.		Phone #	(510) 271-4530
Fax #	(415) 397-1339	Fax #	

DATE:

TO : Local Oversight Program

FROM:

SUBJ: Transfer of Eligible Oversight Case

Site name: WAI YEE WONG YOUNG (owner)

Address: 186 E. Lewelling Blvd city San Lorenzo zip 94580

Closure plan attached? Y N DepRef remaining \$ 193.25

DepRef Project # 568975 STID #(if any) 1709

Number of Tanks: 3 removed? N Date of removal 9-5-90

Samples received? N Contamination: TPHg + BTEX

Petroleum N Types: Avgas Jet leaded unleaded Diesel
fuel oil waste oil kerosene solvents

Monitoring wells on site No Monitoring schedule? Y N

LUFT category 1 2 3 * H S C A R W G O

Briefly describe the following:

Preliminary Assessment Petroleum cont. beneath 2 former fuel tanks

Remedial Action None

Post Remedial Action Monitoring None

Enforcement Action Notices of Violation

The fuel tanks on this property were unused for several years. Waste oil tank was in use until removal. Upon removal, soil contamination >1000 ppm was found in native soil under fuel tanks. Some O+G contamination, but < 50 ppm. Despite having arranged for a proposal for investigative work, owner has not taken any remediation steps. Much energy has been put to obtaining cooperation of past owners/operators in paying for cleanup.

Mrs B Realty

90002783

IN CASE OF AN EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-9802; WITHIN CALIFORNIA CALL 1-800-852-7550

UNIFORM HAZARDOUS WASTE MANIFEST

Generator's US EPA ID No. **CAC00003061211**

Manifest Document No. _____

2. Page 1 of _____

Information in the shaded areas is not required by Federal law.

3. Generator's Name and Mailing Address
Mrs Wai Yee Wong Young 421 15th

A. State Manifest Document Number
90002783

4. Generator's Phone **415-540-0238 Oakland CA 94612**

B. State Generator's ID
CAC00003061211

5. Transporter 1 Company Name
ALLIED PETROLEUM

C. State Transporter's ID
100124

7. Transporter 2 Company Name
CADDOBDD57582U

D. Transporter's Phone
209-576-3500

9. Designated Facility Name and Site Address
**RAMUS ENVIRONMENTAL SERVICES
1515 SOUTH RIVER ROAD, WEST SACRAMENTO, CA 95691**

E. State Transporter's ID

F. Transporter's Phone

G. State Facility's ID
CA1010144010315161

H. Facility's Phone
916-371-2570

11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)

12. Containers No. | Type | 13. Total Quantity | 14. Unit Wt/Vol | I. Waste No.

a. **Waste oil Combustible Liquid
NWS NA 1270**

0 | D | U | T | T | 0 | 1 | 235 GAL | State **221**
EPA/Other

b.

State
EPA/Other

c.

State
EPA/Other

d.

State
EPA/Other

J. Additional Descriptions for Materials Listed Above
**50% water
50% oil
Chlorine Contamination 3800 PPM**

K. Handling Codes for Wastes Listed Above
a. b. c. d.

15. Special Handling Instructions and Additional Information
Wear GLOVES & PROTECTIVE CLOTHING
**Picked up At: 186 East Leveelling
San Leandro CA**

16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.
If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name: **STEVE WIGAN** Signature: _____ Month Day Year: **08/31/1988**

17. Transporter 1 Acknowledgement of Receipt of Materials
Printed/Typed Name: **Colin Kelly** Signature: _____ Month Day Year: **08/31/1988**

18. Transporter 2 Acknowledgement of Receipt of Materials
Printed/Typed Name: _____ Signature: _____ Month Day Year: _____

19. Discrepancy Indication Space

20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.

Printed/Typed Name: **MELISSA POWERS** Signature: **Melissa Powers** Month Day Year: **08/31/1988**

2759

UNIFORM HAZARDOUS WASTE MANIFEST

Generator's US EPA ID No. **CACD00030612170724** Manifest Document No. **7** of **1**
 Information in the shaded areas is not required by Federal law.

3. Generator's Name and Mailing Address
WAI YEE WONG YOUNG
421 - 15TH STREET OAKLAND CA 94612

A. State Manifest Document Number
90001246
 B. State Generator's ID

4. Generator's Phone **(415) 540-0238**

C. State Transporter's ID
 D. Transporter's Phone **209-578-4190**

5. Transporter 1 Company Name
RICH HAMILTON TRUCKING

E. State Transporter's ID **1E0186**
 F. Transporter's Phone

7. Transporter 2 Company Name
 8. US EPA ID Number
C A D 9 8 2 4 7 1 5 9 1

9. Designated Facility Name and Site Address
ERICKSON
225 PARR BLVD.
RICHMOND CA, 94801

10. US EPA ID Number
C A D 0 0 9 4 6 6 3 9 2
 G. State Facility's ID
C A D 0 0 9 4 6 6 3 9 2
 H. Facility's Phone
415-235-1393

11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)

12. Containers No. Type
 13. Total Quantity
 14. Unit Wt/Vol
 I. Waste No.

a. **WASTE EMPTY STORAGE TANK NON RCRA HAZARADOUS WASTE SOLID**

0103 T P O I I W S T O P

b.

State
 EPA/Other

c.

State
 EPA/Other

d.

State
 EPA/Other

J. Additional Descriptions for Materials Listed Above
Empty 50 Petrolu Storage Tanks
4375, 4376, 4375 15 LBS DRY
ONE PER ONE THOUSAND GAL CAP

K. Handling Codes for Wastes Listed Above
 a. **01**
 b.
 c.
 d.

16. Special Handling Instructions and Additional Information
KEEP AWAY FROM SOURCES OF IGNITION. ALWAYS WEAR HARD HATS & GLASSES WHEN WORKING AROUND U.S.T.'S.

18. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.
 If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name
WAI YEE WONG YOUNG

Signature
[Signature] Month Day Year
9 1 59 10

17. Transporter 1 Acknowledgement of Receipt of Materials
 Printed/Typed Name
STEPHEN L. RAYBOURN

Signature
[Signature] Month Day Year
10 9 10 59 10

18. Transporter 2 Acknowledgement of Receipt of Materials
 Printed/Typed Name

Signature
 Month Day Year

19. Discrepancy Indication Space
D) State - 512/EPA/other - NONE
E) Should be in line "C"

20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in item 19.
 Printed/Typed Name
DONALD H. ROSSON JR

Signature
[Signature] Month Day Year
10 9 10 59 10

IN CASE OF AN EMERGENCY OR SPILL, CALL THE NATIONAL RESPONSE CENTER 1-800-424-8802; WITHIN CALIFORNIA CALL 1-800-852-7550
 GENERATOR
 TRANSPORTER
 FACILITY

SUMMARY OF TEST RESULTS

REFERRED BY:

LOCATION: Shafco Petroleum
180 E. Jewelling Ave / Ashland
San Diego, CA

DATE: 6-27-86 CUSTOMER: Shafco Petroleum
 COPIES TO: Carl Shaffer/State

LL-17
 RB

SYSTEM	TANK SIZE		WATER INCHES	PUMP DISCHARGE PRESSURE TEST	LEAK LOCATOR RESULTS*			COMMENTS - RECOMMENDATIONS
	GALLONS	DIAMETER INCHES			LEVEL INCHES	GPH	CONCLUSION	
<u>Super</u>	<u>4000</u>	<u>76"</u>	<u>0"</u>	<u>see note</u>	<u>146"</u>	<u>-0.021</u>	<u>Tight</u>	
<u>R/C</u>	<u>4000</u>	<u>76"</u>	<u>0"</u>	<u>see note</u>	<u>135"</u>	<u>+0.016</u>	<u>Tight</u>	

ADDITIONAL COMMENTS: No pressure testing could be done, due to electricity on site.

OTHER CHARGES: (i.e., pumpovers, overtime, parts, etc.) Parts Replaced: ① 6337C coaxial adaptor 63-
② 4" gaskets 2ea

*LEVEL - INCHES FROM TANK BOTTOM TO TEST LEVEL
 GPH - ABSOLUTE LEAK RATE (MEASURED LEAK RATE - TEMPERATURE COMPENSATION) IN GALLONS PER HOUR
 CONCLUSION - NFPA 129 STANDARD OF +0.05 GPH IS USED TO CERTIFY TIGHTNESS.
 Requires Salesman Approval: _____
 Technical Review: _____

PRELIMINARY REPORT

MAR 17 '93 16:00 J.T.S.BB - LAW OFFICES 415 397

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

November 6, 1990

Wai Yee Wong Young
4230 Harbor View Av.
Oakland CA 94619

RE: 186 E. Lewelling Blvd., San Lorenzo 94580

Dear Ms. Young:

On September 5, 1990, three underground storage tanks were removed from the above referenced site. To date, this office has not received any soil sampling results or hazardous waste manifest copies for tanks and tank rinsate. It is also my understanding that piping associated with the removed tanks was not removed at the time of the tank removal. The piping must be removed and a soil sample must be taken for every 20 lineal feet. As well, stockpile samples must be taken for every 20 cubic yards of soil removed from the tank pits.

You are required to submit the following to this office **no later than November 15, 1990:**

- * 1. Sample analysis results, consultant's sampling report, and chain of custody records for each sample.
2. Copies of the Hazardous Waste Manifests signed by representatives of the treatment/storage/disposal facilities that received the tanks and tank rinsate.
3. Any recommendations or proposals for follow up excavation, pipe removal, sampling, and/or remediation work by your consultant.

Any deadline extensions must be agreed upon in advance and confirmed in writing. You may contact me with any concerns or questions as 271-4320.

Sincerely,

Pamela J. Evans
Hazardous Materials Specialist

c: Gil Jensen, Alameda County District Attorney's Office
Richard Hiett, Regional Water Quality Control Board
James Ferdinand, Eden Consolidated Fire Protection District
Chuck Kiper, SEMCO

Phone call from Greg Garrison on 11/15/90. He will supply a letter by 11/30/90 re: Responsible parties, sample results. Deadline for #2 + #3 extended to 12/15/90.

8. Contact Person for Investigation

Name Chuck Kiper Title Vice - President

Phone 572-8033

9. Total No. of Tanks at facility 3

10. Have permit applications for all tanks been submitted to this office? Yes [] No []

11. State Registered Hazardous Waste Transporters/Facilities

a) Product/Waste Tranporter

Name Allied Petroleum EPA I.D. No. CAD 98065675128

Address P.O. Box 193

city HUMAR State CA zip 95327

b) Rinsate Transporter

Name Allied Petroleum EPA I.D. No. CAD 98065675128

Address P.O. Box 193

city HUMAR State CA zip 95327

RHT Modesto (c)

c) Tank Transporter

Name ERICKSON EPA I.D. No. CAD 009466392

Address 255 Park Blvd.

city Richmond State CA zip 94801

d) Contaminated Soil Transporter

Name DWARD Trucking EPA I.D. No. CAD 981692809

Address Route 1 Box 73

city BYRON State CA zip 94514

12. Sample Collector

Name Chuck Kiper

Company SEMCO

Address 1741 Leslie STREET

city SAN MATEO State CA zip 94402 Phone 572-8033

13. Sampling Information for each tank or area

Tank or Area		Material sampled	Location & Depth
Capacity	Historic Contents (past 5 years)		
4000	GAS	SOIL / ^{OR} WATER	} 2 Feet below EACH END OF TANK
4000	Gas	" "	
350	WASTE OIL	" "	} 2 Feet below FILL END

14. Have tanks or pipes leaked in the past? Yes [] No []

If yes, describe. _____

15. NFPA methods used for rendering tank inert? Yes [] No []

If yes, describe. HIGH PRESSURE HOT WATER DETERGENT
WASH; 20 lbs PER 1000 GALLONS DRY ICE;
FINAL purge with AIR

16. Laboratories

Name SUPERIOR ANALYTICAL
 Address 1555 BURKE - Unit 1
 City SAN FRANCISCO State CA Zip 94124
 State Certification No. 220

17. Chemical Methods to be used for Analyzing Samples

Contaminant Sought	EPA, DHS, or Other Sample Preparation Method Number	EPA, DHS, or Other Analysis Number
TPH BTXE D&G CL HC	GCFID (5030) 8020 OR 8240 → 503 D&E → 8010 or 8240 →	GCFID

18. Site Safety Plan submitted? Yes No

19. Workman's Compensation: Yes No

Copy of Certificate enclosed? Yes No

Name of Insurer _____

20. Plot Plan submitted? Yes No

21. Deposit enclosed? Yes No

22. Please forward to this office the following information within 60 days after receipt of sample results.

- a) Chain of Custody Sheets
- b) Original Signed Laboratory Reports
- c) TSD to Generator copies of wastes shipped and received
- d) Attachment A summarizing laboratory results

I declare that to the best of my knowledge and belief the statements and information provided above are correct and true. I understand that information in addition to that provided above may be needed in order to obtain an approval from the Department of Environmental Health and that no work is to begin on this project until this plan is approved.

