

STP 494

ENVIRONMENTAL
PROTECTION

98 MAY 28 AM 10:10

BILL COX, INC.
c/o 100 Pine Street, Suite 2100
San Francisco, CA 94111
(415) 421-9696

May 21, 1998

VIA FACSIMILE WITH ORIGINAL BY FEDERAL EXPRESS

Mr. Dave Deaner, Program Manager
UST Cleanup Fund Program
State Water Resources Control Board
Division of Clean Water Programs
P. O. Box 944212
Sacramento, CA 94244-2120

**Re: Request for Reconsideration or Appeal of Staff Decision
Claim No. 8721 by Bill Cox, Inc.
Site Address: 230 Bay Place, Oakland**

Dear Mr. Deaner:

This letter is to appeal the Staff Decision to withdraw the Letter of Commitment for the above referenced claim, due to lack of current information regarding corrective action costs paid or to be incurred. The decision was conveyed to us in a letter dated April 22, 1998, a copy of which is attached hereto as Tab A. The Claimant hereby respectfully requests reconsideration of that decision. If reconsideration is denied or unsuccessful, this appeal shall be directed to the Chief of the Division for a Division Decision regarding reinstatement of the Letter of Commitment.

BACKGROUND

The property located at 230 Bay Place in Oakland, California had three underground storage tanks. One tank, which contained mineral spirits, was removed and closed in 1992. A second tank, which held waste oil tank and allegedly had leaked, was removed in 1988. The owner of the property, the Shepard Trust, has received a Letter of Commitment from the Fund as a Class B Claimant to address contamination resulting from the waste oil tank. The Property also contained a 10,000-gallon gasoline tank ("Gas Tank") that was used and later removed by Bill Cox, Inc. (formerly dba Bill Cox Cadillac-Buick) ("Claimant"). A Letter of Commitment as a Class C Claimant was issued to remediate contamination from that tank.

In 1993, a leaking product pipe relating to the Gas Tank was discovered, and the Gas Tank was removed on January 28, 1994. Thereafter, Claimant hired EOA, Inc., an environmental consulting firm, to conduct a site investigation and to draft a Corrective Action Plan listing alternatives for remediating the site. The Corrective Action Plan was submitted to Alameda County on September 5, 1996.

Mr. Dave Deaner, Program Manager
UST Cleanup Fund Program
May 21, 1998
Page 2

In October 1996, pursuant to an agreement between the Claimant and the Shepard Trust, PES Environmental, Inc. ("PES") was hired to draft a workplan and modifications to the Corrective Action Plan. Not long after this agreement, the Claimant terminated its business operations. The combination of a pending lawsuit between Claimant and the Shepard Trust and the termination of Claimant's business, which eliminated the staff and resources to handle the claim, delayed and inhibited Claimant's ability to file a claim with the UST Cleanup Fund.

Because of its inability to pay for the characterization and remediation of the Property, Claimant has agreed to interim agreements and has participated in ongoing negotiations with the Shepard Trust to advance funds for the characterization and remediation. It is anticipated that a final Co-payee Agreement will be executed in the next few months.

JUSTIFICATION FOR RECONSIDERATION

1. Claimant's Grievance

The termination of Claimant's business and its financial situation renders the Claimant unable to undertake the characterization and remediation of the contamination resulting from the Gas Tank. Meanwhile, the suit by the Shepard Trust has not been dismissed. The ability to obtain reimbursement from the UST Cleanup Fund is the only financial mechanism that will enable cleanup of the Property and will aid in resolution of the lawsuit. If the Letter of Commitment is not reinstated, Claimant will be forced to reapply on a new claim, causing unnecessary expense to the agency and the parties, and will delay cleanup of the Property.

2. Remedy Requested

Claimant hereby requests that the UST Cleanup Fund review and reconsider its decision to withdraw the Letter of Commitment. Claimant further requests that the UST Cleanup Fund make a finding that Claim Number 8721 remains eligible for reimbursement and that a reimbursement request shall be submitted to the UST Cleanup Fund by December 31, 1998.

