



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Gray Davis
Governor

Division of Clean Water Programs

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DATE: October 6, 1999

TO: Amir Gholami
(510) 337-9335

FROM: Lori Casias
DIVISION OF CLEAN WATERS PROGRAMS

FAX (916) 227-4349

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NO. OF PAGES 7 (Including this transmittal sheet)

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REMARKS:

California Environmental Protection Agency



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FREDERIC D. SCHRAG (SBN 124590)
6701 Bay Street
Emeryville, CA 94608
Telephone (510) 652-2411 x 263

Attorney for John Nady and Nady Systems,
Inc.

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STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of Coit)
Services, Inc. for Review of a)
Determination of Alameda County Health)
Services Agency Regarding the Status of)
Coit Services, Inc. as a Responsible Party)
for 1137-1167 65th Street, Oakland,)
California 94608)
_____)

FILE NO. P99-195
RESPONSE TO PETITION TO THE
STATE WATER RESOURCES
CONTROL BOARD

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COIT IS A RESPONSIBLE PARTY

“Responsible party” means one or more of the following: ...4. Any person who had ... control over an underground storage tank at the time of or following an unauthorized release of a hazardous substance.”

(23 California Code of Regulations §2720.)

An exception to the usual requirement that the agency naming the responsible party have substantial evidence supporting a reasonable basis to conclude that an unauthorized release occurred during or prior to the time that the person had control of the UST or property is where “discontinuance of use” of the UST occurred before November 8, 1984. (Declaration of Schrag, Exhibit 1 p.3, Clarification of the Definition of Responsible Party Under the Corrective Action Regulations, State Water Resources Control Board letter, January 25, 1994.)

“Discontinuance of use means that (1) product was neither placed in the tank nor removed from the tank (except for product removal at the time of closure) and (2) circumstances indicated that there was no further intent to use the tank. Circumstances which indicate no further intent to use the tank can include such factors as: ...2. The owner abandoned the tank and no one else has used it; ...5. The tank was sold to a person who had no use for the tank (such as a residential real estate developer).”

(Ibid.)

Coit owned the real property containing the UST from 1978 until 1979. (Petition, Exhibit C ¶¶3-5, Declaration of Louis Kearn.) At the time Coit owned the property, Coit was responsible for the UST and its hazardous contents. “‘Operational life’ means the period beginning when installation of the tank system has begun until the time the tank system should be properly closed.” (23 California Code of Regulations [Underground Tank Regulations] §2611.) Coit was aware of the existence of the UST during Coit’s ownership of the property. (See Petition, Exhibit C ¶¶7 and 8, Declaration of Louis Kearn.) Discontinuance of use of the tank occurred before


When? Not when Coit owned property.

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1980. (Petition, Exhibit C ¶¶5 and 7, Declaration of Louis Kearm.) After Coit sold the tank to Alan Wofsy in 1979, neither Wofsy nor the current owner, John Nady, used it. (Declaration of Schrag, Exhibit 2 "I never used the property nor rented the property to anyone who used the UST" and Exhibit 3 "My client is an innocent purchaser who never operated the tanks and had not even known that the tanks were there".) Thus Coit abandoned the tank before November 8, 1984 and no one else used it, and Coit sold the tank to a person who had no use for it (both circumstances showing "discontinuance of use").

Coit had control over the UST. State Water Board decisions have determined that necessary "control" (as the term is used in the fourth definition of Responsible Party) exists where a person "had the legal ability to direct management of the tank or property on which the tank is or was located". (Declaration of Schrag, Exhibit 1 p.2.) Coit, as owner of the property before November 8, 1984, had the legal ability to direct management of the property on which the tank was located.

Date: 10/1/99


FREDERIC D. SCHRAG
Attorney for JOHN NADY and
NADY SYSTEMS, INC.

DECLARATION OF FREDERIC SCHRAG

I, Frederic Schrag, declare:

1. I am attorney at law for John Nady and Nady Systems, Inc., have personal knowledge of the below stated matters, and can competently testify thereto.
2. Exhibit 1 attached hereto is a true and correct copy of a letter I received from the Alameda County Health Services Agency, Environmental Health Services, entitled Clarification of the Definition of Responsible Party Under the Corrective Action Regulations, and dated January 25, 1994.

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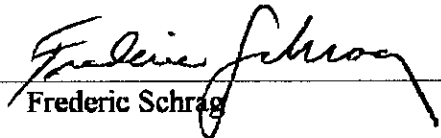
3. Exhibit 2 attached hereto is a true and correct copy of a letter that John Nady received from Alan Wofsy, on or about April 26, 1994.

4. Exhibit 3 attached hereto is a true and correct copy of a letter I wrote to the San Francisco Bay Regional Water Quality Control Board on January 21, 1999.

5. John Nady never used the tanks.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10/1/99


Frederic Schrag

Pcoir

**NADU SYSTEMS, INC.**

6701 Bay Street
Emeryville, CA 94608 USA
510/652-2411
FAX: 510/652-5075

please reply to extension 263

January 21, 1999

Stephen Morse
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: 1137-1167 65th Street, Oakland CA 94608

Dear Mr. Morse:

Thank you for taking the time to talk with me on the phone yesterday. As you recommended, I am providing you with a recap of the situation we discussed.

My client has recently discovered underground storage tanks on real property that he purchased in 1986. The tanks are under the concrete floor of the building that he rents out to musicians. The presence of the tanks had not been disclosed to him by the seller, Mr. Alan Wofsy.

Three tanks contain Stoddards solvent mixed with HVOC, including one tank with about 8,000 gallons in it. (See enclosed Project Status Report of environmental consulting firm.) The soil surrounding one of those tanks is contaminated with Stoddards solvent, but not with HVOC. A fourth tank contains 20,000 gallons of liquid containing Stoddards solvent, but not HVOCs.

Years prior to my client's purchase of the property, it had been a dry-cleaning processing plant which used the Stoddards solvent in the tanks. The plant was operated and real property owned by Dymo Industries, Inc., now named Esselte Corporation. Dymo sold the property to Trans-Western Services Industries, Inc. (formerly named Marshall Steel dry-cleaners), a corporation apparently owned by Dymo. It appears that Dymo then sold Trans-Western to a company now named Coit Services, Inc., operators of drapery dry-cleaners. Trans-Western then sold the property to Alan Wofsy, a developer. The dry-cleaner owners and operators left the tanks underground under concrete, filled with tens of thousands of gallons of liquid containing HVOCs.

seems to be the last tank owner pres to discont of use. (not cont)

Esselte Corporation's address is 71 Clinton Road, Garden City, NY 11530. Its President is Robert K. Scribner.

Coit Services, Inc.'s address is 897 Hinckley Road, Burlingame, CA 94010. Its President is Louis J. Kearn.

Alan Wofsy's address is 401 China Basin Street, San Francisco, CA 94107.

EXHIBIT 3

Stephen Morse
January 21, 1999
Page 2

As we discussed, my client is an innocent purchaser who never operated the tanks and had not even known that the tanks were there. He is without the financial resources to dispose of tens of thousands of gallons of hazardous waste and to clean up the leaked product. The dry-cleaning companies who are responsible for the waste, and the developer who bought the property from the dry cleaners, have the financial resources to take care of the problem.

You recommended that I request you to send notice to the generators of the waste, listed above, obliging them to take care of the problem.

Please let me know what action you will take.

Thank you for your anticipated help.

Very truly yours,



Frederic D. Schrag
Special Counsel

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