I understand that any changes in design, materials or equipment will void this plan if prior approval is not obtained.

I will notify the Department of Environmental Health at least two (2) working days (48 hours) in advance to schedule any required inspections. I understand that site and worker safety are solely the responsibility of the property owner or his agent and that this responsibility is not shared nor assumed by the County of Alameda.

Signature of Contractor

Name (please type) Chuck Kiper
Signature Chuck Kiper
Date 7/19/90

Signature of Site Owner or Operator

Name (please type) Wai Yee Wong Young
Signature Wai Yee Wong Young
Date 7/10/90

NOTES:

1. Any changes in this document must be approved by this Department.
2. Any leaks discovered must be submitted to this office on an underground storage tank unauthorized leak/contamination site report form within 5 days of its discovery.
3. Three (3) copies of this plan must be submitted to this Department. One copy must be at the construction site at all times.
4. A copy of your approved plan must be sent to the landowner.

UNDERGROUND TANK CLOSURE/MODIFICATION PLANS

ATTACHMENT A

SAMPLING RESULTS

Tank or Area	Contaminant	Location & Depth	Results (specify units)

INSTRUCTIONS

2. SITE ADDRESS

Address at which closure or modification is taking place.

5. EPA I.D. NO.

This number may be obtained from the State Department of Health Services, 916/324-1781.

6. CONTRACTOR

Prime contractor for the project.

7. OTHER

List professional consultants here.

12. SAMPLE COLLECTOR

Persons who are collecting samples.

13. SAMPLING INFORMATION

Historic contents - the principal product(s) used in the last 5 years.

Material sampled - i.e., water, oil, sludge, soil, etc.

16. LABORATORIES

Laboratories used for chemical and geotechnical analyses.

17. CHEMICAL METHODS:

All sample collection methods and analyses should conform to EPA or DHS methods.

Contaminant - Specify the chemical to be analyzed.

Sample Preparation Method Number - The means used to prepare the sample prior to analyses - i.e., digestion techniques, solvent extraction, etc. Specify number of method and reference if not an EPA or DHS method.

Analysis Method Number - The means used to analyze the sample - i.e., GC, GC-MS, AA, etc. Specify number of method and reference if not a DHS or EPA method.

NOTE:

Method Numbers are available from certified laboratories.

18. SITE SAFETY PLAN

A plan outlining protective equipment and additional specialized personnel in the event that significant amount of hazardous materials are found. The plan should consider the availability of respirators, respirator cartridges, self-contained breathing apparatus (SCBA) and industrial hygienists.

19. ATTACH COPY OF WORKMAN'S COMPENSATION

20. PLOT PLAN

The plan should consists of a scaled view of the facility at which the tank(s) are located and should include the following information:

- a) Scale
- b) North Arrow
- c) Property Line
- d) Location of all Structures
- e) Location of all relevant existing equipment including tanks and piping to be removed
- f) Streets
- g) Underground conduits, sewers, water lines, utilities
- h) Existing wells (drinking, monitoring, etc.)
- i) Depth to ground water
- j) All existing tanks in addition to the ones being pulled

ACORD. CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)
10/3/89

PRODUCER
R. L. Stewart Ins. Agency
P.O. Box 1515
Oakdale, Ca. 95361

CODE SUB-CODE

INSURED
Semco, Inc.
431 West Hatch Rd.
Modesto, Ca. 95351

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

COMPANIES AFFORDING COVERAGE

COMPANY LETTER A	American Star Ins. Co.
COMPANY LETTER B	Fairmont Ins. Co.
COMPANY LETTER C	
COMPANY LETTER D	
COMPANY LETTER E	

COVERAGES:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT.	AMS 1-509826	10/1/89	10/1/90	GENERAL AGGREGATE \$ 1,000
					PRODUCTS-COMP/OPS AGGREGATE \$ 1,000
					PERSONAL & ADVERTISING INJURY \$ 1,000
					EACH OCCURRENCE \$ 1,000
					FIRE DAMAGE (Any one fire) \$ 50
					MEDICAL EXPENSE (Any one person) \$ 5
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	EXCESS LIABILITY <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
B	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY OTHER	F48637	9/5/89	9/5/90	STATUTORY \$ 1,000 (EACH ACCIDENT) \$ 1,000 (DISEASE-POLICY LIMIT) \$ 1,000 (DISEASE-EACH EMPLOYEE)

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS
All California Operations
This certificate would be applicable to all jobs taking place during the policy term shown.

CERTIFICATE HOLDER
County of Alameda
80 Swan Way, Room 200
Oakland, Ca. 94621

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Roger Sulan

SEMCO

HEALTH & SAFETY

PLAN

HEALTH MONITORING AND SAFETY PROGRAM

Who is site safety officer? Other Key personnel?

Site Control

To assure the health and safety of employees involved in hazardous waste operations, Semco Inc. has developed and implemented a Health and Safety Program.

This plan is based on Standard Operating Safety Guides (USEPA) and The Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities (NIOSH/OSHA/USGC/EPA).