3. Statement of Reasons

There are a number of reasons to reinstate the Letter of Commitment including:
(1) assistance from the UST Cleanup Fund is imperative to being able to remediate the Property;
(2) assistance from the UST Cleanup Fund will enable the parties to the lawsuit to settle the suit and put their money and efforts into remediation; and (3) costs have been incurred and will continue to be incurred.

To date, Claimant has spent in excess of \$15,000 for consulting services provided by EOA, Inc. to assess the nature and extent of required remediation, to prepare a preliminary remediation plan, and to review and comment on the Corrective Action Plan prepared by PES. At this time, the total cost of remediation is not known. Because Alameda County is

Mr. Dave Deaner, Program Manager
UST Cleanup Fund Program
May 21, 1998
Page 3

about contamination leaking into the Bay, it may be assumed that remediation costs will be significant.

As explained above, Bill Cox, Inc. is out of business and is not in a position to fund any further investigation or remediation effort. During the past year and a half since it went out of business, Claimant has been negotiating with the Shepard Trust to advance the funds for characterization and remediation pursuant to a Co-payee agreement. We have an agreement in principle as evidenced by the documents attached to the letter from Shepard Trust's counsel, which is attached hereto under Tab B. The final terms of the Co-payee Agreement are being incorporated into the document and will be executed within the next 60 days. This Co-payee Agreement will assist in settlement of the lawsuit and will allow the focus to shift to site characterization and remediation.


CONCLUSION

For the above reasons, Claimant urges you to reconsider the UST Cleanup Fund Staff Decision to withdraw the Letter of Commitment from Claim Number 8721 and respectfully requests that the Letter of Commitment be reinstated. To avoid an open-ended delay, Claimant does not object to making reinstatement conditional on submission to the UST Cleanup Fund of a final Co-payee agreement between Claimant and Shepard Trust within 60 days.

Thank you for your attention to this matter.

Very truly yours,

Bill Cox, Inc.
(dba Bill Cox Cadillac-Buick)

By: 
Bill Cox *PRIS*

Enclosures
cc (w/encl.):

Mr. Thomas Peacock
Ms. Cheryl Gordon
Mr. Steve Schulman, Wells Fargo Bank
Mr. Rory Campbell (Owner's counsel)
Mr. Robert Cross (Claimant's counsel)



Ca/EPA

State Water
Resources
Control Board

Division of
Clean Water
Programs

Mailing Address:
P.O. Box 944212
Sacramento, CA
94244-2120

2014 T Street,
Suite 130
Sacramento, CA
95814
(916) 227-4539
FAX (916) 227-4530

World Wide Web
<http://www.swrcb.ca.gov/~cwphome/fundhome.htm>

APR 2 2 1998

Bill Cox Cadillac-Buick
c/o: Bob Cross
Hovis, Smith et al.
100 Pine St. 21st Floor
San Francisco, CA 94111

RECEIVED

APR 2 3 1998

HSLSLC



Pete Wilson
Governor

UNDERGROUND STORAGE TANK CLEANUP FUND PROGRAM, STAFF DECISION FOR NOTICE OF INELIGIBILITY DETERMINATION, CLAIM NUMBER 8721, SITE ADDRESS: 230 BAY PL, OAKLAND

This is to notify you that during the detailed review of your application, it has been determined that your claim for the subject site is not eligible for reimbursement in the Underground Storage Tank Cleanup Fund. It is being proposed, therefore, that your claim be removed from the Priority List based on the following reason:

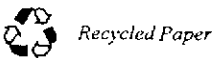
According to section 2810.1(6) of the Petroleum Underground Storage Tank Cleanup Fund Regulations, an eligible claimant is, "an owner or operator who has paid or will pay for the costs claimed."

I have made several attempts to contact you to obtain information on the costs that you have incurred in connection with the contamination at the subject site. Each attempt has been unsuccessful. Through a consultant for Wells Fargo Bank, I was able to obtain information on your attorney, Bob Cross, so I contacted him. I spoke with Mr. Cross on January 16, 1998 and February 24, 1998. Each time, I informed him that I needed a current address and phone number for your claim so that I could send any pertinent information to you. He informed me that he would contact you and get back to me. To date, I have not received any updated information for your address or phone number.