Semco inc. employees must receive health and safety training prior to commencing work at sites where hazardous materials may be present and will be provided with periodic follow-up training as appropriate. Health and Safety training will include;

- * Health Monitoring Program
- * Review of General Chemical & Mechanical Dangers
- * Emergency Response
- * Decontamination
- * Documentation and Record Keeping
- * Updating of Health and Safety Plan
- * Reference Guides for Hazardous Materials

When appropriate, a site-specific safety plan will be implemented and will include the following:

- * Site history
- * Inventory of known chemicals (updated as possible)
- * Project organization
- * Work Plan review
- * Project documentation
- * Review of site safety rules (site safety rules will be updated as new information is available or after an accident of implementation of contingency plan)
- * Review of decontamination procedures
- * Proper use and care of personal protective equipment
- * Proper calibration and use of monitoring equipment
- * Emergency response procedures

1.0 HEALTH MONITORING PROGRAM

All drilling personnel and field staff must be enrolled in the Semco Inc. Health Monitoring Program, developed in conjunction with Industrial Medical Clinics of Anaheim, CA. This program consists of an initial medical examination to establish the employee's general health profile and provides important baseline laboratory data for comparative study. The scope of the initial comprehensive physical examination and laboratory testing routine is detailed in Table 1-0. Follow-up examinations are completed for all personnel enrolled in the health monitoring program on a semi annual basis, or more frequently if project assignments warrant testing following specific field activities. The level of potential exposure that Semco personnel are subjected to in carrying out hazardous waste work assignments are recorded by the individual and reviewed weekly by the site supervisor. The California Poison Control Center maintains a comprehensive reference library containing the current information concerning the carcinogenic, mutagenic, teratogenic and toxic characteristics of hazardous wastes.

1.1 REVIEW OF EXPOSURE SYMPTOMS

Symptoms of exposure to hazardous materials for each site will be reviewed in order to indicate to personnel the recognized signs of possible exposure to those materials. This information will be supplemented with a discussion of the need for objecting in the personal health assessment to account for normal reaction to stressful situations. The Site Safety Officer (the lead driller) will be watchful for outward evidence of changes in worker health. These outward symptoms may include skin irritations, skin discoloration, eye irritability, reduced libido, intolerance to heat or cold, or loss of appetite. Employees will routinely be asked to assess their general state of health during individual projects. At the end of each week, employees will briefly describe minor injuries and chemical experience (exposure potential at each job site). This description will be turned in with time records, reviewed by the corporate safety officer and filed in the employees medical file.

TABLE 1-0

HEALTH MONITORING PROGRAM INITIAL EXAMINATION

Physical Examination

- * medical history survey
- * medical examination
- * vision; near and distance vision, color vision
- * hearing; audiometry
- * radiologic: PA;LAT
- * electrocardiogram: 12 lead
- * spirometry

Lab Studies

- | | | |
|----------------------|-------------------|--------------------|
| * hematology | * blood chemistry | |
| - red blood count | - SMA 17 | - urinalysis |
| - white blood count | - electrolytes | - Papanicolaou |
| - hemoglobin | - creatinine | - cholinesterase |
| - hematocrit | - SGPT | level |
| - platelet | - carbon dioxide | - thyroid function |
| - indices | - cholesterol | test T3/T4 |
| - sedimentation rate | - serum iron | |

2.0 REVIEW OF GENERAL CHEMICAL AND MECHANICAL DANGER

A set of standard onsite safety practices will be enforced during site activities to reduce the risks associated with handling contaminated materials and dangers inherent with working near heavy machinery. These safety practices are divided into three categories: personal precautions, rig safety and general procedures and operations.

2.1 PERSONAL PRECAUTIONS

- 2.1.1 Any practice which increases the probability of hand-to-mouth transfer and ingestion of contaminated material will be prohibited in any area designated contaminated. Prohibited activities include eating, drinking, chewing gum or tobacco and smoking.
- 2.1.2 Hands and face will be thoroughly washed upon leaving the work area and before eating, drinking or any other activities.
- 2.1.3 Any excess facial hair which interferes with proper fit of the mask to face seal will be prohibited on personnel required to wear respirator protection. (while respirators are not typically required, work will be prepared to upgrade to Level "C" protection requiring the use of respirators.)
- 2.1.4 Unnecessary contact with contaminated or suspected contaminated surfaces will be avoided. Workers will be instructed to avoid walking through puddles, mud, or other discolored surfaces: kneeling on the ground; and leaning, sitting, or placing equipment on drums, containers, vehicles or the ground.
- 2.1.5 Medicine and alcohol can increase adverse effect from exposure to toxic chemicals. Therefore, prescribed medication will not be taken by personnel during field activities. Also, alcoholic beverage intake will not be tolerated immediately before or during field work.
- 2.1.6 The effects of heat stress in all personnel will be monitored by the Health and Safety Officer. Appropriate measures will be taken to remove any potential victim of heat stress from the work area, provide cooling to the body and provide plenty of liquids to replace body fluids.

2.2 RIG SAFETY

Semco, Inc. has incorporated the National Drilling Federation's (NDF/DCDMA/NDCA) "Drilling Safety Guide" as our mechanical hazards and rig safety guide. This booklet is required reading for all field personnel.

2.3 GENERAL PROCEDURES AND OPERATIONS

← *what are these?*

2.3.1 Entrance and exit to the site will be planned and emergency escape routes will be determined. Before drilling begins a working phone will be located and the most expeditious route to a hospital established. Site Specific Hazards will be discussed and the clients safety requirements will be adopted. Personnel will practice any unfamiliar procedures prior to performing them in the field. The number of personnel and pieces of equipment in the work area will be minimized to the extent that it compromises the effectiveness of site operations. Procedures for leaving a contaminated work area will be established prior to going onsite. Work areas and decontamination procedures will be established based on site conditions.

2.3.2 LEVELS OF PROTECTION

what do you expect to encounter here?

The level of personnel protective equipment required shall be determined by the type and levels of waste or spill material present at the site where project personnel may be exposed. In situations where the types of waste or spill material on-site are unknown or the hazards are not clearly established or the situation changes during onsite activities, the Site Safety Officer must make a reasonable determination of the level of protection that will assure the safety of drilling personnel until the potential hazards have been determined precisely through monitoring, sampling, informational assessment, or other reliable methods. Once the hazards have been determined, protective levels commensurate with the hazards shall be employed. Protection levels will be continuously evaluated to reflect any new information acquired.

The levels of protection utilized by SEMCO INC. are presented below:

Level A - Level A protection must be selected when the Site Safety Officer makes a reasonable determination that the highest available level of both respiratory and skin and eye contact protection is needed. It should be noted that while Level A provides maximum available protection, it does not protect against all possible hazards. Consideration of the heat stress that can arise from wearing Level A protection should also enter into the subtask leaders decision. (Comfort is not a decision factor, but heat stress will influence work rate, scheduling, and other work practices.)

Level B - The Site Safety Officer must select Level B protection when the highest level of respiratory protection is needed, but hazardous material exposure to the few unprotected areas of the body (i.e. the back of the neck) is unlikely.