Mr. Cross informed me that Bill Cox Cadillac is out of business, and you are no longer in the loop for cleanup purposes at the site. He informed me that the site cleanup is being handled by Wells Fargo Bank, trustee for the Shepard Trust, who also has a claim for the site.

It has already been explained in earlier correspondence to both claimants (Shepard Trust, and Cox Cadillac) that one of the two cannot be reimbursed for the entire cleanup because of the separate ownership held by each claimant.

Since you have apparently not incurred any corrective action costs, your claim should be removed from the Priority List.



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

APR 22 1998

If you disagree with this Staff Decision, you may either request review and reconsideration by the Program Manager or you may formally appeal the decision and request a Division Decision from the Chief of the Division. A request for reconsideration along with any additional documentation should be sent to:

Dave Deaner, Program Manager, Claim #8721
UST Cleanup Fund Program
State Water Resources Control Board
Division of Clean Water Programs
P. O. Box 944212
Sacramento, CA 94244-2120


A request to the Chief of the Division must include, at a minimum: (1) a statement describing how the claimant is damaged by the prior Staff Decision; (2) a description of the remedy or outcome desired; and (3) an explanation of why the claimant believes the action or the Staff Decision is erroneous, inappropriate or improper.

The request to the Chief of the Division must be sent to Harry M. Schueller, Chief, Division of Clean Water Programs, at the address listed above.

If you do not request review and reconsideration by the Program Manager or request a Division Decision from the Chief of the Division within thirty (30) calendar days from the date of this letter, the Staff Decision will then become final and conclusive.

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

Sincerely,


Cheryl Gordon
Claim Review Unit
Underground Storage Tank Cleanup Fund

cc: Mr. Thomas Peacock
Alameda County EHD
1131 Harbor Bay Pkway, 2nd Fl.
Alameda, CA 94502-6577

Harold Shepard Trust
c/o: Mr. Steven Schulman
Wells Fargo Bank
525 Market St. 18th Floor
San Francisco, CA 94105

LEAH S. GOLDBERG
ATTORNEY AT LAW
E-MAIL lgoldberg@hansonbridgett.com

HANSON
BRIDGETT
MARCUS
VLACHOS
RUBY LLP

May 21, 1998

RECEIVED
MAY 21 1998
HSLSLC

Bill Cox, President
Bill Cox, Inc.
c/o Robert R. Cross, Esq.
Hovis, Smith, Larson, Stewart, Lipscomb & Cross
100 Pine Street
21st Floor
San Francisco, CA 94111-5102

Re: 230 Bay Place, Oakland, California

Dear Mr. Cox:

This letter is to update you on the status of the final version of the Co-payee agreement between the Shepard Trust and Bill Cox, Inc. As you know, the Shepard Trust has a Letter of Commitment from the Underground Storage Tank Cleanup Fund as a Class B Claimant for the waste oil tank on the above referenced property. It is our understanding that Bill Cox, Inc. has a Letter of Commitment as a Class C Claimant for the 10,000-gallon gasoline tank.

Over the past year and half, the site characterization and remediation on the property has proceeded under a Co-payee Agreement-in-Principle whereby the Shepard Trust has advanced the funds for site characterization and remediation in exchange for your cooperation in submitting a claim for reimbursement under your Letter of Commitment to the Underground Storage Cleanup Tank Fund. (The documents evidencing this Co-payee Agreement-in-Principle are attached hereto for your reference.) Simultaneously we have been negotiating the terms of a final Co-payee Agreement, which is intended to be executed in connection with the settlement and dismissal of the pending lawsuit between the parties.

As a result of the termination of your business, recent discussions with the Underground Storage Tank Cleanup Fund staff, and a new Water Quality Order by the State Water Resources Control Board, many of the terms of the Co-payee Agreement under negotiation now need to be changed. We are in the process of redrafting the agreement and will have a draft to you in the next few weeks. It is our hope that we can complete the Agreement and have it executed by both parties within the next 60 days.