Level C - The Site Safety Officer may select Level C when the required level of respiratory protection is known, or reasonably assumed to be, not greater than the level of protection afforded by full face air purifying respirators; and hazardous materials exposure to the few unprotected areas of the body. Level C requires carrying an emergency escape respirator.

Level D - Level D is the basic work uniform. Investigators and response personnel must not be permitted to work in civilian clothes. An emergency escape respirator may be required

Respiratory protection criteria and suitable protection gear are summarized in Table 2-1. Fit testing of safety equipment will be an important part of establishing adequate respiratory and dermal protection. Fit testing will be accomplished prior to site explorations and each individual will be assigned a fitted respirator for the duration of the project. These will be tagged for identification.

It should be recognized that most situations require a different combination of respiratory and dermal protective gear, e.g., where no splash protection is required but a high respiratory hazard is present. The site Safety Officer may elect a modification of the above.

TABLE 2-1
 PROTECTIVE GEAR
 (AIR QUALITY LEVELS IN PPM)

	Level D	Level C	Level B	Level A
Air Quality Above Background	0	0-5	5-500	500-1000
Respirator Type*	Escape	Full Face + Escape	SCBA	SCBA
Clothing				
o Boots	*	*	*	*
o Safety glasses or equivalent	*	*	*	
o Hard hat	*	*	*	
o Gloves, inner and outer	*	*	*	*
o Booties		*	*	*
o Coveralls	*	*	*	
o Chemical protective coveralls		*	*	
o Totally encapsulated suit				*

* Use of a respirator is allowed only where identification of organic vapor constituents has occurred and appropriate respirator cartridges have been obtained.

3.0 EMERGENCY RESPONSE

3.1 ON-SITE FIRST AID

All of Semco, Inc.'s Drill Rigs will be equipped with the following items at all times:

- an industrial first aid kit
- 2 ELSA 10 minute supplied Air Escape Mask
- 3 Half Mask respirators
- 3 Full Face respirators
- 10 pair Cartridges TC-21C-287 (organic vapors)
- 10 pair Cartridges TC-23C-450 (organic vapors, acid gases)
- 3 hard hats
- 5 safety glasses
- 30 pair disposable gloves
- 10 pair butyl rubber gloves
- 10 chem resist coveralls (coated Tyvek)
- 3 pair rubber boots with steel toes
- 2 fire extinguishers (co 2)
- 1 eye wash station (portable)

3.1.1 At least one person qualified to perform first aid will be present onsite at all times during work activity. This person will have earned a certificate in first aid training from the American Red Cross or will have received equivalent training.

3.1.2 Transportation to Emergency Treatment

which hospital + where is it?
A vehicle will be available at all times for use in transporting personnel to the hospital. Hospital routes shall be discussed prior to onsite activity.

3.1.3 Contingency Planning

Prior to commencement of onsite activities, field personnel will review safety considerations with the Site Safety Officer. The Site safety Officer is responsible for adherence to the designated safety precautions and for adherence to the designated safety precautions and assumes the role of SEMCO, INC'S on site coordinator with the client in an emergency response situation.

3.2 POTENTIAL HAZARDS

The potential hazards associated with hazardous waste site investigation included 1) accidents; 2) contact, inhalation or ingestion of hazardous materials; 3) explosion; and 4) fire.

3.2.1 Accidents

Accidents must be handled on a case by case basis. Minor cuts, bruises, muscle pulls, etc., will still allow the injured person to undergo reasonable normal decontamination procedures prior to receiving direct first aid. More serious injuries may not permit complete decontamination procedures to be undertaken, particularly if the nature of the injury is such that the victim should not be moved. The nature and degree of surface contamination at a site is generally low enough that emergency vehicles could reach the victim on site without undue hazard.

3.2.2 Contact and/or Ingestion of Hazardous Materials

Properly prescribed and maintained protective clothing and adherence to established safety procedures are designed to minimize these hazards. However, it is still a possibility that contact or ingestion of materials may occur. One possibility for contamination is the puncture of a buried drum of liquid during drilling operations which might cause the random distribution of the drum contents. Standard first aid procedures should be followed. The drilling rig will have a tank of water which may be useful in some circumstances, particularly to flush off any exposed skin areas. Eye wash bottles will also be maintained at the site in case of emergencies. In cases of ingestion or other than minor contact with known substances, the Poison Control Center and local hospital should be contacted and the victim brought there immediately for further treatment and observation.

3.2.3 Explosion

The drilling crew should be keenly aware of combustible gas meter readings and withdraw at an indication of imminently hazardous conditions. The detection of such conditions shall be reported to local agencies for potential execution of the evacuation plan should the situation be assessed as warranting such response.

3.2.4 Fire

The combustible gas meter will also warn of imminent fire hazards at borings. The greatest fire hazard at the site should be recognized as handling the methanol used for decontamination. No smoking or open flames are allowed in this area. Carbon Dioxide fire extinguishers will be kept at the drilling rig, and the decontamination area/field office. The Fire Department, previously informed of site activities, will be called as needed.

Confined space / Excavation?

3.3 EVACUATION RESPONSE LEVELS

Evacuation responses will occur at three levels: (1) withdraw from immediate work area (100+ feet upwind); (2) site evacuation; (3) evacuation of surrounding area. Anticipated conditions which might require these responses are described below:

Withdrawal up-Wind (100 or more feet)

- o Sensing ambient air conditions as containing greater contaminant concentrations than guidelines allow for the type of respiratory protection being worn. The work party may return upon donning greater respiratory protection and/or assessing the situation as transient or past.
- o Breach in protective clothing or minor accident. The party may return when tear or other malfunction is repaired and first aid or decontamination has been administered.

3.5.1 Site Evacuation:

Upon determination of conditions warranting site evacuation, the work party will proceed upwind of the borehole and notify the security force, Site Safety Officer and the field office of site conditions. If the decontamination area is upwind and greater than 500 feet from the borehole, the crew will pass quickly through decontamination to remove contaminated outer suits. If the hazard is toxic gas, respirators will be retained. The crew will proceed to the field office to assess the situation. There the respirators may be removed (if the PI meter indicates an acceptable condition). As more facts are determined from the field crew, these will be relayed to the appropriate agencies.