AW OFFICES

SAN FRANCISCO

333 MARKET STREET 27TH FLOOR
SAN FRANCISCO, CA 94105-2173
TELEPHONE 415 777 3200
FACSIMILE 415 541 9366
email sf_hansonbridgett.com

PAISLEY

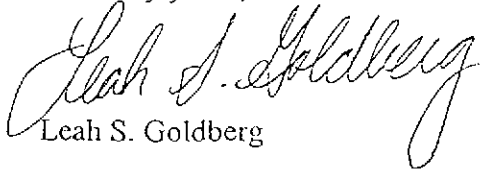
1115 S. FRANCISCO ST. SUITE 100
PAISLEY, OR 97139
TELEPHONE 503 425 1401
FACSIMILE 503 425 1401
email ps_hansonbridgett.com

621523.1

Robert R. Cross, Esq.
Bill Cox
May 21, 1998
Page 2

Please do not hesitate to call me with any questions or comments you may have.

Sincerely yours,



Leah S. Goldberg

LSG:1

LAW OFFICES
HANSON, BRIDGETT, MARCUS, VLAHOS & RUDY, LLP

333 MARKET STREET, SUITE 2300
SAN FRANCISCO, CALIFORNIA 94105-2173

RAYMOND L. HANSON
(1912-1996)
JOHN J. VLAHOS
WILLIAM J. BUSH
RICHARD N. RAPOPORT
LAURENCE W. KESSENICK
DOUGLAS H. BARTON
JAMES O. KOLOEN
MICHAEL A. DUNCHEON
FRED B. WEIL
CRAIG J. CANNIZZO
THEODORE A. HELLMAN
STEPHEN L. TABER
STEPHEN B. PECK
KIM T. SCHOKNECHT
BONNIE KATHLEEN GIBSON
JOEL S. GOLDMAN
JACQUELYN J. GARMAN
MADÉLINE CHUN
LINDA E. KLAMM
PETER L. DMYTRYK
PATRICK M. GLENN
DAVID C. LONGINOTTI
DIANE MARIE O'MALLEY
MICHAEL N. CONNERAN
LEE ANN M. LA FRANCE
JAMES A. NAPOLI
LYNN TRACY BERLAND
PATRICK T. MIYAKI
LISA M. POOLEY
MERÉDITH E. BROWN
LISA K. PUMILLO
ERIC V. TAO
GLENDA M. ZARBOCK
LEAH S. GOLDBERG
CAROLÉ R. ROSSI
GILSON S. RIECKEN
KIM MORIMOTO
MARIA M. SHANLE
JENNIFER G. HUBIT
AMY J. WRIGHT

ARTHUR T. BRIDGETT (RET.)
GERALD D. MARCUS
SIDNEY RUDY
RONALD C. PETERSON
DAVID J. MILLER
RAY E. MCDEVITT
JERROLD C. SCHAEFER
PAUL A. GORDON
WILLIAM D. TAYLOR
TED C. KRUMLAND
STEVEN V. SCHNIER
KEVIN M. O'DONNELL
JOAN L. CASSMAN
ALLAN D. JERGESEN
ROBERT L. RUSKY
HOWARD W. ASHCRAFT
RORY J. CAMPBELL
DAVID W. BAER
LORA J. THIELBAR
PAUL F. GOLDSMITH
SUSAN G. O'NEILL
W. DANIEL CLINTON
PAMELA S. KAUFMANN
JEFFREY M. CHU
JONATHAN S. STORPER
ANDREW G. GIACOMINI
CHARLES L. THOMPSON, IV
DEBRA L. WATANUKI
DANA B. WOLF
MICHAEL B. McNAUGHTON
SANDRA L. RAPPAPORT
BETTINA E. MOORE
ALLISON M. WOODALL
ROSY H. CHO
WALTER R. SCHNEIDER
JENNIFER BERGSTROM
JANET LEE WILSON
TERRY A. SMITH
ALI S. KIA
ANDREA J. LACAMPAGNE
GARNER K. WENG

TELEPHONE (415) 777-3200
FACSIMILE (415) 541-9366

*MARIN OFFICE
WOOD ISLAND
80 E. SIR FRANCIS DRAKE BLVD.
SUITE 3E
LARKSPUR, CA 94939
TEL (415) 925-8400
FAX (415) 925-8409

OF COUNSEL
JACK P. WONG
DANIEL W. BAKER
ROBERT E. SIMMS
JOHN W. BROAD
SARAH D. MOTT
PETER FRANCK
*GARY T. GIACOMINI
WILLIAM A. HICKEY

January 29, 1998

Robert R. Cross, Esq.
HOVIS, LARSON, STEWART & LIPSCOMB
100 Pine Street, 21st Floor
San Francisco, CA 94111-5102

Re: Shepard Trust v. Cox

Dear Bob:

We have a Status Conference tomorrow. In order to minimize the costs of our current effort, I believe that we need to negotiate and finalize a settlement agreement conditioned on the completion of two items: satisfactory evidence that the defendant is insolvent and there have been no fraudulent conveyances, and execution of a satisfactory agreement respecting the application to the UST Cleanup Fund. I recommend that we agree on a definite time frame for obtaining the financial information needed for the first item, and that we work on completing the latter by the end of February, 1998. Could you please confirm your client's agreement with this approach and this timetable, or provide a concrete alternative to this proposal.

Thank you for your attention.

Very truly yours,


Rory J. Campbell

RJC:bm

MAY 16 RECD

HOVIS, SMITH, STEWART, LIPSCOMB & CROSS, LLP

ATTORNEYS AT LAW
100 PINE STREET, 21ST FLOOR
SAN FRANCISCO, CALIFORNIA 94111

TELEPHONE (415) 421-9696
FACSIMILE (415) 421-0320

ROBERT R. CROSS
(415) 274-7226

May 15, 1997

Rory Campbell, Esq.
Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105

Re: Shepard Trust v. Bill Cox, Inc.

Dear Rory:

As we discussed at our meeting on April 25th, I understand that Bill Cox, Inc. has ceased doing business and is in the process of winding up. I agreed to assist to the extent I can to reach an agreement that would let your clients take advantage of Bill Cox, Inc.'s approved application for reimbursement of costs from the State UST cleanup fund, on the understanding that my client is not in a position to fund any part of the reimbursement effort. Following our meeting, I left you a voicemail message that my client will not insist on advance notification and prior approval of remediation expenditures, although we should still receive information copies of significant communications, in care of this office.

Please send along the revised agreement when it is ready for my client's review.

Very truly yours,



Robert R. Cross

cc: Client
Mr. Don Eisenberg

MSD

LAW OFFICES
HANSON, BRIDGETT, MARCUS, VLAHOS & RUDY, LLP

333 MARKET STREET, SUITE 2300
SAN FRANCISCO, CALIFORNIA 94105-2173
(415) 777-3200

FACSIMILE (415) 541-0366

RAYMOND L. HANSON
(1912-1998)
JOHN J. VLAHOS
WILLIAM J. BUSH
RICHARD N. RAPOPORT
LAURENCE W. KESSENICK
DOUGLAS H. BARTON
JAMES D. HOLDEN
MICHAEL A. DUNCHEON
FRED B. WEIL
CRAIG J. CANNIZZO
THEODORE A. HELLMAN
STEPHEN L. TABER
STEPHEN B. PECK
KIM T. SCHOKNECHT
BONNIE KATHLEEN GIBSON
JOEL S. GOLDMAN
JACQUELYN J. GARMAN
MADELINE CHUN
LINDA E. KLAMM
PETER L. DMYTRYK
SUSAN G. O'NEILL
DAVID C. LONGINOTTI
DIANE MARIE O'MALLEY
MICHAEL N. CONNERAK
JONATHAN S. STORPER
LEE ANN M. LA FRANCE
LYNN TRACY NERLAND
ANDREW G. GIACOMINI
JAMES A. NAPOLI
CHARLES L. THOMPSON, IV
LISA M. POOLEY
AMY L. BROWN
PHILIP E. FAGONE
LISA K. PUNTILLO
ERIC V. TAO
GLENDA M. ZARBOCK
ROSY H. CHO
WALTER R. SCHNEIDER
GILSON S. RIECKEN