3.5.2 Evacuation of Surrounding Area

When the Site Manager determines that conditions warrant evacuation of downwind residences and commercial operations, the local agencies will be notified and assistance requested. Designated onsite personnel will initiate evacuation of the immediate off site area without delay.

3.6 TRAINING

The attached matrix (Figure 3-1) indicated training received by on site personnel. All personnel should become familiar with this matrix to minimize response times.

4.0 DECONTAMINATION

4.1 PERSONNEL DECONTAMINATION PROCEDURE

A decontamination procedure will be carried out by all personnel leaving hazardous waste sites. Under no circumstances (except emergency evacuation) will personnel be allowed to leave the site prior to decontamination. Procedures for removal of protective clothing are as follows:

- o Drop tools, monitors, samples and trash at designated drop stations. These will be plastic containers or drop sheets.
- o Step into designated shuffle pit area and scuff feet to remove gross amounts of dirt from outer boots. If necessary, wash boots down with clear water in designated wash pit area.
- o Remove tape from boots and remove boots. Discard in drum container.
- o Remove outer gloves and place in container.
- o Remove hard hat and respirator and hang in the designated area.
- o Remove coveralls and discard in container.
- o Remove inner gloves and discard in container.
- o If the site required utilization of a decontamination trailer, all personnel would also shower before leaving the site at the end of the work day.

Note: Disposable items (coverall, inner gloves, and overboots) will be changed on a daily basis unless there is reason for changing sooner. Dual respirator canisters will be changed weekly unless more frequent changes are deemed appropriate by site surveillance data or personnel assessment.

A water hose and/or designated wash area will be available for wash down and cleaning purposes.

A schematic of a typical decontamination area is shown in Figure 4-1.

4.2 EQUIPMENT DECONTAMINATION

Equipment to be decontaminated during the project may include: (1) drilling rig and tools; (2) sample containers; (3) monitoring equipment; and (4) respirators.

All decontamination will be done by personnel in protective gear appropriate for the level of decontamination, determined by the Site Safety Officer. The decontamination work tasks will be split or rotated among support and work crews. Decontamination procedures within the trailer (if used) should take place only after other personnel have cleared the "hot area", moved to the clean area and the door between the two areas closed.

Miscellaneous tools and samplers will be dropped into a plastic pail, tub or other container. They will be brushed off and rinsed (outside, if possible) and transferred into a second pail to be carried to further decontamination stations. They will be washed with a trisodium phosphate or detergent solution, rinsed with acetone or methanol, rinsed with a trisodium phosphate or detergent solution and finally rinsed with clean water.

4.2.1 Drilling Rig and Tools

It is possible that the drill rigs will be contaminated during test pit/borehole activities. They will be cleaned with high pressure water or portable high pressure steam followed by soap and water wash and rinse. Loose material will be removed by brush.

4.2.2 Sample Containers

Exterior surfaces of sample bottles will be decontaminated prior to packing for transportation to the analytical laboratory. Sample containers will be wiped clean and placed in individual Zip-Loc bags at the sample site. It will be difficult to keep the sample containers completely clean. The samples will be further cleaned if necessary and transferred to a clean carrier and the sample identifies noted and checked off against the chain-of-custody record. The samples, now in a clean carrier, will be stored in a secure area prior to shipment.

4.2.3 Monitoring Equipment

Monitoring equipment will be protected as much as possible from contamination by draping, masking or otherwise covering as much of the instruments as possible with plastic without hindering the operation of the unit. The HNU meter, for example, can be placed in a clear plastic bag which allows reading of the scale and operation of the knobs. The HNU sensor can be partially wrapped, keeping the sensor tip and discharge port clear.

The contaminated equipment will be taken from the drop area and the protective coverings removed and disposed of in the appropriate containers. Any dirt or obvious contamination will be brushed or wiped with a disposable paper wipe and the used wipers discarded. The units will then be taken inside in a clean plastic tub, wiped off with damp disposable wipes and dried. The units will be checked, standardized and recharged as necessary for the next day's operation. They will then be covered with new protective coverings.

4.2.4 Respirators

Respirators will be decontaminated daily. Taken from the drop area, the masks will be disassembled, the cartridges set aside and the rest placed in a cleansing solution. (Parts will be precoded, e.g., #1 on all parts of mask #1). After an appropriate time within the solution, the parts will be removed and rinsed off with tap water. The old cartridges will be marked to indicate length of usage and will be discarded into the contaminated trash container for disposal when considered spent. In the morning the masks will be re-assembled and new cartridges installed if appropriate. Personnel will inspect their own masks to be sure of proper readjustment of straps for proper fit.

5.0 DOCUMENTATION AND RECORD KEEPING

Samples of field activity documentation forms are attached. Minimum documentation consists of:

- o daily field record kept by individuals
- o hazardous site surveillance record kept by Site Safety Officer
- o chain-of-custody records and lab results of samples collected
- o personal hazardous material exposure record

The Site Safety Officer is also responsible for immediate notification of SEMCO Inc's Health and Safety Coordinator in the event of personal injury.

6.0 UPDATING OF HEALTH AND SAFETY PLAN

Each individual involved in field operations is responsible for maintaining weekly safety sheets. If any deficiency is encountered in the Health and Safety Plan, a report will be prepared and forwarded to the Health and Safety Coordinator. The Site Safety Officer will immediately initiate necessary changes to improve protection of field staff.

S E M C O
James C. Bateman Petroleum Services, Inc.
General & Engineering Contractors
License No. 449864 A,B & C-61
1741 Leslie Street
San Mateo, California 94402
(415) 572-8033

August 14, 1990

Alameda County
Hazardous Materials Division
80 Swan Way
Oakland, CA 94621

Attn: Pamela Evans

Re: Addenda for site closure plan for 186 E. Lewelling Blvd.
San Lorenzo

Dear Ms. Evans:

Per your request, I am submitting the following addenda for the closure plan on 186 E. Lewelling Blvd. in San Lorenzo

- 1) The waste oil tank is located on left hand side of building in front of other tanks.
- 2) The piping which is not shown on the site plan will be removed.
- 3) The Site Safety Officer is Chuck Kiper or Terry Hamilton.