ARTHUR T. BRIDGETT (RET.)
GERALD D. MARCUS
SIDNEY RUDY
RONALD C. PETERSON
DAVID J. MILLER
RAY E. MCDEVITT
JERROLD C. SCHAEFER
PAUL A. GORDON
WILLIAM D. TAYLOR
TED C. KRUMLAND
STEVEN V. SCHNIER
KEVIN M. O'DONNELL
JOAN L. CASSMAN
ALLAN D. JERGESEN
ROBERT L. RUSKY
HOWARD W. ASHCRAFT
RORY J. CAMPBELL
DAVID W. BAER
LORA J. THIELBAR
PAUL F. GOLDSMITH
JANE WOODSIDE
PATRICK H. GLENN
PAMELA S. KAUFMANN
JEFFREY M. CHU
MATTHEW J. DULKA
WILLIAM A. HICKEY
STEVEN J. LEVINE
PETER CHADWICK
DEBRA L. WATANUKI
PATRICK T. MYAKI
LAURA L. HAUCK
MICHAEL B. MCNAUGHTON
HEREDITH E. BROWN
SANDRA L. RAPPAPORT
BETTINA E. MOORE
ALLISON M. WOODALL
AMY R. RATHER
LEAH S. GOLDBERG
CAROLE R. ROSSI

OF COUNSEL
JACK P. WONG
DANIEL W. BAKER
ROBERT E. SIMMS
JOHN W. BROAD
SARAH D. MOTT

November 18, 1996

Robert R. Cross, Esq.
HOVIS, LARSON, STEWART & LIPSCOMB
100 Pine Street, 21st Floor
San Francisco, CA 94111-5102

Re: Shepard Trust v. Cox

Dear Robert:

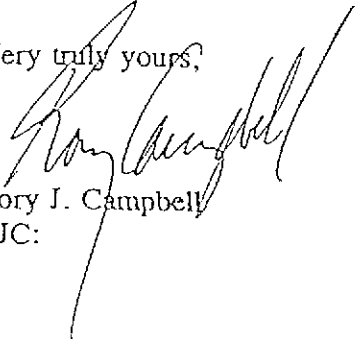
In his letter of November 6, 1996, regarding the PES Interim Remedial Action Plan, Don Eisenberg identified a number of technical issues. PES' response will be delivered today. I think we would all have been better served had the technical differences been discussed by phone, rather than airing our differences in a letter-writing campaign. It is an enormous waste of money. I note that Mr. Eisenberg also took it upon himself to send a cover letter to Dale Kiettker of the Alameda County Department of Environmental Health ("ACDEH") and to Gil Jensen, the Alameda County District Attorney, the main purpose of which seems to trumpet that your client had an approved Corrective Action Plan. We assume that you and your client authorized sending these letters to Mr. Jensen's office.

As you are aware, our client has offered to step in and pay for the remedial work in order to speed up the cleanup process. If Mr. Eisenberg's letter is the first step in orchestrating missives to Gil Jensen to show that our approach is flawed, etc., then I would like to discuss that issue

Robert R. Cross, Esq.
November 18, 1996
Page 2

with you immediately. Our problems should first be addressed between the parties, then taken to Mr. Klettke if they cannot be solved. Please advise me why and to what extent your client plans to include Mr. Jensen's office in his communications on this site.

Very truly yours,



Rory J. Campbell
RJC:

1 HANSON, BRIDGETT, MARCUS, VLAHOS & RUDY
2 RORY J. CAMPBELL - 95682
3 KEVIN M. O'DONNELL - 62298
4 333 Market Street, Suite 2300
5 San Francisco, California 94105-2173
6 Telephone: (415) 777-3200
7 Facsimile: (415) 541-9366

8 Attorneys for Plaintiff
9 Wells Fargo Bank, Trustee of the Harold
10 W. Shepard Trust Agreement

11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 Wells Fargo Bank, Trustee of the Harold) No. 747455-4
14 W. Shepard Trust Agreement,)
15 Plaintiff,) PLAINTIFF WELLS FARGO BANK'S
16 v.) UPDATED CASE MANAGEMENT
17) CONFERENCE STATEMENT
18)
19)
20) Date: October 27, 1997
21) Time: 9:00 a.m.
22) Dept: 15 (Hon. Jacqueline Taber)
23)
24)
25)
26)
27)
28)
29)
30)
31)
32)
33)
34)
35)
36)
37)
38)
39)
40)
41)
42)
43)
44)
45)
46)
47)
48)
49)
50)
51)
52)
53)
54)
55)
56)
57)
58)
59)
60)
61)
62)
63)
64)
65)
66)
67)
68)
69)
70)
71)
72)
73)
74)
75)
76)
77)
78)
79)
80)
81)
82)
83)
84)
85)
86)
87)
88)
89)
90)
91)
92)
93)
94)
95)
96)
97)
98)
99)
100)

101 Plaintiff Wells Fargo Bank, Trustee of the Harold W. Shepard Trust Agreement,
102 submits the following Case Management Conference statement.

103 Background

104 This case involves the contamination of the soil and groundwater of commercial
105 property in Oakland which is owned by plaintiff and was leased to defendant who operated
106 an automobile dealership on the property. For more information regarding the background,
107 please refer to plaintiff's Case Management Conference Statement lodged November 17,
108 1995.

1 **Status of Case**

2 At the last Case Management Conference in this case, the parties noted that experts
3 for both parties required additional time to complete their characterization of the
4 contamination so that the parties would be prepared to participate meaningfully in mediation.
5 Concurrently, the property is under regulatory compliance mandates of the Alameda County
6 Department of Environmental Health. Historically, defendant Bill Cox, Inc. has been
7 underwriting the costs of such regulatory compliance efforts. Approximately six months ago,
8 defendant, through its counsel, represented to plaintiff that it was insolvent. Since such time,
9 plaintiff has been forced to assume primary responsibility for implementing the County
10 mandated remedial effort, and has focused its efforts on minimizing expenses and completing
11 a thorough analysis of the affected Property. Such analysis will include a determination of
12 the probable ultimate costs of the remaining remedial work and of the damages plaintiff will
13 suffer. Plaintiff is also investigating the details of defendant Bill Cox, Inc.' claim of
14 insolvency. If defendant is insolvent, the handling and disposition of this matter will be
15 materially affected.

16 It is anticipated that these issues will be further clarified in the near future. It is
17 estimated that this will take roughly 90 days. Consequently, plaintiff respectfully requests a
18 further continuance of this matter in anticipation of these developments.
19
20
21
22

23 **Proposed Orders**

24 Since there is ongoing remedial work and clarification of the damages and
25 evidentiary basis for plaintiff's claims, plaintiff respectfully requests that currently set Case
26
27
28

1 Management Conference be continued until mid-January 1998.

2

3 Dated: October 21, 1997

HANSON, BRIDGETT, MARCUS, VLAHOS &
RUDY, LLP

4

5

6 By: 

Rory J. Campbell

Attorneys for Plaintiff

Wells Fargo Bank, Trustee of the Harold W.
Shepard Trust Agreement

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 PROOF OF SERVICE BY MAIL

2
3 I, Paula Gunnell, declare:

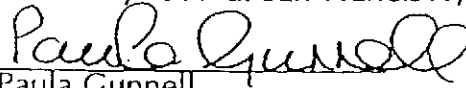
4 I am over the age of eighteen years, and not a party to the within action. My
5 business address is 333 Market Street, Suite 2300, San Francisco, CA 94105.

6 I am readily familiar with the business practice at my place of business for
7 collection and processing of correspondence for mailing with the United States Postal
8 Service. Correspondence so collected and processed is deposited with the United States
9 Postal Service that same day in the ordinary course of business.

10 On October 21, 1997 I placed a true copy of PLAINTIFF WELLS FARGO
11 BANK'S UPDATED CASE MANAGEMENT CONFERENCE STATEMENT AND
12 PROPOSED ORDER and caused it to be sealed, with postage fully prepaid thereon, and
13 placed for collection and mailing on that date following ordinary business practices,
14 addressed as follows:

15 Robert R. Cross, Esq.
16 Hovis, Smith, Stewart, Lipscomb & Cross, LLP
17 100 Pine Street, Suite 2100
San Francisco, CA 94111

18 I declare under penalty of perjury that the foregoing is true and correct and that
19 this declaration was executed on October 21, 1997 at San Francisco, California.

20 
21 Paula Gunnell
22
23
24
25
26
27
28