Pre Site Safety meeting is held before the excavation begins

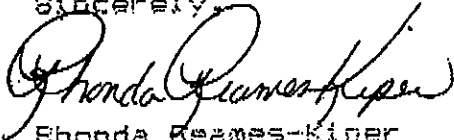
Medical Facility to be utilized on this tank removal will be:
Fairmont Hospital- 15400 Foothill Blvd., San Leandro
East on Lewelling to Mission; North west on Mission to 159th;
North East or right on 159th to Foothill then on to the hospital.
Phone # (415) 667-7800

- 4) Employees will not be entering the tank pit at any times
Samples will be taken from the backhoe bucket
At time of excavation, if it appears that shoring or any other forms of support for the excavation are needed, work shall cease until they are acquired.

- 5) The area will be secured with barricades and barrier tape during the tank removal.
The excavation will be backfilled to grade as to not leave a open hole; also the area will be secured with a 4' plastic safety fence.

If you have any further questions regarding this matter, please give me a call.

Sincerely,



Rhonda Reames-Kiper
SEMCO-SAN MATEO

ALAMEDA COUNTY
HEALTH CARE SERVICES



AGENCY

DAVID J. KEARS, Agency Director

DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

July 9, 1990

Wai Yee Wong Young
4230 Harbor View Av.
Oakland CA 94619

Re: Tech Performance, 186 E. Lewelling Blvd. San Lorenzo

Dear Ms. Young:

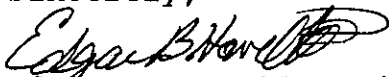
I have reviewed your workplan and proposed timetable for correction of violations noted by my staff. These included failure to monitor and properly close underground hazardous materials storage tanks.

You stated in your letter of April 15 that the underground waste oil tank would be precision tested by July 31, 1990. A copy of the test results must be forwarded to this agency within 30 days of test completion. We will expect them no later than August 31, 1990. Depending upon the results of the precision test, you may be required to remove the waste oil tank.

Also, two unused underground fuel tanks are in place on the property and have not been used since 1987. Your proposal to wait until December 31, 1990 to monitor the tanks is not acceptable. Underground storage tanks that have been out of use for over two years must be either removed or closed in place. Underground tank removal requires you to obtain and complete an underground tank closure plan and submit it, with a deposit, to this office for review. You may also have the option, contingent upon local fire department approval, to close the underground tanks in place. However, Eden Consolidated Fire Protection District does not normally approve closures in place unless the removal operation would entail significant damage to a structure.

You are required to submit to this office by September 15, 1990, a completed underground tank closure plan for either removal or closure in place for the tanks. I am enclosing a closure plan form and instructions. You may contact Hazardous Materials Specialist Pamela Evans with any questions at 271-4320.

Sincerely,


Edgar B. Howell, Chief
Hazardous Materials Division

EBH:PJE

enclosure

c: Gil Jensen, Alameda County District Attorney's Office
James Ferdinand, Eden Consolidated Fire Protection District

April 15, 1990

Pamela Evans

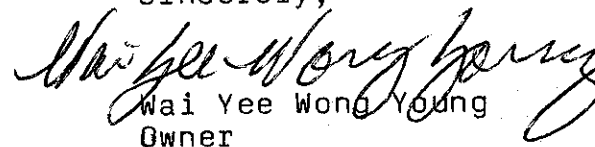
Re: Tech Performance
186 E. Lewelling Blvd
San Lorenzo, CA 94580

Dear Ms. Evans:

In accordance to the violations the Alameda County Department of Environmental Health, Hazardous Materials Divisions noted, this is the proposed plan of actions to be taken.

1. Section 25189.5 (a) (H & SC) - Two oil contaminated areas on the facility. Clean up of the oil contamination will be cleaned up by using kitty litter on the contaminated areas, and disposing of it properly. Clean up expected completion date May 31, 1990.
2. Section 2640 (a), CCr - No monitoring of the underground waste oil tank. Research is currently being done to aid in the monitoring of the underground waste oil tank. Expected completion date July 31, 1990.
3. Section 25298 , (H & SC) - Two unused underground tanks are in place on the property. The property is currently for sale. Therefore, the proposed action is to postpone the monitoring of the tank until December 31, 1990.

Sincerely,


Wai Yee Wong Young
Owner

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Director



2700 file

Telephone Number: (415)

Certified Mailer # P 062 127 918

March 19, 1990

Eva Young
4230 Harbor View Av.
Oakland CA 94619

Re: Tech Performance
186 E. Lewelling Blvd.
San Lorenzo CA 94580

NOTICE OF VIOLATION

Dear Ms. Young:

On February 21, 1990, Pamela Evans of the Alameda County Department of Environmental Health, Hazardous Materials Division, inspected your premises. During this inspection, Ms. Evans noted the following violations of the California Health and Safety Code and California Code of Regulations, Title 23:

1. Section 25189.5 (a) (H&SC) - Two oil contaminated areas exist at the facility. One is outside the west end of the building in the vicinity of the sump. This apparently clogged drain appears to be the source of the contamination. The second area is behind the north wall of the building. It surrounds an opening to the waste oil tank and extends from the tank opening toward the east side of the property on an asphalt surface. These findings indicate significant spillage of hazardous materials. Contamination must be removed and disposed of properly.
2. Section 2640 (a), CCR - No monitoring of the underground waste oil tank is being carried out. Underground tanks storing hazardous materials must be monitored in order to detect unauthorized releases.
3. Section 25298, (H&SC) - Two unused underground tanks are in place on the property. According to representatives of Tech Performance, these tanks have not been in use since 1987, when Tech Performance began operating at this address. Apparently these tanks were used for fuel storage by the previous business owner. Unused underground storage tanks must be removed or monitored.

March 19, 1990

Eva Young
Re: Tech Performance
186 E. Lewelling Blvd.
San Lorenzo CA 94580
Page 2 of 2

In accordance with Section 66328 of Title 22, a Plan of Correction must be submitted to this office within 30 days, or by April 18, 1990. The plan must specify the actions to be taken to address each of the above violations and their expected dates of completion.

Sincerely,



Edgar B. Howell, Chief
Hazardous Materials Division

EBH:PJE

- c: Rafat Shahid, Assistant Agency Director, Environmental Health
- Gil Jensen, Alameda County District Attorney, Consumer and Environmental Protection Division
- James Ferdinand, Battalion Chief, Eden Consolidated Fire Protection District

P 062 127 918

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Street and No.	
P.O. State and ZIP Code	
Postage	\$
Certified Fee	
Extra Delivery Fee	
Signature Delivery Fee	
Registered Mailing Fee	
Postage and Fees	\$
Postmark or Date	

PS Form 3800 (3-79)

Hunter

ENVIRONMENTAL SERVICES, INC.

115 DEWALT AVENUE, NORTHWEST
SUITE 400
CANTON, OH 44702
800-523-4370 216-453-1800
Outside Ohio

INVOICE DATE 06/30/86
INVOICE NO. 005865
CUSTOMER NO. GRAFCO

INVOICE

COPY 1

BILL TO:
Attn: CARL GRAFFENSTATTE
GRAFCO PETROLEUM
P.O. BOX 1713

SAN LEANDRO, CA
94577

TEST LOCATION:

GRAFCO PETROLEUM
186 E. LEWELLING AVE./ASHLAND

SAN LEANDRO, CA

PAGE 1

LOCATION	CUSTOMER ORDER NO.	VAN ID	TERMS	SALES ID	OUR ORDER NO.
/27/86 S.LEAND		PE LL-17	NET 10 DAYS	052008	000104

ITEM NO./ WORK TYPE	WORK DESCRIPTION	UNIT	QUANTITY			UNIT PRICE	EXTENDED PRICE
			ORDERED	BACKORDERED	COMPLETED		
NK TEST 625	LEAK LOKATOR TEST	TEST	2	0	2	625.000	1250.00
00	DPW 633-TC-4" X 4" COAXIAL FI LL ADAPTOR	PART	1	0	1	63.000	63.00
55	DPW H-4150-M 4" GASKETS (TOP SEAL)	PART	6	0	6	2.000	12.00
						Sales Total	1325.00
						Freight	0.00
						Misc. Charges	0.00
						Sales Taxes	0.00

leak lokator

TOTAL 1325.00

INVESTIGATIVE PROCEDURES FOR LEAK LOKATOR RESULTS

All results indicating a leak conclusion should be investigated.

Hunter
 ENVIRONMENTAL SERVICES, INC.
 115 Dewalt Ave. N.W., Suite 400
 Canton, Ohio 44702
 PHONE: 800-523-4370
 IN OHIO: 216-453-1800

RESULTS			CONCLUSION	INVESTIGATIVE PROCEDURE
Full System Tank & Piping	Tank Top 6"-10" above tank top	In Tank* 6"-10" below tank top		
1 Leak Leak Leak	Tight --- Leak	--- Tight Tight	Piping and/or tank top leak	a. Conduct hydrostatic pressure test on product lines • If light , proceed to b. • If leak , repair and retest at full system. b. Uncover the entire tank top (all fittings) and piping — start at most likely sources — fills, vapor recovery, gauges, vents, pumps (don't forget the suction side). Be observant as to whether or not loose fittings, etc. are inadvertently repaired during investigation. c. If no piping leak is found, retest the system while still uncovered. If a piping leak is found, repair and retest the system while still uncovered (this is important to assure that all leaks have been corrected). d. If full system retest still reveals a leak and no leak in piping can be observed, it is safe to assume there is a tank leak that is being covered up by geology or some other hydraulic phenomenon.
2 Leak Leak	--- Leak	--- ---	Full system leak, however, tank top and/or in tank test unable to be performed due to inaccessibility to low level (i.e., bent riser, too small riser, or time restraints on site).	a. If due to inaccessibility: • Uncover and repair or replace riser. • Retest at full system and lower level if necessary. b. If due to time restraints — set up retest for in tank.
3 Leak Leak Leak	Innage --- Innage	--- Innage Innage	Water In Tank (Two Possibilities) a. There is a hole below the water table and water is leaking in at low level and gasoline is leaking out at full system. b. Water is entering through hole in piping or tank top.	a. Repair/Replace system b. Follow procedure outlined in #4.
Leak Leak Leak	Innage --- Innage	--- Innage Innage	No Water in Tank • There is a hole on the tank top or in piping which results in product leaking out at full system and the same product leaking back in at low level test.	a. Conduct hydrostatic pressure test on product lines • If tight , proceed to b. • If leak , repair and retest at full system. b. Uncover and investigate piping and tank top and follow procedure outlined in 1b. c. If no leak is found, retest while still uncovered. If leak is found, repair and retest the system while still uncovered (this is important to assure that all leaks have been corrected). d. If full system retest still reveals a leak and no leak in piping can be observed, it is safe to assume there is a tank leak that is being covered up by geology or some other hydraulic phenomenon.
5 Leak Leak	Leak ---	Leak Leak	Tank and/or Piping Leak	a. Repair/replace system.

* The conclusion is based on the assumption that the test was conducted completely below tank top. Test level and tank configuration should be thoroughly investigated before corrective action is taken (where vapor recovery is present - watch for ball float interference).

NOTE: In tank results are not certified as meeting the NFPA 329 Criterion.

SUMMARY OF TEST RESULTS

REFERRED BY:

LOCATION:

Shafco Petroleum
186th E. Jewelling Ave / Ashland
San Lorenzo, CA

DATE:

6-27-86

CUSTOMER:

Shafco Petroleum
Carl Shaffer/owner

COPIES TO:

Carl Shaffer/owner

SYSTEM	TANK SIZE		WATER INCHES	PUMP DISCHARGE PRESSURE TEST	LEAK LOKATOR RESULTS*			COMMENTS - RECOMMENDATIONS
	GALLONS	DIAMETER INCHES			LEVEL INCHES	GPH	CONCLUSION	
Super	4000	76"	0"	see note	146"	-0.021	Tight	
R/L	4000	76"	0"	see note	135"	+0.016	Tight	

ADDITIONAL COMMENTS:

No pressure testing could be done due to electricity on site.

OTHER CHARGES:

(i.e., pumpovers, overtime, parts, etc.)

Parts Replaced:

① 633TCP coaxial adaptor 63-
 ② 4" gaskets 2ea

*LEVEL - INCHES FROM TANK BOTTOM TO TEST LEVEL

GPH - ABSOLUTE LEAK RATE (MEASURED LEAK RATE - TEMPERATURE COMPENSATION) IN GALLONS PER HOUR

CONCLUSION - NFPA 329 STANDARD OF +0.05 GPH IS USED TO CERTIFY TIGHTNESS.

Requires Salesman Approval: _____

Technical Review: _____

PRELIMINARY REPORT

OCT 18 '90 10:15